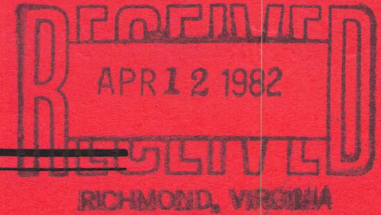


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CLERK
SUPREME COURT OF VIRGINIA



IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 810678

NORMAN V. WATSON, et al., etc., d/b/a
AVON STREET LIMITED PARTNERSHIP,

Appellants,

v.

AVON STREET BUSINESS CENTER, INC.,

Appellee.

JOINT APPENDIX

David Craig Landin, Esquire
John D. Epps, Esquire
McGUIRE, WOODS & BATTLE
Post Office Box 1191
Charlottesville, Virginia 22902

Counsel for Appellants

Charles R. Haugh, Esquire
James E. Treakle, Jr., Esquire
HAUGH & TREACLE, P.C.
435 Park Street
Charlottesville, Virginia 22901

Forbes R. Reback, Esquire
230 Court Square
Charlottesville, Virginia 22901

Counsel for Appellee

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Commonwealth of Virginia

IN THE CIRCUIT COURT OF THE COUNTY OF ALBEMARLE

NOTICE OF MOTION FOR JUDGMENT AT LAW # 1265-L

To: THOMAS D. WEBB, III
5821 Wyngate Drive
Bethesda, Maryland

You are hereby notified that unless within twenty-one (21) days after service of this Notice of Motion for judgment on you, response is made by filing in the Clerk's Office of this court a pleading in writing, in proper legal form, judgment may be entered against you by default, without further notice.

Done in the name of the Commonwealth of Virginia, this.....24th.....
day of...October....., 19.....78

SHELBY J. MARSHALL, CLERK

Carole Manpin....., DEPUTY CLERK.

Forbes Reback....., p. q.
230 Court Sq.
Charlottesville, Va.

(OFFICE ADDRESS)

Filed 13 Sept 76
5.00
25.00

Deposit
Total Paid \$ 30.00

Motion for Judgment
Civil No.

Shelley J. Marshall Clerk

TO THE HONORABLE DAVID F. BERRY, JUDGE OF SAID COURT:

The Plaintiff respectively represents to the Court as follows:

1. Plaintiff, Avon Street Business Center, Incorporated, is a corporation organized and existing under the laws of the State of Virginia whose principal offices are located at P.O. Box 231, Orange, Virginia 22960. The Plaintiff is engaged in the business of real estate investment.

2. The Defendant, Avon Street Limited Partnership, is a limited partnership organized and existing under the laws of the State of Virginia whose principal offices are located at 7th & Franklin Building, Suite 1512, Richmond, Virginia 23219. The Defendant is engaged in the business of real estate investment.

3. During 1975, the Defendant owned a warehouse on certain property fronting on Avon Street Extended (hereinafter, the "Warehouse") in Albemarle County, Virginia.

4. In April, 1975, a section of roof of the Warehouse was severely damaged by high winds. This section was temporarily repaired by Edward van Laer, Inc., General Contractors (hereinafter, the "General Contractor").

5. By letter dated May 30, 1975, the General Contractor notified the Defendant that the temporary repairs had been completed, and that "the roof has not been properly prepared for an extended period of exposure to the elements and could leak if not permanently repaired soon." A copy of this letter is attached hereto as Exhibit A and by reference made a part hereof.

6. By Agreement of Sale dated November 8, 1976, the Defendant agreed to sell and John B. Hull, as agent for the Plaintiff, agreed to buy the Warehouse for \$605,000.00.

7. John B. Hull, now President of the Plaintiff corporation, had no prior knowledge of the defect and the defect was not readily apparent upon physical examination. Mr. Hull did not have access to information about the defect equal to that of the Defendant.

8. Prior to the windstorm which caused the damage to the roof, there had been a serious fire in the Warehouse. The Defendant assured Mr. Hull that the repairs had been done in a workmanlike manner. The Defendant did not disclose the existence of the defect in the roof to Mr. Hull. Mr. Hull reasonably concluded that all damage to the building had been repaired properly.

9. By deed dated December 22, 1976, of record in the Clerk's Office of the Circuit Court of Albemarle County, Virginia in Deed Book 611, page 480, the Defendant conveyed the Warehouse to the Plaintiff.

10. On or about April 25, 1978 that section of the roof which had been damaged by high winds had to be replaced due

to leakage. W. A. Lynch Roofing Company, Inc., replaced that section of the roof at a cost to Plaintiff of \$7,459.00.

11. As a result of the concealed defect in the roof, Plaintiff has suffered actual damage in the amount of SEVEN THOUSAND FOUR HUNDRED FIFTY-NINE AND NO/100 DOLLARS (\$7,459.00).

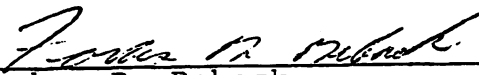
12. The defect in the roof was material, and the failure of the Defendant to disclose the defect constituted wilful concealment for the purpose of inducing the Plaintiff to purchase the Warehouse.

13. The Plaintiff innocently and justifiably believed that there was no defect in the roof and relied on that belief in purchasing the Warehouse.

14. The Defendant knew that the Plaintiff was relying on this false and material belief, and non-disclosure of this defect by the Defendant constituted fraud and deceit which caused the above injury to the Plaintiff and for which the Defendant is liable to the Plaintiff.

WHEREFORE, the Plaintiff moves for judgment against the Defendant, Avon Street Limited Partnership, in the amount of \$7,459.00, with interest thereon from May 3, 1978 as compensatory damages, and further moves the Court to award \$21,000.00 as punitive damages and the costs of this proceeding.

AVON STREET BUSINESS CENTER,
INCORPORATED
By Counsel


Forbes R. Reback
230 Court Square
Charlottesville, Virginia 22901
(804) 295-1196
Of Counsel

GROUND OF DEFENSE

Come now Norman V. Watson, Karen G. Watson, G. Cope Stewart, III, Elizabeth D. Stewart, Thomas D. Webb, III, Carol B. Webb, Ben T. Austin, III, and Norma J. Austin, General Partners of Avon Street Limited Partnership, who for their grounds of defense say as follows:

1. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 1 and 10 of the motion for judgment.

2. The allegations contained in paragraph 2 of the motion for judgment are denied, -with the exception that defendants admit that Avon Street Limited Partnership is a Limited Partnership organized and existing under the laws of the State of Virginia.

3. The allegations contained in paragraphs 3 and 6 of the motion for judgment are admitted.

4. The allegations contained in paragraphs 4, 5, 7, 8, 11, 12, 13 and 14 of the motion for judgment are denied.

5. Defendants admit that the warehouse was conveyed to plaintiff by deed dated December 22, 1976, but are without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of paragraph 9 of the motion for judgment.

WHEREFORE, defendants move the Court to enter judgment in their behalf and to award them their reasonable costs in this behalf expended.

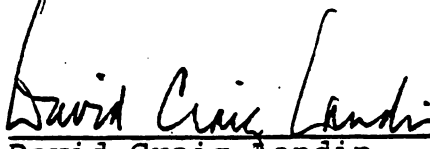
Respectfully submitted,

AVON STREET LIMITED PARTNERSHIP

By Counsel

CERTIFICATE

I hereby certify that a true copy of the foregoing grounds of defense was mailed to Forbes R. Reback, Esquire, 230 Court Square, Charlottesville, Virginia 22901, counsel for plaintiff, on this 22nd day of November, 1978.



David Craig Landin
Of Counsel

COUNSEL:

McGUIRE, WOODS & BATTLE
P. O. Box 1191
Charlottesville, Virginia 22902

MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION
TO SET ASIDE THE VERDICT OF THE JURY

TO THE HONORABLE F. WARD HARKRADER, JR., JUDGE OF THE CIRCUIT COURT OF ALBEMARLE COUNTY:

STATEMENT OF THE CASE

Plaintiff filed its motion for judgment, claiming defendants defrauded it by willfully concealing a defect in the roof of a warehouse defendants sold plaintiff. Plaintiff sought \$7,459 in compensatory damages and \$21,000 in punitive damages. Trial was held June 17, 1980 in the Circuit Court of Albemarle County and the jury returned a verdict for the plaintiff in the amount of \$7,459 in compensatory and \$4,000 in punitive damages. After the jury had been dismissed, defendants moved that the jury verdict be set aside as contrary to the law and evidence.

STATEMENT OF MATERIAL FACTS

The defendant partnership bought a warehouse on Avon Street Extended in the City of Charlottesville in 1975. Before its purchase of the property, the warehouse was damaged by a fire and was later damaged by high winds. The damage from both of these incidents was repaired. Plaintiff claims that the wind damage was only temporarily repaired and that defendants concealed this fact from it when President John B. Hull investigated the property before contracting to buy it. It is this concealment which plaintiff claims constituted fraud. Defendants' evidence was that the roof repairs were adequate.

In 1976, John Hull, already the owner of commercial warehouse property in Northern Virginia, became interested in

buying the warehouse and approached defendants' real estate agent. Hull who has an engineering background, investigated the warehouse before purchase and in the course of his investigation:

1. had two independent advisors, one of which was an experienced general contractor, inspect the building with him, Hull's inspection included the highest portion of the roof.

2. requested and was given permission to question all the tenants of the warehouse, and did question many of them;

3. asked for and was given defendants partnership's check stubs, which check stubs showed that money had been received by the partnership by its insurance carrier for the damage caused by the wind, but showed nothing as to payment of proceeds for repair;

4. did not observe the entry about wind damage or insurance proceeds in the check stubs and asked no questions;

5. was given every bit of information asked for and was given the full cooperation of the defendant.

Over a year after buying the property, and during the second full winter after the purchase plaintiff had trouble with a portion of the roof area which had been damaged by the wind and he made repairs. He then learned of the wind damage repairs and met with defendants' agent Glade Knight to request that the defendants pay for these repairs. In the course of a meeting, Knight made a remark about not using all of the insurance proceeds to repair the wind damage to the effect that the partnership had to make a profit where it could. The result of these negotiations was that the defendants refused to reimburse plaintiff for any repairs.

QUESTIONS PRESENTED

1. Did the admission of evidence on the insurance proceeds and disposition of funds prejudice defendants and constitute error?

2. Was there evidence to support the giving of jury Instruction 14 on the issue of whether defendants threw the plaintiff off guard or diverted it from making proper inquiries and examinations?

3. Was there evidence on which a jury award of punitive damages could properly be based?

ARGUMENT - QUESTION 1.

THE COURT SHOULD HAVE GRANTED DEFENDANTS' MOTION TO ELIMINATE ALL REFERENCES TO THE RECEIPT OF INSURANCE PROCEEDS AS BEING IRRELEVANT AND PREJUDICIAL.

Plaintiff attempted to prove its fraud allegation by introducing check stubs of the partnership, which showed receipt of insurance proceeds for wind damage to the Avon Street warehouse. Plaintiff claimed this reference in the check stubs misled Hull into believing that any damage had been repaired, using these funds, despite the fact that the stubs showed no entries regarding the use of the proceeds to pay for damage. Defendants objected to the use of these check references before trial, but was overruled.

In order to prove fraud plaintiff was required to prove by clear and convincing evidence a misrepresentation by defendants that was material and false, that plaintiff relied on this misrepresentation, and that plaintiff suffered damage as a

result. English v. Angel, Rec. No. 78-1106, 221 VRR 254 (August 28, 1980); Barnes, Administrator v. Barnes, 207 Va. 114, 148 S.E.2d 789 (1966); Brame v. Guarantee Finance Co., Inc., 139 Va. 394, 124 S.E. 477, (1924); Max Meadows v. Brady, 92 Va. 71, 22 S.E. 847 (1895); Michie's Juris., Vol. 8b, Fraud and Deceit §§ 5-28.

The check stubs are not relevant to any of these elements of fraud. Plaintiff clearly intended the stubs to establish a misrepresentation by defendants, yet it is equally clear the stubs are not a representation at all to plaintiff, nor false, and plaintiff never saw the critical entry prior to purchase. To be liable for fraud a defendant must have made a false representation on which defendant intended the other party to rely, and on which the other party did rely. See W. Prosser, Law of Torts (4th ed., 1971) p. 702, Restatement (Second) of Torts § 531.

Even if the check stubs did constitute a misrepresentation, they would still have had to be material to be relevant to the issue of fraud. A representation is material only if it "influences a person to enter into a contract, [if] it deceives him and induces him to act, or [if] without it the transaction would not have occurred." Packard & Norfolk, Incorporated v. Miller, 198 Va. 557, 563, 95 S.E.2d 207, 211-12 (1956), quoting 23 Am. Jur., Fraud & Deceit, § 111, p. 892; 8 Michie's Juris., Fraud & Deceit, § 7, p. 699. Plaintiff certainly was not influenced by the stubs to enter the contract and not induced to act since Hull failed to see the insurance entries before the sale. By definition, therefore, the representations could not be material.

Neither the law nor the insurance contract placed upon defendants the duty to use all or any of the proceeds from the insurance claim for the wind damage in repairing the roof. No principal or agent of the Avon Street Limited Partnership ever told plaintiff that all of the insurance proceeds were used to repair the roof. Even had Hull relied on the stubs, this false assumption would have been insufficient to make the check stubs relevant to the issue of fraud. And since the evidence showed that Hull did not even see the entries before the sale, the only result of the introduction of the stubs was to confuse the jury to the prejudice of defendant.

For these reasons, the introduction of the check stubs was error.

ARGUMENT - QUESTION 2.

THERE WAS NO EVIDENCE TO SUPPORT THE GIVING OF PLAINTIFF'S INSTRUCTION 14 AND REFUSING DEFENDANT'S INSTRUCTION 12A.

Plaintiff's Instruction 14¹ was based on Armentrout v. French, 220 Va. 458, 258 S.E.2d 519 (1979). In that case, the Virginia Supreme Court wrote that

a purchaser of real estate must discover for himself the true condition of the premises if

¹The Court instructs the jury that a purchaser of real property must discover for himself the true conditions of the premises if he had information which would excite the suspicions of a reasonably prudent person; provided the seller has done nothing to throw the purchaser off guard or divert him from making the inquiries and examination which a prudent man ought to make.

he has information which would excite the suspicions of a reasonably prudent person...[but] the seller must not say or do anything to throw the purchaser off his guard or to divert him from making the inquiries and examination which a prudent man ought to make.

Id. at 524, quoting Horner v. Ahern, 207 Va. 860, 864, 153 S.E.2d 216, 219 (1967).

The evidence in Armentrout showed:

1. The defendant made affirmative misrepresentations to the purchaser. None were shown by plaintiff Avon Street Business Center, Incorporated.

2. The plaintiff discovered a problem with the real estate and made inquiries regarding the problem and was deliberately misled by an incomplete, evasive answer which caused plaintiff to cease investigation. In the case at bar, however, no specific inquiries regarding wind damage were made and certainly no misleading answers were intentionally given.

3. An offensive odor in the house bought by plaintiff was apparently deliberately hidden by defendant by cooking pungent "garlicky" food when plaintiff investigated the property. In the present litigation absolutely no attempt to hide the roof's condition was made. On the contrary, the evidence showed that the repair work left the wind damaged portion a different color clearly discernible to anyone inspecting it.

4. The subject of Armentrout was residential property

while the subject in the case at bar is commercial property with both the sellers and the buyers being business and commercial real estate professionals.

In short, the facts of Armentrout compelled the exception grafted on to the traditional caveat emptor rule followed in Virginia. The facts of the case at bar, however, are anything but compelling and do not support the giving of an instruction based on the exception. There simply was no evidence that defendant threw Hull off guard or in any way diverted him from making prudent inquiries. A more appropriate instruction would have been defendant's proposed Instruction 12A² based on the traditional rule, Poe v. Voss, 196 Va. 821, 258 S.E.2d 519 (1955); West End Co. v. Claiborne, 97 Va. 734, 34 S.E. 900 (1900), or Instruction 14 without the second sentence.

ARGUMENT - QUESTION 3.

THE EVIDENCE WAS INSUFFICIENT TO BASE AN AWARD OF PUNITIVE DAMAGES.

In order to award punitive damages, the jury must find that the defendant acted with actual malice, Jordon v. Sauve and Koons Ford, Inc., 219 Va. 448, 247 S.E.2d 739 (1978), which has been defined as conduct evidencing "ill will, malevolence,

²The jury is instructed that if it finds that the plaintiff conducted his own independent investigation as to the fitness of the Avon Street warehouse, and that had the plaintiff pursued the investigation to the end with diligence and completeness the plaintiff would have discovered that there had been wind damage and repair to the roof, the jury will return a verdict for the defendant.

grudge, spite, wicked intention, or conscious disregard of the rights of another." Lee v. Southland Corp., 219 Va. 23, 244 S.E.2d 756 (1978).

There was no evidence at trial which even arguably met the Lee definition. Certainly the off-the-cuff, tongue-in-check remark of Glade Knight—made long after the sale—regarding making profits when possible falls short of "ill will" or "grudge", or "a conscious disregard of the rights of another." This conclusion is buttressed when Knight's remark is viewed in light of the fact that Hull never noticed the appropriate entry before the sale. Even had there been "ill will" or "grudge" associated with that remark, the comment referred to check entries which were irrelevant to the issue of fraud anyway.

The jury's award of punitive damages, therefore, should be set aside as clearly contrary to the evidence.

CONCLUSION

For the reasons set forth, the verdict of the jury, when viewed in the light most favorable to the plaintiff, should be set aside and a new trial granted; or in the alternative, an order of remittitur issued, putting plaintiff to the choice of a new trial or to an award of compensatory damages only.

Respectfully submitted,

NORMAN V. WATSON
KAREN G. WATSON
G. COPE STEWART, III
THOMAS D. WEBB, III
CAROL B. WEBB
BEN T. AUSTIN
NORMA J. AUSTIN, GENERAL PARTNERS
d/b/a AVON STREET LIMITED PARTNERSHIP

By Counsel

CERTIFICATE

I hereby certify that a true copy of the foregoing memorandum in support of defendant's motion to set aside the verdict of the jury was delivered to Forbes R. Reback, Esquire, 230 Court Square, Charlottesville, Virginia 22901, counsel for plaintiff, on this 16 day of September, 1980.



Of Counsel

COUNSEL:

David Craig Landin
John D. Epps
McGUIRE, WOODS & BATTLE
P. O. Box 1191
Charlottesville, Virginia 22902



F. WARD HARKRADER, JR., JUDGE
SIXTEENTH JUDICIAL CIRCUIT
BOX 799
LOUISA, VIRGINIA 23093

TELEPHONE
OFFICE
LOUISA (703) 967-0797

RECEIVED
DATE <u>9/25/80</u>
NAME <u>JDE</u>
CHARLOTTESVILLE

September 22, 1980

Mr. David Craig Landin
Mr. John D. Epps
McGuire, Woods & Battle
P. O. Box 1191
Charlottesville, Virginia 22902

Mr. Forbes R. Reback,
Attorney at Law
230 Court Square
Charlottesville, Virginia 22901

Mr. Charles R. Haugh
Mr. James E. Treakle, Jr.
Haugh, Helvin & Treakle
435 Park Street
Charlottesville, Virginia 22901

Re: Avon St. Business Center, Inc.
v.
Norman V. Watson, Et. Al. General Partners
d/b/a Avon St. Limited Partnership

Gentlemen:

I have reviewed the evidence in the light of the defendant's motion to have the jury verdict set aside, and a new trial granted, or in the alternative to have the Court enter an order of remittitur. The evidence in this case was conflicting, however, we find that there was evidence to support the verdict of the jury, we therefore decline to grant the defendant's motion. We ask Mr. Reback to prepare the necessary order and submit it to counsel.

Sincerely,


F. W. Harkrader, Jr., Judge

FWHjr/bl

VIRGINIA:

FOR THE COUNTY OF ALBEMARLE ON THE LAW SIDE THEREOF, THURSDAY
JANUARY 29, 1981.

AT A CIRCUIT COURT HELD AND CONTINUED
PRESENT: HON. DAVID F. BERRY, JUDGE

JUDGMENT ORDER

On June 17, 1980, this action came on for trial ^{before the Honorable F.W. Harkness, Jr., Jc} came plaintiff, Avon Street Business Center, Inc., in person and by counsel; and came Avon Street Limited Partnership, in person and by counsel, and issue was joined.

Thereupon, a jury of seven (7) persons was regularly impaneled and sworn to try the action. The jury heard the evidence of the plaintiff, the evidence of the defendants, and after receiving the instructions of the Court and hearing argument of counsel, retired to consider its verdict and subsequently returned to the Court.

The jury submitted a statement signed by the foreman rendering its verdict in open Court in favor of plaintiff in the amount of Seven Thousand Four Hundred Fifty-Nine Dollars (\$7,459.00) in compensatory damages and Four Thousand Dollars (\$4,000.00) in punitive damages against defendant.

During the course of the trial, objections were made to certain rulings of the Court with regard to evidentiary matters, motions were made to strike plaintiff's evidence and objections were made to the granting or refusing of certain instructions and to set aside the verdict, all as more fully preserved and set out in the transcript of the proceedings.

Thereafter, on September 16, 1980, the Court heard argument by counsel on the motion of defendants to set aside the verdict or in the alternative to order a remittitur, which motion was denied and it is ORDERED that plaintiff recover from Norman V. Watson, Karen G. Watson, G. Cope Stewart, III, Elizabeth D. Stewart, Thomas D. Webb, III, Carol B. Webb, Ben T. Austin, and Norma J. Austin, General Partners, d/b/a Avon Street Limited Partnership, the sum of Eleven Thousand Four Hundred Fifty-Nine Dollars (\$11,459.00), with interest from June 17, 1980, until paid, together with its taxable costs, amounting to \$ 61.75.

It appearing to the Court that the defendants intend to petition the Supreme Court of Virginia to award an appeal to this judgment, on motion of defendants, it is ORDERED that execution of this judgment be suspended so long as the defendants timely prosecute an appeal and thereafter so long as the matter is under consideration by the Supreme Court of Virginia, provided that the defendants or someone for the defendants file an appeal bond in the Clerk's Office of this Court within twenty (20) days from the entry of this order in the penalty of Thirteen Thousand Dollars (\$13,000.00), conditioned and payable as the law directs according to the provisions of §8.01-676, Code of Virginia, as amended.

Pursuant to Rule 5:9 of the Supreme Court of Virginia, the transcript of the trial is hereby directed to constitute a part of the record in this action.

ENTER: 1-29-81

David F. Berry
Judge

We ask for this:

Forbes R. Reback
FORBES R. REBACK

P. O. Box 20
Charlottesville, Virginia
Counsel for Plaintiff

May 1981

SHERRY J. MARSHALL, CLERK

Sherry J. Marshall Dec. Clerk

Charles R. Haugh
Charles R. Haugh
HAUGH & TREAKLE, P.C.
435 Park Street
Charlottesville, Virginia
Counsel for Plaintiff

Seen and Objections Noted:

David Craig Landin
David Craig Landin
McGUIRE, WOODS & BATTLE
P. O. Box 1191
Charlottesville, Virginia 22902
Counsel for Defendants

JURY INSTRUCTION

12A refused

The jury is instructed that if it finds that the plaintiff conducted his own independent investigation as to the fitness of the Avon Street warehouse, and that had the plaintiff pursued the investigation to the end with diligence and completeness the plaintiff would have discovered that there had been wind damage and repair to the roof, the jury will return a verdict for the defendant.

INSTRUCTION NO. 14

The Court instructs the jury that a purchaser of real property must discover for himself the true conditions of the premises if he had information which would excite the suspicions of a reasonably prudent person; provided the seller has done nothing to throw the purchaser off guard or divert him from making the inquiries and examination which a prudent man ought to make.

ASSIGNMENTS OF ERROR.

1. The trial court erred in admitting evidence that the partnership had received insurance proceeds for wind damage to a portion of the warehouse roof and in admitting evidence that the partnership had not used all of the proceeds toward repair of the roof.

2. The trial court erred in admitting the deed between the parties, as the deed was not relevant nor material and improperly injected the suggestion of a "general warranty" into the case.

3. The trial court erred in submitting the issue of fraud to the jury, as plaintiff failed to establish by clear and convincing evidence a misrepresentation that was material and false, reliance on a misrepresentation and damage as a result of the misrepresentation.

4. The trial court erred in refusing to give defendants Instruction 12(a) and in giving plaintiff's Instruction 14, which incorrectly stated the law with regard to the effect of an inspection by a prospective purchaser on an action for fraud based on matters which an inspection should have disclosed.

5. The trial court erred in submitting the question of punitive damages to the jury as there was no evidence to support such an award as a matter of law.

June 17, 1980

COURT convened at 10:50 a.m.

THE COURT: Is there anything you wish to take up before we empanel the jury?

MR. HAUGH: Yes, Your Honor.

MR. LANDIN: Yes, Your Honor.

THE COURT: All right, Mr. Haugh.

MR. HAUGH: May it please the court, Your Honor, as attorney for the plaintiff we propose to introduce during the course of this trial certain letters and documents, many of which will refer to insurance coverage and insurance payment. Briefly this is a case in which, according to our side, this is the purchase of a warehouse building. We maintain that there was wind damage that happened to this roof of this building sometime prior to the purchase by our client, that in fact only temporary repairs were made and that this fact was misrepresented and really concealed from our client and for that reason thereafter he had to have the roof repaired for a certain amount. We are suing both for compensatory and punitive damages, alleging it was a wilfull and malicious concealment.

Part of our evidence will show that the prior owners of the property received, made claim to the insurance company or companies as the case may be, had an adjustor involved,

1 received, oh say some eight thousand dollars in payment for
2 repair to the roof but instead of having the roof permanently
3 repaired only put a patch on it for about eight hundred dollars.
4 Now, we would introduce this to show the circumstances
5 surrounding the transaction, the malicious intent of the
6 parties and I understand that Mr.Landin is going to object
7 to anything that has a reference to insurance.

8 THE COURT: All right, Mr. Epps.

9 MR. EPPS: Your Honor, it's our position that
10 these check stubs, I mean these references to insurance
11 proceeds are irrelevant to the plaintiff's cause of action.
12 As Your Honor is aware in order to prove fraud, the plaintiff
13 has to prove that there was misrepresentation to the plaintiff,
14 that the statements were untrue, that they were material
15 and that the plaintiff relied on these statements to his
16 damage and that the defendant was aware of this reliance.
17 It is our position that any reference to any insurance
18 proceeds was no representation at all and certainly no
19 representation to the plaintiff. In order to prove fraud
20 this has to be shown that it was made to him for the purpose
21 of him relying on it. For instance in the Restatement of
22 Torts, it says at Section 531 "One who makes a fraudulent
23 misrepresentation is subject to liability to a person or class
24 of persons who intends or has reason to expect to act or refrain
25 from action in reliance on misrepresentation, for pecuniary

1 loss suffered by them through their justifiable reliance in
2 the type of transaction in which he intends or has reason
3 to expect their conduct to be influenced." And it's our
4 position that these statements, that these were not representations
5 to the plaintiff, they were not intended for him, there was
6 no intent on the defendant's part that the plaintiff relied
7 on him.

8 This Restatement Section is a restatement of what
9 the general rule on this is and it can be found on page 702
10 of the 4th Edition of Prosser on Torts as well. In order to
11 be held liable for fraud, the defendant must have made a
12 misrepresentation intended to be relied upon by the particular
13 plaintiff in the action, and it's our position that this was
14 not the case with the particular documents that they propose
15 to introduce.

16 THE COURT: Thank you, Mr. Epps. Mr. Haugh.

17 MR. HAUGH: Your Honor, we are not relying on
18 that they obtained \$8121 from the insurance company and
19 only then spent ~~7~~ \$800, except as the fraud that was practiced
20 on the plaintiff. The fraud is as we see it, the concealment
21 of facts that we show a check showing payment for \$8121 and
22 only a patch was put on. So we are not saying they defrauded
23 the plaintiff by taking the money from the insurance company,
24 what we are saying is that when the examination was made, the
25 claim was put in, then they did not repair it. The failure

1 to advise them...he didn't read the restatement far enough,
2 it also covers concealment of material fact...the fact that
3 the roof was damaged and not permanently repaired. One of
4 the letters for instance shows that...from the contractor to
5 the agent for the owners, if you don't do something it's
6 hard to tell what's going to happen. But all of these things
7 go to show the intent, motive and action of the defendant
8 and we are suing for punitive as well as compensatory damages.

9 THE COURT: It would also go to show the knowledge...

10 MR. HAUGH: Yes, sir.

11 THE COURT: ...of the parties of the damage
12 to the building. For that reason it would appear at this
13 point to be relevant evidence in the case.

14 MR. LANDIN: Judge, if I may respond briefly since
15 we are actually moving to exclude, I think I would have the
16 right to open and close. It doesn't really make any difference
17 to this case whether or not the roof was repaired at all.
18 There is no statutory or contractual obligation that the plaintiff
19 is going to be able to establish that says an insured must
20 repair the roof at all if they have a loss. And the issue
21 in this case is whether or not the roof as sold to the plaintiff
22 was as represented or as concealed from him, the issue has
23 got to be in this case whether or not the repairs were temporary
24 or permanent in nature and whether or not these people have
25 reason to know by virtue of what they did to the roof that it

1 was less than they were representing to the plaintiff. And
2 if you inject insurance in the case, it's very clear, I think
3 ...obviously the plaintiff wants it, but a side benefit
4 that is very prejudicial to the defendants is that if the
5 jury decides that an adjustment of a claim is made in a certain
6 figure, in this case \$8,000, and the defendant in its judgment
7 chooses to spend less than \$8,000 in repairing the roof, then
8 I think they are going to perhaps be influenced by the con-
9 sideration that well, there was insurance involved, let's not
10 worry about fault or the evidence, there is money there to
11 compensate the plaintiff and I don't think that is correct.
12 I also don't think that that's the issue that the plaintiff
13 has taken on to prove by way of fraud. If we start talking
14 about dollar values, of insurance adjustors who are not here
15 today and what they did with the company's...what proceeds
16 they may have paid back to the insured...the insurer has no
17 obligation to spend any of that money on its building.

18 THE COURT: Well, certainly the evidence would
19 not be conclusive on the issue but we think it would tend
20 to prove one of the issues in the case and at this point the
21 court is not willing to rule in advance that all such evidence
22 would be inadmissible. The court, as the evidence is introduced,
23 will give you the opportunity to raise your objections as to
24 relevance at the time.

25 MR. LANDIN: Judge, the only problem with that and

1 the reason I took this up in advance is that we have got
2 documents that make reference to insurance adjustors, estimates
3 and this that and the other thing, and if we are going to,
4 everytime...I am certain the plaintiff is going to start out
5 talking about insurance matters from the beginning and I think
6 once it's in, the damage as to the defendants is going to
7 be done. I don't think it's a matter that can be treated
8 letter by letter. Certainly if we are going to do it that
9 way, we are going to have to march the jury out every time
10 and you will have to consider each letter and the witnesses
11 are likely to be confused on what they can testify to and what
12 they can't testify to. One, of course, is/insurance agent,
13 himself.

14 since

14 THE COURT: Well,/the court is not familiar with
15 any exclusionary rule in a case of this sort, similar to the
16 one in automobile liability cases, we think if the evidence
17 is relevant, there is no reason why it shouldn't be considered
18 by the jury.

19 MR. TREACLE: Your Honor, if I may, there is
20 one more preliminary matter with respect to the jurors. One
21 of the jurors, a Thomas Chandler, who is number 3 on the list,
22 in which Mr. Rebäck has previously been involved in proceedings
23 in which he hadn't been committed on at least two occasions.....
24 under the circumstances we think it would be somewhat prejudicial
25 to have him on the jury, I think counsel would agree. Also we

1 MR. HAUGH: Mr. John Hull, please, Your Honor.

2
3 JOHN B. HULL, having been duly sworn, was called
4 on behalf of the plaintiff and testified as follows:
5

6 DIRECT EXAMINATION

7 By: Mr. Haugh

8 Q Would you state your full name and address, please?
9 --residence address?

10 A John B. Hull, Highpoint Farm, Orange, Virginia.

11 Q You have heard the reference to your background,
12 I will ask you to give your background to the court and
13 jury please, both as to education and business?

14 A Education, I graduated from the United States
15 Military Academy in 1943...

16 Q Did you serve in the Army?

17 A I was a rifle company commander overseas and
18 I was wounded five times, 100 percent disabled when I was 26
19 and retired as a major.

20 Q At 26...all right, sir, during your military
21 courses at West Point and your service in the Army, did you have
22 any engineering background?

23 A West Point gives a degree in engineering.

24 Q All right, sir, go ahead, please.

25 A On what?

1 Q In your business now?

2 A In business, I got out of the hospital and I
3 started law school...the doctor said I couldn't go to work
4 and I went to work. After two years I got into the investment
5 business, selling mutual funds door to door and managing
6 real estate. I've been doing that type of thing, investment
7 business my whole life and at the same time we have a farm
8 in Fairfax, which was my grand-father's and we moved down
9 to Orange about 19 years ago, I run a farm and am active
10 in farming, cattle and corn.

11 Q And how long did you go to law school?

12 A I ...the doctor said I couldn't go to work so
13 I went to law school for two years and about the time the
14 doctor said I could go to work, the Dean said I could leave
15 law school.

16 Q All right, what is your connection with Avon
17 Street Business Center, Incorporated?

18 A I'm the president and was principal stockholder.
19 That's the only thing the corporation owns, is one warehouse.

20 Q Now, I hand you this deed and ask you if you
21 can identify this?

22 A Yes, that's the deed to this particular warehouse,
23 Avon Street warehouse.

24 Q Your Honor, I believe there is going to be
25 an objection at this time. Do you want to be heard out of the

1 presence of the jury?

2 THE COURT: All right, do counsel desire the
3 jury...

4 MR. LANDIN: Your Honor, all I want to indicate
5 to the court is that I was willing to stipulate that they
6 owned the premises and I don't think there is any dispute
7 over the fact that the proper defendants have answered in
8 the action and I don't think that the deed, itself, if it's
9 to be...

10 THE COURT: Does that stipulation cover the
11 purpose of your exhibit?

12 MR. HAUGH: No, Your Honor, because there is also
13 a plat with this showing the location of the structure upon
14 the property we want to use as well.

15 THE COURT: Is there any objection then that you
16 wish to take up out of the presence of the jury?

17 MR. LANDIN: Well, I still don't think the deed
18 is relevant. I don't know that the deed, itself, needs to come
19 in Your Honor. I think it needs to be taken up out of the
20 presence of the jury though.

21 THE COURT: All right, I will ask that the jury
22 step into the jury room.

23
24 (Jury retired to the jury room at this time)
25

1 THE COURT: All right.

2 MR. HAUGH: This is the deed and plat, Your Honor,
3 that is in question.

4 THE COURT: All right, Mr. Landin, have you had
5 an opportunity to look at this? If so, state your objection.

6 MR. LANDIN: I haven't taken a close look at the
7 plat, Your Honor. I don't know that there is any objection
8 to the plat coming in. It's going to give the jury an idea
9 of where the building sits but what I object to is essentially
10 the deed. I don't think the deed has any relevance since
11 ownership is not questioned, the deed document itself.

12 THE COURT: Well, what is the objection to it? It
13 would have relevance...without the stipulation, if counsel
14 doesn't want to accept the stipulation, what is your objection
15 to the deed?

16 MR. LANDIN: Your Honor, I object, it's not going
17 to be relevant to any issue here today since I believe under
18 the statute if we are going to deny ownership of property
19 involved in a lawsuit, I believe we have to make a specific
20 denial, otherwise that objection is deemed as being waived.
21 And furthermore, I don't want the jury confused by any language
22 in the deed that talks about general warranty and English
23 covenants because it's very clear that the law is that there
24 is no general warranty as to the conditions of the improvements
25 on realty. And I don't want there to be any confusion on this

1 document. We are not dealing with a warranty case, we are
2 dealing with a fraud case.

3 THE COURT: There is always, of course, the
4 possibility that the jury may misinterpret the language
5 of any exhibit but we don't think that forms the basis for
6 objection. If you wish to offer an instruction to cover that,
7 the court will consider it at the appropriate time.

8 MR. LANDIN: Your Honor, I have no objection to the
9 plat, I certainly do object to the deed documents.

10 THE COURT: The objection will be overruled. You
11 may resubmit the jury. It will be received as plaintiff's
12 exhibit number 1, subject to objection.

13
14 (Plaintiff's exhibit number 1 was so marked and
15 received into evidence at this time)

16
17 MR. HAUGH: May we have the exhibit withdrawn and
18 substitute a copy at a later time?

19 THE COURT: Yes, you may.

20
21 (Jury returned to the courtroom)

22
23 Q (Mr. Haugh continuing) For the benefit of the
24 record, this deed has now been identified and marked as
25 plaintiff's exhibit number 1, it's the one you read...this is

1 the deed in which the property was conveyed to you?

2 A That is correct.

3 Q And you will see the plat on the back, does that
4 show the location of the building that was on the property
5 that was purchased by you?

6 A It does.

7 Q Mr. Hull, will you tell the court and the jury
8 what the terms of your purchase were, from the defendants?
9 What were the terms of the purchase?

10 A The terms were, as I remember, overall cost of
11 \$605,000.00, assume the first mortgage that was on it, which
12 was in excess of \$400,000.00, and give them a second mortgage
13 I believe of \$180,000.00 and give them \$75,000 in cash.

14 Q All right, and is there still a second mortgage
15 payable...

16 A The second mortgage was a five year mortgage
17 so it's still in being, I owe them \$77,000.00 on the second
18 mortgage, I owe them \$401,000.00 on the first.

19 Q Now would you tell the court and jury how you
20 became interested in purchasing this property? What called
21 your attention to it?

22 A I was reading the want ads in the Wall Street
23 Journal and I saw it advertised in Charlottesville and it
24 was advertised by Polly McGavock and it had Doug Zerkel's
25 name. I had never met Doug so I gave him a call. I got to see

1 the property. That was about the end of June and finally in
2 December we finally got together on it.

3 Q Now, did you and Mr. Zerkel discuss whether this
4 building had ever been damaged?

told

5 A They /' me it had been damaged by fire, I had
6 never seen the building before I went out with Zerkel to see
7 it. It's a long rectangular building and on the right hand
8 side that had the fire, that was Ridge Electronics, there had
9 been considerable damage. I had never seen the fire damage
10 myself...been considerable damage and the agent, their
11 agent explained to me that all the damage that had been done
12 had been repaired in a workmanlike manner.

13 Q Now, was any mention made of any other type
14 damage such as wind damage or repairs?

15 A None whatsoever.

16 Q Did you have an occasion to inspect the roof
17 or any portion of it?

18 A I went up on the roof on the right hand side where
19 there had been fire damage to look at it and it looked...I mean
20 I'm not a roofer, and I went up there and everything looked
21 all right to me and it seemed to be pretty well...the wind
22 damage is on the left hand ^{side} of the building and I never went
23 up there until afterwards.

24 Q Will you come up and point out to the jury on this
25 plat of the building, where the front of it is that you are

1 talking about, where the fire damage was and where you went
2 up on it?

3 A The road is here...

4 Q That's Avon Street Extended?

5 A That's Avon Street Extended and you have an
6 entrance here and an entrance here. This building extends...
7 the fire damage was in this end of the building, the wind
8 damage was in this end. I went up on the back...the American
9 Marine Defense has a walkway that you can go right up on the
10 top. This building is divided into three sections. There
11 are fire walls like so and...

12 Q Describe the fire walls? How high did they go
13 above the roof?

14 A About this high about the roof, it varies...

15 Q And how do you get into each section? Is there
16 an entranceway from each building?

17 A There is no way, you've got to put a ladder
18 up. When I went up here, you put a ladder up. There was
19 ...they kept radar machines up on top, the American Marine
20 Defense repaired radar and they had radars up there so you could
21 walk up on the back. I walked up there and saw that.

22 Q Now, why did you go up there and check the building,
23 the roof where there had been fire damage?

24 A Because I knew there had been damage up there.
25 There had been repairs made and I wanted to take a look at it.

1 Q Now, during the time that you were negotiating
2 with Mr. Zerkel regarding the purchase of this property, did
3 you request any information about the operation or expenses
4 from him?

5 A I did. They didn't come forward with any balance
6 sheet or anything like that so I wanted to know what their
7 different costs had been. Doug Zerkel came up with these
8 cancelled...bunch of cancelled check stubs, photostats of
9 them. So from those I could see how much their water, the
10 utilities, what they had been paying, I could see in there
11 receipts for fire damage that I am talking about, the
12 insurance damages coming in, their paying out money for
13 repairing...I think it was something like \$90,000 they showed
14 in receipts...

15 Q Without going into these specifically, I hand
16 you these and ask you if these are the copies of the check
17 stubs that you received from Mr. Zerkel?

18 A Yes.

19 Q And did he represent those to be the check
20 stubs of Avon Street Limited Partnership?

21 A That's right.

22 Q Mr. Hull, I ask you to look at the first page
23 of these where it shows check 140, and ask you if you can
24 tell me the beginning date of these check stubs?

25 A Well, this one says December 27, '74.

1 Q Now, I ask you to look at the last one, check
2 number 394?

3 A That says July 2, '76.

4 Q Now, I am going to hand you these two sheets
5 specifically and ask you if those were included in this
6 entire group of checks?

7 A I believe they were, yes.

8 Q Your Honor, I am going to ask at this time that
9 these two copies be introduced into evidence.

10 THE COURT: Any objection?

11 MR. LANDIN: Your Honor, it would be based on the
12 same objection I took up with the court at the start of
13 the trial.

14 THE COURT: The ruling of the court will be the same.
15 It will be received as plaintiff's exhibit 2, subject to
16 the objection previously noted.

17
18 (Plaintiff's exhibit number 2 was so marked and
19 received into evidence at this time)

20
21 Q Now, after you purchased this building, did there
22 come a time when the roof had to be repaired, any portion
23 of the roof have to be repaired?

24 A There did. I started getting complaints from
25 the tenants that the left end of the building that...like you

1 see a leak up there on that roof, a little leak coming down,
2 well that's normal, and so I started trying to find it...it
3 was during the winter and there was ice on the roof, I couldn't
4 get up there, the gutters were freezing and therefore letting
5 it flow back beyond the flashing. Well, then we got another
6 leak on the other side, from another tenant, the whole roof
7 collapsed...it was not a leak, it was a collapse. Everybody
8 has got a leak but this was different. This was leaks all
9 over the place and it wasn't running on the beam which we
10 thought for a while. When the weather got right and we got
11 people up there, the roofing people up there and they found
12 out that we didn't have a roof really on this section.

13 Q Now, was the leak...when the leak started, was
14 this in the winter of '77 and '78?

15 A I believe so, that's correct.

16 Q All right, who did you call to look at the roof?

17 A I called Doug Zerkel as the agent, managing agent,
18 real estate agent.

19 Q And did subsequently Lynch Roofing...

20 A He got estimates on fixing it. I okayed one of
21 the estimates and we had it fixed.

22 Q Now, how much did that cost you?

23 A I believe it was seven thousand, four hundred and
24 some odd dollars, I don't have the figure right with me.

25 Q Do you have a record of that?

1 A Yes, I do, right back there in my file...\$7,459.00
2 and it was paid May 3, 1978.

3 Q Now, you have described briefly the area where
4 the fire damage occurred, and the area where you had the
5 roof repaired, was that what you were talking about when
6 you said it was damaged by wind?

7 A The fire damage is on the right side as you look
8 at the building and the roof damage by wind, I found out later
9 was on the left side...they were completely separate. There
10 is another building in between them.

11 Q Now, after having the roof repaired did you have
12 an occasion to talk with any of the defendants? --if so, when
13 and where?

14 A My original thought...when I found out we didn't
15 have a permanent roof up there, was that the previous owner
16 had hired a roofer and roofer had done a shoddy job so I
17 went to the defendants over there and asked them who did their
18 roof repair. Well, they didn't have any knowledge, couldn't
19 help me, and I thought that the person who had done the repair
20 had done a bad job, and therefore I could go against Lynch or
21 whatever roofing company, Better Living or whoever it was. When
22 I found out, or Mr. Zerkel found out, by letters...

23 MR. LANDIN: Your Honor, I am going to have to object
24 to him passing on what Mr. Zerkel found out...

25 THE COURT: Objection sustained.

1 MR. HAUGH: All right, go ahead.

2 A So I went up to the defendants and asked them
3 about it and I found out that we hadn't had a permanent roof
4 put up there.

5 Q Now, who did you talk to of the defendants?

6 A Well, let me get my notes out so I make sure
7 I have the right thing. On May 18th I talked to Glade Knight
8 in Richmond. We talked for about one hour.

9 Q This is 1978?

10 A 1978.

11 Q All right.

12 A And he couldn't give us any information or
13 any satisfaction. He didn't know at that time that I had
14 letters from the roofers, that a temporary repair had been
15 made. I asked him to set up a meeting with the general
16 partners who would have some say in this matter and they are
17 in Rockville, Maryland. That meeting was set up for May 31st
18 at, I think it was 10 o'clock in the morning. I got up there
19 to meet them and nobody was there. So I went to lunch and then
20 I came back and sat in the outer office until they came in
21 and I met with Mr. Austin, Glade Knight...I think they had
22 a couple of house attorneys and another one there, and Doug
23 Zerkel were all there.

24 Q Did you get any information during this conversation
25 concerning the wind damage or the type of repairs that had been

1 made?

2 A Nothing from them. Their claim was that they
3 had made a permanent roof. I showed the letter that it was
4 a temporary repair and it was either Glade Knight or Austin
5 that said, what's wrong with making a small profit?

6 Q Your Honor, could I have this...I do not proffer
7 it into evidence at this time but if I could just have it
8 marked for identification?

9 THE COURT: Yes, you may. It is marked for identi-
10 fication as plaintiff's exhibit 3.

11
12 (Plaintiff's Exhibit 3 was so marked for identification
13 at this time)

14
15 Q (Mr. Haugh continuing) Mr. Hull, I hand you this
16 letter...I don't want you to read it or disclose its contents,
17 it's marked exhibit 3, and I ask you if this is the letter
18 that you were referring to that you had and read to them
19 at your meeting in Maryland?

20 A That's the letter.

21 Q Mr. Hull, when...I will ask you this question,
22 would you have purchased this warehouse building on the terms
23 and conditions agreed to if you had known of the wind damage
24 and the temporary repairs that had been made?

25 A No. It would had to have had a permanent roof, or

1 discount the price so I could put a permanent roof. Let's face
2 it you've got to have a permanent roof on the building.

3 Q You considered the amount you paid \$7,459.00
4 a material sum?

5 MR. LANDIN: Your Honor, I object to his leading
6 the witness very strongly at this point.

7 THE COURT: Yes, you mustn't lead your witness.

8 Q Do you consider the sum of \$7,459.00 a material
9 amount?

10 A To me it's a lot of money.

11 Q That's all we have.

12 THE COURT: Mr. Landin.

13
14
15 CROSS EXAMINATION

16 By: Mr. Landin

17 Q Mr. Hull, I think you in going through your
18 business background for the jury, you indicated that you
19 graduated from the Military Academy with a degree in
20 engineering?

21 A That's correct, with a B.S. in engineering.

22 Q All right, sir. You did attend two years of
23 law school, that's also correct?

24 A That's correct.

25 Q You went into what you have described as an

1 investment business after that time?

2 A Yes.

3 Q And the investment business included managing a
4 number of apartment buildings, did it not?

5 A That was when I was moonlighting. The investment
6 business was one. I had three jobs and the second job was
7 managing some apartment houses.

8 Q And the apartment houses had how many units
9 in them?

10 A There were complexes of threes that had about
11 35, and two that had about 50 or 60 in each.

12 Q And one of your duties during the course of
13 managing is to be an agent who not only collects rent but
14 is a repository for complaints such as leaking roofs and
15 things like that, is it not?

16 A Neither of those, I didn't collect the rents
17 or have to take the complaints. You have a manager on the
18 place that took that, took the complaints. He would also
19 collect the rents and bring them into the secretary. I didn't
20 have to do either of those jobs.

21 Q When the manager got a complaint that something
22 was more serious such as the roof or furnace for something
23 that required a bigger person to make a decision or more
24 authority, he would have to come to you, would he not?

25 A That's correct.

1 Q Now, you talked about...now in your investment
2 business did you not also work for a gentleman for a number
3 of years in terms of buying businesses and doing little things
4 like that?

5 A Worked...

6 Q Who else did you work for? --in your investment...

7 A I worked with Layton/ Associates in Washington
8 and I worked for National Bulk Carriers in New York before I
9 came down here.

10 Q How many years did you do that?

11 A I worked for Hamilton Management when I was in
12 Denver about five years, six years, Layton & Associations
13 a couple and National Bulk Carrier in New York for a couple.

14 Q Layton & Associates, what did you do? Did you
15 evaluate the purchasers...

16 A You take a person who has money and a person
17 who has a thought and you try to put them together and get
18 a small piece of it.

19 Q And you own a warehouse in Northern Virginia,
20 is that correct?

21 A Not at that time, no. That was much later.

22 Q When...

23 A When the farm was condemned up in Fairfax I was
24 able to take that money and buy a warehouse up in Northern
25 Virginia which was eight years ago.

1 Q How many square feet was that warehouse?

2 A 26,000.

3 Q Now the farm that you are talking about being
4 condemned you and your brother, Mr. Ludlow King intended
5 to turn that into a housing subdivision, did you not?

6 A We had a contract for that. We were not the
7 developers.

8 Q You purchased the warehouse of 26,000 square
9 feet and your tenant was whom?

10 A With whom?

11 Q Who was your tenant in the warehouse?

12 A At that time G.S.A. was.

13 Q All right, and...

14 A General Services Administration.

15 Q Is it not true that the warehouse had the same
16 type of flat build up roof that you had down here on Avon
17 Street?

18 A It did.

19 Q And you inspected that roof, did you not?

20 A That's correct.

21 Q And it's also true, that you were concerned
22 about...when you purchased that other warehouse you were
23 concerned about the condition of that roof?

24 A That's right.

25 Q Because a good roof is important, isn't it?

1 A And that's why I asked the agent about the roof
2 at the other one.

3 Q My question is, a good roof is important, isn't
4 it?

5 A A good roof is very important.

6 Q All right. Now, you indicated that you are a
7 farmer in Orange?

8 A That is true.

9 Q How big a farm do you run down there?

10 A We have 370' acres, 300. open.

11 Q Do you have a farm manager?

12 A I have one hand.

13 Q Do you also...

14 A I'm the manager.

15 Q Do you also own other commercial property?

16 A Yes.

17 Q Do you own an office building here in Charlottes-
18 ville?

19 A Yes.

20 Q What other commercial property do you own?

21 A Well, the last month my wife and I bought some
22 townhouses.

23 Q All right, now when you started looking at the
24 Avon Street Warehouse in Charlottesville, you indicated you
25 saw the ad in the Wall Street Journal and you called Doug

1 Zerkel with Polly McGavock?

2 A That's correct.

3 Q When did you first go and look at that warehouse?

4 A I don't know the exact date. It was at the end
5 of June or the 1st of July, in that area, because that's when
6 I saw the ad and I went right to Zerkel and he was anxious.

7 Q You say you were anxious?

8 A He was anxious to show it.

9 Q The asking price was \$650,000.00, was it not?

10 A It could have been that or more.

11 Q And you went with him and looked at the warehouse?

12 A Yes.

13 Q Mr. Zerkel did not take you up on the roof, did
14 he?

15 A No, he did not.

16 Q But you went up on the roof yourself, did you not?

17 A At another time, that's correct, not with Mr.
18 Zerkel present.

19 Q Now, when you started looking at the building,
20 you were careful to analyze it from the financial standpoint and
21 structure standpoint and price standpoint, weren't you?

22 A I tried my best.

23 Q You in fact got permission from the...through
24 Quadel Management Corporation indirectly, but through Mr.
25 Zerkel to go talk with the tenants yourself, did you not?

1 A I don't know that. I did talk to some of the
2 tenants.

3 Q You went in and talked to the tenants?

4 A That's right, especially Ridge Electronics where
5 they had had the fire.

6 Q And you made your own physical examination of
7 the interior of the building?

8 A I did.

9 Q I think you mentioned when I talked to you before
10 that you determined that the beams, themselves, were sound?

11 A I was told that..at the same time I was told
12 there was a 25 year roof, I was told that the contractor had
13 put in heavy beams and it was over structured and it looked
14 that way to me, the little I know about it.

15 Q Well, you looked at the beams...

16 A Yeah...

17 Q And you relied on your own knowledge to determine
18 that they were oversize for the structure, didn't you?

19 A Nothing contradicted what I had been told.

20 Q All right, sir. And your brother, Mr. Ludlow
21 King, is the president of King Builders, is that correct?

22 A That is correct, he is chairman of the Board.

23 Q Chairman of the Board, he came down and evaluated
24 this property for you also, did he not?

25 A Not as closely. He went around the outside of it

1 with me.

2 Q All right, so you took a builder over it, correct?

3 A That's right.

4 Q All right, who else did you take over there?

5 A I took Mr. P. Hunt over there.

6 Q And Mr. Hunt for the jury's edification, he is
7 a developer of shopping centers?

8 A He is a farmer now but he wanted to go...he was
9 going to go in with me but the payout was so long that he
10 ...he's 72 now, he didn't think he could go into it with me.

11 Q But Mr. Hunt has developed shopping center
12 properties throughout the east coast in the past, has he not?

13 A He has owned them, I don't know whether he has
14 developed them. He has owned them, as a partner in them.

15 Q And who else did you take over there?

16 A I don't remember anybody else. There could have
17 been...I mean I was very interested in this expense..this is
18 five months so I could have taken anybody, I know I took my
19 wife over.

20 Q So in a period of time, in the summer of '76 through
21 the time that you entered into a contract which was November of
22 '76 you inspected the property yourself, you went with Mr.
23 King, you went with Mr. Hunt?

24 A That's right.

25 Q Did you ever go with any representatives of

1 Quadel Management or of Avon Street Limited Partnership?

2 A Doug Zerkel was their agent.

3 Q Well, with Doug Zerkel and you did talk to the
4 tenants?

5 A I talked to a tenant.

6 Q And it's true, is it not, that the tenants...none
7 of the tenants indicated to you that they were having any
8 problems with the roof leaking at the time you entered into
9 a contract?

10 A I didn't talk to the right tenant...

11 Q Mr. Hull, I'm asking you to answer my question...

12 THE COURT: Answer the question and then you can
13 qualify it, sir.

14 A I can qualify it...

15 Q Your Honor, I think the witness doesn't want to
16 answer my question...

17 A I would love to answer your question if you will
18 let me.

19 THE COURT: Mr. Hull, you must answer the question
20 first and then if you wish to qualify your answer you may
21 do so.

22 A Ask the question.

23 Q Mr. Hull, in fact none of the tenants that you
24 talked to indicated to you that they had any problems with
25 the roof leaking, did they?

1 A No, but I did not talk to all of the tenants.

2 Q All right, sir, the tenants you chose to talk to
3 indicated to you no problems with the roof leaking, is that
4 correct?

5 A That's right.

6 Q All right, when you wanted additional information
7 about this building to analyze it from a financial standpoint,
8 you asked Mr. Zerkel to provide you with certain data, did
9 you not?

10 A That's correct.

11 Q And he provided you with check stubs that you
12 have already identified, didn't he?

13 A Correct.

14 Q And he provided you with what other information?

15 A Pardon me?

16 Q What other information did he give you?

17 A At that time I think I got to see some of the
18 leases or maybe all of the leases, I'm not sure. I got to
19 see the plat, I know that, and at some point along here I had
20 seen a blueprint of how they were going to construct the building
21 but they didn't go ahead and construct it. I can't find that
22 blueprint at this point. If you all have it, I would love to
23 have it back.

24 Q Mr. Hull, specifically with regard to the conversation
25 with Mr. Zerkel, you say you asked him about the fire damage

1 and Mr. Zerkel responded that

2 MR. HAUGH: I object, Your Honor, that's not what
3 he said. He said Mr. Zerkel mentioned the fire damage to him.

4 A That's correct. I didn't ask him, I didn't know
5 about the fire damage beforehand.

6 Q Mr. Hull, regardless of how it came up, you had
7 a conversation with Mr. Zerkel...

8 A Mr. Zerkel had told me about the fire damage. I
9 didn't know about it. I had never seen the fire damage.

10 Q And he told you to the best of his knowledge the
11 fire damage had been repaired in a workmanlike manner?

12 A That is correct.

13 Q And you did not ask him whether or not , between
14 the fire which occurred in 1974, and your purchase which
15 occurred in 1976, that there had been any other damage of
16 any type, did you?

17 A No, I never asked.

18 Q And with regard to Mr. Zerkel, isn't it a fact
19 that he told you, with regard to the roof, he told you there
20 was no guarantee on the roof?

21 A Mr. Zerkel said the...that Potts had built the
22 roof and there was no guarantee on the roof because he had built
23 it but it was a 25 year roof.

24 Q Mr. Zerkel told you there was no guarantee on the
25 roof?

1 A That is correct.

2 Q All right. Now, I think you have indicated you
3 had no knowledge that there had ever been any wind damage to
4 the building prior to March of 1978 when you experienced leaks
5 and Mr. Lynch went up on the roof? Is that correct?

6 A That's right.

7 Q Let me borrow an exhibit if I might, Your Honor.
8 By your earlier testimony you identified plaintiff's exhibit
9 number 2, a copy of the check stubs that you received?
10 Did you not?

11 A Yeah.

12 Q And in that packet there is a check stub that
13 says at the bottom, it says a check made payable to Quadel
14 Management, says repair wind damage?

15 A Repair wind damage, \$8,121.00.

16 Q All right, and it's your testimony that you did
17 not see this entry until or know of any wind damage until
18 1978?

19 A The only damage that I knew of was the fire
20 damage and if I saw that at the time, I don't know whether
21 I did or not. I would have to say it's all on the fire damage.

22 Q Mr. Hull, your testimony is that you received
23 these documents and you reviewed them yourself, is that correct?

24 A I did, and I added all the insurance there because
25 I was looking for the fire damage.

1 Q And you in fact did not ask any further questions
2 of Mr. Zerkel about what that entry meant, did you?

3 A No, because all the damage that I knew about
4 had been repaired in a workmanlike shape, which was the fire
5 damage.

6 Q All right, and you did not ask any questions
7 about the wind damage...

8 A I didn't ask Zerkel any questions on any of
9 that.

10 Q In order to make it clear, is it correct or is
11 it not correct that you never had any conversations with
12 anyone connected with Quadel Management or anyone connected
13 with the partnership other than Zerkel until May of 1978, when
14 you were looking to be reimbursed for roof repair?

15 A When I went down to see Glade Knight is the first
16 one, when I met him...when I went up to see Mr. Austin is the
17 second time I had met him. I think he was there at the closing
18 or one of your people were, somebody.

19 Q And it is also true, is it not, that you were not
20 refused any records that you asked for?

21 A I was not, no, I will have to agree with you
22 there.

23 Q Now, when you met with the representatives of
24 the partnership on May 31, you, of course, knew what your
25 repair was going to cost, is that right?

1 A When...

2 Q May 31, 1978, your testimony was that you...

3 A I knew the whole thing then, I knew the whole
4 story.

5 Q And their indication to you was that they felt
6 that the repairs that had been made in 1975 were permanent,
7 is that right?

8 A That was their indication.

9 Q All right. Now, when you earlier met with Mr.
10 Knight on May 18, 1978, he was no longer with Quadel Management,
11 was he? Hadn't he in fact gone out on his own, in his own
12 business?

13 A I don't know what his status was. He will have
14 to testify to that. I was looking for what was wrong with the
15 roof and at the time that the roof was supposedly repaired
16 he was connected with this building, and he was the one I should
17 look to, to find out what my problem was. I wasn't trying to lay
18 fault, I was trying to get the thing fixed.

19 Q Did you go up on the roof in March of 1978?

20 A No.

21 Q Have you been up on the roof since it has been
22 repaired in 1978?

23 A While it was being repaired, not completed.

24 Q You did go up on the roof?

25 A Yes.

1 Q And inspected it?

2 A No, I didn't go walking all around it, they were
3 putting tar up there.

4 Q And when...

5 A I went up on the ladder which was very tiring
6 and looked, but I didn't go walking around, no, because they
7 were working then.

8 Q When you went up on the building, prior to your
9 purchase of the building in 1976, why didn't you continue
10 looking down the roof to see the remainder of the grooves
11 on the building?

12 A If you had been up on the roof, you can't look
13 from one end of the roof to the other because of the fire walls
14 up there. I was over the part that had been damaged by fire,
15 that was my problem. That's the only thing I knew about.

16 Q Well, isn't the elevation of the building the
17 highest at the end by Ridge Electronics?

18 A Yes, it is.

19 Q And you never made any further attempt to go and
20 inspect the other sections of the roof or have anyone else
21 look at them?

22 A No, I had been guaranteed that that was a 25 year
23 old roof overall. The one that has not been guaranteed to me
24 was the new fire damage. That's the one I looked at.

25 Q You looked at nothing else?

1 A I didn't go on the rest of it.

2 Q Let me hand you a copy, if I might, of the
3 proposal that you got I assumed from Mr. Lynch...let me ask
4 you if you can identify this as the proposal from Mr. Lynch
5 for the repairs that were made in 1978?

6 A It looks like the same one I got.

7 Q I think I in fact made a copy...

8 A No, I think we gave them to you. Yeah.

9 Q Let me get this marked, if I may. Your Honor,
10 at this time we would offer as defendant's exhibit 1, a
11 proposal from Lynch Roofing Company, Incorporated, dated March
12 21, 1978, submitted to Polly P. McGavock for repairs in question,
13 in 1978.

14 THE COURT: Any objection?

15 MR. HAUGH: No objection, Your Honor.

16 THE COURT: It will be received without objection
17 as defendant's exhibit 1.

18
19 (Defendant's exhibit number 1, proposal from Lynch,
20 was so marked and received into evidence at this time)

21
22 Q Thank you, sir. Mr. Hull, in trying to find
23 out a little bit more about the...I show you what has now been
24 marked as defendant's exhibit number 2, which is another proposal
25 from W.A. Lynch Roofing, dated April 11, 1975, and ask you if

1 that is the document you ultimately came in possession of at
2 the point in time when you were doing the repairs in 1978?

3 A I don't have this one in my file.

4 Q You do not. Your Honor, I would offer this
5 into evidence...

6 A But the figures are pretty close.

7
8 (Defendant's exhibit number 2 was so marked and
9 admitted into evidence at this time)

10
11 Q Let me ask you then, Mr. Hull...Your Honor, I
12 think at this point in time I will reserve the right to recall
13 Mr. Hull when some of these matters are clarified by other
14 witnesses.

15 THE COURT: All right, sir. Any further questions,
16 Mr. Haugh?

17 MR. HAUGH: Yes, I have a couple.

18
19 REDIRECT EXAMINATION

20
21 By: Mr. Haugh

22 Q You may have answered this on cross examination,
23 I don't want to put words in your mouth, did you say that you
24 were told that there was no guarantee only on the roof area
25 where the fire damage had taken place had been repaired?

1 MR. LANDIN: Your Honor, he is leading his witness,
2 which is not proper.

3 Q All right, would you explain the guarantee?

4 A I will try to explain what the deal was.

5 Q All right.

6 A The fellow that built the building, built it
7 for himself and he was a contractor. I asked for the guarantee
8 on the roof from the agent. He said that the fellow that built
9 the building built it for himself and he put up a 25 year
10 roof and he knew...Doug Zerkel knew Mr. Potts intimately and
11 knows his work and everything else, said you can rest assured
12 that is a good roof up there. Then when the fire damage was
13 brought up on the right hand side, that destroys the roof that
14 Potts put up so I asked about this and they said all the work
15 has been done in a workmanlike manner. So, therefore, I figure
16 my whole roof is covered. Does that answer your question?

17 Q Yes, it does. Now, you were asked about tenants
18 you had talked to, what tenants did you talk to and what was
19 your purpose in talking to them?

20 A I talked to the tenants under the fire damage.
21 That's where I was worried. If I had talked to the tenants
22 down here I would have found those leaks because I have letters
23 now in the file from those about this time that there were leaks
24 but I didn't know that. I talked to the tenants up here. I
25 didn't talk to the tenants down there.

1 Q Did you rely on Mr. Zerkel telling you...

2 MR. LANDIN: Your Honor, I object. He's leading
3 his witness and now we are going to have it turned around, so
4 that he gets the same thing in...

5 THE COURT: Yes, Mr. Haugh, you mustn't suggest
6 an answer in your question.

7 MR. HAUGH: Sir?

8 THE COURT: You must not lead your witness.

9 Q All right, sir, Mr. Hull, I will ask you whether
10 or not representations were made to you by Mr. Zerkel concerning
11 the roof?

12 MR. LANDIN: Your Honor, that's going to be a leading
13 question again. It's calling for obviously a yes or no answer
14 and the ground has already been covered. We have...the statements
15 have been made three times that there was no guarantee, that there
16 was a guarantee and there was no guarantee and I just don't think
17 it's proper.

18 THE COURT: We don't want to go over the same material,
19 Mr. Haugh.

20 MR. HAUGH: Your Honor, I'm asking if / there was a representation
21 and if he relied on it, I think that's a part of my case and I
22 have to show that he relied on the representations made.

23 THE COURT: All right, you may ask that question.

24 Q Did you rely on representations made?

25 A I definitely relied on the representations...

1 MR. LANDIN: Your Honor, I am going to object for
2 the record to that. He is asking him a leading question again,
3 did you rely, and he is calling for a legal conclusion and I
4 think it's improper to have that go in in that fashion.

5 THE COURT: The objection will be overruled. Proceed.

6 Q That's all I have of this witness, Your Honor.

7 THE COURT: Anything further?

8 MR. LANDIN: Not at this time, Your Honor.

9 THE COURT: I assume you wish to retain this witness?

10 MR. LANDIN: Yes, sir.

11 MR. HAUGH: Yes, sir, Your Honor.

12 THE COURT: All right, ladies and gentlemen of the jury,
13 we are going to take a ten minute recess now. The court cautions
14 you that you must not discuss the case, or allow anyone to discuss
15 the case with you during your recess. Be back in ten minutes.

16
17 (Brief recess for court, counsel and jury)

18
19 THE COURT: All right, gentlemen, proceed.

20 MR. HAUGH: Your Honor, if I could recall Mr. Hull
21 for one further question?

22 THE COURT: All right, sir.

23
24 MR. JOHN B. HULL, was recalled and testified as
25 follows on redirect:

REDIRECT EXAMINATION

By: Mr. Haugh

Q Mr. Hull, in addition to the two pages of copies introduced into evidence at this time, you have previously introduced these as the check stubs furnished you by Mr. Zerkel?

A I believe that's it.

Q I would ask that these be introduced into evidence at one exhibit, Your Honor.

THE COURT: Any objection?

MR. LANDIN: Your Honor, many of them are not relevant to the issue involved here.

MR. HAUGH: May we be heard out of the presence of the jury, Your Honor?

THE COURT: All right, sir, the jury will retire to the jury room, please.

(Jury retired to the jury room at this time)

MR. HAUGH: May it please the court, Your Honor, during cross examination Mr. Landin raised a question about Mr. Hull's going through these, what he picked out and what he didn't pick out. He questioned him very thoroughly and specifically about financial and other matters that he inquired into and that's the reason these were supplied him, as part of his negotiations to purchase

1 and that's the reason we are asking that these be introduced
2 into evidence so the jury can see what he went through and
3 what he was doing.

4 THE COURT: All right, Mr. Landin.

5 MR. LANDIN: My only response, Your Honor, is that
6 the only one that is obviously both material and relevant are
7 the ones that they have already offered and they are ones dealing
8 with the entry on wind damage and the entries on insurance
9 proceeds for wind damage.

10 THE COURT: The court believes that the volume of
11 receipts, checks themselves may be relevant in view of the
12 questions that have been asked, the objection will be overruled.
13 They will be admitted.

14
15 (Plaintiff's exhibit number 4 was so marked and
16 admitted at this time)

17
18 THE COURT: Any other matter counsel wish to take
19 up before we resummon the jury?

20 MR. LANDIN: No, sir.

21 THE COURT: All right, bring the jury back in.

22
23 (Jury returned to the courtroom at this time)

1 Q (Mr. Hull continuing) Mr. Hull, are these
2 copies, marked plaintiff's exhibit 4, together with the other
3 two sheets, the check stubs given you by Mr. Zerkel?

4 A I believe those are similar to the others.

5 Q That's all I have, Mr. Landin.

6 THE COURT: Mr. Landin.

7 MR. LANDIN: Your Honor, I am going to defer
8 questioning this witness any further at this time.

9 THE COURT: All right, that has been marked and
10 admitted as plaintiff's exhibit 4, subject to the objections
11 as stated.

12 MR. HAUGH: I call Mr. Martin.

13
14 F. WARREN MARTIN, having been duly sworn, testified
15 as follows:

16
17 DIRECT EXAMINATION

18 By: Mr. Haugh

19 Q Would you state your name and address, please?

20 A F. Warren Martin, do you want my business
21 address or home?

22 Q Your home?

23 A 1620 Brandywine Drive, Charlottesville.

24 Q And what is your occupation or profession, Mr.
25 Martin?

1 A General contractor.

2 Q And do you have a firm?

3 A Yes, I'm president of Martin/Horn, Incorporated.

4 Q Have you ever been associated with Edward VanLear.
5 & Company?

6 A Yes.

7 Q What is the correct name of that company?

8 A Edward VanLear, Incorporated.

9 Q And were you so associated in 1975?

10 A Yes, sir.

11 Q What was your position with that company?

12 A I was president of the corporation.

13 Q I will ask you whether or not your company in
14 early April of 1975 was contacted about certain damage to the
15 roof of Avon Street warehouse, then owned by the Avon Street
16 Limited Partnership?

17 A Yes, sir.

18 Q Would you tell us who contacted you and how that
19 contact came about?

20 A May I refer to my notes and letters?

21 Q Yes.

22 A It was Quadel Corporation that contacted me about
23 it.

24 Q Who in particular, do you know?

25 A Mr. Glade Knight.

1 Q All right, sir, go ahead. Can you tell us when that
2 was?

3 A It was in the early part of May, I don't know
4 the exact date he contacted me.

5 Q All right, will you...

6 A Of April, excuse me, it was April.

7 Q Would you tell us what you did after you were
8 contacted?

9 A I called Mr. Lynch of the W.A. Lynch Roofing
10 Company who went with me to the site of the damage and we
11 visually inspected the roof...

12 Q And what did you find?

13 A We found that the roof was torn along the edges
14 and that it had peeled back to a certain extent, and that the
15 wind...the wind was still blowing at the time we were there...the
16 roofing, itself, was rippling. It was kind of flapping like
17 a flag in a breeze.

18 Q And did you then do anything?

19 A Subsequently we made some temporary repairs
20 to prevent the wind from getting under the roof and to prevent
21 it from leaking.

22 Q Did you then analyze it to see what had to be
23 done to the roof?

24 A Yes, sir.

25 Q And when did you do that, do you know?

1 A Mr. Lynch made the final analysis and submitted
2 to me an estimate for making those repairs. And the date of
3 his estimate is on April 11th.

4 Q And what did you do with that estimate, Mr.
5 Martin?

6 A We forwarded the estimate to the insurance
7 adjustors.

8 Q Did you contact thereafter...I ask you whether
9 or not you contacted Avon Street Limited Partnership?

10 A Yes. On May 30th, I wrote to them...

11 Q Well, prior to May 30th, who did you contact?

12 A I don't understand.

13 Q Does your file ^{disclose} whether or not you contacted
14 them...

15 A Oh, yes, I did send them a copy of an estimate
16 dated April 11th which...

17 Q Do you have that...

18 A Yes.

19 Q I show you this and ask you if this a copy of
20 the letter that is in your file?

21 A That's correct.

22 Q Your Honor, I ask that this be marked as an
23 exhibit for the plaintiff...I think 5, dated April 11, 1975.

24 THE COURT: Are you asking that this be introduced
25 at this time?

1 MR. HAUGH: Yes, sir.

2 THE COURT: Any objection, Mr. Landin?

3 MR. LANDIN: No, Your Honor.

4 THE COURT: All right, it will be admitted and
5 received as Plaintiff's exhibit 5 without objection.

6
7 (Plaintiff's exhibit 5, letter of April 11, 1975,
8 was so marked and received into evidence at this time)

9
10 Q (Mr. Haugh continuing) All right, Mr. Martin,
11 would you explain briefly to the jury what this letter purports
12 to do?

13 MR. LANDIN: Your Honor, I think the letter speaks
14 for itself. It's now in evidence.

15 THE COURT: Yes, if that is an objection, it will
16 be sustained.

17 MR. LANDIN: Yes, sir, Your Honor, that was an
18 objection.

19 Q When you wrote on April-11th, did you get
20 any reply?

21 A No, sir.

22 Q Did you have occasion to attempt to contact
23 the parthnership thereafter?

24 A Yes, as I stated before on May 30th I wrote
25 to them telling them that the roof was...

1 MR. LANDIN: Your Honor, I am going to object until
2 we...I think there is an exhibit associated with this testimony,
3 that we would like to discuss with the court out of the presence
4 of the jury.

5 THE COURT: All right, I will ask the jury to
6 withdraw to the jury room.

7
8 (Jury retired to the jury room at this time)

9
10 THE COURT: All right, Mr. Landin.

11 MR. LANDIN: Your Honor, the letter I anticipate
12 Mr. Haugh to now be referring to was marked for identification
13 earlier...

14 MR. HAUGH: Exhibit 3.

15 MR. LANDIN: If the court will read the letter
16 over...

17 THE COURT: All right, your objection.

18 MR. LANDIN: Your Honor, my objection, to renew
19 it again is as to the question of insurance and the mention
20 of insurance adjustors and the disagreement between them, which
21 obviously is not binding on the defendants.

22 THE COURT: As I understand it the letter is not
23 being introduced for the purpose of showing disagreement between
24 the insurance companies but to show notice of the condition
25 of the roof, is that correct, Mr. Haugh?

1 MR. HAUGH: That's correct, Your Honor.

2 MR. LANDIN: Your Honor, then perhaps certain
3 elements of the letter should be excised but then we go on
4 to a conclusion as to the condition of the roof and no
5 foundation has been laid through this witness as to his
6 basis for expressing such an opinion in writing or otherwise.
7 As a matter of fact to the contrary it seems that the evidence
8 to this point has indicated that he contacted a proper sub
9 contractor, Mr. Lynch, and I think his testimony was just to
10 the effect that Mr, Lynch did the final analysis in the proposal.
11 I anticipate that his letter of May 30 basically mirrored
12 information that he had arrived at second hand through Mr.
13 Lynch.

14 THE COURT: The purpose of this letter is not to
15 show whether or not there was actual damage to the roof but
16 the fact that the defendants have been put on notice of damage.

17 MR. LANDIN: Well, they had in fact been put on
18 notice, that's already established. One of the issues of course
19 is to the extent to which the damage was repaired or not
20 repaired.

21 THE COURT: Well, the fact that there may be other
22 evidence tending to prove the same thing wouldn't limit the
23 plaintiff from putting in additional evidence, Mr. Landin.

24 MR. LANDIN: Your Honor, my feeling is that the
25 proper evidence on the issue that is being raised is that the

1 witness indicate he wrote to the address of this letter, Mr.
2 Glade Knight and indicated that he had not received any
3 response, and that he received no further response after May
4 30, 1975, after submitting the proposal.

5 MR. HAUGH: Now, that doesn't say they didn't
6 get someone else to do it, we are just talking with the
7 contractor they first contacted, Your Honor.

8 THE COURT: For the purposes that the court has
9 previously outlined we think that this is relevant to go
10 to the jury. It may be that we could tape over the area,
11 that refers to the insurance company's disagreement. That may
12 be distracting to the jury.

13 MR. HAUGH: Your Honor, we will introduce subsequent
14 evidence to show that payment was made, that there was no
15 disagreement overall. It might have been at this time but
16 that is not a basis of any argument that we would make..the
17 disagreement.

18 THE COURT: All right, on that proffer then it doesn't
19 seem to be necessary. It will be admitted subject to the
20 objection of the defendants. You may resummon the jury.

21
22 (Jury returned to the courtroom at this time)

23
24 Q (Mr. Haugh continuing) Mr. Martin, I hand
25 you again plaintiff's exhibit 3 and ask you if that is a copy

1 of the letter you wrote Mr. Glade Knight concerning the Avon
2 Street Limited Partnership?

3 A It is, sir.

4 Q I offer this in evidence as plaintiff's exhibit
5 3, Your Honor.

6 THE COURT: It will be received as plaintiff's
7 exhibit 3, subject to the objections as stated by counsel
8 for the defense.

9
10 (Plaintiff's exhibit 3 was so marked and received
11 into evidence at this time)

12
13 Q I hand you a proposal and ask you, without
14 going into any of the specifics, if you can identify this?

15 A Yes, this is the proposal from W.A. Lynch Roofing
16 Company to Edward VanLear, Incorporated.

17 Q I believe, Your Honor, the proposal we had was
18 marked by the defendant as their exhibit, but I don't think
19 it was introduced, is that correct?

20 MR. LANDIN: Defendant's exhibit 2 marked for
21 identification, Your Honor.

22 THE COURT: All right, do you wish to have it
23 introduced as a defense exhibit at this time, Mr. Landin?

24 MR. LANDIN: Your Honor, it's fine either way...

25 THE COURT: It's already marked as a defense exhibit,

1 so we will admit it as defense exhibit 2, without objection.

2 MR. LANDIN: All right.

3
4 (Defense exhibit number 2 was so marked and
5 received into evidence at this time)

6
7 Q Now, did you examine the type of what you called
8 temporary repairs that were made to the damaged roof caused
9 by the wind?

10 A Yes, sir.

11 Q And what type of repairs did you find? What
12 type of repairs were finally made?

13 A It was...the temporary repair was a build up
14 type of roof. The roof that was on the building was temporary...
15 it was not a temporary but it was a smooth surface type of
16 build up roof, a number of plys of asphalt and paper. The
17 temporary repair was only a very thin membrane type of
18 roofing which was to just keep the elements from the building
19 until such time as permanent repairs could be made.

20 Q Did you ever get a reply to your May 30, 1975
21 letter?

22 A No, sir.

23 Q What is the difference as far as visual sighting
24 or looks between the repaired portion of the roof at this time
25 and the rest of the roof?

1 A None that I can tell.

2 Q You are saying it all looks the same?

3 A Yeah.

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

5 THE COURT: All right, Mr. Landin.

6
7
8 CROSS EXAMINATION

9 By: Mr. Landin

10 Q Mr. Martin, at the time...say at the time of
11 1975 generally, Edward VanLear, Incorporated was doing fire
12 repair at that warehouse, was it not?

13 A Yes, sir, in another section of the warehouse.

14 Q Right. And the fire had basically guttered
15 the Ridge Electronics end of the warehouse, did it not?

16 A That is correct.

17 Q And the roof had gone out at the end obviously?
18 The fire had gone right up through the roof?

19 A Yes, sir.

20 Q Now, did you sub contract to Mr. Lynch's company
21 to have him repair the roof in that area?

22 A Yes, I did.

23 Q What aspects of the general contracting did
24 your company handle, everything else?

25 A There were other areas that we sub contracted

1 as well as the roofing, plumbing, wiring, painting, the normal
2 things that the general contractor would sub contract a project
3 of that size.

4 Q Now, were you still working up on the roof in
5 that area or was Mr. Lynch still working up on the roof, in the
6 area, say on Ridge Electronics when this wind damage occurred?

7 A No, sir.

8 Q He had completed his work?

9 A That's correct.

10 Q And when your company got the call about the wind
11 damage you say you went over there with Mr. Lynch?

12 A Yes.

13 Q And did you actually physically go up on the
14 roof or did you look at it from a ladder?

15 A We looked at it from a ladder because the wind
16 was blowing too hard we couldn't stand up on the roof.

17 Q Which area of the roof did you go up on, do
18 you recall?

19 A We went up over the front eave of the roof where
20 you could see it was blown aloose.

21 Q You are talking about the eave closest to
22 Avon Street?

23 A To Avon Street, right.

24 Q Do you recall which end of the building you
25 were on?

1 A We were on the north end of the building.

2 Q Would that be the end closest to town?

3 A Yes.

4 Q And when you say there was wind damage, I think
5 you said that the roof was torn along the edges and peeled
6 back, did it start sort of at the edge where it was flashed and
7 wind had gotten up under the roof and sort of pushed it back
8 somewhat?

9 A That's correct.

10 Q Do you recall how big an area we are talking
11 about?

12 A I...

13 Q I mean if you don't...

14 A As I recall it was a very small area at that
15 particular time.

16 Q All right, and the temporary repairs that were
17 initially done, I take it was to put something heavy on it
18 to hold it down, is that right? Maybe you would roll some tar
19 paper or felts I think you call them, and put cinderblock,
20 or something that is going to keep it in place so that there
21 is no further damage, right?

22 A Right.

23 Q All right. Now, did you visually look at the
24 temporary repairs yourself, any aspect of it? Did you actually
25 see any of the repairs that Lynch's people made?

1 A Yes.

2 Q Do you recall when you next went up on the roof
3 after your first visit when the damage was initially done?

4 A Not exactly, no.

5 Q Would it have been as much as a month or two
6 months?

7 A It was less than I would say two weeks.

8 Q Less than two weeks?

9 A Right because we were still working at the Ridge
10 Electronics project and I was there on a daily basis. However,
11 I don't recall that I went up there immediately upon the
12 completion of the repairs but I did see them.

13 Q But it's your recollection that the preliminary
14 repairs had been made by Lynch's people?

15 A Right.

16 Q Now, when...do you know other than from your
17 observation exactly what those initial repairs consisted
18 of?

19 A Not exactly, precisely...

20 Q So all you can...

21 A But I know generally that the roof had been
22 made weather-tight.

23 Q All you could see then I guess was the surface?

24 A Yes, sir, that's correct.

25 Q And you could see the roof was no longer

1 rippling, it was no longer peeled back from the edge?

2 A That's correct.

3 Q Now you described this roof as a build up roof,
4 that is of course a flat surface?

5 A Yes,

6 Q Didn't that roof have gravel on it or do you
7 recall?

8 A It was a smooth surface roof.

9 Q All right, and what color was it?

10 A Painted aluminum I believe, if I recall
11 correctly.

12 Q And when you looked back at the repairs that
13 had been done, had...from the surface what had Mr. Lynch
14 done? Put down a felt or piece of tar paper and mopped it,
15 is that what you do?

16 A Yes, sir.

17 Q And that's what it looked like to you?

18 A That's correct.

19 Q Now, when you saw it, had it again been painted
20 aluminum?

21 A At the time I saw it, it had not been. I don't
22 know what happened subsequent to my seeing it.

23 Q So at the time you saw it the area that had not
24 been repaired was aluminum in color, and the area that had been
25 repaired was black from having the felts put down and being

1 mopped, is that correct?

2 A That's true.

3 Q Now, did you ever go back up and look at the
4 roof again?

5 A No.

6 Q And all you know I take it is that you did write
7 a letter addressed to Mr. Knight on May 30, 1975, in which
8 you indicated that you hadn't heard anything and that you
9 would like to hear something in essence, is that right?

10 A That's correct.

11 Q Now do you have any personal knowledge of whether
12 or not they had either any repairs done by anyone else in the
13 area or whether or not they asked anybody else to give them
14 an opinion on the adequacy of the repairs that had been made
15 by Lynch?

16 A I did not know this until just the other day.

17 Q All right, and you were informed of that in
18 talking with counsel, for Mr. Hull, is that correct?

19 A That's correct.

20 Q All right, sir. I have no further questions
21 of this witness, Your Honor.

22 THE COURT: Mr. Haugh.

23 MR. HAUGH: Yes, Your Honor.
24
25

REDIRECT EXAMINATION

By: Mr. Haugh

Q Mr. Martin, could you for the jury describe the area of the wind damage and the area of the fire damage... if you could face the building and look at the building, could you describe for the jury what locations those two damages were in?

A The wind damage was on the...if you are facing the building, on the far left hand of the building. The building had approximately five or six sections, divided by fire walls in a warehouse type of configuration. The Ridge Electronics portion of the building was central and more to the right end of the building. I think it was the last two sections of the building to the right, working from the right hand end towards the center.

Q And I believe you said on cross that you were still working on the Ridge Electronics project, how long did you and your company stay over there working on this, after this wind damage?

A I really don't have any idea.

Q That's all I have of this witness, Your Honor.

THE COURT: Mr. Landin.

RECROSS EXAMINATION

By: Mr. Landin

Q Mr. Martin, in order that it's clear it is correct, is it not, that the building as you face it from Avon Street has different elevations, roof elevations, the Ridge Electronics on the south end is the highest roof elevation, is that correct?

A That's correct.

Q There is a fire wall separating those buildings from another section of the warehouse...how tall is that fire wall, about as high as the top of the jury box or less?

A It would be a little less than that, probably about 30 inches.

Q And are there fire ladders connecting down to the next lower level and then on down on a further level?

A I don't believe that there are any fire ladders.

Q Well, ladders...

A At least I don't recall any.

Q Am I also not correct that there is nothing to prevent someone from standing on the Ridge Electronics roof from being able to see down the length of the building to see the other roofs?

A Yes, I would say that would be possible.

Q Yes, sir. No further questions, Your Honor.

THE COURT: Anything further Mr. Haugh?

1 MR. HAUGH: Yes, Your Honor.

2
3 REDIRECT EXAMINATION

4 By: Mr. Haugh

5 Q How many fire walls are there up there, that
6 extend 30 inches or so above the roof line?

7 A Four or five.

8 Q And what is the total length of the whole
9 operation, do you recall?

10 A No, sir.

11 Q Can you give an estimate?

12 A 400 feet, 4 or 500 feet.

13 Q Thank you, that's all we have, Your Honor.

14 THE COURT: Do you wish to retain this witness,
15 gentlemen?

16 MR. HAUGH: Sir?

17 THE COURT: Do you wish to retain this witness?

18 MR. HAUGH: No, Your Honor.

19 MR. LANDIN: That's perfectly acceptable to me,
20 Your Honor.

21 THE COURT: You may be excused, sir. Thank you
22 for your attendance.

23 MR. HAUGH: Mr. William Lynch.

24
25 WILLIAM LYNCH, having been duly sworn, testified

1 as follows:

3 DIRECT EXAMINATION

4 By: Mr. Haugh

5 Q Would you state your name and occupation,
6 please?

7 A William Lynch, Jr. I'm a roofing contractor
8 in Charlottesville.

9 Q What's the name of your company?

10 A W. A. Lynch Roofing Company, Incorporated.

11 Q I ask you whether or not in April of 1975,
12 you were contacted by Warren Martin with regard to the damage
13 to the roof of the warehouse on Avon Street owned by Avon
14 Street Limited Partnership?

15 A Yes, sir, I was.

16 Q Do you know when you were contacted?

17 A I don't remember the exact date but it was
18 late in the afternoon.

19 Q Tell us what you did after you were contacted?

20 A I met Mr. Warren Martin at the warehouse. We
21 had a terrific wind storm and the storm was still going on.
22 The roof had ruptured along the edge and several pieces of the
23 roofing had blown off and the other portion of it was bobbing
24 up and down in the air. He said he wanted me to do something
25 immediately, to try and save the roof. I said I don't know what

1 we can do, we will try. The wind was still blowing and gusty,
2 50 miles an hour I guess. But we did, we sent somebody back
3 there that afternoon and temporarily did something. I am not
4 sure whether the next day being a Saturday or maybe it was
5 a Friday, we went back and made temporary repairs to this
6 area.

7 Q Now, would you describe the temporary repairs
8 to the court?

9 A We installed one layer of roof insulation, which
10 was I believe an inch and a half thick...that's the thickness
11 that was on there and one ply of 40 pound coated felt. That
12 was all that was done.

13 Q Thereafter did you have occasion to analyze
14 the extent of the area damaged and submit a proposal for
15 repair?

16 A Yes, sir, I did this through Mr. Warren Martin
17 who was acting as the agent for the owner, I think.

18 Q I hand you a copy of defendant's exhibit 2,
19 and ask you if that is the proposal that you submitted?

20 A Yes, sir.

21 Q May I have a second with counsel, Your Honor?

22 THE COURT: Yes.

23 MR.HAUGH: May we be heard out of the presence
24 of the jury, Your Honor?

25 THE COURT: All right. Members of the jury will

1 retire to the jury room please.

2
3 (Jury retired to the jury room at this time)

4
5 MR. HAUGH: May it please the Court, Your Honor,
6 I thought I had better tell opposing counsel that I am going...
7 or propose to ask Mr. Lynch what he did next and his answer
8 is going to be that he met with the insurance adjustor out
9 on the roof. They had a copy of his proposal and they agreed
10 on the area that had been damaged. I thought there might be
11 some objection to that and I had better inform the court
12 out of the presence of the jury.

13 THE COURT: Any objection to that question, Mr.
14 Landin?

15 MR. LANDIN: Your Honor, my response is in the
16 way of an objection. I don't think it's appropriate for an
17 insurance adjustor...he obviously agreed to the proposal
18 submitted ultimately because that's further evidence that is
19 going to be put in and the court has ruled that the plaintiff
20 may do that. But the agreement by a third party who was not
21 an agent of the defendant can't bind the defendant.

22 THE COURT: I don't think it would be an appropriate
23 question, Mr. Haugh.

24 MR. HAUGH: Can I tell the witness what I am going
25 to skip then so he won't...

1 THE COURT: Yes, you may.

2 MR. HAUGH: Thank you, Your Honor.

3 THE COURT: You may bring the jury back in.

4
5 (Jury returned to the courtroom at this time)

6
7 Q (Mr. Haugh continuing) Mr. Lynch, what happened
8 after you submitted your proposal?

9 A I was not contacted further.

10 Q All right, did you attempt to make any contact
11 with anybody?

12 A Yes. I notified Mr. Warren Martin and reminded
13 him that only temporary repairs had been made. I thought he
14 should write a letter stating this so we wouldn't be libel
15 in case we had any damage.

16 Q Now, were you ever contacted by anybody in 1975
17 or 1976 concerning making further repairs on this portion
18 of this roof?

19 MR. LANDIN: Your Honor, I am going to object before
20 the witness responds. I am not certain of the reason the question
21 is being asked. Obviously...the question should be directed to,
22 I think, someone from the defendants contacting to make repairs.
23 I think anyone is a bit broad...

24 MR. HAUGH: Well, I was including the general
25 contractor, Your Honor. I will be glad to ask if any of the

1 defendants or their agents..

2 THE COURT: All right, suppose you phrase it in
3 that manner.

4 Q Thereafter did the defendants or any of their
5 agents contact you about doing further repairs to this portion
6 of the building?

7 A No, sir.

8 Q Now, after the plaintiff purchased this property
9 did you have occasion to go back and view this area again?

10 A Yes.

11 Q All right, do you know when that was?

12 A Sometime in '78.

13 Q And what was that occasion, will you tell us
14 what you saw?

15 A Well, we had been called to look at the roof
16 because I believe Ridge Electronics was in there and I am not
17 sure they were in there in '75 but they had a severe leak.

18 Q Did you examine it?

19 A We made the inspection of it and it was leaking
20 in the same area that temporary repairs had been made. I didn't
21 know, I thought the roof had been fixed. I assumed since
22 you know...we don't always get every estimate, somebody could
23 have been lower but I in turn notified the people that in my
24 opinion the reason the roof was leaking was because of improper
25 repairs.

1 Q And from your examination in 1978, can you say
2 that no further work had been done on the temporary repair
3 that you had put on there?

4 MR. LANDIN: Your Honor, he is leading the witness
5 and now he is going to...

6 THE COURT: The question is leading, Mr. Haugh.
7 Objection sustained.

8 Q Mr. Lynch, when you examined the roof in 1978,
9 did you form an opinion as to whether any further work of a
10 permanent nature had been done in the spot that you had
11 temporarily repaired in 1975?

12 A It did not appear that any other work had been
13 done.

14 Q All right, sir. Did you have occasion to make
15 repairs thereafter?

16 A Yes, I was...we submitted a proposal to Mr.
17 Zerkel, Doug Zerkle, and he notified me that he wanted us
18 to proceed and make the necessary repairs, which we did.

19 Q Did you get paid for that, sir?

20 A Yes, sir.

21 Q Would you tell us the amount?

22 A Seven thousand, six hundred and some dollars,
23 I believe.

24 Q I hand you this and ask you if this is a copy
25 ...if you can identify that?

1 A Yes, sir, this is a copy of my ledger sheet.

2 Q Can you tell the court and jury what that shows?

3 A It's repairs to the warehouse number 1 and 2 at
4 the north end of Avon Street Limited, Incorporated, in the
5 amount of \$7,459.00.

6 Q That's all I have of this witness, Your Honor.

7 THE COURT: All right, Mr. Landin.

8
9
10 CROSS EXAMINATION

11 By: Mr. Landin

12 Q Mr. Lynch, you did roofing repair work on the
13 warehouse from the Ridge Electronics fire, didn't you?

14 A Yes, sir we did.

15 Q Had you completed that work prior to this
16 wind damage in April of 1975?

17 A I believe so.

18 Q To the best of your recollection you were finished
19 and off the roof in other words?

20 A Yes, sir.

21 Q And Mr. Martin, of course, being the general
22 contractor on that job, it was certainly not surprising to you
23 that he called you when the wind damage occurred and asked you
24 to go over there and see what could be done? Is that correct?

25 A Yes, sir.

1 Q Now, when you went over there do you recall
2 exactly the day or what time of day you went over there?

3 A I do not recall the day. It was I'd say around
4 four o'clock.

5 Q Okay, how old was that warehouse? Do you have
6 any idea how long the roof had been on there?

7 A Six or seven years.

8 Q And the area, of course, where the Ridge
9 Electronics fire had been, that roof was just completely put
10 back because there was nothing left to repair, is that right?

11 A Yes, sir, the whole building was destroyed. It
12 was rebuilt.

13 Q And the area down where you went and looked
14 at the wind damage, that was the original roof as far as you
15 could tell?

16 A Yes, sir.

17 Q Now, what did...you say you observed that
18 some of the roof had been blown back, is that correct? Would
19 that be accurate?

20 A When the actual wind storm happened?

21 Q Yes, sir.

22 A Yes, sir.

23 Q I mean what you saw when you got there?

24 A Well, yes, some of it had been blown off, the
25 metal deck was exposed...the steel metal deck was exposed.

1 Q And the..how big an area was blown back, do
2 you recall?

3 A About 5 or 600 feet...mainly on one corner.

4 Q Which corner, do you recall?

5 A I guess it would be the north, probably the
6 northwest corner.

7 Q I take it that the initial thing that needed
8 to be done was to get some weight up on the roof and hold it
9 down?

10 A Right, to try and...Mr. Martin was afraid and
11 so was I that the whole roof would go.

12 Q So you had some of your men go up and do something
13 very quickly to try to hold it down...

14 A That's true...

15 Q So the wind couldn't get under it anymore, is
16 that right?

17 A That's true.

18 Q What happened is that the wind gets up under
19 the edge by the flashing, doesn't it?

20 A Yes, sir.

21 Q And it starts to push it back?

22 A Yes, sir.

23 Q Now, you've got a build up roof out there, don't
24 you?

25 A Yes, sir.

1 Q That's a flat roof?

2 A Yes, sir.

3 Q And the normal way of putting that on, you tell
4 me if I am wrong, but isn't the normal way that you first
5 would put down some insulation, is that right?

6 A Yes, sir.

7 Q Then you are going to put layers of felt...

8 A And tar...

9 Q Tar in between the layers...

10 A That's right.

11 Q And then you are going to have a finished job
12 and you are going to put a surface coating on it, and that's
13 going to be it, right?

14 A Right.

15 Q Now, I think you indicated that you went out
16 and did some repairs immediately and...did you supervise those
17 repairs yourself or did you have someone of your people do it,
18 one of your men do it?

19 A I did not supervise it.

20 Q Do you know exactly what was put down on there,
21 on the temporary repairs?

22 A Yes, sir.

23 Q All right...

24 A One layer of insulation, one layer of felt.

25 Q Okay, and it was hooked in to the remainder of the

1 roof and was made water tight, is that right?

2 A Yes, sir.

3 Q Now, after that you prepared a proposal, correct?

4 A Yes, sir.

5 Q And you have identified this as defendant's
6 exhibit number 2. Take a look at that again, the proposal is
7 given to Edward VanLear but that's because he was the general
8 contractor, right?

9 A Yes, sir.

10 Q All right, and it talks about warehouse number
11 1, occupied by Motorola Communications System and that's the
12 area in question?

13 A Yes, sir.

14 Q Now, did you prepare this or did one of your
15 people prepare it and give it to you for review?

16 A My estimator prepared it and gave it to me.

17 Q So you didn't actually go up on the roof and
18 work this thing out?

19 A I didn't get the diminsions or measurements.

20 Q Someone else got them?

21 A Yes, sir.

22 Q This talks about 6600 square feet, does it not?

23 A Yes.

24 Q And it talks about doing work on flashings,
25 removal of debris, talks about temporary repairs, a separate

1 sum not included in the price?

2 A Yes.

3 Q All right. Now, this proposal talks about putting
4 in one layer of one inch thick, Celotherm roof insulation,
5 now that's what you put down in temporary repairs, isn't
6 it?

7 A Yes, sir.

8 Q Now, over the insulation, you are going to
9 furnish and install asbestos smooth-surface built-up roof
10 as manufactured by Celotex?

11 A Yes, sir.

12 Q All right, you are talking about doing some,
13 replacing some expansion joint and you are talking about doing
14 some flashing work, and then you gave this to Warren Martin
15 and what your testimony has been is that you were not asked
16 to do the work, represented by this other than the...you did
17 do the temporary repairs, that's correct, isn't it?

18 A Yes, sir.

19 Q Now, didn't you also do that flashing work
20 though?

21 A What do you mean, the flashing work in connection
22 with the...

23 Q This proposal, didn't you also do that though?

24 A Yes. You mean in the temporary repairs?

25 Q You did it after the temporary repairs, didn't

1 you?

2 A Yes, sir.

3 Q So in addition to the \$755, Quadel or Avon
4 Street Partnership, whatever...whoever you understood to be
5 paying the bills, they also had you do the separate item
6 which you talk about in number 5? They had you do that
7 flashing, right?

8 A Yes, sir.

9 Q Now let me ask you one further question, when
10 you left the roof, did you ever see the repairs after they
11 had been completed? ---'75?

12 A No, sir.

13 Q When the top layer was mopped, it's normal is
14 it not to leave it basically black when it's finished?

15 A Yes, sir.

16 Q The remainder of that roof is a light color,
17 aluminum paint, is that right?

18 A Yes, sir.

19 Q Now, when you went back in 1978 and did this...
20 at the request of Mr. Zerkel or someone, the present owner.
21 the now owner of the warehouse, you prepared another proposal
22 for doing that work, right?

23 A Yes, sir.

24 Q Let me show you this which is marked defendant's
25 exhibit number 1...I will anticipate that you will agree that

1 that's a copy of your proposal in 1978?

2 A Yes.

3 Q Now, that talks about warehouse number 1 and
4 warehouse number 2, does it not?

5 A Uh-huh.

6 Q And it talks about 3500 square feet, does it
7 not?

8 A Yeah.

9 Q So obviously Mr. Hull, did you deal with him?

10 A I dealt with Mr. Zerkel.

11 Q The decision was made to only repair 3500
12 square feet in 1978, correct?

13 A Uh-huh.

14 Q what kind of a guarantee did you give on the
15 1978 work? What is your normal guarantee?

16 A 12 months.

17 Q Pardon me?

18 A 12 months.

19 Q And would there have been a 12 month guarantee
20 on the work in 1975?

21 A Yes, sir. Not on the temporary repair now.

22 Q Only if the entire thing had been done?

23 A Yes, sir.

24 Q On the temporary repair your guarantee is a
25 workmanlike manner, is that correct?

1 A Yes.

2 Q Now in terms of the work done in 1978, I take
3 it that a decision was made by somebody to repair less than
4 this 6600 feet that you were talking about in 1975?

5 A Yes.

6 Q And the decision was made I assume based on
7 your company's statement that all didn't need to be repaired
8 at this time, is that correct?

9 A And when we had the wind storm there were a lot
10 of sections that were, I guess had wrinkles...that's the word
11 we use, as it was flopping in the air, it hadn't gone back
12 down and when I met with the three insurance adjustors, they
13 had their tapes and they marked the areas off and they pretty
14 much told me what they wanted repair...

15 Q I understand. Your Honor, I would ask that the
16 references...

17 THE COURT: Yes, the jury will disregard those
18 references.

19 A That part, well...

20 Q What I am asking you now, is that in 1978 when
21 the work was done, the man who was paying the bills, said I
22 don't want/repair the whole area, right?

23 A No, I guess it was my decision and Mr. Tom
24 McCraw when we looked at the roof in '78, we felt that only
25 3500 square feet needed to be repaired. The other had smoothed

Lynch - Cross

1 itself out, not completely like it was but we didn't feel like
2 it needed to be repaired.

3 Q It's obvious that...when you are going up on
4 there, you have got two duties, you've got...isn't it correct
5 that you have got to tell the man what needs to be done in
6 your judgment as a roofer, but you obviously don't want to get
7 him to repair more than is necessary, is that correct?

8 A Yes, sir.

9 Q And that's how you stay in business is because
10 you are a competitor, that's correct, isn't it?

11 A Yes, sir.

12 Q I don't have any further questions.

13 THE COURT: Anything further Mr. Haugh?

14 MR. HAUGH: No, we don't have anything further,
15 Your Honor.

16 THE COURT: May this witness be excused, gentlemen
17 or do you wish to retain him?

18 MR. HAUGH: He can be excused, I think, Your Honor.

19 MR. LANDIN: Yes, sir, that will be fine.

20 THE COURT: You may be excused, sir. Gentlemen,
21 I believe this is an appropriate time to take our lunch recess.
22 Any member of the jury that feels they could not get sufficient
23 lunch and be back here by quarter past two, I will give you
24 a full hour if you require it but if you can be back by
25 quarter past two, we will get started. Hearing no objection

1 we will be in recess then until quarter past two.

2
3 (Court in lunch recess)

4
5 COURT reconvened, jury in the box.

6
7 THE COURT: All right, gentlemen, court will come
8 to order, the jury is in the box.

9 MR. HAUGH: May it please the court, Your Honor,
10 I have conferred with opposing counsel and we believe...we
11 would like to have a few minutes with the court out of the
12 presence of the jury before the next witness.

13 THE COURT: All right, I will ask the jury to step
14 into the jury room.

15
16 (Jury retired from the courtroom)

17
18 THE COURT: All right, Mr. Haugh.

19 MR. HAUGH: May it please the court, Your Honor,
20 the next witness we propose to call is Mr. Albert H. Holt,
21 an insurance man who had insurance on this building. He has
22 produced for us on two occasions certain documents that were
23 in his file. The most important being a letter and a breakdown
24 from Southeastern Adjustment Company, H. P. Melone, Jr.
25 ...H.P. Melone is dead, Garrett is dead, and the files

1 are all thrown away. In any event these went to him as a part
2 of his business file in this case. As Your Honor may recall we
3 have in evidence check deposits or at least deposits on
4 check stubs, three different checks. This gives a breakdown
5 of the amount of the total and the checks that were sent.

6 THE COURT: All right, has Mr. Landin seen this
7 file?

8 MR. HAUGH: Yes, Your Honor. I might say, Your
9 Honor, we have in evidence Mr. Lynch's proposal of April 11
10 to VanLear. We have a letter from VanLear, signed by Mr.
11 Martin, to the defendants dated April 11, 1975, showing the
12 total costs of repairs at \$8948 and we have check stubs showing
13 three deposits and a check withdrawn for \$8121, being the net
14 after deductible and depreciation according to these records.
15 We feel that we need these records of the breakdown to be able
16 to tie the proposal, the estimate costs sent by VanLear to
17 them, with the amounts deposited in the checkbook and the check
18 paying it out from Avon Street Limited Partnership to Quadel
19 Management. We think that this would show knowledge, and of course,
20 the conduct that is important to our case.

21 THE COURT: Mr. Landin.

22 MR. LANDIN: Your Honor, my response is that this
23 is the wrong evidence to do that. The best evidence of that
24 fact is already in now, had already been submitted by the plaintiff
25 ...it is the entries in the partnership checkbook and the more

1 appropriate evidence would be, if he needs to identify the
2 entries in the checkbook, and the proceeds from the insurance
3 company, would be to ask the partnership whose check stubs
4 they were. But to use letters from a third-party adjustor
5 to another third-party insurance agent, as being somehow
6 binding on the defendants, I don't think is the proper way to
7 go about this. Obviously these letters...there are all sorts
8 of opinions and statements by the adjustor that don't have
9 any bearing on this case and they are letters from Mr. Holt
10 that don't bear on the issues in the case. There is no denial
11 that the insurance proceeds were received, in fact that's
12 already...

13 THE COURT: Let me ask you this, Mr. Landin, would
14 you be willing to enter into a stipulation that claim was made
15 by your clients for wind damage to this building and that
16 you received compensation based on that claim from the insurance
17 company in the amount that you did actually receive?

18 MR. LANDIN: Well, the only difference is, Your
19 Honor, that the actual facts are that the agent called the
20 adjustor and they did this, without conferring with the partner-
21 ship as to these estimates. And then once the insurance company
22 decided on the correct amount of the loss....

23 THE COURT: Well, this is an agent of your partnership,
24 was it not? You don't deny agency?

25 MR. LANDIN: Well, he's the general insurance agent.

1 I don't know that he is by law considered an agent for the
2 partnership. He had a contractual obligation...

3 THE COURT: But the agent who was managing this
4 building and reported the damage was the agent of the partner-
5 ship, was it not?

6 MR. LANDIN: That's correct.

7 THE COURT: That's I think the essential fact,
8 that a claim was made against the insurance based on damage
9 to this building and that you were compensated for it. Isn't
10 that what Mr. Haugh wants to get into evidence...

11 MR. HAUGH: Yes, sir, these three entries showing
12 deposits...it doesn't show, it just says insurance, insurance
13 and insurance.

14 THE COURT: It seems to me that we can do that
15 in a much less prejudicial way, simply by entering into that
16 stipulation as the court suggested.

17 MR. LANDIN: Well, Your Honor, I am willing to
18 stipulate that the claim was made and that the partnerhsip
19 received proceeds from the insurance company in the amount of
20 \$8121.

21 MR. HAUGH: To these three entries?

22 MR. LANDIN: To those three entries.

23 MR. HAUGH: That's the net amount, that would
24 tie it up...

25 MR. LANDIN: Mathematically it totals that.

1 MR. HAUGH: Right.

2 THE COURT: All right, with that stipulation it seems
3 to me we don't need that in evidence.

4 MR. HAUGH: May I have those back, Your Honor?

5 THE COURT: All right. Mr. Landin, you will
6 state the stipulation to the jury when they return.
7 Summon the jury.

8
9 (Jury returned to the courtroom at this time)

10
11 THE COURT: All right, the jury is in the box,
12 Mr. Landin, would you state the stipulation arrived at by
13 counsel?

14 MR. LANDIN: May it please the court, and members
15 of the jury, while you ladies and gentlemen were out of our
16 presence, Mr. Haugh, representing the plaintiff and myself
17 agreed to stipulate some facts to you rather than going to
18 the necessity of presenting documents and letters to you.
19 Basically what we have agreed to stipulate to the jury is the
20 fact that on these exhibits that were previously put in evidence
21 in terms of the check stubs, that certain entries that Mr. Haugh
22 has marked and he mentioned to you when he made his opening
23 statement represent the fact that a claim was made for the
24 wind damage, to partnership's insurance company, and that
25 the insurance company did make payments and the payments are

1 indicated in the margin of these checks, and total \$8121.00.

2 I think that was the basis of the stipulation.

3 THE COURT: Thank you, sir.

4 MR. LANDIN: Is that correct?

5 MR. HAUGH: \$8121.

6 MR. LANDIN: \$8121.

7 THE COURT: All right.

8 MR. HAUGH: Thank you, Your Honor. If I may release
9 Mr. Holt at this time, Your Honor...

10 THE COURT: Yes, you may. Do you wish to retain
11 Mr. Holt, Mr. Landin?

12 MR. LANDIN: Your Honor, I'm afraid we may have
13 to.

14 THE COURT: All right.

15 MR. TREACLE: We call Mr. Austin.

16
17
18 BEN TILMAN AUSTIN, III, having been duly sworn,
19 testified as follows:

20
21 DIRECT EXAMINATION

22 By: Mr. Treacle

23 Q Mr. Austin, have you been sworn?

24 A Yes, I have.

25 Q Would you state your name for the record, please?

1 A I was not involved in the sale aspects of the
2 property. I cannot really speak first-hand to...I have seen
3 Mr. Zerkel in the Quadel's offices in Rockville, Maryland,
4 but I was not involved in the day to day sales or any contractual
5 arrangements that were made with Mr. Zerkel.

6 Q What are the assets of Quadel Corporation?

7 A I don't know what they are at this time.
8 I am no longer affiliated with Quadel, nor have I been for the
9 last two years.

10 Q What were the assets at the time you ceased
11 your affiliation with Quadel?

12 A With Quadel or Quadel Management?

13 Q Quadel?

14 A Basically the furnishings of the office. We had
15 or they had a consulting company at that time also. Basically...
16 in addition to that it was good will and knowledge of the
17 real estate industry and 80 percent of the stock of Quadel
18 Management Corporation.

19 Q Who owned the apartments that Quadel Management
20 was responsible for?

21 A It was in a limited partnership of which the four
22 of us were the general partners.

23 Q So what you are saying is that the four of you
24 were general partners of the limited partnership and you in
25 turn were managing the property for the limited partnership?

1 A Right.

2 Q What are the assets of the limited partnership
3 then?

4 MR. LANDIN: Your Honor, I am going to object. We
5 are going very far afield. I assumed that their initial
6 inquiries were something to do with their claim for punitive
7 damages but we are going beyond the assets of the defendant
8 partnership..

9 THE COURT: Mr. Treakle, what's the relevancy
10 of this line of questioning?

11 MR. TREAKLE: Because of the interlocking nature...
12 maybe we should be heard outside the presence of the jury.

13 THE COURT: All right, the jury will retire to the
14 jury room please.

15
16 (Jury retired to the jury room at this time)

17
18 MR. TREAKLE: Your Honor, one of the factors
19 we considered before the jury on the issue of punitive ~~on the~~
20 ~~damages is the~~ financial standing of the individually named
21 defendant. Because of the interlocking relationship between
22 these various corporations, we are trying to determine what
23 are the assets of the defendant and thus far all he seems to
24 tell me is that one corporation owns another corporation,
25 own another corporation and doesn't seem to be giving me direct

1 answers. What I am exploring, I am trying to determine what
2 the assets of the named defendants might be.

3 MR. LANDIN: Your Honor the witness has answered
4 very directly to the question, and what we are engaged in, is a
5 fishing expedition and if they wanted to fish they have done
6 it when they were deposing him. If they want to ask him what
7 the assets, what his assets are or the partnership's assets
8 are, he will answer to the best of his knowledge which is what
9 he is trying to do. But we have gone into Quadel Corporation,
10 we are going beyond...I think they are bootstrapping themselves
11 into making an incorrect impression with the jury as to the
12 nature of the assets that are involved in this case.

13 MR. TREAKLE: Your Honor, I'd have to review back
14 to the depositions but if my memory serves me correctly, the
15 testimony was that there was 5 to 6,000 apartment units that
16 they owned and that's what we are getting to...if we could
17 have a moment to review the deposition.

18 THE COURT: You can ask the two questions Mr. Landin
19 has indicated. If you find those answers in variance with the
20 depositions, then you may use the depositions.

21 MR. TREAKLE: May we have a moment, Your Honor.

22 THE COURT: All right.

23 MR. TREAKLE: Your Honor, just so this won't be
24 in the presence of the jury, just to make sure Mr. Landin doesn't
25 have any further objections, Mr. Austin, what assets do you have

1 personally?

2 A Do I have personally?

3 Q Yes, sir.

4 A In what respect? I mean do you want me to go
5 down my financial statement or...

6 Q Yes.

7 A I own a house, two cars, I have partial ownership
8 in approximately 25 apartment complexes and I have notes
9 receivable with Second Mortgages on other transactions.

10 Q What's the amount of the notes receivable
11 approximately?

12 A Probably in the neighborhood of \$600,000.

13 Q What is your net worth, sir?

14 A It's little over two million.

15 Q Do you have any knowledge of the assets of
16 your former associate, Mr. Watson?

17 A No, I do not.

18 Q Is he an owner of any of these apartment complexes
19 with you?

20 A Yes, he is a general partner, in a lot of them.

21 Q How many?

22 A It would be probably in the neighborhood of
23 17 or 18, but I don't know.

24 Q 17 or 18 complexes or units?

25 A Complexes.

1 Q How about the same questions as to Mr. Stewart?

2 A Mr. Stewart has no interest that I am aware of
3 in any of them at the present time.

4 Q Does he have an interest in any of the notes
5 receivable that you have an interest in?

6 A Not that I am aware of.

7 Q Are you aware of any assets that he might have?

8 A No.

9 Q How about Mr. Webb?

10 A He would be basically in the same number
11 of partnerships and notes receivables as Mr. Watson.

12 Q What is the percentage interest , their financial
13 interest in these notes receivables and apartments? --the same
14 as yours?

15 A Yes.

16 Q And what is the value of your interest in the
17 notes receivables and the apartment complexes that you have
18 and hold in common with them?

19 A I would hate to even venture a guess. Off the
20 top of my head it would probably be in the neighborhood
21 of...I would estimate somewhere in the neighborhood of maybe
22 as much as \$300,000, it may be less than that also.

23 Q And their interest would be the same as yours,
24 right?

25 A No. Watson has a larger percentage of ownership

1 than Webb and myself.

2 Q So your testimony would be then that Mr. Watson's
3 interest in these common notes receivables and/apartment
4 complexes, is in excess of \$300,000?

5 A No, it's in excess of what mine is, that I share
6 with him in whatever number that is.

7 Q The question is what is the interest, what is
8 the value of your interest in those complexes and notes
9 receivables that you hold in common with him? Place a value
10 on your interest?

11 MR. LANDIN: If the witness knows.

12 A I would have to...I'd need my financial statement
13 to do that.

14 Q Do you have a copy of your financial statement
15 with you?

16 A No.

17 Q Would you estimate it for us?

18 A My notes...what my notes receivable are in
19 common with Webb's and Watson's?

20 Q Yes, sir.

21 A Again it would probably be, what I am in with
22 them would probably be in the neighborhood of \$300,000/ \$250,000
23 somewhere in that area.

24 Q Does Watson have more or less than you do, sir?

25 A He has more.

1 Q So Watson's interest in common with you would
2 be of a value in excess of \$300,000?

3 A It would be in excess of what mine is if mine
4 is in that amount.

5 Q And Webb has the same interest you have?

6 A Yes, basically. There is some variance but
7 basically it's the same.

8 Q How about as to Mr. Stewart, are you aware
9 of any interest that he might have?

10 A He has no interest that I am aware of.

11 Q Are you aware of any property that he owns?

12 A No.

13 Q Does he have a home?

14 A I do not know, I haven't seen him in about
15 three years.

16 Q That would be satisfactory, Your Honor.

17 MR. HAUGH: We would ask those questions when the
18 jury comes back, Mr. Landin.

19 THE COURT: Any objection to simply playing this
20 back to the jury, it may save some time?

21 MR. TREACLE: I have no objections, Your Honor.

22 THE COURT: Any objections, Mr. Landin?

23 MR. LANDIN: No, Your Honor.

24 THE COURT: All right bring the jury back Sheriff.

25 (Jury returned to the courtroom)

1 (The tape was played back at this time for the
2 jury of the questions to the witness which had been out of the
3 presence of the jury)

4
5 THE COURT: All right, you may continue, Mr. Treakle.

6 Q (Mr. Treakle continuing) Mr. Austin, who are
7 the officers of Quadel Management Corporation? Who were the
8 officers as of March..April of 1975?

9 A The president was Norman B. Watson, I was
10 executive vice-president, and I think Cope Stewart was a vice-
11 president and Tom Webb would have been secretary/Treasurer.

12 Q Who were the officers of Quadel Corporation at
13 that time?

14 A That would have been...Watson would have been
15 president, Stewart Vice-president and Webb secretary/Treasurer.

16 Q Nothing further of this witness.

17 THE COURT: Anything further Mr. Epps?

18 MR. EPPS: Yes.

19
20 CROSS EXAMINATION

21 By: Mr. Epps

22 Q Mr. Austin, you said that you were the executive
23 vice-president of Quadel Management Corporation?

24 A Right.

25 Q And in that position you had supervisory power

1 ...I mean supervisory responsibility over the Avon Street
2 property?

3 A Right.

4 Q Did you handle the day to day affairs?

5 A From a supervisory standpoint but I was handling
6 in addition to Avon Street, which was a very small parcel
7 probably in the neighborhood of 45 or 46 apartment complexes
8 stretched through the southeastern part of the United States.
9 I had the overall responsibility and then I had regional
10 managers in different parts of the southeast that had staff
11 and them/their staff managed the day to day affairs of the
12 local properties.

13 Q Who was the regional manager for this particular
14 property?

15 A Mr. Knight.

16 Q Would he be the one who would handle the day
17 to day affairs of the property?

18 A Right.

19 Q What was the nature of Mr. Knight's duties?

20 A Well, he was responsible for hiring and firing,
21 for advertising, for repairs and maintenance, for rent collection,
22 for evictions, the whole gamut of property management.

23 Q And did you leave that up to him? Did he have
24 to report to you before he took actions?

25 A There...we had a lot of policies and procedures

1 that were formalized and then within those guidelines the...our
2 regional manager had the full flexibility and Mr. Knight
3 did have...because I had total confidence in him and he had
4 full discretion to act.

5 Q Were you aware of any wind damage which occurred
6 to the property?

7 MR. TREACLE: Objection, I think that goes beyond
8 the scope of proper cross examination. There was nothing
9 on direct with respect to wind damage.

10 THE COURT: Yes, I think you will have to reserve
11 that for your direct examination, Mr. Epps.

12 Q No further questions.

13 THE COURT: Anything further, Mr. Treakle?

14 MR. TREACLE: We have nothing further of this
15 witness, Your Honor.

16 THE COURT: All right, you may rejoin your counsel.

17 MR. LANDIN: Your Honor, Mr. Austin is just going
18 out to return a telephone call to his wife...I just wanted
19 the court to know that's the reason he is leaving...

20 THE COURT: All right, sir.

21 MR. HAUGH: We rest, Your Honor.

22 THE COURT: All right, the plaintiff rests.

23 MR. LANDIN: Your Honor, we have a few matters
24 that we might want to take up with the court out of the
25 presence of the jury before we...

1 THE COURT: All right, members of the jury we
2 will give you a recess at this time. Be back in about fifteen
3 minutes. The court cautions you not to discuss the case
4 during the recess.

5
6 (Jury retired from the courtroom at this time)

7
8 THE COURT: All right, Mr. Epps.

9 MR. EPPS: Your Honor, I've got several points to
10 make, would you like for me to take them point by point or go
11 through the whole...

12 THE COURT: Suppose you go through the whole thing
13 and we will make Mr. Haugh take notes.

14 MR. EPPS: Your Honor, the defense would like to move
15 that the court strike the plaintiff's evidence. As Your Honor
16 is aware in order to prove this case of fraud, the plaintiff
17 has to show that there has been a misrepresentation either
18 by commission or omission and that the...this misrepresentation
19 was material and the defendant had knowledge of the fact that
20 it was false and that the plaintiff relied on this misrepresen-
21 taion, and that the plaintiff suffered damage. Those are the
22 elements he has to prove. He has to do this by clear and
23 convincing evidence. It's clear in Virginia that that's the
24 standard that has to be met. I cite Barnes v. Barnes 207 Va.
25 114 and Redwood v. Rogers, 105 Va. 155. The Barnes case said

1 it is elementary that in the absence of a relationship where
2 fraud is presumed, the allegation of fraud in the procurement
3 of a contract must be proven by evidence which is clear, cogent
4 and convincing. In that case there was no fraud shown that
5 dealt with the remainder man inducing...excuse me, the life
6 tenant inducing the remainder man to give up their interests
7 in the estate despite the fact that there were misrepresentations
8 made as to the extent of the estate.

9 In Redwood v. Rogers the court said that the charge
10 of fraud is easily made and the burden is upon the party
11 alleging it to establish its existence, not by doubtful and
12 inconclusive evidence but clearly and conclusively. Unfortunately
13 that case does not discuss enough in detail the evidence that
14 was used to draw the conclusions as to the facts in that case.

15 The Virginia Supreme Court has defined the clear
16 and convincing test as being that measured degree of proof which
17 will produce in the minds of the trier of facts a firm belief
18 or conviction as to the allegations sought to be established.
19 It is more than a mere preponderance the court said. That was
20 said in the Fred C. Walker Agency v. Lucus , 215 Va. 535
21 and again it was quoted in Sawyer v. Sawyer 216 Va. 521. The
22 Sawyer case dealt with the resulting trust which the court said
23 had to be proven by clear and convincing evidence and I think
24 the Walker case dealt with an oral contract.

25 Your Honor, the plaintiff has in no way shown...met

1 this burden of clear and convincing evidence in this case. The
2 very basic element of the case is the misrepresentation...the
3 misrepresentation so called that the defendant...the plaintiff
4 is relying on is the concealment of the wind damage and yet
5 the plaintiff in its own evidence has shown through Mr. Hull
6 that he saw the check stubs of the partnership. And the specific
7 check stub I believe is check stub 279, which says that that..
8 says repairs to wind damage or wind damage repair, clearly
9 shows that there was something besides fire damage.

10 Furthermore even if this were a misrepresentation
11 of some sort, plaintiff must have relied on that misrepresentation
12 in order to recover on the basis of fraud. It's apparent that
13 plaintiff in this case did not rely on the representations made
14 by the defendant or the defendant's agents. He sought to
15 discover the facts regarding the roof of the Avon Street building
16 himself and by doing so relieved the defendant of any liability
17 for any alleged misrepresentations. He went up on the roof,
18 he looked at the roof the evidence shows. He looked through
19 the check stubs, looked through expense statements.

20 The Supreme Court of Virginia has said that when
21 one conducts an investigation, even if that investigation
22 is an incomplete one, he no longer can claim that he relied
23 upon any misrepresentation made to him by the other party. The
24 court said that the party cannot rely on representation when
25 "after the representation the party receiving it has given to

1 him a sufficient opportunity of examining into the real acts,
2 when his attention is directed to the sources of information
3 and he commences or purports or professes to commence an
4 investigation. The plaintiff's motive of expediency and of
5 justice require that he should be charged with all the knowledge
6 that he might have obtained had he pursued to inquiry to the
7 end with diligence and completeness. He cannot claim that he
8 did not learn the truth and that he was misled. That was the
9 case of Westend Realty Company v. Clayborne, 197 Va. at 751.
10 Mr. Hull for the plaintiff has testified that he went up on the
11 roof but failed to look at the entire roof and in the plaintiff's
12 case it was shown that the repairs to the roof were apparent,
13 that they were of a different color, one was aluminum...the roof
14 was aluminum. The repairs that Mr. Lynch put up there were of
15 a different color that could be spotted by someone taking a look
16 at it. The fact is that Mr. Hull went up on the roof, to make
17 sure that the roof was adequate. He may have forgotten to look
18 at the rest of the roof but he did conduct his own investigation.
19 It is..he also continued that investigation in the financial
20 area when he went and looked at the check stubs and saw check
21 stub 279. Furthermore in continuing the line of investigation
22 the plaintiff also had two other experienced men look it over
23 with him. The plaintiff should have become aware that there were
24 funds that had come into the partnership, and that there had been
25 repair to the roof. And because of this he could not be said

1 to have relied on any concealment on the defendant's part. He
2 also testified that he talked to some of the tenants but said
3 on the stand that he should have talked to them all. He failed
4 to talk to some that he claims would have told him something
5 different.

6 Furthermore even if the court should determine that
7 there is sufficient evidence to create a jury issue on the
8 question of fraud, plaintiff's evidence should still be struck
9 because the plaintiff has failed to show that the defendant,
10 Avon Street Limited Partnership, either authorized that fraud
11 on the part of its agents or in a sense ratified that fraud.
12 Both Mr. Zerkel and Mr. Knight were acting as agents for the
13 partnership in the selling and managing of the Avon Street
14 property. Mr. Knight was an employee of the Quadel Management
15 Corporation, which as an independent contractor, was managing
16 the property for the partnership. Mr. Zerkel was the Quadel
17 Management Corporation's agent in Charlottesville. If any fraud
18 was perpetrated upon the plaintiff, the partnership is not liable
19 for the damages which resulted therefrom without proof of
20 authorization or ratification. It's clear that there has been
21 no evidence thus far of authorization by the partnership and
22 equally clear that there is no such ratification. The evidence
23 fails to show that the partnership was with knowledge as to any
24 fraud perpetrated upon the plaintiff for the sale of the building
25 to the plaintiff. In order for a fraudulent act an agent or

servant to be actionable against the master or principal, the plaintiff must show that any ratification of a contract which results from a fraudulent misrepresentation was made with full knowledge of the principal or master of the fraudulent act.

In the case of Tennent v. Union Mutual Life Insurance Company, the Virginia Supreme Court said that "It is perfectly well settled that a ratification of the unauthorized act of an agent in order to be effectual and binding on the principal must have been made with a full knowledge of all material facts and that ignorance, mistake or misapprehension of any of the essential circumstances relating to the particular transaction alleged to have been ratified will absolve the principal from all liability by reason of any supposed adoption or assent to a previously unauthorized acts of the agent."

And I continue in that quotation "It has been declared by the court that no doctrine is better settled/upon principal and authority than this, that the ratification of the act of an agent previously unauthorized must in order to bind the principal be with the full knowledge of all material facts. If the material facts be suppressed or unknown the ratification is treated as invalid because founded on mistake or fraud." That particular case....I don't know if I gave the citation to was 150 Va. 548.

The plaintiff tended a life insurance premium to the insurance company the day after she found out the insured was dead and claimed that the payment had been an oversight. The company's

1 agent was...the payment was past due....the company's agent
2 was alleged to have said the payment was all right but didn't
3 have authority to do that and the court held that neither
4 the agent nor the company knew the facts and therefore
5 ratification was ineffectual.

6 And finally, Your Honor, on the issue of punitive
7 damages, if the...even if the courts have determined that
8 a jury issue has been created on the issue of fraudulent
9 misrepresentation, the plaintiff's request for punitive
10 damages should be struck since the plaintiff has failed to show
11 actual malice on the part of the defendant. At 219 Va. 448
12 in the case of Jordon v. Sauve and Koons the Supreme Court
13 of Virginia held that "Punitive damages may be recovered only
14 if there is proof, either direct or circumstantial, showing
15 actual malice." To prove malice the court said the plaintiff
16 must show that the defendant was so reckless or negligent as
17 to evince a conscious disregard of the plaintiff's rights, that
18 the defendant acted wantonly, oppresively or with such malice
19 as to evince a spirit of mischief or criminal indifference to
20 civil obligations.

21 Your Honor in an earlier case the Supreme Court in
22 saying just about the same thing added however that actual
23 malice may be established by showing that the prosecutor's
24 action was prompted by "ill will, malevolence, grudge, spite,
25 wicked intention, or a conscious disregard of the rights of

1 others." That case is Lee v. Southland Corporation...I have
2 the Southeast cite...I have the Virginia cite too, 219 Va.,
3 23, and that quotation would be at page 27. The plaintiff
4 has not shown any such spirit of ill will, spite, grudge,
5 mischief, criminal indifference on the part of the defendant
6 in this particular case. On the contrary he asked a good
7 number of questions, he testified that nothing he asked was
8 left unanswered, nothing he asked for was left not given to
9 him. The tenants were made available to him. The books were
10 made available to him. And after displaying...after complying
11 with all his wishes it would be unjust to now come back and
12 complain that in this arm's length transaction that the
13 defendant somehow was exhibiting ill will or grudge or
14 malevolence toward the plaintiff.

15 Furthermore, even if the court should determine
16 that the defendant's agents did some act which warranted the
17 awarding of punitive damages, the defendant, Avon Street Limited
18 Partnership cannot be held liable for punitive damages "unless
19 the agents did some act warranting punitive damages and that
20 such act was previously authorized or subsequently ratified by
21 the partnership." Punitive damages "cannot be awarded against
22 a master or principal for the wrongful act of his servant or
23 agent in which he did not participate and which he did not
24 authorize or ratify." That case is Hogg v. Plant
25 145 Va. 175. In that particular case the servant hired someone

1 without authority to do so and the elevator shaft was left
2 opened and a blind man stumbled into it and yet the owner
3 of the building was held not to be libel for the punitive
4 damages because the servant that he had hired was without
5 authority to hire a sub servant and that sub servant was the
6 one that left the shaft opened.

7 I think for all of these reasons, one the court
8 should strike the plaintiff's evidence as to fraud and
9 even barring that to the punitive damages...should strike
10 the claim for punitive damages.

11 THE COURT: All right, Mr. Haugh.

12 MR. HAUGH: May it please the court, Your Honor, I
13 will start first with the facts and with the court's permission
14 will let Mr. Treakle argue the law.

15 The elements which were quoted by Mr. Epps are not
16 really fully quoted. He keeps saying misrepresentation but
17 in each of the cases it says misrepresentation is concealment
18 but Mr. Treakle will go into that more fully.

19 Now, Your Honor, what have we proven as of this
20 time. Take the evidence most favorable to the plaintiff.
21 First we have proven that in 1975, April there was wind damage
22 to a portion of the roof on this building. We have proven that
23 only temporary repairs were made to that portion of the roof,
24 by Lynch Roofing...I think for \$755...it's either \$755 or \$775,
25 it's in the proposal that he submitted and which is in evidence.

1 We also have proven that no permanent repairs were made to that
2 area. Now, Mr. Billie Lynch testified to this, he said that
3 when he went back, he was the one that went back in '78 and
4 said no, no other work had been done on it.

5 Then we have Mr. Warren Martin's letter to the
6 defendant of May 30, 1975...and this is in evidence...reminding
7 them that if they didn't already know, reminding them that
8 only temporary repairs had been made and what the consequences
9 could be if permanent repairs were not made. Now there is
10 one other thing...Mr. Martin also testified that he couldn't
11 tell the difference from temporary repair and the permanent
12 repair. He said he couldn't tell the difference.

13 Now, we have also proven that the real estate agent
14 representing the defendants in the sale of this property
15 represented to Mr. Hull as the only damage to the building
16 that he knew about was the fire damage. Now that's not the
17 exact words but he mentioned this portion had been damaged
18 by fire. There was other talk about the roof, who did the
19 work, the type of work...I will just quote two things that Mr.
20 Hull testified to...I won't quote them but paraphrase them on
21 cross...I was told it was a 25 year roof, heavy beams and over
22 structure. Zerkel told me you can rest assured there is a good
23 roof up there, asked and told the work was done in a workmanlike
24 manner. That was the portion of the fire. So they did talk.
25 He did talk with the agents for the defendants about the

1 condition of the roof.

2 Now, John Hull further testified that he relied upon
3 Mr. Zerkel, the real estate agent's representation and he said
4 he checked under the building which was damaged by fire. He
5 talked to the tenants under that section. He looked at the
6 roof under that section. So here you have a man, the purchaser,
7 the plaintiff's agent coming in and saying look how is this,
8 or Mr. Zerkel saying to him look, the damage to this was fire
9 damage over here on this end. He checked on the fire damage,
10 it was repaired and he checked the roof that had been
11 destroyed by fire, he checked with the tenants underneath
12 and was asked on cross why didn't you check this and he said
13 no reason to check anything else. I was never told anything
14 else. He also said that he would not have purchased it on
15 the terms agreed upon, which were the basis of conveyance,
16 if he had known of the wind damage and temporary repairs.

17 Now, how much of this did the defendants know?
18 They knew the whole thing according to our evidence. They knew
19 the whole thing. If you read the May 30, 1975 letter to...from
20 F. Warren Martin to Glade Knight of Quadel Corporation, he
21 went to the Corporation...now, you have got to remember that
22 all of these people are interwoven. The principle partners
23 in the Avon Street are the principle partners of the Management
24 who were the principle owners of Quadel Corporation. So you
25 have them all three together, just like that, notice to one,

1 notice to all. But on May 30th he wrote them and told them,
2 if they didn't already know it, he told them then, this is
3 what's going to happen. They got no response. Thereafter the
4 defendants made an insurance company claim. They received
5 payment in three checks and paid to themselves under the name
6 of Quadel Management Corporation and wrote on the check "repair
7 wind damage."

8 Now, Mr. Epps argued that there was really no
9 concealment because Mr. Hull was furnished with a check stub
10 that had a misrepresentation it. It said paid Quadel Management
11 \$8121 repair wind damage. That's a very peculiar argument
12 that they are saying we are going to rely on this misrepresentation
13 on our check stub to overcome a fact of concealment of a
14 material fact. By the misrepresentation, itself, it would
15 make them responsible because they didn't pay out \$8121 worth
16 of work on that.

17 Now, Mr. Hull sought to discover the facts of the
18 portion of the roof as I said that he had been told about
19 had been damaged.

20 THE COURT: Actually your client stated in his
21 testimony that he didn't see that when he reviewed...

22 MR. HAUGH: That's correct. He said he didn't
23 know whether he saw that stub or not. That's correct.

24 Now, there are different roofs on this building
25 as you heard testified. You have a building of approximately

1 500 feet long, separated I think Mr. Martin said by four or five
2 fire walls, extending about 30 inches higher than the roof,
3 and there is no evidence that the roof was different colors
4 as Mr. Epps testified. The painting had been done when Mr.
5 Martin I believe, himself, went back up, within two weeks, but
6 that's all the evidence there is. There is nothing about...

7 MR. LANDIN: Your Honor, I have to object because
8 Mr. Lynch very clearly said there was a difference in coloration
9 when they finished the mopping.

10 MR. HAUGH: In 1975, but nothing after that.

11 MR. LANDIN: Well, there is no evidence that there
12 was anything else.

13 THE COURT: The court recalls it that way. Of course,
14 we don't know what the situation was when your client looked
15 at it but we have some prior indication that it was in two
16 different colors.

17 MR. HAUGH: Yes, sir. Now, Mr. Epps argued that the
18 parties were not responsible for the acts of the agent, certainly
19 they are. They are responsible for each other's acts. They
20 are all interwoven. More than that, Your Honor, you heard Mr.
21 Hull testify that when he and Mr. Zerkel went to Maryland to
22 talk to Mr. Austin and Glade Knight, the statement was made
23 to him, when he talked about the roof and what happened and
24 the statement was made by one of the two that you've got to
25 make a profit where you can. Your Honor, that not only shows

12
1 notice, that is ratification, if ratification is necessary.
not

2 THE COURT: That's/ exactly what he said, Mr.
3 Haugh. The court recalls him saying you can't blame a man
4 for making a little profit.

5 MR. HAUGH: Yes, sir, I will take your word for it.
6 It was in answer to the question of what happened to it.
7 Now, Mr. Epps argued about unauthorized acts but the correspondence,
8 to Avon Street Limited Partnership, shows exactly what happened,
9 that they knew everything that was going on, everything was
10 sent to them. They are the owners. They are Quadel Management,
11 all together. And it also shows that they then took the money
12 from the Limited Partnership, paid it to Quadel Management
13 Corporation which is there ownselves, and said wind damage
14 repairs.

15 THE COURT: All right, Mr. Treakle.

16 MR. TREACLE: Your Honor, I will be fairly brief.
17 Initially we had some concern with perhaps a latent defect,
18 this defect that was not easily discoverable, whether or not,
19 if you will, a sin of omission, that is the failure to disclose
20 that defect would be sufficient to support our cause of action,
21 as opposed to a sin of commission, and if anybody has any problems,
22 if a man says there are not termites in my house, and the house
23 is falling down with termites around him, and it's easily
24 discoverable because all the beams are rotted out, it's easily
25 seen, nobody has any problems with that, but what if the beams

1 are covered? What if it's a defeat that is not easily dis-
2 coverable and the owner knows about it, is it such a defect
3 that would warrant recovery in a case like this? We had some
4 initial concern about that and Restatement of Torts says
5 in Section 551, paragraph 2, sub paragraph e, Facts basic to the
6 Transaction if he, the seller, knows that the other is about to
7 enter into a mistake as to them, and that the other because
8 of the relationship, etcetera, customs of the trade or other
9 objective circumstances would reasonably expect a disclosure
10 of these facts, liability, fraudulent concealment. The
11 Supreme Court of Virginia has accepted this fraudulent
12 concealment argument. They did so in the case of Ware v.
13 Scott, rendered by the court on August 30, 1979, and the court
14 in that case, which deals with fraudulent inducement in the
15 performance and execution of a contract, the court said
16 "Although the formation was free of fraud, performance of an executory
17 contract may be fraudulently induced. By the same
18 logic, fraudulent inducement to perform may arise when one
19 party induces the other to perform by concealing some
20 fact which excuses performance by the latter."

21 THE COURT: Let me ask you this, I don't want to
22 interrupt your argument...

23 MR. TREAKLE: Yes, sir...

24 THE COURT: And I am going to let you go on but
25 what is the duty to make first class repairs to a piece of

1 property? Suppose a man paints his house with cheap paint
2 and the paint comes off in a year's time, is he under a duty
3 to disclose to a potential purchaser what kind of paint he
4 has used?

5 MR. TREAKLE: It depends on the circumstances, Your
6 Honor. In a case where representations are made to the
7 purchaser that that's a first class paint job or the roof
8 is good, there might not be a duty to disclose but in this
9 instance, where you have the agent of the seller, Mr. Zerkel
10 saying that the roof was good...

11 THE COURT: Suppose it's just been painted last
12 year?

13 MR. TREAKLE: The question then becomes one Your
14 Honor of having just been repainted last year, should the
15 purchaser inquire further as to the reason for the repainting
16 in your case. That is not the case here. We have the
17 statement being made that the roof over Ridge Electronics
18 had just been repaired and everything else is fine. So there
19 is nothing to make the purchaser question the roof further
20 on down. The court will recall the facts of the testimony,
21 the area of the roof...

22 THE COURT: What do you mean by fine? Do you mean
23 it's not leaking right now or do you mean it's going to last
24 25 years?

25 MR. TREAKLE: Your Honor, I mean that there are no

1 latent defects in the material, no material defects in the roof.
2 There was a representation made that the south end of the roof
3 just
has/been repaired because of fire damage. In essence...

4 THE COURT: Is latent defect and poor repair or
5 cheap repair the same thing?

6 MR. TREAKLE: No, sir.

7 THE COURT: Well, why do you call this a latent
8 defect?

9 MR. TREAKLE: If we could go to the Restatement,
10 Your Honor...Restatement Section 550, Liability for Fraudulent
11 who
Concealment, one party to a transaction/by concealment or other
12 action intentionally prevents the other from acquiring
13 material information is subject to the same liability to
14 the other for pecuniary loss as though he had stated the
15 non existence of the material fact that the other was thus
16 prevented from discovering.

17 THE COURT: What's the evidence of an intentional
18 prevention in this case?

19 MR. TREAKLE: Your Honor, what the evidence is,
20 if I might characterize it, the seller through their agents
21 almost lulled Mr. Hull into a false sense of security. They
22 said the only problem with the roof is here, over Ridge Electronics.
23 This is being repaired in a first-class workmanlike manner.
24 The representations with respect to the remainder of the roof
25 was that the roof was fine. Mr. Hull was told that this was

1 a 25 year roof by Mr. Zerkel, that the builder, Mr. Potts, I
2 believe his name was, was a good builder, with good reputation,
3 he did a good job and he did it for himself. He also at the
4 same time was told that the roof over Ridge Electronics
5 was being repaired in a workmanlike manner and since that was
6 being prepared he investigated that and found that what Mr.
7 Zerkel had told him was accurate, and that was that the work
8 was being performed in a workmanlike manner. Therefore had
9 every reason to believe that Mr. Zerkel had not failed to
10 disclose something to him,

11 THE COURT: So your position is that in the absence
12 of Mr. Zerkel's statement that your client would not have
13 a case, is that...

14 MR. TREAKLE: No, Your Honor. I think we have a case
15 where we are not talking about paint, we are talking about a
16 structural defect of a building. We are talking about
17 a structural defect in a roof. If we were talking about a drain
18 field that wasn't working, if we were talking about an illegal
19 hookup to the city septic system, I think under those circumstances
20 the seller would have an obligation to disclose. Coincidentally
21 Judge Pickford has ruled in a similar case that that's in fact
22 what the seller's obligation is. The case is University of
23 Virginia...

24 THE COURT: In which case is that?

25 MR. TREAKLE: The case is University of Virginia...

1 THE COURT: Not the name of it but of the three
2 examples you gave...

3 MR. TREAKLE: The example in fact was a hookup
4 to the city sewer system. What they have done is they have
5 taken their storm drain system and they have put that in the
6 city sewer system contrary to the city code. The case is
7 University of Virginia, Chapter of Delta Zeta House v. Arthur
8 L. Phiel and Helen W. Phiel. I have the Judge's opinion if
9 the court would like to review it. I also have a memorandum
10 prepared by counsel. I don't know if Mr. Landin has seen
11 a copy of this or not. What I am saying Your Honor is a defect
12 of that nature, a material defect of that substance would
13 warrant and place upon the seller an obligation to disclose it.
14 That's different from putting a \$6 gallon of paint up as oppose
15 to a \$15 gallon of paint. Its distinction is materiality..

16 THE COURT: And you think the same distinction
17 would hold where you put up one layer of felt and tar over
18 it as oppose to a recommended layer of composition roof?

19 MR. TREAKLE: No, Your Honor, I think there is
20 a distinction there because of the time Mr. Lynch in this
21 case repaired the roof. Those were intended as repairs of
22 a temporary nature and all parties to that transaction, Mr.
23 Lynch, the agent for Avon Street Limited Partnership and
24 Avon themselves were aware of the fact that this was a temporary
25 repair. The man who paints his house may not have that

1 knowledge that this is a temporary painting. He may be...

2 THE COURT: How about the man who paints it with
3 the idea of putting it on the market that year and his real
4 estate agent told him it would sell better if it's been painted
5 and he buys the cheapest paint available? Isn't he in essentially
6 the same position?

7 MR. TREAKLE: Not really, Your Honor, because
8 painting is a day to day basis, it's like cutting the grass.
9 This is a structural defect. This is defect in the roof,
10 where the whole roof had rolled back. Your Honor, heard the
11 testimony...what happened the lip of the roof catches up and it
12 rolls back. And I think the distinction is structural versus
13 maintenance. The distinction is the size and import and
14 significance of the defect as opposed to something that is
15 purely cosmetics. No one will buy a house without a roof. Someone
16 may buy a house without a current paint job, a new paint job.
17 Would Your Honor care to read the latest opinion?

18 THE COURT: All right.

19 MR. TREAKLE: Your Honor, following basically the
20 reasoning in that case which was the unlawful hookup to the
21 sewer system, if the Court would like we also have Ware
22 v. Scott which we cited previously....that was the case where
23 the defendant neglected to mention the water problem along
24 the driveway...we have a copy of that if the court would
25 care to read it. There is a case of Armentrout v. French

1 which was decided in October 5, 1979. That was the case of the
2 septic system. Again very material items that were mis-
3 represented or concealed from the purchasers. In each of those
4 cases, and the case before Your Honor which dealt with the
5 sorority case, there was concealment of that fact. A review
6 of the file in that case will show/that what happened is that
7 the purchasers unaware of this defect executed the contract,
8 the sellers aware of the defect did not disclose it. The
9 court ruled in that case that the rescission of the contract
10 was proper. In Ware v. Scott, the defendant neglected to mention
11 that there was a water problem along the driveway. The court
12 found that to be a misrepresentation which would be sufficient.
13 In Armentrout v. French, the question was...a septic system
14 had cracks in it or leaks and was overflowing and there was
15 a rather peculiar noticeable odor in the family room downstairs
16 in the basement. The facts of the case...the purchasers coming
17 to inspect the premises came in the middle of the winter and during
18 the spring months, a balmy day and noted that it was rather
19 peculiar that the sellers had a roaring fire going in the fire-
20 place but the court did not rule that that was sufficient to
21 put them on notice that they should investigate further. In
22 Armentrout the court ruled that that was evidence and that is
23 that in the family room where the overflow occurred and the odor
24 was most prevalent, the attempts by the seller to conceal the
25 problem, the odor and the overflow of the septic system was

1 sufficient to give the evidence to the jury. There is a long
2 course of cases and I'm certain Your Honor is familiar with
3 them and counsel are dealing with whether or not misrepresentation
4 and concealment should be distinguished. The long courses of
5 cases say there should be no distinction. We can cite Your
6 Honor to v. Kyle, Addington v. Fulton, looks like
7 and Costello v. Larsen, 182 Va. 567, /this whole series of cases
8 does not draw a distinction between, in my terminology, a sin
9 of omission and a sin of commission...in response to a direct
10 question saying no, that is not a problem, we are simply not
11 telling the purchaser that that is a problem. It is true
12 and Virginia Law recognizes that misrepresentation and concealment
13 are one and the same and that the remedies for them are one
14 and the same.

15 The key as we seem to see in the cases is one of the
16 and elements of the fraud action/ that is it must be a material
17 defect. It must be a material fact. In this case we have
18 a material fact. The roof...Mr. Hull testified that he would
19 not have purchased the building at this price without, and I
20 would have to go back to that abatement in the purchase price, so
21 that either the roof were repaired properly or that the purchase
22 price adjusted accordingly so that he could have it repaired
23 properly. He relied on the fact, on the firm of statements
24 made by Mr. Zerkel that in fact there was a 25 year roof, the
25 roof was good. He relied on the fact that this has been concealed

1 from him. He had no reason to believe there were any problems.
2 The duty to disclose is certainly shown by the cases, The
3 damage to the plaintiff, he subsequently had to incur expenses
4 of some \$7,400...I believe is the figure, but he had to go
5 out and get that roof repaired because all that was there was
6 a temporary patched job, one layer of felt and a mopping of
7 tar.

8 That is sufficient, we have shown all of the elements
9 that are required to show fraud. I might point out to the
10 court, of course, it's the standard here, we have a motion
11 to strike by the defendants. We feel simply Your Honor, in
12 reviewing all this evidence that we have sufficient evidence
13 to go forward and this is most important in light of some
14 of the more recent cases that deal with punitive damages and
15 such. In response to Mr. Epps argument he cited the case
16 of Jordan v. Sauve and Koons...we have that case here for
17 the court to review as well, 219 Va. 448. We commend that to
18 the court because the court there said in dealing with the
19 damage issue "All inferences which may be fairly drawn, from
20 the evidence must be considered favorably to the plaintiff
21 and where there are several inferences which may be drawn,
22 though they differ in degree of probability, the court must
23 adopt those most favorable to the party whose evidence it is
24 sought to have struck out, unless the inferences be strained,
25 forced or contrary to reason."

1 It is very logic that what happened in this case is
2 there was a concealment of this material fact, that because
3 of this concealment, the plaintiff went forward with the
4 transaction and that because he went forward with the trans-
5 action, he has suffered damage. To overrule his case at this
6 point and sustain the motion we think would be improper and
7 contrary to the evidence and we would ask the court to overrule
8 the motion.

9 We would offer this to Your Honor, which deals with
10 the punitive damages as well. It goes on to say that I believe
11 any evidence of malice is sufficient for the court to award
12 punitive damages.

13 THE COURT: Well, what is the evidence of malice
14 in this case, Mr. Treakle?

15 MR. TREAKLE: Your Honor the definition of malice
16 is set forth in Koons and set forth I believe in Ware...is
17 a conscious disregard for the rights of the plaintiff, civil
18 rights, civil claims. In this case we have a defendant, a series
19 of defendants, who are making a profit where they can, or
20 whatever the direct testimony was...

21 THE COURT: That's the only evidence that I see...

22 MR. TREAKLE: Your Honor, if the court goes further
23 and goes into the evidence and Mr. Haugh's argument on the
24 evidence, if the court goes further, and look at the check
25 stubs, the check stubs show eight thousand, one hundred and some

1 odd dollars, repair wind damage. That was money that rightfully
2 belonged to Avon Street Limited Partnership, was paid by the
3 general partners of Avon Street to Quadell Management for these
4 repairs. And the real issue is what happened to that money
5 because it certainly didn't go...or one of the issues is what
6 happened to the money, it certainly didn't go to the repair of
7 this building and we assume in subsequent testimony this
8 afternoon the defendants will try to explain it.

9 THE COURT: The notation on the check could be what
10 it was received for, instead of what it was spent for.

11 MR. TREAKLE: NO, Your Honor, this is the check
12 stub of Avon Street Limited Partnership. On the previous
13 page there is a showing of three receipts, one is \$1677, one
14 \$1677, and one \$47...

15 THE COURT: They were all received for this damage..

16 MR. TREAKLE: They were all received for this damage
17 and then there was a disbursement for that as well. The
18 exhibits on the bench...Your Honor, the receipts if I might
19 are \$1671.97, \$1671.97 and \$4777.05 and the disbursement
20 is check number 279 and that is a disbursement. That is not
21 money received for wind damage.

22 MR. LANDIN: Well, that's to the Management Corporation...

23 MR. TREAKLE: Right...

24 THE COURT: Well, it could still very well be an
25 indication from what source the monies being paid are received,

1 Mr. Treakle.

2 MR. TREAKLE: I am not sure I follow you, Your Honor.
3 It's the money being paid to Quadel Management...

4 THE COURT: I understand...

5 MR. TREAKLE: And it's money that properly belongs...

6 THE COURT: But the indication on the check stub
7 may be for what the money was received that is now being paid
8 over to Quadel.

9 MR. TREAKLE: Yes, sir.

10 MR. EPPS: Your Honor...

11 MR. TREAKLE: As I understand the testimony of the
12 relationship of the various entities, Quadel Management,
13 Avon Street Limited Partnership, Quadel Corporation, Avon
14 Street Limited Partnership is the owner of or was the owner
15 at that point in time of the warehouse complex. They had as
16 their managing agent Quadel Management Corporation. So what
17 we have is a disbursement of funds of the owners to the management
18 corporation for some purpose. We submit that now the defendants
19 should come forward and show if in fact that was spent on
20 repairs or whatever.

21 THE COURT: Well, there is no question about the fact
22 that it wasn't spent on repairs apparently, Mr. Treakle.

23 MR. TREAKLE: I assume they would acknowledge that,
24 I don't know Your Honor but we are not at that stage, right now.
25 But it's not a receipt, the check 279 or whatever the number

1 was is not a receipt, it's a disbursement of funds that belong
2 to Avon Street Limited Partnership and that is a record of
3 that disbursement.

4 THE COURT: All right, Mr. Epps, do you wish
5 to reply?

6 MR. EPPS: Yes, Your Honor. I will take some
7 of his points as I wrote them down but I would like to start
8 with the point that Mr. Treakle has labeled this so-called
9 defect as a latent defect and said there is a duty for
10 the defendant to have disclosed such a defect to the plaintiff
11 before the plaintiff purchased. I think the evidence that we
12 have had before us today shows that we are really not in the
13 latent defect area. The evidence as it was presented this
14 morning showed that you could tell the difference between
15 where there had been some patching and where the original
16 roof was.

17 MR. TREACLE: Your Honor, I object to that because
18 the testimony was that at the time of the repairs, at the time
19 of the patching in April of 1975, there was a difference...

20 THE COURT: All right, the court believes that that
21 is a jury question. There is evidence from which the jury could
22 believe either of the two facts as stated.

23 MR. EPPS: All right, Your Honor, on representations
24 which may have been made to Mr. Hull by Mr. Zerkel, I don't
25 think there has been anything said here that Mr. Zerkel

1 represented to Mr. Hull that was not what the law calls puffing
2 and dealer talk. He did not apparently tell him that it was
3 a 25 year guarantee on the roof. He said that the fire repair
4 had been done. He said who had made the other repairs...I mean
5 built the roof and he knew of that man's reputation. Now,
6 that is clearly puffing and dealer talk.

7 Furthermore the check stub which they said was
8 a misrepresentation...one was not any representation to Mr.
9 Hull other than the fact that he asked to see the check stubs
10 and they were provided to him. There was no knowledgeable,
11 conscious misrepresentation regarding that check stub or
12 any concealment by the defendant. I think the plaintiff
13 bears the burden to prove by clear and convincing evidence
14 that there was no concealment. I think they have not borne
15 that burden.

16 As for the case, the University of Virginia case
17 which they presented the court, there are two things I would
18 like to point out about that case. One is that when you
19 are talking about a sewer hookup, which is what...is that what
20 it was, a sewer water hookup...

21 MR. TREAKLE: It was a hookup of the storm sewer
22 system into the City sewer system.

23 MR. EPPS: It's not the type of thing that an
24 inspection, by a homeowner or home buyer would be able to determine
25 upon
his inspection. In that case you are talking about something

1 that was illegal and in this case I don't think that making
2 less expensive repairs that what some people say you might have
3 to do is illegal.

4 Furthermore on the punitive damage issue, Your
5 Honor, I think the statement that Mr. Treakle referred to as
6 making a profit, if you can, that was certainly after the
7 fact, well after the fact of any concealment, if there was one.
8 This was two years after the sale and three years after the
9 damage was repaired.

10 THE COURT: Referred to actions though that had
11 been carried out prior to the sale though, did it not, Mr.
12 Epps?

13 MR. EPPS: Excuse me.

14 THE COURT: It referred to actions that had been
15 carried out prior to the sale, though, did it not?

16 MR. EPPS: Yes, sir. That's all, Your Honor.

17 THE COURT: The court has reviewed the evidence
18 in the light of arguments of counsel, we believe that there is
19 sufficient evidence to go to the jury on both fraud and on
20 punitive damages. The motion will be overruled. We will
21 take a five minute recess before we begin the defense case.

22
23 (Brief recess)
24
25

1 THE COURT: All right, you may proceed.

2 MR. LANDIN: Your Honor, we call as our first
3 witness Mr. Holt.

4
5
6 ELBERT H. HOLT, having been duly sworn, testified
7 as follows:

8
9 DIRECT EXAMINATION

10 By: Mr. Landin

11 Q Please tell the jury your full name and
12 your business and business address?

13 A My name is Elbert H. Holt and I'm an insurance
14 agent in Midlothian, Virginia, which is a suburb of Richmond, on
15 Route 60.

16 Q How long have you been an insurance agent?

17 A 20 years.

18 Q Did you carry the insurance on the Avon Street
19 Limited Partnership on this warehouse down here in Charlottesville
20 that is the subject of this action today?

21 A I carried a part of it. I did not carry it all.
22 I carried part of it.

23 Q Do you recall some damage to the roof caused
24 by wind in April of 1975?

25 A Yes, sir.

1 Q Could you tell the jury whether or not you
2 made any inspection of that roof yourself after the wind damage?

3 A I did...

4 MR. HAUGH: May it please the court, Your Honor,
5 this was the type of information we solicited...to offer
6 and it was objected to by Mr. Landin. If he is opening the
7 door, I have no objection to it, but I would then reoffer
8 the instruments.

9 MR. LANDIN: Mr. Haugh's and my recollection
10 is different entirely, Your Honor. I think he was trying to
11 offer some other documents of third parties and I'm eliciting
12 from this witness' own firsthand observations and I think I
13 am entitled to do that.

14 THE COURT: I think your question is appropriate.
15 You may proceed.

16 A I did go to the building the morning after
17 I was notified that there was damage.

18 Q All right, sir, did you go up on the roof?

19 A Yes, sir.

20 Q Did you use a ladder or what means did you
21 use?

22 A You will have to excuse my ignorance but
23 I honestly don't remember how I got up there really. I assume
24 I went up the ladder but it's not vivid in mind.

25 Q Tell the jury what you saw when you went up

1 there?

2 A Well, when I did get on the roof, a portion of
3 it was obviously blown off and some temporary repairs had
4 been made on that portion that was bare or where the roof
5 had come back.

6 Q What was the nature of these repairs?

7 A Well, someone had taken some 30 pound or
8 15 pound black felt, building paper, felt I think it's called
9 and rolled it out and temporarily put something on it to kind
10 of keep the wind from blowing it away again.

11 Q There were weights on it of some description?

12 A Yes.

13 Q There were further repairs yet to be done?

14 A Yes, that's correct.

15 Q Now, could^{you}/describe for the jury how big

16 the area in question was? --to the best of your recollection?

17 A It was in the neighborhood of a thousand
18 feet. I think in my notes somewhere there is a figure
19 mentioned of 900 feet. I stepped it off length and width, which
20 I believe in my notes is about a thousand feet.

21 Q All right, sir. Now, were you later made
22 aware that Lynch Roofing Company had prepared an estimate
23 for the repair of that damage involving...let me make sure
24 I'm accurate...were you aware that Lynch Roofing Company had
25 given a proposal for repair in the amount of \$7265.00?

1 A No, sir, not in that amount.

2 Q All right, sir, were you aware that Mr. VanLear
3 or that Mr. Martin, through VanLear, had given a proposal
4 incorporating this which put the total amount up somewhere
5 in the neighborhood of \$8900.00?

6 A Yes, sir, I was aware of that.

7 Q Did you then form any opinion about the
8 nature of the repairs^{that} were supposed to be encompassed in this
9 \$8900.00 bid?

10 A I thought the bid was completely out of all
11 reason, from what I had seen that needed to be repaired and
12 I so wrote my home office, the head of the Claim Department.

13 Q How long have you been insuring commercial
14 property against damage from wind and other causes?

15 A How long what?

16 Q How long have you been insuring commercial
17 properties against loss from wind and other causes?

18 A 20 years.

19 Q How high did you report to the company that
20 you thought this bid was?

21 A Well, I believe my notes say that when I first
22 looked at it...I thought we were looking at a repair bill
23 of 12 to 13 or \$1400.00, that was my judgment at the time.
24 Now, when they came through with this bill I wrote and told
25 them I thought it was completely out of all reason for a bill

1 to be that high. But I did not have the final word, I was
2 the field manager who was suppose to be looking at it and
3 getting the word back to the home office.

4 Q Now, you indicated you wrote your home office,
5 do you have a copy of that letter with you?

6 A Yes, sir.

7 Q Would/^{you}read it to the jury please? Identify
8 it by date, if you will, so Mr. Haugh can follow you.

9 THE COURT: If you will show that letter to
10 counsel..

11 MR. LANDIN: Pardon me?

12 THE COURT: Show that letter to counsel.

13 MR. LANDIN: He has it through production of
14 documents, that's why I was going to...

15 MR. HAUGH: These are some we offered, Your Honor.

16 MR. LANDIN: This letter was not included in the
17 ones we talked about...

18 MR. HAUGH: Are you sure?

19 MR. LANDIN: Yes, sir, I'm positive.

20 MR. HAUGH: Yes, it was...

21 MR. LANDIN: May 13th...

22 MR. HAUGH: I thought it was...may it please the
23 court may we be heard out of the presence of the jury.

24 THE COURT: All right, ladies and gentlemen of
25 the jury, if you will step into the jury room.

1 (Jury retired to the jury room at this time)

2
3 MR. HAUGH: Your Honor, we feel that Mr. Landin
4 has now opened the door to all the documents that were produced,
5 as exhibited earlier to the court. They were in the file
6 of Mr. Holt. Now, Mr. Holt has taken the stand and said
7 this is what he wrote his company. There are papers in there
8 where other estimates were obtained. He was working with the
9 adjustors and it shows all of these things Your Honor. We feel
10 ...we are going to object unless the door has been opened to it
11 because this is just a part of the story. Southeastern Adjustment
12 is no longer in business. Their records are gone. The only
13 records that we have are in Mr. Holt's file. Mr. Holt acted
14 on those in all this matter that was before him.

15 THE COURT: What is the purpose of the interrogation
16 of this witness, Mr. Landin?

17 MR. LANDIN: Your Honor, it's quite clear from
18 the evidence that has gone in, including the May 30, 1975 letter
19 of Warren Martin that contains a paragraph reference to the
20 disagreement among the adjustors and...

21 THE COURT: What beyond what you have already gotten
22 from this witness do you hope to get? He's already said
23 that he thinks the estimate was greater...

24 MR. LANDIN: I think I have to clarify that it's
25 not the insured who was producing estimates that were too high

1 for the repairs and that in fact the court should see or hear
2 the letter in question...I am paraphrasing the letter but in fact
3 asserts from Mr. Holt's view that the insurer is in essence
4 being dealt with unfairly by the adjustor and by the roofers
5 in producing estimates that are too high, it's going to effect
6 their premiums...

7 THE COURT: Let me see the letter.

8 MR. LANDIN: Your Honor, I am going to let
9 you see Mr. Holt's copy.

10 THE COURT: I don't see any point in putting this
11 letter in the record but will allow the witness to testify
12 to his opinion in regard to it, as he did in the letter, but I see
13 no purpose in putting the letter in.

14 MR. LANDIN: All right, sir.

15 MR. HAUGH: May it please the court, Your Honor,
16 to pursue our point further about opening the door, Mr. Landin
17 argued it would be prejudicial to open the file of this man
18 to the jury because it mentions insurance and now he puts
19 the insurance man on and said he handled ^{the} policy and the claim.

20 THE COURT: He's putting him on for the purpose
21 of giving his observations concerning the actual damage to this
22 building...

23 MR. HAUGH: But he is not an expert and he does
24 not have the final say...

25 THE COURT: Well, I think he has...if you wish

1 to examine him further as to qualifying him as an expert, I
2 will allow you to do so but he has testified that he has
3 investigated claims of this kind for a period of twenty years
4 and I think that certainly makes him a prima facie expert.

5 MR. HAUGH: Could I question him about that?

6 THE COURT: Yes, you may.

7 MR. HAUGH: Do you consider yourself an expert
8 in the estimate of damage repairs such as this?

9 A Not in the true sense an expert, no.

10 MR. HAUGH: All right, sir..

11 A But may I make an observation or may I say
12 one other thing?

13 THE COURT: You may clarify what you just said,
14 yes, sir.

15 A I don't consider myself an expert. I think
16 an expert would have to be in the business for a number of
17 years in order to qualify to make an estimate of repairs but
18 I have been involved in roof damages for 20 years and working
19 with roof damages for 20 years, whereas I don't think I can
20 qualify myself as an expert, I think I know what I am talking
21 about.

22 THE COURT: Do you think you are qualified to have
23 written a letter that you wrote and set out the findings that
24 you set out in that letter?

25 A Yes, sir, I do. That's what my company paid

1 me for.

2 MR. HAUGH: Your Honor, we cannot question what
3 his company did under the rulings of the court so far. Only
4 his file would disclose what his company did. In answer to
5 the letter he wrote...it didn't just directly say in answer
6 to your letter but it shows exactly what they did.

7 MR. LANDIN: Your Honor, that's what we have
8 stipulated. We have in fact stipulated...

9 THE COURT: Yes, that stipulation would appear
10 to cover that, Mr. Haugh,, but I think that this man can testify
11 as to his observations which are personal observations.

12 MR. HAUGH: About what happened to the roof...

13 THE COURT: Yes, sir...

14 MR. HAUGH: As to the amount of damage that
15 was done...

16 THE COURT: Yes, sir, and whether he thinks the
17 amount of damage is sufficient to warrant the claim that was
18 paid in his opinion as a man who has settled claims of this
19 type for 20 years.

20 MR. HAUGH: Your Honor, his file also discloses
21 a second opinion in the amount of \$9,073.00.

22 THE COURT: Is it his opinion?

23 MR. HAUGH: Not his, it's from Forest Hills
24 Associates, Inc. that his insurance company obtained. It's
25 in his file.

1 THE COURT: I will allow you to ask him about
2 that.

3 MR. HAUGH: All right, thank you.

4 THE COURT: Are you ready to proceed gentlemen?

5 MR. LANDIN: Yes, Your Honor.

6 THE COURT: All right, call the jury.

7
8
9
10 (The jury returned to the courtroom at this
11 time)

12
13
14 THE COURT: All right, Mr. Landin.

15 Q (Mr. Landin continuing) Mr. Holt, you may refer
16 to your notes or to your business records if you need to
17 in answer to the questions. Let me ask you, you have
18 indicated that after you had walked the roof and made your
19 measurement by pacing the damaged area, that you wrote
20 your company about the damage, is that correct?

21 A Yes, sir.

22 Q Could you tell the jury what the date was of
23 that letter?

24 A That was April 17, 1975.

25 Q Did you also write them on May 17, 1975?

1 MR. HAUGH: Is that one that has been introduced
2 into evidence, Mr. Landin?

3 MR. LANDIN: No, it's not in evidence. I have
4 asked him where he got the VanLear estimate...

5 MR. HAUGH: Is that the VanLear estimate that
6 is in evidence?

7 MR. LANDIN: The VanLear estimate was the one
8 that submitted the Lynch proposal...

9 MR. HAUGH: No, then he wrote on April 11th as well...

10 MR. LANDIN: Yes...

11 MR. HAUGH: Okay...

12 MR. LANDIN: That's what I am referring to.

13 A I have a letter from Mr. VanLear's stationary
14 dated April 11, 1975, written to Avon Street Limited Partnership
15 ...now this is a copy giving me the amount...their estimate.

16 Q And do you know who gave you that copy?

17 A I'm not real sure to be frank with you. I believe
18 that that came to me with this letter from Southeastern
19 Adjusting Company, in their letter.

20 Q All right, sir.

21 A But I am not certain of that.

22 Q Let me refer you back to the circumstances that
23 were in your April 17, 1975 letter and May 13, 1975 letter and
24 I will ask you to tell the jury what concerned you about these...
25 about this estimate and what effect you were afraid it was going

1 to have on your insurer and which you expressed to the company
2 about?

3 A May I check my notes before I speak?

4 Q Yes, sir.

5 A Now, in answer to your previous question, I
6 see it in writing, I was given my estimate by Mr. Melone...

7 MR. HAUGH: May I ask which he is referring to
8 for purposes of the record, Your Honor.

9 THE COURT: This is the VanLear estimate, Mr.
10 Holt?

11 A Yes, sir.

12 MR. HAUGH: Yes, sir, which letter are you referring
13 to now...

14 A This is the April 17th letter which I said
15 I am attaching an estimate given to me by Mr. Melone of the
16 Southeastern Underwriters.

17 Q Now, that you have had a chance to refresh
18 your recollection, did you express any opinion about whether
19 the estimate was in line with what you observed on the roof?

20 A I thought the estimate was extremely high.

21 Q And did you express any opinion or do you have
22 any opinion that you expressed to the company at that time
23 about the effect that these estimates were going to have on
24 the insured, the Avon Street Limited Partnership?

25 A My opinion and the...at that time and the

1 general opinion of an insurance agent concerning a loss, extremely
2 high loss is the availability of insurance in the future for
3 that insured, if he is spending money unnecessarily for a claim
4 it becomes difficult after one or two claims for him to get
5 insurance. That was my concern. Insureds are the concern of
6 the agents and that's what I was concerned about.

7 Q Now, to your knowledge was your insured
8 involved in obtaining this estimate?

9 A I didn't understand you.

10 Q Was your insured the one who obtained this
11 estimate?

12 A What...

13 Q Was it your knowledge as to whether or not
14 the insured obtained the estimate that you were concerned about?

15 A The insured did not obtain it, no.

16 Q I have no further questions of this witness.

17 THE COURT: All right, Mr. Haugh.

18
19
20 CROSS EXAMINATION

21 By; Mr. Haugh

22 Q How do you know that the insured did not obtain
23 the estimate?

24 A Well, I can just relate to my notes...

25 Q All right...

1 A ...and say that I received an estimate from
2 Mr. Melone, the manager of the Southeastern...

3 Q I believe you said it was attached to a letter
4 written by Southeastern, do you have that letter? Which letter
5 are you referring to by Southeastern?

6 A This April 17th memo that I wrote to my home
7 office..

8 Q No, sir, I am asking you what letter you got
9 from Southeastern that had this attached to it?

10 A This letter right here, if you'd like to
11 see it.

12 Q Yes, sir..

13 A This letter is written to Merchants and
14 Business from Mr. Melone.

15 Q Now, that's not sent to you?

16 A No, that was a copy sent to me from the
17 company. But it gives the amount of the damage...

18 Q Did you receive other correspondence from
19 the Southeastern Adjustment Bureau?

20 A Yes, I did. I did receive a report from Mr.
21 Melone...this is a letter of companies at interest, which were
22 the three involved...do you have a copy of that?

23 Q Was that the one on the front page marked
24 file May 30th...no, I'm sorry, on the back marked 6/30/75?

25 A Yes, right.

1 Q And you received that as part of the on going
2 transaction concerning your concern about the amount of damage
3 and whether the insured would be suitable for insurability
4 in the future?

5 A No, I don't think I received that as a result
6 of my concern. I think I just received that as due course
7 being agent and trying to keep the file up to date...

8 Q You ordinarily would receive these things?

9 A Yes.

10 Q Now, I hand you this and ask you without going
11 into specifics, can you identify it as having come from your
12 file?

13 A I don't recall this. It certainly may have...

14 Q Would you look through your file...

15 A If you say it did I will take your word for
16 it but I don't recall it.

17 Q Would you...

18 A If I may look in my file...

19 Q Yes, go ahead please.

20 A I have a copy of it.

21 Q And would you tell the jury what this purports
22 to be and how you got it?

23 A I would assume that this came with the report
24 made by Southeastern...do you want me to read this?

25 Q No, did it come with that report? Did this

1 estimate come with that report?

2 A Yes, it did.

3 Q Now, keeping that place, what did this purport
4 to be, the one I have shown you called the estimate?

5 A It says...do you want me to read it?

6 Q Well, paraphrase it or read it, whichever
7 you want.

8 A All right, it's a proposal to remove and replace
9 5600 square feet of roofing.

10 Q And is that the area that was damaged by the
11 wind?

12 A I would assume so but I couldn't say otherwise.

13 Q All right, now you are referring to a letter
14 from Southeastern Adjustment Bureau dated 6/30/75 and this
15 was attached to that letter, is that correct?

16 A Yes.

17 Q Your Honor, at this time I would move for
18 the introduction of that letter plus this attached estimate
19 for repairs.....from Forest Hills Associates, Inc.

20 MR. LANDIN: Your Honor, apparently I misunderstood
21 but I thought the court said that we were free to question
22 this gentlemen about matters within his personal opinion but
23 we were not going to be introducing documents out of his file.
24 I thought Mr. Haugh was permitted to cross examine Mr. Holt
25 and ask him if there were other proposals that were obtained,

1 and I assume to ask him how much. I object to them going in
2 ...it's the same grounds we crossed before when I went into
3 the stipulation.

4 MR. HAUGH: We feel they have opened the door
5 Your Honor by the questions he asked about his correspondence
6 from Southeastern...

7 THE COURT: I am going to allow you to ask
8 questions about the correspondence and if you are not
9 satisfied with the answers, then we will allow you to introduce
10 the correspondence.

11 Q (Mr. Haugh continuing) All right, Mr. Holt
12 referring to the June 30th letter from Southeastern Adjustment
13 Bureau, to Merchants & Business Men, Mutual Insurance Company,
14 Home Insurance Company, Insurance Company of North America,
15 with a copy to you, will you look at that and tell us whether
16 or not a determination of the damage caused by the wind at the
17 time in question was made in this letter?

18 A I am not sure what you are asking me to answer
19 frankly...

20 Q I'm asking...go ahead.

21 A I said would you ask me again...

22 Q Yeh, I'm asking you if you will review that
23 letter and tell us whether or not that letter contains a
24 determination of the damage done by the wind on the Avon Street
25 property?

1 A Now...

2 Q I refer you to paragraph 3 on the second
3 page, among others...if you will read it all, sir?

4 A Okay. Now, will you repeat the question?

5 Q Now, did this letter, referring to that paragraph
6 make a determination of what area the roof would have to be
7 replaced?

8 A Well, it mentions two figures...in the third
9 paragraph the writer, Mr. Melone, mentions 6600 square feet.

10 Q All right, sir.

11 A But in the first paragraph it says it appears
12 to the writer that approximately 1,000 feet of roof had been
13 damaged...

14 Q Right, but not square feet, 1,000 feet?

15 A Approximately 1,000 feet of roof had been
16 damaged.

17 Q Now, referring to the 6600 square feet, did
18 the letter contain any recommendations of how this could be
19 replaced and what would be the most economical way to make
20 the replacement or repairs?

21 A Well, Mr. Melone I think, after seeing the
22 situation, his recommendation was to repair the whole area, not
23 the small area that I had looked at and he had looked at, but
24 the whole area according to this letter here.

25 Q And did that letter contain an opinion from

1 him that that would be the most economical way to replace the
2 whole 6600 square feet?

3 A Yes, it did.

4 Q And with that does the letter refer to the
5 amount of the estimate that he obtained from Mr. Walter
6 of Forest Hills Associates, Inc.?

7 A Yes, it did.

8 Q And how much was that amount, sir?

9 A \$9,073.00.

10 Q That's all I have of this witness.

11 THE COURT: Any further questions, Mr. Landin?

12 MR. LANDIN: Yes, sir.

13
14
15 REDIRECT EXAMINATION

16 By: Mr. Landin

17 Q Mr. Holt, is there to your knowledge any
18 requirement in policies involved in this case that the insured
19 is required to expend all money received from the companies
20 in repair, whatever it was that the company issued the money
21 for?

22 A No, sir, there is no such phrase or policy.

23 Q All right, no further questions.

24 THE COURT: Any further questions?

25 MR. HAUGH: Yes, sir.

RECROSS EXAMINATION

By: Mr. Haugh

Q Is there any requirement of your policy that the mortgagee be named in the check for payment?

A Is there any requirement that the mortgagee...

Q Yes.

A Not unless the words "as their interest may appear" and the policy is endorsed as to how payment would be made.

Q Does this policy contain any language concerning that?

A Not to my knowledge, I would have to go back and study the policy but I don't recall any.

Q Would you...would you look at it right there?

THE COURT: The court doesn't see the relevance of your question, last question...

MR. HAUGH: Sir?

THE COURT: The court doesn't ^{see} the relevance of your last question as to the issues to be determined by the jury in this case.

MR. HAUGH: All right, sir.

THE COURT: May this witness be excused?

MR. LANDIN: Yes, Your Honor.

THE COURT: You may be excused, sir.

1 MR. HOLT: Am I free to leave?

2 THE COURT: You are free to leave.

3 MR. LANDIN: Mr. Zerkel.

4
5
6 DOUGLAS L. ZERKEL, having been duly sworn,
7 testified as follows:

8
9 DIRECT EXAMINATION

10 By: Mr. Landin

11 Q Mr. Zerkel, tell the jury, if you would
12 you full name and your business?

13 A I'm Douglas L. Zerkel, I have a commercial
14 and investment service division of the Roy McGavock Realty
15 Firm.

16 Q How long have you been in the business
17 with Roy McGavock?

18 A Since 1975.

19 Q What is your general background for real
20 estate in this area, if you could give that to the jury?

21 A I've been licensed since 1952 in the State
22 of Virginia.

23 Q Is there any particular type of property that
24 you normally deal with as a broker, commercial or residential?

25 A I do any and all, wherever...whatever the

1 situation is.

2 Q All right, sir. Now, in 1974, were you familiar
3 with the Avon Street warehouse?

4 A Yes.

5 Q Built on Avon Street Extended?

6 A Right.

7 Q Could you tell the jury whether or not you
8 had any connection with the original owner of that warehouse?

9 A I had known the original owner for a number
10 of years and after my return to Virginia and to Albemarle
11 County, we again made contact and I helped him in purchasing
12 some land that he was interested in, in Albemarle and Fluvanna
13 areas and he then started building the warehouse.

14 Q What's that gentleman's name?

15 A Mr. Potts.

16 Q Mr. Potts?

17 A Theodore Potts.

18 Q Now, who did he sell the warehouse to?

19 A Sold it to Goodman Associates.

20 Q Did you have any role in that sale, in that
21 transaction?

22 A Yes, I handled that sale.

23 Q Who purchased it after Goodman?

24 A The purchase after Goodman was by Mr. Hull.
25 Quadel Corporation came into the same...among the Goodman

1 purchase and among the time they had it.

2 Q Is it correct that the Avon Street Limited
3 Partnership was basically transferred from Goodman to other
4 partners? Is that your understanding of what happened? --or
5 what is your understanding?

6 A I don't know what transpired between Goodman
7 and Quadel other than Quadel Corporation assumed the ownership
8 role as far as my knowledge is concerned.

9 Q The principals involved with Quadel...

10 A That's right. In other words Goodman ceased to
11 be in the picture and Quadel came into the picture.

12 Q When you are talking about Quadel you are
13 talking about Mr. Watson, Mr. Austin...

14 A My first contact was with Mr. Glade Knight
15 who was their, as I understood it, their Richmond regional
16 manager, division manager, whatever.

17 Q I see. Were you the managing agent or the
18 management agent for Goodman Associates?

19 A No.

20 Q Were you the rental agent?

21 A No.

22 Q How about when Mr. Knight came into the
23 picture, did you act as rental agent during that time?

24 A My arrangement with both was that I was here
25 locally, they were in Richmond, if we had vacancies and I

1 was able to lease the space out, I participated in the commission.

2 Q Were you actively engaged with the building
3 when the fire occurred at Ridge Electronics, Inc.?

4 A Not anymore than in my role to help fill
5 vacancies. They...if they found a tenant that was it. If I
6 found a tenant I got the commission.

7 Q A substitution...basically a change of
8 personnel occurred right about the time of the fire, did it
9 not, and that's when Mr. Knight got involved with the building?

10 A As I recollect the fire occurred...no, let
11 me think, I think it was with Goodman and I think Mr. Knight
12 came in sometime during the renovation program as I recall.
13 I don't have specific dates because I wasn't aware of
14 exactly the scheduling of the transfer of ownership or whatever
15 it was that took place.

16 Q Well, through Mr. Potts, and then Goodman
17 and then into Mr. Knight and the gentlemen that he was working
18 for, was it ever your responsibility to effect repairs to
19 the premises?

20 A Responsibility, no, cooperation, yes. Mr.
21 Knight of Quadel was also in the Richmond area, we talked
22 frequently by phone. We talked about leases. If I got a
23 complaint he knew about it. He came up and took care of
24 a number of his own complaints whenever they called him
25 direct. He inspected the property on his own. Sometimes I

1 knew he was here, sometimes I did not.

2 Q So if you got complaints, the tenant called
3 you, you would pass them on...

4 A Yes...

5 Q But that was not your primary duty?

6 A That was not a written responsibility, no.

7 Q Now, you had an exclusive...did you have some
8 arrangement for the warehouse to Mr. Hull for the Avon Street
9 Business Center?

10 A Mr. Knight and I discussed the sale of the
11 building and I was given an exclusive, I think on the 30th of
12 March...excuse me just a minute...and it ran until October of
13 ...if I am correct...my exclusive for Mr. Knight was...witnessed
14 the following signatures and seal the 30th day of March, 1976
15 and it was an exclusive until the 1st day of October, 1976 at
16 6 o'clock.

17 Q What is your recollection as to the asking
18 price for that building when it went on the market?

19 A \$650,000.00.

20 Q What is your recollection as to the first
21 offer that Mr. Hull made...the amount of that offer?

22 A I don't recall the various amounts that Mr.
23 Hull and we discussed. It was in and out of the picture several
24 times as far as his interest was concerned. The final selling
25 price was \$605,000.00.

1 Q Were you anxiously after Mr. Hull to buy this
2 building?

3 A Mr. Hull was an Investor/Client and I was
4 looking for any property that came into the picture in
5 Charlottesville that represented an investment. We advertised
6 this building and Mr. Hull showed interest in it.

7 Q Did you go out to the property with Mr.
8 Hull and show it to him?

9 A Yes.

10 Q Do you recall whether you went on more than
11 one occasion?

12 A Now I would say I went on more than one
13 occasion.

14 Q Did you ever go up on the roof with Mr. Hull?

15 A No.

16 Q Did you have any instructions from Mr. Knight
17 or anyone connected with the Avon Street Limited Partnership
18 while you were dealing with Mr. Hull, as to what you were
19 to say or not say about the condition of the building?

20 A No, I had no instructions...no.

21 Q Did Mr. Hull request from you or through
22 you information about the financial affairs to do with the
23 building?

24 A Yes.

25 Q Did he ever request of you anything that Mr.

1 Knight or the partnership refused to provide?

2 A No, they provided the expense information and
3 detail we wanted.

4 Q Did you make any representations to Mr. Hull
5 about the condition of the repairs that had been made to the...
6 from the fire damage to the Ridge Electronics area?

7 A I made no representations, I expressed an
8 opinion that the building had been repaired and had been
9 reoccupied.

10 Q Was this opinion based on your knowledge of
11 VanLear, Incorporated?

12 A I had no knowledge of VanLear, Incorporated.
13 In fact I did not know who the general contractor was making
14 the repairs at the time.

15 Q Did you express any opinion to Mr. Hull about
16 the original construction of the building?

17 A I expressed my opinion that it was a sound
18 constructed building, soundly constructed, and to the best of
19 my knowledge was in good repairs, subject to normal wear and
20 tear.

21 Q Did you express to Mr. Hull any representations
22 of guarantee about the roof...

23 A No, sir...

24 Q Any portion of the roof?

25 A No, sir.

170

1 Q Did you at any time seek to induce Mr. Hull
2 not to make his own inspection or to...or not to have anyone
3 else make an inspection for him?

4 A No.

5 Q Did he ever ask to have access to anything
6 in connection with the building that you refused of him?

7 A That I refused?

8 Q Yes, sir.

9 A None.

10 Q Are you aware of anything that the partnership
11 or any request that the partnership refused of him during the
12 period of negotiations?

13 A I am not aware of anything that we asked that
14 they refused, no.

15 Q Now, I think when I talked to you about this
16 case before you indicated that you did not have any personal
17 knowledge of wind damage in April of 1975, is that correct?

18 A I had no knowledge.

19 Q So consequently you did not discuss that with
20 Mr. Hull one way or the other, is that right?

21 A That's correct.

22 Q Did you at any time during the...during your
23 dealings with Mr. Hull attempt to catalogue for him all of the
24 repairs that had ever been made of the building at anytime
25 during the time that Potts built it and up to the time he was
seeking to buy it?

1 A No, I did not.

2 Q Did he ever ask you to do that?

3 A No, not to my knowledge.

4 Q Now, during the time you were dealing with Mr.
5 Hull, did you know that he had taken other people out there
6 to look at the building?

7 A I met with Mr. Hull out there with an associate
8 and with Mrs. Hull.

9 Q Do you recall who the associate was?

10 A Mr. Pete...

11 Q Mr. Hunt, is that...

12 A Pete Hunt, that's correct.

13 MR. HAUGH: Who, I'm sorry...

14 A Hunt.

15 Q Hunt and I'm leading the witness from his
16 deposition...

17 A I'd have to look for it.

18 Q Did you know what Mr. Hunt's business had been
19 in terms of real estate?

20 A No.

21 Q Now, you know there was wind damage in April
22 of 1975, I assume, is that right?

23 A I have learned that there was wind damage,
24 yes.

25 Q Right. Now, in a period subsequent to April,

1 1975, or...well, let me limit it to this. In the period that you
2 were dealing with Mr. Hull, starting March 30, 1976, whenever
3 your exclusive started and up until the time he bought the
4 building, did you receive any tenant complaints about problems
5 with the roof?

6 A I have no record of...when I get a maintenance
7 complaint for Mr. Hull, I phone it through...

8 Q I may have confused you, I mean during the
9 period of time that you were engaged in selling the building...
10 during the time that you were actively engaged in selling the
11 building and up until the time he bought it, do you recall
12 receiving any complaints from any tenants who were then at
13 the warehouse that they were having roof problems?

14 A I don't recall any that I handled.

15 Q I understand. Now, can you tell me...well, I
16 don't think I have any other questions of you at this time.
17 Thank you, Mr. Zerkel.

18 THE COURT: Mr. Haugh.

19
20 CROSS EXAMINATION

21 By: Mr. Haugh

22 Q Mr. Zerkel, when did you learn of the 1975
23 wind damage to the roof?

24 A It was in the mid winter of 1978 when we got
25 ...we thought we had scupper freezing problems and leaks

1 continued..it was some period of time before anyone could get
2 on the roof. I think if you recall it was several snows on
3 snows and the leaks began to appear in three tenant's areas
4 to my knowledge, all along the front of the building, and the
5 leaks got progressively more serious. When we could get on
6 the roof and make an inspection...well, not we, I have not been
7 on it, but whenthe roofing man, Mr. Lynch, who was the one I
8 used when I built Ednam Village, I considered that he would
9 know what to do so he went up and made the inspection and reported
10 that there was a defect that was causing all the leaks.

11 Q Now, you did know about the fire damage?

12 A I knew of the fire, yes.

13 Q And you mentioned that to Mr. Hull?

14 A Yes.

15 Q I will ask you, what was Mr. Hull's reaction
16 or actions after you told him that a certain area had been
17 damaged by fire?

18 A Well, the 12,000 foot section that represented
19 Ridge Electronics was in effect a box, it was in between
20 two fire walls, and that section was rebuilt in its entirety,
21 except for the outer walls.

22 Q Did Mr. Hull inspect this area that had been
23 fire damaged? --as far as you know?

24 A A cursory inspection. I had satisfied myself
25 through just the knowledge that Ridge had moved back in and

1 were back in business and business as usual, and that there had
2 been a contractor on the job effecting the fire repairs.
3 So we presumed, accepting the contractor's final bill meant
4 he had done a workmanlike job.

5 Q Were you aware of any other damage, major
6 damage, that had happened to the building prior to the time
7 you started negotiating with Mr. Hull?

8 A No. I know of none.

9 Q If you had been aware that there had been
10 wind damage, would you have mentioned that to Mr. Hull?

11 A Absolutely.

12 Q Do you consider that important in selling...

13 MR. LANDIN: I am going to object. It's
14 calling for a conclusion on the part of the witness...

15 THE COURT: Objection sustained.

16 MR. HAUGH: Sir?

17 THE COURT: The objection is sustained as to whether
18 or not he considered it important.

19 MR. HAUGH: Oh, all right, sir. Now, you said
20 you were given an exclusive on March 30, 1976, who gave you
21 that exclusive, Mr. Zerkel?

22 A Mr. Knight, Glade Knight.

23 Q And who did he sign for?

24 A Just signed Glade M. Knight.

25 Q And what parties are listed in the caption of

1 your exclusive?

2 A Polly P. McGavock, Realtor was given the
3 exclusive right to sell, at \$650,000.00 up until the 1st of
4 October, 1976.

5 Q Just by Mr. Knight alone?

6 A Yes, if that's his signature, I think it is.

7 Q, Now, did I understand from you that during
8 this period of time prior to entering into a contract of
9 purchase with Mr. Hull, that various offers and counter offers
10 were taking place?

11 A Yes, we had discussed with several perspective
12 buyers. We had an offer that would not fly and several people
13 interested but no firm taker until Mr. Hull.

14 Q Before your authorization to sell, who do
15 you report these things to, these offers, whether they were
16 valid or not? If you reported who did you report to?

17 A Generally through Mr. Knight.

18 Q So all your dealings went through Mr. Knight?

19 A On one occasion I think I went to headquarters
20 in Rockville with Mr. Knight but as I recall it was nothing to
21 do with the contract...specific contract...

22 Q It was just...

23 A To answer your question, yes, I would have
24 dealt with Mr. Knight.

25 Q Okay...

1 A I believe there was a time when he was about
2 to leave Richmond and go to Rockville and whatnot..I just can't
3 pin that time down as to whether it was someone else on the
4 scene or not in Richmond.

5 Q Now, I understand you to say that you had
6 no responsibility for effecting repairs during the time you
7 were discussing this with Quadel?

8 A That's correct.

9 Q But that you were here for local assistance?

10 A I cooperated...

11 Q Well...

12 A Yes, because of my ability to lease the
13 property.

14 Q Were you ever called on to assist for repairs
15 or anything, not to do them yourself but to contact someone or
16 for a name?

17 A I...the only contact I recall, we had a great
18 deal of trouble with the overhead doors and I believe I told
19 Mr. Knight that I knew of a contractor that could come in
20 and repair the doors but that was a contract in effect between
21 Quadel and the door repairer and I would have, under normal
22 circumstances, sent the bill to Richmond to Mr. Knight.

23 Q But you were never asked to render any
24 assistance because of wind damage by anybody?

25 A Not specifically and certainly not under contract.

1 Q All right. Were you the exclusive agent for
2 this property?

3 A Yes, it was...

4 Q You had an exclusive listing?

5 A Yes, it was my listing through the Polly
6 McGavock firm but they were the broker.

7 Q Right. And when it was sold, did the sellers
8 pay you a commission?

9 A Yes, we took an initial commission and a
10 second...the balance of the commission was riding the second
11 trust.

12 Q Are you aware of the name Avon Street Limited
13 Partnership?

14 A Yes, I think that was the group that Quadel
15 operated under.

16 Q I just wanted to clarify that. Was the wind
17 damage that you subsequently learned about in the same location
18 as the fire damage?

19 MR. LANDIN: Your Honor, I am going to have to
20 object because the witness has said he has never been up on the
21 roof.

22 THE COURT: Do you know the answer to that
23 question of your own knowledge?

24 A Yes, sir, I know where I was told the wind
25 damage was, in the front of the building...

1 THE COURT: Do you know of your own knowledge?

2 A No, I didn't see it.

3 THE COURT: Objection sustained.

4 Q Did you testify that you went in the building
5 with Mr. Hull prior to the purchase?

6 A Yes, we went in and around it.

7 Q Could you tell us what section you went in?
8 What was occupying that...

9 A Well, there are 48,000 square feet in 4
10 12,000 foot bays and some of those were subdivided down to
11 6 and 3,000 feet so we went through the entire building.

12 Q Do you recall where Communication Services
13 was located in 1975?

14 A Communication Services was the Motorola
15 end
16 group at the north/front of the building, north and front.

17 Q All right, thank you very much. That's all
18 we have.

19 A Let me just check myself...

20 Q Wait a minute, I think he wants to check...

21 A Yes, Communications were north of the front
22 of the building.

23 THE COURT: All right, anything further, Mr.
24 Haugh?

25 MR. HAUGH: Yes, Your Honor, I would like to
introduce into evidence the listing of this property. I would

ask that it be introduced into evidence as the plaintiff's next exhibit.

MR. LANDIN: Your Honor, I don't see the relevance of the listing itself. If there is something incident to the document that has not been covered in the examination then...

MR. HAUGH: Well, there is some question as to the parties, Your Honor. The listing is signed by Knight and the deed is signed by several people, to show ratification of the agency, that's all.

THE COURT: All right, sir.
not

MR. LANDIN: We have denied that Mr. Knight signed the thing...

MR. HAUGH: All right, You don't deny the agency?

MR. LANDIN: No, I don't deny he signed the contract. If you are arguing the legal point then I...

MR. HAUGH: Then I would ask that it be introduced into evidence, Your Honor.

THE COURT: All right, sir.

MR. HAUGH: Could we have leave to withdraw this and substitute a copy at a later date?

THE COURT: Yes, leave is granted. It will be received as exhibit number 6 for the plaintiff.

(Plaintiff's exhibit number 6 was so received into evidence at this time)

1 MR. HAUGH: That's all we have, Your Honor.

2 THE COURT: All right, Mr. Landin.

3
4 REDIRECT EXAMINATION

5 By: Mr. Landin

6 Q One thing further, Mr. Zerkel, before you
7 go, do you recall sending around a questionnaire to each of
8 the tenants during the period of time that Mr. Hull was
9 negotiating or looking at this building?

10 A I think it was prior to Mr. Hull's most
11 intense interest but it was during the time we were talking
12 about the sale of the building and Mr. Knight prepared a
13 questionnaire and forwarded it to...in order for us to ascertain
14 what the tenants were going to do in the future, if they were
15 going to renew...it was that type of question.

16 Q And you actually sent them out through your
17 office, did you not?

18 A Yes, over his signature. He sent me the
19 questionnaires and we distributed them, yes.

20 Q And the purpose of the questionnaire was to
21 find out long...if the tenants were going to renew?

22 A Right.

23 Q How long they had left and if they were
24 happy basically, is that right?

25 A Right, essentially.

1 Q All right, sir, thank you.

2 THE COURT: Any further questions, Mr. Haugh?

3 MR. HAUGH: Yes, sir, I do now, Your Honor.

4
5
6 RECROSS EXAMINATION

7 By: Mr. Haugh

8 Q These questionnaires, did they deal with...you
9 say whether the tenants had any complaints or not?

10 A Shall I answer each of the...

11 Q Well, just if you can answer that one, if
12 you had any complaints about the condition of the building..is
13 that included?

14 A Nothing about the complaints.

15 Q Could we see that please?

16 A Yes, sir....if they had enough space, did they
17 need anymore space, how long were they going to stay...the
18 typical type of thing you do when you are getting history on
19 the building.

20 Q That's all.

21 THE COURT: Any further questions of this witness?

22 MR. LANDIN: Yes, sir.
23
24
25

REDIRECT EXAMINATION

By: Mr. Landin

Q Just if you would, Mr. Zerkel, tell the jury what the date was on that questionnaire?

A August 10, 1976.

Q Thank you, sir.

THE COURT: May this witness be excused, gentlemen?

MR. HAUGH: Yes, sir..

THE COURT: Mr. Landin?

MR. LANDIN: As far as I am concerned, Your Honor.

THE COURT: You may be excused, sir. All right, the next witness for the defense.

MR. LANDIN: Your Honor, I would call Mr. Glade Knight to the stand.

GLADE M. KNIGHT, having been duly sworn, testified as follows:

DIRECT EXAMINATION

By: Mr. Landin

Q Mr. Knight, tell the jury your name, please?

A Glade M. Knight.

Q And your address?

A My business or...

1 Q Business?

2 A 1001 E. Main Street in Richmond, Virginia.

3 Q What is the name of your business?

4 A Knight/Austin Corporation.

5 Q What kind of business is that?

6 A It's an investment real estate business. We
7 acquire and manage apartment buildings.

8 Q How long have you been in that business?

9 A Since 1972.

10 Q How long have you been engaged in the business
11 titled Knight/Austin Corporation?

12 A Since 1978, June of 1978.

13 Q Tell the jury a little bit about your general
14 background, your schooling and business experience?

15 A Okay. I attended the Brigham University
16 in Utah. In that area I grew up. I came to Virginia in
17 the military and spent three years in the military. Upon my
18 discharge I went to work for a company in real estate
19 investments. I attended various schools related to that and I have
20 been basically employed either in my own company or a partner
21 in other companies during that entire period/ related entirely
22 to apartments, a couple of motels. Our primary business is
23 that of acquiring and managing apartments.

24 Q Where do you and your family live at the
25 present time?

1 A We live in Midlothian, Virginia.

2 Q And your business address is Richmond, Virginia,
3 as you have indicated?

4 A Yes.

5 Q What was your first relationship with this
6 Avon Street Warehouse? Just tell the jury how and with whom?

7 A Okay. I was working as a regional manager
8 for the Quadel Corporation out of Richmond. This was the only
9 warehouse that was managed by that corporation. I covered the
10 area of Lynchburg, Charlottesville on down to Virginia Beach,
11 and was responsible for the day to day management, the operation,
12 the complaints, the general overall management and welfare
13 of the projects within that region.

14 Q Now, did you during that period of time have
15 responsibility for handling repairs for example?

16 A Yes.

17 Q What was the situation in 1974 when the fire
18 occurred? Who was your employer at that time?

19 A In 1974 I would have also been with Quadel.
20 That was prior to the time that the Goodman Corporation who
21 originally owned the project had sole or transferred its
22 interest to Quadel Corporation.

23 MR. HAUGH: I'm sorry, I didn't hear that last...

24 A The interest was transferred from the Goodman
25 Associates to the Quadel Corporation, a transfer of the general

1 partnership interest to that corporation.

2 Q And the general partners at the time of the
3 transfer became Mr. and Mrs. Watson, Mr. and Mrs. Webb, Mr.
4 and Mrs. Stewart and Mr. and Mrs. Austin, is that right?

5 A That's correct.

6 Q Now, did you stay on in the same function you
7 had before in managing the property?

8 A Yes.

9 Q What I am asking did the transfer of ownership
10 effect your duties with regard to the warehouse?

11 A I did not have the duties of managing the
12 warehouse except through the Quadel Corporation.

13 Q Do you know what the sales price was or what
14 the purchase price was when the property was transferred from
15 Goodman to Quadel?

16 A Goodman's partnership that purchased the
17 project paid \$599,900.00 for the project in 1974.

18 Q And this partnership is the one Messrs. Webb,
19 Watson...

20 A That is correct.

21 Q Could you tell the jury a little bit about what
22 the experience was that you had with the repairs to the fire
23 damage? Did you get involved in that personally?

24 A The fire damage, under the Goodman Corporation,
25 all contracts had been let. Mr. Warren Martin with Edward

1 VanLear & Company was the general contractor. That work was
2 well in progress and to a great extent had been completed.
3 My responsibilities during that time were to inspect, make
4 sure that the work was adequately being done and look after
5 generally the assets of the partnership, that being Avon Street
6 Limited.

7 Q All right, the fire repairs were effected on
8 what period of time, do you recall...the general period?

9 A I believe that was in the latter part of 1974
10 and probably in the fall of '74. It was completed in the
11 spring of '75.

12 Q Did you have any particular problems with the
13 roof area on the other aspect of the building, the lower end
14 of the building, that was not involved in the fire, prior
15 to the fire damage?

16 A I wasn't involved in it prior to the fire
17 damage..

18 Q Well, now what you were aware then?

19 A There were during the time I was watching
20 for the management minor problems. Mr. Hank's originals
21 was one of the tenants there. They had an air conditioner
22 on top of the roof and there was some leakage from the
23 installation of that air conditioner. Prior to the time of
24 the wind damage I think that was the only leak that I was
25 aware of.

1 Q All right, now both Mr. Martin and I believe
2 Mr. Lynch described the roof structure in the roof area of
3 the building, what is your recollection of the fire walls and
4 of the elevations of this building?

5 A Well, in the area the Ridge Electronics
6 occupied, which was the burnt section of the building, is at
7 a higher level and then from there it kind of tiers down.
8 That portion of the building, of course, was completely rebuilt.
9 I was on the building a number of times. You do have free
10 access to the building. It is possible if you are standing
11 at the highest point, to see across the building, and have
12 a general observation of the roof

13 Q When did you become aware that the wind had
14 damaged a portion of the old section of the roof?

15 A I was called I think around one o'clock
16 in the morning. I can't even remember who made the call but
17 it was immediately after the damage had been sustained by
18 the wind.

19 Q And what did you do then?

20 A From that time I knew that Mr. Martin had
21 been there as the contractor on the project. I believe that
22 I contacted him, said we have a problem, can you get out there
23 and do anything to stop whatever damage there might be existing
24 on the roof at that time.

25 Q Okay, did he ever report to you that he had been

1 out there?

2 A Yes, I was aware that he had been out there.

3 Q All right, I am going to show you plaintiff's
4 exhibit number 5, which is a letter to Avon Street Limited
5 Partnership from Edward VanLear and the proposal of April 11,
6 1975 from Lynch Roofing Company and I am going to ask you if
7 you can tell me when you saw either of those? Let me ask you in
8 a little bit easier fashion, do you recall receiving that letter
9 of April 11, 1975, about the time it was written?

10 A Yes, these came into my office and I'm sure
11 were reviewed at that time.

12 Q Do you recall whether or not the proposal of
13 April 11, 1975 was attached?

14 A I believe that did accompany it...the letter.

15 Q Now, in response to this letter, during this
16 period, around April 11th, what did you do or what did you
17 authorize to be done about that roof?

18 A Well, there was work that had been done, it's
19 been referred to many times as temporary work, there was
20 temporary work that was completed. That was evidenced by various
21 rolls of felt being rolled down and weighted there by additional
22 weights to hold it down and just to get through the weather.
23 I wasn't aware of the work that was being done as far as
24 getting the estimates related to the insurance proceeds nor was
25 it my responsibility. But I had full responsibility for making

1 sure that the roof was repaired. Mr. VanLear made additional
2 repairs to the building, to the extent that the temporary
3 structures that were put there to hold the weathering down
4 or the felt were removed and a repair in a patched area was
5 done...

6 MR. HAUGH: Excuse me, are you testifying from
7 personal knowledge?

8 A Yes, sir.

9 MR. HAUGH: Okay, that you observed this?

10 A Yes.

11 MR. HAUGH: Okay.

12 A I inspected the building. Also there was
13 flashing that had been damaged as has been testified. There
14 was flashing on the north part of the building that had been
15 damaged and if the flashing strip is not repaired there is
16 a chance that the wind could get back up under and possibly
17 do some damage. I also authorized that work to be done and
18 I believe...

19 Q Let me interrupt you while you are on that
20 and ask you if you can identify what has been marked as
21 plaintiff's exhibit 3?

22 A Yes.

23 Q Would you tell the jury what that is?

24 A This is from W.A. Lynch Roofing Company. It's
25 an additional bill for...to furnish and install 9 roof flashings,

1 \$550.00...

2 MR. HAUGH: Excuse me, I think you said plaintiff's
3 exhibit 3, I think you had better correct that for the record.

4 Q I'm sorry, that's correct, it's defendant's
5 exhibit 3. Thank you.

6 A To furnish and install hood and Jen Air
7 exhaust fan \$806.00.

8 Q Okay, return to the roofing work is that
9 item now circled?

10 A Yes.

11 Q What is the date of that roofing work?

12 A That's April 25, 1975.

13 Q Your Honor, we would offer this as defendant's
14 exhibit 3, unless there is an objection. Mr. Haugh wanted
15 to know what the handwriting was to the righthand side, read
16 that for us please?

17 A The 80 percent to the Quadel Management
18 Corporation.

19 Q Your Honor we have offered this as defendant's
20 exhibit 3.

21 THE COURT: Any objection?

22 MR. HAUGH: May I see it please...oh, is this
23 the same one...

24 MR. TREACLE: Your Honor, we would object unless
25 there is further explanation of the notations, I'm not sure...

1 MR. LANDIN: The witness has indicated what it says
2 and it indicates what they paid for flashing. They have a right
3 to cross examine.

4 THE COURT: What's the basis of your objection
5 to it, Mr. Treakle?

6 MR. TREAKLE: Your Honor, my question is we
7 have a document that says paid for flashing \$550 and there is
8 some notation, my objection is to the notation unless there
9 is further explanation.

10 THE COURT: Well, simply by virtue of the fact
11 there is a notation on it?

12 MR. TREAKLE: Well, I think before they offer
13 this into evidence as an exhibit to show they in fact paid the
14 \$550, we are entitled to at least a better foundation with
15 respect to the notes as to whether this man made them or some
16 other man...what the source of that information is before that
17 information can be considered by the jury.

18 THE COURT: The purpose as I understand the
19 exhibit is to show that this flashing work was performed and
20 paid for. For that purpose it would appear to be admissible.
21 Do you have any objection to its admissibility for that purpose,
22 Mr. Treakle?

23 MR. TREAKLE: Not as to that Your Honor. Our
24 objection is to the other notation.

25 THE COURT: It will be admitted for that purpose.

1 (Defendant's exhibit 3, Statement dated April 25,
2 1975, was so admitted into evidence at this time)

3
4 Q (Mr. Landin continuing) Mr. Knight, did you
5 also authorize Lynch to do what he calls on his bill \$755
6 worth of temporary repairs?

7 A That is correct.

8 Q Now, so far I think we have gotten to the
9 point in time where the wind damage has occurred, you have
10 gotten proposal from VanLear, you have done two things, you
11 have had Lynch do what he calls temporary work, you've done...
12 you've had Lynch do these roof flashings, now did you do
13 anything else or tell the jury how that roof looked once the
14 temporary repair was done.

15 A After I inspected the roof, to take a look
16 at the repairs, it is noticeable...any roof is noticeable if
17 somebody has cut something out or put something new upon it.
18 It was very evident to me where that portion was. It was black
19 tar and I could tell of course, that that had been repaired.
20 You could also see the new flashings that had been around the
21 sides of it. In generally looking at it, it looked good. I
22 don't...can't give any observation other than that, that it
23 looked good and that in my business judgment it would most
24 likely hold up and would not be...cause any problem as far
25 as leaks go.

1 Q Let me ask you this, you say it was black in
2 the area where the patching was, did it contrast with the
3 surrounding area or what are you basing your conclusion on
4 that it was noticeable?

5 A The surrounding area is a very light color.
6 I'm not sure the technical terms or what they do to the roof
7 but it's certainly to reflect the heat away from rather than
8 cause engery problems in the building. Many times that's
9 done with gravel, white gravel.

10 Q Well, was there anything done to change the
11 color or the appearance of the area that was patched from the
12 time the patch was done by Lynch until the time Mr. Hull
13 bought the building from the partnership?

14 A No, not to my knowledge. There had been
15 several months that had expired from the time it was repaired
16 ...in fact 18 or almost 20 months went past from the time the
17 repairs were made, prior to the time the sale was made. I presume
18 they were still there and were evidenced the same.

19 Q You didn't pay anybody else to do any other
20 work on that area, is that what you saying? Did you?

21 A Additional work was done out there. Upon
22 request we did have later on some additional leaking problems
23 and we did have another roofing contractor from Better Living,
24 Mr. Harvey Hoke, who was their roofing manager, came out and
25 inspected the building and also made some additional repairs.

1 Q Why did Mr. Hoke go to the building?

2 A I had two things...I guess as a business man
3 I felt I needed another opinion and also I had some leaks
4 in the area that covered the Communications Services...the area
5 was minor and needed to be repaired. I had asked him his
6 opinion for the roof, if there was anything else that needed
7 to be done, whatever it was I felt like we should do.

8 Q Do you recall when you asked Mr. Hoke to
9 render that opinion?

10 A The exact time I am not sure. I'm not sure
11 of the exact time when I asked him.

12 Q All right, did you do it by telephone or by
13 letter or how?

14 A It would have been done by telephone, a number
15 of telephone conversations I had with him. I later asked him
16 to furnish me in writing his opinion as to the condition of
17 the roof.

18 Q I hand you what has been marked as defendant's
19 exhibit 4 and ask you if you can identify that copy for the
20 jury?

21 A Yes, I can.

22 Q All right, tell them what it is?

23 A This is a letter from Better Living, Incorporated,
24 dated August 20, 1975. It is addressed to me. It was at my re-
25 quest on an inspection they had made of the roof structure.

1 MR. HAUGH: I am going to object to this unless he
2 can show that this was in the same area we are talking about,
3 the wind damage area, Your Honor.

4 A I can testify to that. My general concern
5 was of the roof area, related not only to the problem of the
6 leak in the Communications area but also to any possible problem
7 that I might have related to the wind damage. That was my
8 verbal request and from a management standpoint that was the
9 information I wanted to receive.

10 Q Your Honor, we would offer as defendant's
11 exhibit number 4, the letter that has been identified by the
12 witness of August 20, 1975, from Harvey Hoke, Manager of
13 the Roofing Department of Better Living.

14 THE COURT: Any objection?

15 MR. HAUGH: No, Your Honor, not at this time.

16 THE COURT: All right, it will be so received
17 without objection.

18
19 (Defendant's Exhibit number 4 was so received
20 into evidence at this time)

21
22 Q (Mr. Landin continuing) If you would, Mr.
23 Knight, go ahead and read to the jury what the letter says?

24 A "Dear Mr. Knight: This is in regards to your
25 telephone call requesting us to check the roofs on the buildings

1 on Avon Extended next to Ridge Electronics." ...which again
2 is the northern building that had the damage on it...

3 MR. HAUGH: Excuse me, is that in the letter?

4 A No, I'm commenting to the jury.

5 MR. HAUGH: I thought you were reading the letter.
6 Would you start again, please?

7 A Yes. "This is in regards to your phone call
8 requesting us to check the roofs on the building located
9 on Avon Extended next to Ridge Electronics.

10 As far as we can tell the roofs are in good shape
11 and appear to be leak free.

12 If I can be of any further help, please call.
13 Better Living, Harvey Hoke, Mgr., Roofing Department."

14 Q All right, sir...

15 MR. HAUGH: Excuse me, what is that exhibit,
16 Your Honor?

17 THE COURT: Number 4.

18 A He was the manager of that department.

19 Q Did you go up on the roof with him when he
20 went up there?

21 A I can't remember, I believe I did. I was
22 up there with a number of people. I can't testify as to whether
23 I went specifically with him.

24 Q Mr. Knight, after Mr. Hoke sent you this
25 letter or you received this letter, you mentioned I think some

1 minor problems, some problems that you had, would you take
2 a look at what I have marked...had marked as defendant's
3 exhibits 5, 6 and 7, identify those for the jury and describe
4 their contents please?

5 A Okay, exhibit 5 is a letter to Mr. Harvey
6 Hoke from myself and it's relating to some work that needed
7 to be done with Mr. Hank Originals in repairing some leaks
8 that were around the air conditioning unit.

9 Exhibit number 6 is addressed to Mr. Austin...

10 Q What date?

11 A Pardon me?

12 Q What date?

13 A September 15, 1975. It's addressed to Mr.
14 Austin...

15 Q Go ahead and read it to the jury?

16 A Okay. "Thank you for your letter of September
17 10, 1975. We were unaware that the time for renewal of our
18 lease had passed. We do, of course, wish to continue occupancy.
19 The new monthly rent is satisfactory, also.

20 For the past three or four months, we have been
21 requesting repairs that are of a most urgent nature. The wall
22 between us and Davenport Insulation is leaning in toward our
23 shop. Should it fall, it would do extensive damage to our
24 inventory and equipment stored in that area. We have talked
25 to Mr. Knight several times concerning this. Although he has

1 assured us each time that the wall would be repaired, it has not
2 been.

3 The roof is still leaking. We have been told
4 by the company that has done previous work on the roof that
5 the repairs made were more of a "stop-gap" measure than of a
6 permanent nature.

7 We regret that we have to take this stand, but in
8 an effort to emphasize the need for expediency in making the
9 repairs we have outlined, we are withholding payment of the
10 \$237.18 covering the monthly increase in rent from April 1
11 through September 30 until such repairs are made. We do hope
12 that these problems will be corrected very soon so that we
13 may forward this amount to you."

14 Q Did you respond to that?

15 A Yes, I did.

16 Q Read the jury your response?

17 A I responded to that September 26, 1975.

18 "Dear Mr. Shulz: Please accept my apologies for your leaky
19 roof and leaning wall. I was under the impression that both
20 had been repaired. Some time ago I requested that Davenport
21 Insulation have one of their men repair the wall, which they
22 agreed to do, and on August 20 I contacted Mr. Harvey Hoke with
23 Better Living, Inc. and requested that he give me a complete
24 roof inspection. I have enclosed a copy of his return letter.

25 This morning I again contacted Better Living and

1 they will be sending a man out to check the roof again and
2 make any necessary repairs. Also, Randy Rinehart with Development
3 Corporation of Virginia will be in touch with you Monday or
4 Tuesday of next week to make the necessary repairs to your
5 divider wall.

6 I again apologize for any inconvenience these
7 two items have caused you. Cordinally yours.."

8 Q Your Honor, we would offer these letters
9 marked defendant's exhibits 5, 6 and 7 in evidence.

10 THE COURT: Any objection, Mr. Haugh?

11 MR. HAUGH: No, Your Honor.

12 THE COURT: Received without objection.

13
14
15 (Defendant's exhibits 5, 6 and 7 were so received
16 into evidence at this time)

17
18 Q After your letter of September 26, 1975 to
19 Mr. Shulz, were the repairs made by Better Living and by
20 Randy Rinehart on that wall?

21 A Yes, they were.

22 Q Did you receive any other complaints about
23 leaks of the roof in the area where the wind damage had occurred?

24 A No other complaints on the roof.

25 MR. HAUGH: I'm sorry, I couldn't hear that.

1 A I received no other complaints related to the
2 roof.

3 Q All right, we are now at the area of about
4 September, 1975, when was the decision made to put this
5 property on the market for sale?

6 A We gave, in March of 1976 I guess, we gave
7 the exclusive right to Mr. Doug Zerkel and I presume it would
8 have been sometime in that time frame. If you wish I can
9 tell you the reasoning behind that.

10 Q All right, well go ahead?

11 A It is very brief, it was the only warehouse
12 that we owned or managed and the only thing in this area.
13 We felt that we would prefer to do our apartment managing and
14 therefore decided to liquidate the warehouse.

15 Q Now up until the time...do you recall when
16 Mr. Hull was first proposed by Mr. Zerkel as a potential
17 buyer?

18 A I don't remember the exact date, sometime
19 in the summer I think, of '76.

20 Q Do you recall what kind of negotiations took
21 place with Mr. Hull?

22 A Yes. Through Mr. Zerkel...I've never had
23 any conversation with Mr. Hull, during the time prior to his
24 purchase or even at the closing. I had no contact with him.
25 In the negotiations we asked \$650,000, which was approximately

1 \$50,000 more than the partnership had paid for it a couple of
2 years ago. The word got back to me that there was a lot of
3 problems with the building. We had some leaks around the door.
4 There were some pot holes out in the driveway area. Because
5 of these conditions certain things had to be done. We repaired
6 the doors with some new weather stripping or whatever it was
7 that needed to go around them. I think we made some minor
8 repairs to the driveway and then through that negotiation
9 because of other problems that existed I presume in the mind
10 of Mr. Hull, the buyer...

11 MR. HAUGH: I am going to object to this, Your Honor.

12 Q I agree, don't...

13 THE COURT: Objection sustained as to what was
14 in Mr. Hull's mind.

15 Q Don't raise any conclusions as to what Mr.
16 Hull was thinking...

17 A Sure.

18 Q Do you know the factual basis on which he
19 was negotiating the price down to the \$605,000 for which he
20 paid for the building?

21 A Yes, because of the condition of the property.

22 Q How did he go about determining the condition
23 of the property from your knowledge?

24 A I was never with him. It was through Mr.
25 Zerkel, as has been testified through various inspections. I

1 am sure...

2 MR. HAUGH: I object to this, Your Honor.

3 THE COURT: Objection sustained.

4 Q Did you provide documentation requested by
5 Mr. Zerkel and Mr. Hull?

6 A Yes, we provided all of the financial
7 information we had, our files were opened in Washington and
8 so made available to Mr. Zerkel or whoever else would want
9 to look at them. Whatever was needed or requested was given
10 to them at any particular time.

11 Q Do you recall who specifically requested it?

12 A Those requests would have been made through
13 Mr. Zerkel.

14 Q Do you recall which specific request you got
15 from Mr. Zerkel?

16 A Repeat that again.

17 Q Do you recall what Mr. Zerkel reported that
18 he was requested to come up with?

19 A Mr. Zerkel had asked for a copy of the leases,
20 a breakdown on the tenant profile. We had a big concern,
21 Ridge Electronics that was not paying their rent, were going
22 into bankruptcy and they occupied a large portion of this
23 space. We were in various negotiations with them. That
24 information was related to him. He was concerned about the
25 inspection as has been testified....a letter was sent to each

1 one of the tenants authorizing Mr. Zerkel and the potential
2 buyer to investigate and inspect the building. Through my
3 authorization they were given complete authority to ask any
4 question, go on any building, visit with any tenant, do whatever
5 they wanted.

6 Q All right, what has been put into evidence
7 as plaintiff's exhibit number 2 is a photo copy of the check
8 stubs that were from the Avon Street Limited Partnership
9 checkbook, were you aware at the time that they had been
10 forwarded to Mr. Zerkel in a letter to Mr. Hull?

11 A Yes.

12 Q And were you aware at the time that there
13 was an entry, number 279, which indicated that Quadel Management
14 had received a check from the partnership in the amount of
15 \$8,121.00 which carries the legend repair wind damage?

16 A I personally wasn't aware that that entry
17 was there because I didn't handle the bookkeeping but I was
18 aware that all accounting records/were being forwarded to him.

19 Q Did you receive any questions either directly
20 or indirectly about what that entry meant and...or when that
21 wind damage had occurred or what kind of wind damage it was?

22 A No questions. May I respond on that also?

23 Q Well, let me get you, if you would, to indicate
24 what the partnership sent money to Quadel Management for? What
25 would you have been receiving money for?

1 A Related to that...

2 Q Related to the general..

3 MR. HAUGH: Only if he knows, Your Honor, not
4 what they might have. If he has personal knowledge of this
5 payment...he said he did not.

6 Q I will rephrase the question.

7 THE COURT: All right, rephrase the question.

8 Q Generally for what purposes did the...did
9 Quadel Management Corporation, your employer, receive funds
10 from the partnership? What expenses were paid to the
11 Management Corporation?

12 A All right, all funds were received in the
13 home office, including rent, the insurance proceeds, any
14 income, whatever it might be related to the partnership would
15 be received by the Management company.

16 Q All right, from the partnership?

17 A Correct.

18 Q And then what did the Management Company do
19 with it? What were you customed to pay to the Management
20 Company accounts?

21 A Generally the Management Company has a
22 corporate, a general corporate account of which all bills are
23 paid out of related to labor, repairs, mortgage payments, the
24 general operation of the...

25 Q Were these general operations?

1 A Correct.

2 Q Now at any time was there ever any direction
3 given to you to do anything specific to the roof area that
4 the wind damage had occurred other than what you did?

5 A No. Do you mean as far as making additional
6 repairs...

7 Q Additional repairs, fuel repairs, anything?

8 A No.

9 Q Do you know whether or not anyone else in
10 Quadel Management Corporation was instructed to do anything
11 else about the roof other than what was done?

12 A No, I would have handled that pretty much
13 on a local level and I think they would have respected my
14 judgment on it.

15 Q Now, when did you recall Mr. Hull taking
16 over this building?

17 A Mr. Hull purchased the building December 22,
18 1976.

19 Q All right, the wind damage had taken place
20 when?

21 A In March of 1975.

22 Q March or April...

23 A April of 1975.

24 Q Up until the...did you continue in a managing
25 capacity up until the time of the closing in December of 1976?

1 A Yes, we did.

2 Q Did you receive any further complaints after
3 your letter of September, 1975, of leaks in the roof in the
4 area where the patching had been done and repairs had been
5 made?

6 A No, no further complaints.

7 Q Were there any complaints directed to you or
8 which you are aware after Mr. Hull took over the building until
9 March of 1978?

10 A No.

11 Q Tell the jury, if you would, what you first
12 know of the problem which Mr. Hull experienced around March
13 and May of 1978? When did you first become involved?

14 A Mr. Zerkel had contacted me and had requested
15 I think some information related to the insurance, what had
16 happened on the roof repairs. I had since left Quadel Corporation
17 and had no access to their records, had given him basically
18 what I could remember which was not adequate to suffice what
19 they were looking for. Mr. Zerkel arranged for a meeting in
20 Richmond with Mr. Hull. They came to Richmond and I did meet
21 with them. That was the first meeting I had with Mr. Hull,
22 in which he outlined the problem that he had with the roof
23 leaking, that I had had repaired some three years ago.

24 Q Did he at that meeting disclose to you or show
25 to you the April 11, 1975 letter from VanLear and the May 30, 1975

1 letter from VanLear that talks about the fact that they are
2 going to make temporary repairs, are awaiting further instructions?

3 A I don't recall from memory that any information
4 such as that was exchanged at that time.

5 Q Did he at that time indicate to you that
6 he felt that you or Quadel Management Corporation or the
7 Avon Street Limited Partnership had defrauded him and intentionally
8 concealed information from him with regard to the condition of
9 the roof?

10 A He never made any statement that we had
11 defrauded him or concealed anything. He was attempting to find
12 out what damage there was or what his recourse for getting
13 it repaired might be.

14 Q Did you arrange a meeting in 1978 in Washington?

15 A Yes I did.

16 Q Did you go to that meeting?

17 A Yes, I did.

18 Q Would you tell the jury who else was present?

19 A I was present at the meeting, Mr. Ben Austin was
20 in the meeting, and at least one of the in-house counsel, Mr.
21 Victor Pennon was present at the meeting, Mr. Doug Zerkel
22 and Mr. Hull.

23 Q All right, what as discussed?

24 A Mr.Hull as he has indicated did arrive in
25 the morning. The partners were very busy and I had probably

1 done a very bad job at arranging the meeting. He was detained
2 until in the afternoon. He expressed at that time that there
3 was a leak in the roof, that he had had some repair work done
4 on it, felt like he would like to discuss with us the payment
5 of that or at least asking us if we felt we shouldn't make
6 payment regarding the leak roof that he sustained on his
7 property.

8 Q Do you recall what your response was or did
9 you make any response?

10 A Yes. It was hard for me to conceive being
11 involved in the management of a number of properties and also
12 owning some, that anyone would have any recourse to ask for
13 any kind of repairs for me to pay three years after they had
14 been done and two years...excuse me a little over a year after
15 the building had been sold. We told him I think...I can't
16 remember the exact details but we felt no obligation for
17 liability for the repairs that he had to have done on the
18 roof and certainly I would have expressed as a business man
19 that I had made repairs adequate to..

20 MR. HAUGH: Excuse me, you said you certainly
21 would have. Did you or didn't you..are you saying what you
22 think you might have said, I object if it's not what he did
23 say.

24 A I expressed this to him, that as a business
25 man I had made repairs and expressed to him also that time had

1 proven that those repairs did hold, in fact they held for three
2 years before there were any leaks in the roof.

3 Q Now, at that time it was clear and I assume...
4 well, let me ask you, was it clear at the time of that con-
5 versation that the insurance proceeds had been in excess of what
6 had been expended on the repairs?

7 A Yes.

8 Q And that was part of the discussion?

9 A Yes, it as.

10 Q During that meeting did Mr. Hull tell you
11 or tell anyone else connected with Quadel or with the
12 partnership who was at that meeting, that he felt that you
13 owed him money because you had deliberately, intentionally
14 concealed from him knowledge about the roof?

15 A No, he did not express that.

16 Q Did he tell you that you had defrauded him?

17 A No, he never indicated that.

18 Q Now, can you tell the jury a little bit...Mr.
19 Hull described some sort of statement...I think his quote
20 was something about making a little profit, can you tell the
21 jury where that came from?

22 A I will take responsibility for that. That was
23 in Richmond at the meeting that we had, the first time I met
24 Mr. Hull. I had left the Quadel Corporation, I wasn't involved
25 in the management of the operation. We had a rather friendly

1 and very, very informal talk and I made that...not in a flippanant
2 response to him but in a factual response, knowing that the
3 building had been owned by the partnership, they had paid
4 \$599,000 for it and had sold it for \$605,000, had paid closing
5 costs and real estate commissions and had sustained a very, very
6 large fire damage, of which I'm not sure, to the extent that the
7 insurance proceeds even covered the fire damage...I made that
8 in gist, but /I did make the statement to him.

9 Q I have no further questions at this time.

10 THE COURT: Before we begin cross examination
11 of this witness I am going to give the jury a recess, give
12 them an opportunity to call home and indicate to their families
13 that we will be here rather late this evening.

14 Approximately how many more witnesses do you
15 have, Mr. Landin?

16 MR. LANDIN: Your Honor, at the conclusion
17 of this, perhaps Mr. Austin for a very brief examination and
18 ...

19 THE COURT: How many witnesses do you intend to
20 have in rebuttal, Mr. Treakle?

21 MR. TREAKLE: Excuse me, Your Honor.

22 THE COURT:: Approximately how many witnesses
23 do you intend to call in rebuttal?

24 MR. TREAKLE: We might have one, Your Honor.

25 MR. HAUGH: If we do, it will be very short, Your

1 Honor.

2 THE COURT: I would indicate to the jury that it
3 will probably be 9 o'clock or later before you get home, maybe
4 considerably later, if you wish to indicate that to your families.
5 We will be taking a dinner recess somewhere around 7 o'clock.
6 You are excused for ten minutes in order to notify your families.

7
8
9 (Jury retired from the jury room at this time)

10
11 COURT in recess.

12
13 (Jury returned to the courtroom at this time)

14
15 THE COURT: All right, the jury is in the box, you
16 may proceed with cross examination, Mr. Haugh.

17 MR. HAUGH: Thank you, Your Honor.

18
19
20 CROSS EXAMINATION

21 By: Mr. Haugh

22 Q Mr. Knight, do I understand from your testimony
23 that you take full responsibility for making the statement about
24 making a small profit, that was testified to?

25 A Yes.

1 Q And when did you make...

2 A I would like to clarify...I'm not sure exactly
3 what that statement was.

4 Q When did you make that statement?

5 A That was at our meeting in Richmond.

6 Q And when do you recall that you made that
7 statement?

8 A Sometime during the course of our visit
9 there.

10 Q And you know since you made the statement
11 that you were the one and not Ben Austin that made the state-
12 ment?

13 A Yes.

14 Q Your deposition was taken on May 8, 1979,
15 is that correct?

16 A That is correct.

17 Q I will refer you to page 25 and ask you if
18 this is correct? Page 25, line 19...question

19 "Did you ever make a statement in the presence
20 of Mr. Hull and Mr. Zerkel, at anytime, that you have to make a
21 profit where you find it? Answer, I don't recall making that -
22 certainly would not be an untrue statement."

23 Is that a correct interpretation?

24 A I do not recall here, that is correct.

25 Q And now you say you remembered it since the

1 time you made the statement, is that right?

2 A That is correct.

3 Q Now, I...

4 A I would like to respond to that just a second...

5 Q I'm going on, I'm sorry.

6 A Okay.

7 Q Mr. Landin showed you this check, a copy
8 of a check stub, 279...

9 A Yes.

10 Q Now, did I understand you...that's for \$8121.00
11 and it says repair wind damage made out to Quadel Management
12 and that's, of course, Avon Street Limited Partnership?

13 A Right.

14 Q Did I understand you to say that all the
15 money from the partnership was forwarded up there and they
16 paid the bills, and that was all their money regardless of
17 where it came from, insurance...any income?

18 A That's correct. It was sent directly there.
19 All the tenants paid directly there and the insurance proceeds
20 I believe went directly there also.

21 Q So there means Quadel Management...

22 A In Maryland.

23 Q In Maryland and then they paid the bills for
24 the various jobs and other expenses that the partnership would
25 have?

1 A That's correct.

2 Q And then did you give the partners, even the
3 limited partners, an accounting of these funds? What you
4 received up there on behalf of the partnership, what you spent,
5 and then any distribution that would be made?

6 A The...

7 MR. LANDIN: If I might interrupt, Mr. Haugh,
8 I don't think this witness had any role in...

9 MR. HAUGH: He said he was familiar with the
10 accounting procedure, Your Honor.

11 MR. LANDIN: Well, you said did you give them
12 an accounting...

13 MR. HAUGH: His partnership or anyone on behalf
14 of the partnership.

15 THE COURT: Well, if the witness doesn't know
16 the answer to the question he can so state it, Mr. Landin.

17 MR. LANDIN: Yes, sir, I understand, thank you.

18 Q Do you know?

19 A I did not have charge or the responsibility
20 of the accounting. There was monthly information that was
21 assembled, at least annually, if not quarterly, that was
22 given to all partners in any partnership.

23 Q But you are familiar with the accounting
24 procedures either from information supplied to you by the
25 partners or just in your position to know that the accounting

1 was done there, the income all went there and then they
2 accounted ..paid the bills and accounted to the partners?

3 A Yes, sir.

4 Q They meaning Quadel Management?

5 A Yes.

6 Q Now, I hand you as our exhibit 2, which
7 contain two copies of ledger sheets, and ask you if you will
8 look on these check stubs to see if Avon Limited Partnership,
9 if any amounts were paid to anybody other than Quadel
10 Management?

11 A Yes.

12 Q What payments were made other than Quadel
13 Management?

14 A Do you want all of them?

15 Q Yes.

16 A There is one to Quadel Management...

17 Q Other than Quadel Management?

18 A All right. Robert M. Goodman...

19 Q And what is that for?

20 A That was a...indicated here as a management
21 fee.

22 Q That was a bill?

23 A No, Goodman was the former owner of the
24 project.

25 Q How was that fee earned by Goodman?

1 A I don't know the specifics of it. It's indicated
2 a management fee for July.

3 Q But he was paid by Avon Street rather than
4 Quadel Management?

5 A That is correct.

6 Q All right, go ahead.

7 A The amount of the check was \$13.35...

8 Q Go ahead..

9 A Another one Robert Goodman, another one to
10 either Better or Bottle Gas Corporation..

11 Q Is that for a bill for Avon Street?

12 A That's for fuel, gas...it is a bill, yes.
13 Another one for Davenport or excuse me Development Corporation
14 of Virginia...

15 Q How much is that one, sir?

16 A That's for \$3,665.45.

17 Q Does the stub note what that was for?

18 A It has job number 27503.

19 Q So that was paid by Avon Street, not Quadel
20 Management?

21 A Quadel Management handled all of the books.

22 Q These were Avon Street checkbooks, they were
23 paid by Avon Street Partnership, were they not?

24 A Yes, they were.

25 Q So the money just didn't go from this partnership

1 up to Washington to Quadel Management and they paid all the
2 bills, the bills were paid from this account?

3 A No, I think you are getting into an accounting
4 area..

5 Q Are they bills paid from this account?

6 A They were bills paid from this account.

7 Q All right...

8 A I think you are asking technical questions
9 and...

10 Q All right, would you like to check exhibit
11 4 and see if you can find...

12 THE COURT: Mr. Haugh, you will have to let the witness
13 qualify his answer.

14 Q All right, sir, go ahead.

15 A I was stating I believe that he was getting
16 into an accounting area which is not my expertise. It may
17 be his, I'm not sure...

18 Q On direct examination you said you were
19 familiar with the accounting procedures, not that one particular
20 check, but you were familiar with the accounting procedures?

21 A Well, I accept that, I am familiar with them.

22 Q And you also said that all the money went
23 from this partnership to the Management Corporation and they
24 paid the bills, are you backing off from that now?

25 A Not a bit...

1 Q Okay, read the rest of this stuff...

2 A All...

3 MR. LANDIN: Your Honor, I think he is entitled
4 to finish his answer...

5 THE COURT: I am still going to have to let
6 the witness complete his qualification.

7 A All the money from everyone of the projects
8 went to the Management Corporation. How they handled their
9 accounting was an internal process. I'm not sure if the
10 checks were made out to Quadel Management, some of them probably
11 were, or whether they were made out to Avon Street Limited
12 Partnership. All money flowed to Quadel Management Corporation.
13 They handled probably 45 different sets of books for various
14 projects. Their accounting function you would have to...I am
15 familiar with it, I am not an expert in it and if you need
16 that advice you would have to talk to the comptroller.

17 Q Then I ask you this, go back to check stub
18 279, what happened to that money? Where did it end up?

19 A I have no idea. That was not my jurisdiction
20 of where the money went. It went...here is indicating a receipt
21 of that money. It is recorded...

22 Q By who?

23 A It is recorded in the Avon Street Partnership
24 checkbook.

25 Q Does it show a payment out?

1 A Yes, it does. It shows a payment is made
2 to Quadel Management Corporation.

3 Q \$8121.00...

4 A That is correct.

5 Q Repair wind damage?

6 A That is correct.

7 Q Did Quadel Management ever repair wind damage
8 for the amount of \$8121.00?

9 A Under the....I think I should clarify that
10 a little bit, I think it would be helpful to you and the jury...

11 Q I would ask him to answer my question first,
12 Your Honor.

13 THE COURT: All right, you may answer it and then
14 clarify it.

15 A Okay, restate the question please.

16 Q Did Quadel Management Corporation ever pay
17 out \$8121.00 for repairs caused by wind damage?

18 A No, they did not.

19 Q All right.

20 THE COURT: Now, you may qualify your answer.

21 A Okay. In the process again of the accounting
22 which if it's going to be detailed would have to be handled
23 by the Comptroller, Quadel Management Corporation, under the
24 partnership agreement is authorized to make various repairs,
25 to supervise those repairs, and also has an obligation for any

1 short falls that the partnership might have to extend to that
2 partnership any deficits or any cash that they would need to
3 cover short falls. If you needed to go into an accounting
4 as to the entire amount of the money, that certainly is
5 available.

6 Q So what you are saying is that Avon Street
7 Limited Partnership received from the insurance company
8 \$8121.00 for their wind damage claim, that Avon Street Limited
9 Partnership paid that amount to Quadel Management Corporation
10 for repair of wind damage and Quadel Management Corporation
11 did not repair the wind damage, isn't that...

12 MR. LANDIN: Your Honor, I object to the form
13 of the question because Mr. Haugh is now choosing...

14 A No, I am not saying that...

15 MR. LANDIN: Wait a minute...I object to the form
16 of the question because Mr. Haugh is now choosing to construe
17 the entry that there was a specific mandate that they would
18 repair the wind damage and that's not what that document says.

19 THE COURT: The objection is going to be overruled,
20 the witness can so note that if that's the case.

21 A State that again please.

22 Q That Avon Street Limited Partnership received
23 and deposited three checks from insurance companies in payment
24 of a claim made for wind damage to the roof in the amount of
25 \$8121.00, was deposited in their account, they then wrote a

1 check to Quadel Management Corporation which stub says repair
2 wind damage \$8121.00 and Quadel Management Corporation got the
3 money and did not make \$8121.00 in repairs for the wind damage
4 to the roof, is that correct?

5 A You are correct in that that is a recording
6 of the money that was received. As to monies that had been
7 paid out previously on bills by Quadel Management Corporation,
8 I don't know and that would require an indepth audit. That
9 does not indicate that Quadel Management Corporation was paid
10 \$8121.00 for repairs to the...

11 Q What does the stub say?

12 A The stub says, recorded by a bookkeeper,
13 repairs...

14 Q Do you know who recorded it?

15 THE COURT: Just a second now, Mr. Haugh, you are
16 going to have to let this witness answer fully the questions.

17 Q All right.

18 A It indicates the amount of the check. It says
19 repair wind damage. That check would probably be cross
20 referenced with the source of it and the bookkeeper's name
21 was Helen Taylor.

22 Q But you do know that no permanent repairs
23 were made to the portion of the roof that was damaged by the
24 wind?

25 A I have never testified that there was not

1 permanent repairs made to the roof. In my business judgment
2 permanent repairs were made, flashing around the outside was
3 permanent.

4 Q Other than the flashing and the temporary
5 repairs that were testified to by Mr. Lynch today?

6 A There were additional repairs made other than
7 that...

8 Q What additional repairs were made?

9 A We had additional repairs made over Communications
10 Services.

11 Q What additional repairs were made, sir?

12 A To the extent that were needed there.

13 Q What repairs sir?

14 A They had a leak and the leak was fixed.

15 Q Where was that?

16 A That was over top of their particular warehouse.

17 Q That's where the wind damage had taken place?

18 A The wind damage was to some extent there and
19 other parts of the building.

20 Q The other parts of the building, now referring
21 to the part where it was damaged by the wind, how much money
22 did you spend in repairs on that, other than what Mr. Lynch
23 has testified that he received?

24 A Okay. There is something short of \$2,000 in
25 repairs...I think somewhere around \$1300 or \$1400.

1 Q Now, do you know who paid that?

2 A Do I know who paid that?

3 Q Yes.

4 A That was paid, yes, each one received money
5 and ...

6 Q From whom?

7 A Pardon me?

8 Q Who paid the bill?

9 A It was paid out of Quadel Management, either...

10 Q So you are familiar with that?

11 MR. LANDIN: Your Honor, he is not letting him
12 finish his answer.

13 THE COURT: I think he finished the answer.

14 Q I thought he had finished, I'm sorry.

15 A I am very familiar that they billed, made the
16 billing to us and that they received compensation for it.
17 Now, where that is recorded, whether it's in this, I am not
18 aware of in other records.

19 Q Now, defendant's exhibit 3 showing a statement
20 Development Corporation of Virginia from W. A. Lynch Roofing
21 Company to furnish and install 9 roof flashings \$550.00, 80
22 percent to Quadel Management Corporation, is that what that
23 says?

24 A As I've indicated before it reads 80 percent
25 to Quadel Management Corporation.

1 Q What does that mean?

2 A I don't know, I didn't write that on there.

3 I can speculate.

4 Q All right...

5 A I might assume that they paid 80 percent of
6 the bill.

7 Q Do you know that they did, sir?

8 A I do not.

9 Q Now, I believe you testified that after
10 Mr. Lynch made his repairs you were rather satisfied, that
11 you received some complaints. I think one about a leakage
12 around an air conditioning unit...

13 A Yes...

14 Q I forget who that was from...Mr. Hank's...

15 A Mr. Hank's.

16 Q Was that in the area of the wind damage to
17 the roof?

18 A Yes, that was in the lower portion of the
19 building and there had been some damage in that area.

20 Q And you had that repaired?

21 A Yes, that complaint was originally prior
22 to...they had problems with that prior to the wind damage
23 also.

24 Q Then thereafter you received a complaint
25 from a communications outfit...

Knight - Cross

1 A Communication Services, correct.

2 Q And then you had someone from Better Living,
3 Mr. Hoke, go up and check the roof, is that what you testified
4 to?

5 A That's correct.

6 Q And after you had these complaints you asked
7 him to check it, and then I believe you said later on you
8 had him put his opinion in writing?

9 A As he made necessary repairs, and I could
10 ask him at that time also as to the condition of the roof
11 and what repairs needed to be made and he had told me...

12 Q I am looking at defendant's exhibit 4, which
13 is a letter August 20, 1975, to you from Better Living and
14 signed Harvey Hoke, is this the result, you had received
15 complaints about leakage, you asked him to go up and check
16 and then put this in writing?

17 A Certainly the one from communications. I'm
18 not sure of the exact sequence as to when you are talking
19 about there.

20 Q After he wrote this then you received
21 further complaints about leakage in the area over the wind
22 damage, is that correct?

23 A Yes.

24 Q And you didn't have him put anything else
25 in writing? Mr. Hoke?

1 A I am not aware that he did.

2 Q So even after he wrote you an opinion you
3 received complaints about leaks around the wind damage area,
4 is that correct?

5 A Yes, that's correct. He went out and fixed
6 those leaks.

7 Q Now, I hand you defendant's exhibit 3 again,
8 you said you were familiar with this I believe, except
9 for the notation?

10 A Yes.

11 Q Would you tell us what the caption for that
12 job is, what job they are talking about, not the individual
13 work done but the job?

14 A It's indicated Ridge Electronics Corporation,
15 Avon Street Extended, came from W.A. Lynch Roofing Company.

16 Q Ridge, if I am not mistaken was in the area
17 of the fire damage, not the wind damage?

18 A That's correct. I would like to clarify
19 that...

20 Q You are going to clarify this statement in
21 the letter?

22 A Yes. W.W. Lynch had done the repairs...

23 Q This is a statement from W.A. Lynch to
24 Development Corporation of Virginia...

25 A Yes, I'd like to clarify that...

1 Q And you know, where they say work on Ridge
2 Electronics Corporation, Avon Street Extended building, now
3 you are going to explain where the fire damage was, am I right?

4 MR. LANDIN: Your Honor, I think he is arguing
5 with the witness and frankly the witness has testified already
6 that this had to do with the flashings down at the other end.

7 THE COURT: We are going to allow the witness
8 to clarify his statement.

9 A W. A. Lynch had done the entire roofing
10 on the burned area, which was the Ridge Electronics Corporation.
11 All the billings that they had done were probably set up
12 that way, with Ridge Electronics...

13 Q Well, do you know that they were probably
14 set up that way?

15 A I know where this work was completed because
16 I authorized...

17 Q But do you know that they were set up that
18 way or are you just guessing?

19 A I know that this bill came in that way.

20 Q What way?

21 A It came in Ridge Electronics, Avon Street
22 Extended and there is a further addition as to why that came
23 in...on the bottom of it, it's to furnish and install hoods
24 and Jen Air exhaust fan \$806, which was a new bathroom facility
25 that was put in the area to comply with certain codes, that

1 you have to have two bath areas and they needed to be vented
2 so they did that work as well as the flashings on the old
3 part. That's why it came in that way. There was work done
4 on the Ridge Electronics portion which was not brought up.
5 It is indicated on this bill also.

6 Q Plaintiff's exhibit 3...I hand you plaintiff's
7 exhibit which is a letter from Warren Martin to you on May
8 30, 1975, I will ask you if you forwarded that on to the
9 principals?

10 A Yes.

11 Q Was any action ever taken as far as you know
12 as a result of that letter?

13 A We would have discussed that. The responsibility
14 of that would have been on me to make sure that adequate repairs
15 had been followed through with.

16 Q Who did you discuss it with?

17 A Ben Austin was my direct superior that I
18 reported to.

19 Q Do you recall this discussion in particular
20 sir?

21 A I don't recall definite detail on it. I know
22 that we did discuss lots of general things about all of our
23 properties.

24 Q Were you aware that \$8121.00 had been
25 received from the insurance companies as a result of this

1 claim?

2 A I knew that funds had been received. At the
3 time I probably did not know the exact amount. I certainly
4 do now.

5 Q Now, what is the name of your firm today?

6 A The name is Knight/Austin Corporation.

7 Q And is that with Ben Austin?

8 A That's correct.

9 Q And are you two equal owners?

10 A That's correct.

11 Q And when was that formed?

12 A That was formed in 1978 and I think in June or
13 July of '78.

14 Q What is your relationship with Avon Street
15 now?

16 A The relationship that I have with Avon Street
17 ...I was the regional manager for Quadel Corporation, I later
18 became an officer of that corporation and I was given the
19 opportunity in September of '76 and I moved to Washington in
20 November of '76. One of the conditions was that the various
21 partnerships that the principals of Quadel had ownership in,
22 that I would be assigned a portion of the ownership by
23 assignment from them to me. So I have an assigned interest
24 in the Avon Street Limited Partnership which holds the note
25 for Mr. Hull.

1 Q And when you purchased into this partnership,
2 I don't want to put words in your mouth, you purchased an
3 note, the
4 interest in that/indebtedness as well? That's a part of the
5 assets which you own?

6 A As a part of the assets that I own, yes.

7 Q All right. Mr. Landin asked you several
8 questions about who owned this property, I show you plaintiff's
9 exhibit 1, which is the deed from Avon Street Limited
10 Partnership to Avon Street Business Center, Incorporated,
11 being Mr. Hull's company, and notice that it recites being
12 the same land conveyed to Avon Street Limited Partnership
13 by a deed dated April 10, 1974, from Charlottesville Service
14 Center, Inc., were you familiar with Charlottesville Service
15 Center, Inc.?

16 A No.

17 Q You were not. Would you please specify the
18 repair work on the roof on this building that was authorized
19 by you after the work done by Mr. Lynch in April of 1975?

20 A Okay. Mr. Lynch...I think we are all aware
21 of what work he had done and after that, there was some
22 additional work that was done by the Better Living Company...

23 Q What was that?

24 A They had completed some additional patching
25 work I believe. They repaired over the Communications Services,
the leak problem we had there and I believe they repaired

1 around the air conditioner over Mr.Hank's Originals. I believe
2 that was the extent of the work that they did.

3 Q Did anybody else do any work up there authorized
4 by you?

5 A No, just those two companies.

6 Q Just those. These are the things that you
7 have referred to previously in your testimony?

8 A Yes, those are the only two that I recall that
9 have done work out there.

10 Q Now, after this work was done did you go up
11 on the roof and check?

12 A Yes, I did.

13 Q And when was that?

14 A It was a number of times. It was after each
15 occurrence, at least after the repairs had been done, I would
16 make a trip to Charlottesville and inspect those repairs.

17 Q And do you know when it happened with regard
18 to the time that you all placed this property on the market
19 for sale, March of '76?

20 A Well, the original damage was in April of '75...

21 Q After Lynch had done his work...

22 A Pardon me?

23 Q From the time Lynch had done what work he
24 was going to do on the roof, and until you placed it for sale,
25 when was the last time you went up there?

1 A There was nothing...I guess the last repair
2 was done in August, as best that my memory serves me, and the
3 property was then placed on the market, exclusive authorization
4 to sell was the following March.

5 Q That's all we have, Your Honor.

6 THE COURT: Anything further, Mr. Landin?

7
8
9 REDIRECT EXAMINATION

10 By: Mr. Landin

11 Q Mr. Knight, these check stubs that were
12 provided to Mr. Hull for his examination, did you inspect
13 them or did you photo copy them yourself?

14 A No, I didn't.

15 Q Could you tell the jury when the first time
16 you can recall seeing that entry number 279, in which the
17 \$8121.00 was transferred to Quadel Management Company?

18 A I think this morning in your office is
19 probably the first time I have taken a look at the package.
20 They were prepared and were sent down to him from our office
21 in Rockville.

22 Q Did you sign checks for either Avon Street
23 Limited Partnership or Quadel Management Corporation during
24 this period, '74, '75 and '76?

25 A No, I didn't.

1 Q Did you have accounting duties with regard to
2 inspecting the books or reconciling the books?

3 A No, I had no responsibilities there.

4 Q The source of your knowledge about the general
5 practices of the Management Corporation was derived from
6 what?

7 A From being associated with the company.
8 I had no responsibility nor direction to do anything, purely
9 an observation as to what was going on in the accounting
10 department of the company.

11 Q I take it that your memory is identical
12 to Mr. Hull's, that you did not speak to him either by telephone
13 or person to person meeting with him until sometime in 1978,
14 is that your recollection?

15 A The first time that we met was in Richmond
16 in '78.

17 Q Did Mr. Hull...was it reported to you that
18 Mr. Hull had requested any kind of documentation of repairs
19 of any nature made more than a year before his purchase?

20 A At what time?

21 Q Well, in '74 and '75, did he request any
22 specific files or documentations of all receipts or anything
23 like that?

24 A Whatever requests....which he requested, which
25 were the checks and operating statements, leases...all of that

1 was forwarded to him. I don't recall any other requests
2 for a list of what repairs had been made over a period of
3 years.

4 Q No further questions.

5 THE COURT: Anything further, Mr. Haugh?

6 MR. HAUGH: Nothing further, Your Honor.

7 THE COURT: All right, you may rejoin your
8 counsel.

9 MR. LANDIN: Your Honor, if I might have the
10 court's indulgence, for just a second. Your Honor, I apologize
11 to the court. There is one thing I forgot to take up with
12 Mr. Knight when he was on the stand in response to cross
13 examination.

14
15 MR. GLADE KNIGHT, resumed the stand for redirect
16 examination by Mr. Landin.

17
18 Q (Mr. Landin continuing) Mr. Knight, Mr.
19 Haugh questioned you with regard to your deposition about
20 your recollections of having made a statement about the making
21 of a little profit, he referred you to your testimony on page
22 25, at lines 19 through 23, were you also further asked by
23 the attorney for Mr. Hull the following question:

24 "Q Did you ever make a statement in the presence
25 of Mr. Hull, and Mr. Zerkel, at anytime, that you have to make

1 a profit where you find it?

2 A I don't recall making that - that certainly
3 would not be an untrue statement.

4 Q Yeah, we all agree with that. Did you ever
5 make such a statement in reference to this roof damage?

6 A Not that I recall.

7 Q Again, you say that not that you recall - are
8 you saying you deny making the statement or are you saying you
9 can't recall it?

10 A I am not denying it.

11 Q ^{was} Now, ~~is~~/that your testimony on that day?

12 A Yes, that was my testimony.

13 Q In fact did you deny making that statement?

14 A No, I never denied making that statement.

15 Q All right, sir. This may raise further
16 questions from Mr. Haugh.

17 THE COURT: All right, Mr. Haugh.

18
19
20 RECROSS EXAMINATION

21 By: Mr. Haugh

22 Q You didn't remember it at that time either,
23 did you?

24 A No, five years is a long time ago. I apologize
25 for not being able to remember that.

1 Q All right, that's all.

2 THE COURT: All right, you may rejoin your counsel.

3 MR. LANDIN: Your Honor, the defense rests at
4 this time.

5 THE COURT: Defense rests, any rebuttal?

6 MR. HAUGH: May we have a second, Your Honor?

7 THE COURT: All right.

8 MR. TREAKLE: May I speak with counsel, Your
9 Honor, we might be able to save some time.

10 THE COURT: All right.

11 MR. TREAKLE: Your Honor, we have a copy of
12 correspondence here dated October 24, 1975 from Thomas D.
13 Webb, III, one of the named defendants who was then vice-
14 president of Quadel Corporation, partners in Avon Street
15 Limited Partnership. We would like that marked as plaintiff's
16 exhibit 7. We would offer it into evidence with stipulation
17 by counsel that it is a true copy of the correspondence...

18 THE COURT: Is it so stipulated Mr. Landin?

19 MR. LANDIN: Your Honor, yes sir...in an effort
20 to save time before the jury, I obviously disagree that it's
21 going to bear on what their side is going to argue but recognizing
22 that they want to argue that it does bear on the case, I am
23 willing to have the jury consider it.

24 THE COURT: All right, sir.

25 MR. LANDIN: It is by stipulation.

1 THE COURT: All right, it is received by
2 stipulation as plaintiff's exhibit 7.

3
4 (Plaintiff's exhibit number 7 was so marked
5 and received into evidence at this time)

6
7 THE COURT: Any further rebuttal?

8 MR. TREAKLE: No, Your Honor. We rest.

9 THE COURT: All right, ladies and gentlemen
10 of the jury we will now give you your dinner recess. I ask
11 that you be back at quarter past eight. The Court instructs
12 you again that you are not to discuss the case or allow anyone
13 to discuss the case with you. You may now be excused for
14 your dinner recess.

15
16 (Jury retired from the courtroom at this time)

17
18 (Dinner recess)

19
20 THE COURT: All right, gentlemen, the court
21 will give you an opportunity to go over your instructions first.

22
23 (Court considered instructions with counsel
24 off record, objections to instructions are noted in the
25 transcript when the jury retires to consider verdict)

1 MR. LANDIN: Your Honor, we need to renew our
2 motion to strike for the record.

3 THE COURT: All right, sir, hold the jury just
4 for a few minutes, please.

5 MR. EPPS: Your Honor, we would just like to
6 renew the motion based on the same grounds as we have stated
7 before and just to point out specifically that the plaintiff
8 as failed as a matter of law to prove the elements of fraud,
9 and especially knowledge on the part of the defendant. I think
10 the plaintiff has not shown reliance, at least if he is relying
11 on the check stubs, he has shown no reliance since Mr. Hull
12 testified that he didn't even see that check stub. So I think
13 as for that particular representation it can't be relied on
14 for the basis of fraud, because he has admitted away one of
15 the elements. I think the plaintiff has failed to show that
16 ...as to Mr. Zerkel's statements, has failed to show that Mr.
17 Zerkel made a misrepresentation. I think finally on the punitive
18 damages, Your Honor, the plaintiff has failed to show, present
19 any evidence of ill-will, malevolence or grudge to prove
20 actual malice. Thank you.

21 THE COURT: The court has reviewed the evidence
22 in this case and believe there is sufficient evidence to take
23 the case...to make the case a jury issue. The motion will be
24 overruled. Bring in the jury.

25 (Jury returned to the courtroom at this time)

1 THE COURT: Let the record reflect that all
2 seven jurors are in the box.

3 Ladies and gentlemen of the jury in the beginning
4 we told you that you would determine the facts in the case
5 and the court would instruct you as to the law upon which to
6 apply those facts. The court instructs you as follows:

7 That under the facts of this case Quadel
8 Management Corporation, and its employees, including Glade
9 Knight, and Douglas Zerkel, listing real estate agent for
10 the sale of the property, were agents of the defendants.
11 and defendants are liable for all acts of their agents performed
12 within the scope of their employment, but there can be no
13 acquiescence in or ratification of acts outside the scope of
14 their employment without knowledge.

15 The Court instructs the jury that in order to
16 recover against the defendant, the burden is on plaintiff
17 to prove by clear and convincing evidence that the misrepresentations
18 complained of were positive statements of fact, not merely
19 statements of opinion, made for the purpose of inducing the
20 sale of the warehouse; that the statements of fact were untrue;
21 that they were material to the condition of the warehouse at
22 the time of the sale; and that the plaintiff relied on them
23 and was induced by the statements of fact to enter into the
24 purchase of the warehouse.

25 And unless you find from clear and convincing

1 evidence, as defined in another instruction of the Court, that
2 the plaintiff has proved each of these elements, then you shall
3 return your verdict in favor of the defendant.

4 The jury are the sole judges of the weight of
5 the evidence and of the credibility of the witnesses, and the jury
6 has the right to discard or accept the testimony or any part
7 thereof of any witness which the jury regards proper to discard
8 or accept, when considered in connection with the whole evidence
9 in the case, but the jury has no right arbitrarily to disregard
10 the credible testimony of a witness. And in ascertaining
11 the weight of the evidence and the credibility of witnesses,
12 the jury may take into consideration the demeanor of the witness
13 on the witness stand; his apparent candor or fairness; his
14 bias, if any; his intelligence; his interest, or lack of it,
15 in the outcome of the case; his opportunity, or lack of it, for
16 knowing the truth and for having observed the facts to which
17 he testifies; any prior inconsistent statements by the witness
18 if proven by the evidence; and from all these and taking into
19 consideration all the facts and circumstances of the case, the
20 jury are to determine the credibility of the witness and the
21 weight of the evidence.

22 The Court instructs the jury that Norman V. Watson,
23 Karen G. Watson, G. Cope Stewart, III, Elizabeth D. Stewart,
24 Thomas D. Webb. III, Carol B. Webb, Ben T. Austin and Norma J.
25 Austin are General Partners in the Avon Street Limited Partnership

1 and that each member of the partnership is liable for the
2 wrongful acts of the other partners while acting in the ordinary
3 course of the firm's business.

4 The Court instructs the jury that damages are
5 of two types: (1) Compensatory Damages; which are awarded as
6 compensation for pecuniary loss and recompense for the injury
7 suffered; (2) Punitive Damages; which are something in
8 addition to full compensation, not given as the Plaintiff's due
9 but as a punishment to the Defendant and as a warning and example
10 to deter him and others from committing like wrongs.

11 And if from the evidence and the other instructions
12 of the Court you find your verdict in favor of the plaintiff,
13 then in addition to compensatory damages, if you believe by
14 clear and convincing evidence that the defendant acted
15 wantonly, oppressively, or with such recklessness or negligence
16 as evinced a conscious disregard of the rights of others, or
17 with such actual malice as implied a spirit of mischief, or
18 criminal indifference to civil obligations, you may award
19 the plaintiff such additional sum as punitive damages as in
20 your opinion are called for by the circumstances of the case.

21 And if the jury do award punitive damages, they shall
22 state in their verdict what amount they allow as compensatory
23 damages and what amount as punitive damages.

24 The Court instructs the jury that in assessing
25 the amount of punitive damages to be awarded against the

1 Defendants, you may consider the defendants' wealth and their
2 financial standing and their social standing in the community.

3 The court instructs the jury that in determining
4 whether the defendant was influenced by actual malice or a
5 design to injure, or oppress the plaintiff, the jury should
6 consider the relation of the parties to each other, the acts of
7 the defendant before and after the sale of the property,
8 in question, and all the circumstances surrounding those
9 acts, whether proven by either direct or circumstantial
10 evidence.

11 A verdict must not be based in whole or in
12 part upon surmise, conjecture or sympathy for either of the
13 parties, but must be based solely upon the evidence and the
14 instructions of the Court.

15 The Court instructs the jury that the sale
16 of real estate carries with it no warranties as to the condition
17 of buildings on the real estate, including the fitness of a
18 building for its intended use, unless warranties of fitness
19 are specifically made by the parties.

20 The jury is instructed that the law does not
21 require a person to spend any or all proceeds received on an
22 insurance claim for repair or replacement of the item damaged.

23 Clear and convincing evidence is that measure or
24 degree of proof which will produce in the jury's mind a firm
25 belief or conviction as to the allegations sought to be

1 established. It is more than a mere preponderance.

2 The Court instructs the jury that fraud is never
3 presumed, but that, on the contrary, people are presumed to
4 act in good faith toward one another. The burden is always
5 on the one who charges fraud to establish it to the satisfaction
6 of the jury by clear and convincing evidence. And the Court
7 further instructs the jury that actual fraud means that the
8 party charged with it was inspired by a deliberate fraudulent
9 purpose to injure and deceive the plaintiff.

10 The jury is instructed that even if they find
11 from clear and convincing evidence that either Douglas L.
12 Zerkel, acting as broker, or Glade Knight, acting as agent
13 for the Avon Street Limited Partnership in his capacity as
14 an employee of Quadel Management Corporation, did in fact
15 make false and material misrepresentations to the plaintiff
16 which were made with malice as defined in another instruction
17 of the Court, the partners of the Avon Street Limited Partnership
18 cannot be held liable for damages unless the partnership
19 previously authorized the misrepresentation by their agents
20 or subsequently ratified those misrepresentations.

21 Damages cannot be awarded against a master or
22 principal for the wrongful act of his servant or agent in which
23 he did not participate, and which he did not authorize or
24 ratify or subsequently adopt.

25 The Court instructs the jury that actual malice

255
253

1 is established by showing that the one against whom malice is
2 accused was prompted by ill will, malevolence, grudge, spite,
3 wicked intention, or conscious disregard of the rights of
4 another.

5 The Court instructs the jury that a purchaser
6 of real property must discover for himself the true conditions
7 of the premises if he had information which would excite
8 the suspicions of a reasonably prudent person; provided the
9 seller has done nothing to throw the purchaser off guard or
10 divert him from making the inquiries and examination which
11 a prudent man ought to make.

12 The Court instructs the jury if you believe
13 from clear and convincing evidence that the roof of the building
14 sold by defendants to plaintiff had been damaged by wind; that
15 defendants made repairs to such roof which were of a temporary
16 rather than permanent nature; that prior to closing said sale,
17 defendants misrepresented or concealed from the plaintiff the
18 fact that only temporary repairs had been made to such roof
19 and that said misrepresentations or concealment was of a material
20 fact which was relied upon by the plaintiff and was employed by
21 the defendants as an inducement to the plaintiff to purchase
22 said building from the defendants; and that the plaintiff
23 suffered damages as a result thereof, then you shall return
24 your verdict in favor of the plaintiff and assess its damages
25 in accordance with the other instructions of the court.

1 All right, counsel may proceed with their
2 closing argument.

3 MR. TREAKLE: Lady and gentlemen of the jury,
4 first I would like to thank each of you for your attention
5 today, it's been a long day for everybody concerned but
6 most importantly for you because you have had to sit there
7 in the jury box and hear the evidence that you heard from
8 the witness stand. You are now faced with a very important
9 duty and that is you are charged with after hearing this
10 evidence, considering the law that the court has instructed
11 you on, and putting those two factors together, the law
12 and the evidence, to reach a verdict in this case. What I
13 would like to do is very briefly hit four points. Unfortunately
14 I can't spend the time I'd like to spend going through all
15 the chronology of events and everything that has happened
16 and all the testimony that you've heard. I'd like to do
17 it but I am certain you don't want to hear it again because
18 you have heard the testimony. I'd like to hit the chronology
19 of events, just hit the high points. I'd like to touch
20 upon some of the exhibits and touch upon some of the
21 instructions the court has just given you and fourthly, I'd
22 like to address the issue of damages.

23 First though with respect to the chronology
24 of events. We are talking about the Avon Street Warehouse
25 Complex which is on Avon Street Extended in Albemarle County.

1 THE COURT: I will note to counsel that there
2 are two instructions number 14, however they are both given
3 by the court.

4 MR. HAUGH: There is also one that was not
5 endorsed by you, Your Honor, you might want to check that.

6 MR. REBACK: That's number 15, I think Judge.

7 MR. LANDIN: May it please the court sometime
8 we want to put on the record the objections to the instructions.

9 THE COURT: You may do that while we are in
10 recess gentlemen.

11 MR. EPPS: The defendant objects to the court
12 giving the instruction number 7 which reads as follows:

13 The court instructs the jury that in determining
14 whether the defendant was influenced by actual malice or a
15 design to injure or oppress the plaintiff, the jury should
16 consider the relation of the parties to each other, the acts
17 of the defendant before and after the sale of the property,
18 in question, and all the circumstances surrounding those
19 acts, whether proven by either direct or circumstantial evidence.

20 On the grounds that there was no legal relationship
21 shown and it's not a clear statement of Virginia law.

22 The defense would also like to object to the
23 court's refusal to give instruction 12-A and the jury instruction
24 proffered by the defendant which reads as follows:

25 The Court instructs the jury that if you believe

1 from the evidence that the plaintiff from his own observations
2 or from information requested from the defendant or the
3 defendant's agent knew or should have known that there had
4 been wind damage to the building, then you shall find your
5 verdict for the defendant on the grounds that Virginia law
6 is to the effect that the plaintiff if he had conducted his
7 own investigation would have found defects...

8 MR. LANDIN: On the basis of Abbott and Solomon
9 instructions for Virginia and West Virginia cases cited
10 as to that being a correct statement of Virginia law. The
11 grounds on instruction 12-A would be the principals of law
12 cited in Westend Real Estate Company v. Clayborn 97 Va. 734
13 at 751.

14
15 (Court in recess while jury considering verdict)

16
17 THE COURT: All right, members of the jury have
18 you reached a verdict?

19 THE FOREMAN: We have, Your Honor.

20 THE COURT: The jury verdict appears to be in
21 proper form, "We, the jury, on the issue joined find in favor
22 of the plaintiff and assess its compensatory damages at
23 \$7,459.00 and its punitive damages at \$4,000.00, or a total of
24 \$11,459.00, signed foreman and date."

25 Any motion to have the jury polled?

1 MR. LANDIN: Yes, Your Honor, I would so move.

2 THE COURT: Herbert Hughes, is this your verdict?

3 MR. HUGHES: Yes, sir.

4 THE COURT: Neil MacDougall, is this your verdict?

5 MR. MACDOUGALL: Yes, sir.

6 THE COURT: Robey Shifflett, is this your verdict?

7 MR. SHIFFLETT: Yes, sir.

8 THE COURT: David Soloman, is this your verdict?

9 MR. SOLOMAN: Yes, sir.

10 THE COURT: Florence Pace, is this your verdict?

11 MS. PACE: Yes.

12 THE COURT: William Powley, is this your verdict?

13 MR. POLWEY. Yes, sir.

14 THE COURT: Douglas Tapscott, is this your verdict?

15 MR. TAPSCOTT: Yes, sir.

16 THE COURT: Ladies and gentlemen of the jury, we
17 thank you for your attention to your duties here today. We
18 realize this has been a great imposition upon your time but
19 we are sure that it is service that you perform willingly
20 with the knowledge that you assist the form of government
21 that we all cherish. You are now excused until you are needed
22 here again which will be June 30th at 10 o'clock. You may
23 now retire.

24
25 (Jury retired from the courtroom)

1 THE COURT: All right, gentlemen, any motions
2 that you wish to make?

3 MR. LANDIN: Your Honor, I would like to move the
4 court to set aside the verdict both as to compensatory and
5 punitive damages on the ground that the verdict of the jury
6 is contrary to the law and evidence in the case. It is
7 certainly contrary to the principles of law on which the
8 court instructed the jury, both on punitive and compensatory
9 damages. And due to the lateness of the hour, I would like to
10 have time to submit to the court a proper formal motion in
11 support of my argument and to argue it to the court. I will
12 be happy to set a time with the court now or at the court's
13 convenience, request time later.

14 THE COURT: How much time would you require?

15 MR. LANDIN: Your Honor, I suspect perhaps an
16 hour. I would expect to provide the court with a brief prior
17 to the argument.

18 THE COURT: All right, August 12th at 9 o'clock?

19 MR. LANDIN: That will be satisfactory, Your
20 Honor.

21 MR. HAUGH: 9 o'clock?

22 THE COURT: 9 o'clock.

23 MR. LANDIN: That will be here in Albemarle, Your
24 Honor?

25 THE COURT: Yes. Any further motions, gentlemen?

1 MR. LANDIN: Not at this time, Your Honor.

2 MR. TREAKLE: No, Your Honor.

3 THE COURT: All right, court will stand adjourned.

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1 STATE OF VIRGINIA AT LARGE:

2 I, Jean D. Easton, Notary Public in and for the
3 State of Virginia at Large, having been so duly commissioned
4 and qualified do hereby certify that the foregoing hearing
5 was duly taken by me at the time and place specified in the
6 caption hereof, said witnesses having first been duly sworn.

7 I further certify that said hearing was correctly
8 taken by me by mechanical methods and that the same was
9 accurately written out in full and transcribed into the
10 English language and that said transcript is a true, accurate
11 and correct record to the best of my knowledge and belief.

12 I do further certify that I am neither attorney
13 nor counsel for or related to any of the parties to the action
14 in which this hearing was taken and further that I am not
15 a relative or employee of any attorney or counsel employed
16 by the parties who are financially interested in this action.

17 Given under my hand and seal this 15th day
18 of December, 1980.

19 My Commission expires April 24, 1984.
20
21

22 _____
Notary Public
23
24
25

THIS DEED made this 15th day of December, 1976, by and between AVON STREET LIMITED PARTNERSHIP, party of the first part and AVON STREET BUSINESS CENTER, INC., party of the second part.

W I T N E S S E T H :

That for and in consideration of the sum of TEN DOLLARS (\$10.00) and other valuable consideration, receipt of which is hereby acknowledged, said party of the first part hereby GRANTS and CONVEYS with GENERAL WARRANTY and ENGLISH COVENANTS OF TITLE unto said party of the second part, all that certain tract or parcel of land situated in Albemarle County, Virginia, south of Charlottesville, containing 10.060 acres, more particularly described by plat of R. O. Snow and Associates dated January 19, 1971, captioned "Plat of 10.060 Acres on State Route 742 and Interstate Route 64 About 0.5 Miles Southwest of Charlottesville, Albemarle County, Virginia," which plat is recorded in the Clerk's Office of the Circuit Court of the County of Albemarle, Virginia, in Deed Book 484, page 557, and being the same land in all respects that was conveyed to Avon Street Limited Partnership by deed dated April 10, 1974, from Charlottesville Service Center, Inc. of record in said Clerk's Office in Deed Book 551, page 70.

This conveyance is made subject to recorded restrictions and easements affecting the property hereby conveyed.

Said land is subject to the lien of a deed of trust dated May 21, 1974, recorded in said Clerk's Office in Deed Book 551, page 72, securing one note in the principal amount of \$425,000.00 payable to Charlottesville Service Center, Inc., the unpaid principal balance of which is \$416,494.27. The party of the second part as part of the consideration for this conveyance hereby assumes and agrees to pay the balance of said indebtedness.

WITNESS the following signature and seal:

AVON STREET LIMITED PARTNERSHIP

By _____ (SEAL)

_____ (SEAL)

General Partner

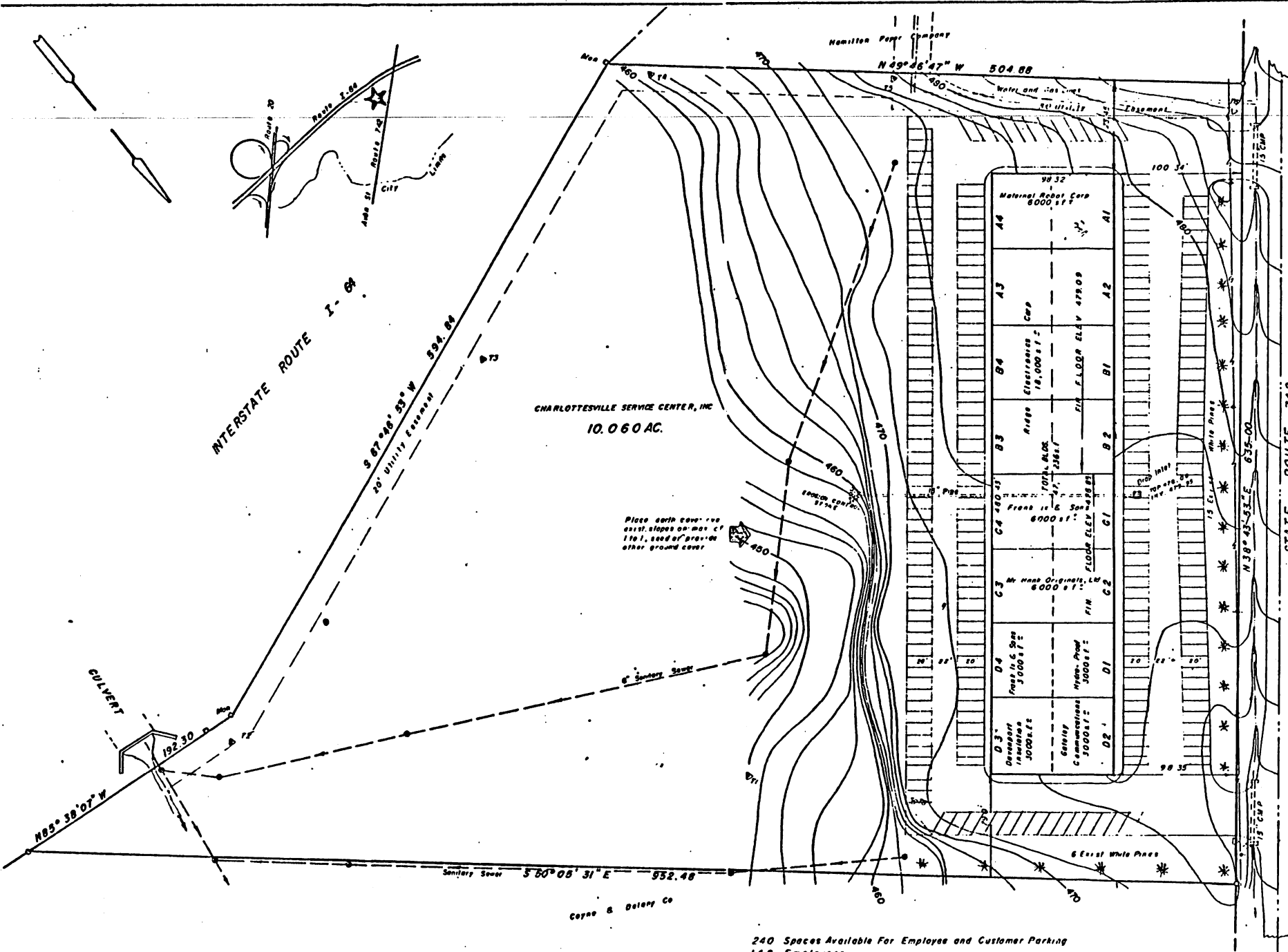
STATE OF VIRGINIA

COUNTY OF ALBEMARLE

The foregoing instrument was acknowledged before me this _____ day of _____, 19____, by _____ and _____, general partner, on behalf of Avon Street Limited Partnership, a partnership.

Notary Public

My commission expires:



254

SITE PLAN
CHARLOTTESVILLE SERVICE CENTER, INC.
 SOUTH OF CHARLOTTESVILLE CITY LIMITS
 ALBEMARLE COUNTY, VA.

240 Spaces Available For Employee and Customer Parking
 148 Employees
 16 Toilets at Present, 22 Ultimately



REVISIONS			W.S. ROUDABUSH, JR. & ASSOC.		
NO.	DATE	BY	CHANGED BY	DATE	REASON
1					
2					
3					
4					

266

BAL.
BRO'T
FOR'D

7-14 1975

Leadel Management

Accounting July

TOTAL

AMOUNT THIS CHECK

50 00

BALANCE

15,480 34

*1,671 98

*1,671 98

turnover for 267 sign

7-14 1975

Capt. M. Goodman

Assoc

Mgmt Fee
July

TOTAL

AMOUNT THIS CHECK

13 35

BALANCE

268

7-18 1975

Leadel Management

Mgmt Fee
1st & 2nd QTR

TOTAL

AMOUNT THIS CHECK

128 24

BALANCE

4

269

BAL.
BRO'T
FOR'D

18,682

7-18 1975

TO Capt. M. Goodman

Assoc

FOR Mgmt Fee Due
1st & 2nd QTR

TOTAL

AMOUNT THIS CHECK

14

BALANCE

18,668

270

7-18 1975

TO Bettles Gas Corp. of Va

Heat Flame, Inc.

FOR 6/18 bill
Fuel (Gas)

TOTAL

AMOUNT THIS CHECK

17

BALANCE

18,650

Inv. Check 235
Void Ch 2715*4777
70

7-21 1975

TO Development Corp
of Va

FOR job # 27503

TOTAL

AMOUNT THIS CHECK

3,665

BALANCE

2,265

PLAINTIFFS
EXHIBIT

6-17-8

255

ENGAD - Bayonne, N.J.

17 270 Tue chkb 4771.05 11/18
 266-276 Tue chkb 1671.98 7/19
 266 Fri chkb 1671.97 7/14

8121.00

278 ✓	BAL. BRO'T FOR'D		
9-2 1975			
4 M Goodman			
Mgm Fee Sept	DEPOSITS		
TOTAL			
AMOUNT THIS CHECK		12	35
BALANCE		387	50
375 00			
279 ✓			
9-4 1975			
Quadel Management			
Repair wind	DEPOSITS		
Damage			
TOTAL			
AMOUNT THIS CHECK		8	121 00
BALANCE		2,250	00
280 ✓		783	33
9-4 1975			
Quadel Management			
Mgm Fee - Sept	DEPOSITS		
TOTAL			
AMOUNT THIS CHECK		120	19
BALANCE			

4

281 ✓	BAL. BRO'T FOR'D		
9-4 1975			
TO Quadel Management			
FOR Acct Sept	DEPOSITS		
TOTAL			
AMOUNT THIS CHECK		50	00
BALANCE		8428	2
179 9			
119 9			
59 9			
8788 17			
9-22 1975			
TO Clower Realty			
Co, Inc			
FOR Leasing Fee	DEPOSITS		
Space A-1 & A-4			
TOTAL			
AMOUNT THIS CHECK		97	5
BALANCE		1,560	00
788.00 - 1/10			
780.00 Rent 83 ✓			
Settlement Repro. Prosp			
Income 10-119 75		304	5
10,555 2			
TO Quadel Management			
FOR Mgm Fee	DEPOSITS		
Oct			
TOTAL			
256	AMOUNT THIS CHECK	120	1
BALANCE			

101

11

T #3

EDWARD VAN LAER
INCORPORATED

General Contractors
110-B Second Street, N. E.
Charlottesville, Virginia 22901

May 30, 1975

Mr. Glade Knight
Quadel Corporation
2922 Hathaway Road
Richmond, Va.

Re: Avon ST. Limited Partnership
Wind damage

Dear Mr. Knight,

We made temporary repairs to the roof of the referenced building immediately after receiving instructions from you. This was approximately seven weeks ago.


Since that time we have made estimates to repair the roof permanently and have submitted the estimates to the insurance adjustors. (Mr. Malone with Southeastern and Mr. Harter with General Adjustment)

There seems to be some disagreement between the adjustors as to the actual damage done to the roof, which, I assume, is holding up the settlement of the claim.

In the meanwhile, however, the roof has not been properly prepared for an extended period of exposure to the elements and could leak if not permanently repaired soon.

We just want you to know the condition of things out there. If we can be of service let us know.

Yours Truly,



F. Warren Martin, President



PLAINTIFF'S EXHIBIT 3

140

BAL.
PROT
FORD

12-27

1975

Quadel Mgmt.

Dec. Accounting fee

DEPOSITS

TOTAL

AMOUNT THIS CHECK

29.17

127,604.01

OK

BALANCE

127,604.01

1887.50

141

1-8

1975

Edward van Laere, Inc.

Repair fire damage

DEPOSITS

TOTAL

AMOUNT THIS CHECK

36,920.91

BALANCE

92,570.60

142

1-8-

1975

Robert Ratschaw

Retainer

Legal

DEPOSITS

TOTAL

AMOUNT THIS CHECK

100.00

BALANCE

92,470.60

4

143

BAL.
PROT
FORD

1-1

1975

TO Quadel Management

1/4 of 2,670.83

FOR Survey Rental Income

partial mgt. fee for

DEPOSITS

TOTAL

AMOUNT THIS CHECK

120.10

BALANCE

92,350.50

144

1-1

1975

TO Robert M. Goodman Assoc.

FOR 1/4 of 2,670.83

Survey Rental Income

partial mgt. fee for

DEPOSITS

TOTAL

AMOUNT THIS CHECK

13.30

BALANCE

92,337.20

145

1-27

1975

TO Quadel Management

FOR Rent Fee - Jan

DEPOSITS

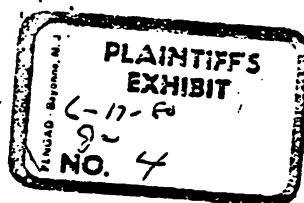
TOTAL

AMOUNT THIS CHECK

50.00

BALANCE

92,287.20



146

BAL.
BRO'T
FOR'D

92,257 06

4

1-27 1975

Edward van Lear Inc

Line damage repair

TOTAL

AMOUNT THIS CHECK

38074 18

BALANCE

54,212 88

1-22

783 33

1-29 1975

325 00

1-31 1975

Daily Progress

Advertising

TOTAL

AMOUNT THIS CHECK

17 92

BALANCE

55,303 29

148

2-1 1975

Quadel Management

Comm.
Management

TOTAL

AMOUNT THIS CHECK

120 19

BALANCE

55,183 10

149

BAL.
BRO'T
FOR'D

55,183 10

2-1 1975

TO: R. M. Goodman

Assoc

FOR 127 2670.83

Comm. Feb

TOTAL

AMOUNT THIS CHECK

13 35

BALANCE

150

2-10 1975

TO: Gordon Marshall

+ Ruben

FOR: Court Cost

Ridge Elev. Reg.

TOTAL

AMOUNT THIS CHECK

56 25

BALANCE

Deposit

151

2-15 1975

TO: Quadel Management

FOR: Act - Feb

TOTAL

AMOUNT THIS CHECK

50 00

BALANCE

55,846 10

152	BAL. BRO'T FOR'D	55,846 83	4
2-18 1975			
Par 3 Motel			
numbers for written			
out of Par 3 for			
EPCC			
TOTAL			
AMOUNT THIS CHECK		50 00	
BALANCE			
153			
2-19 1975			
Charlottesville Service			
Center			
Mortgage			
TOTAL			
AMOUNT THIS CHECK		8,750 00	
BALANCE			
2-10 1975		1887 50	
154 2-15		225 00	
2-19 1975			
Edward Van Lear			
Fire Coat			
TOTAL			
AMOUNT THIS CHECK		16,606 62	
BALANCE		33,652 71	

155	BAL. BRO'T FOR'D	
2-28 1975		
TO Jenny S. Ballan		
FOR Investor		
TOTAL		
AMOUNT THIS CHECK		99 26
BALANCE		
156		
2-28 1975		
TO Dr John F. Butterworth		
III		
FOR Investor		
TOTAL		
AMOUNT THIS CHECK		99 26
BALANCE		
157		
2-28 1975		
TO Harry R. Cooper		
FOR		
TOTAL		
AMOUNT THIS CHECK		49 6
BALANCE		32,404 50

158	BAL. BRO'T FOR'D	32,404 56	4
2-28 1975			
Dr. Marshall			
C. Deep			
OR Stopped payment			
OK	TOTAL	99 26	
	AMOUNT THIS CHECK	99 26	
	BALANCE	32,305 30	

159			
2-28 1975			
Shewin R. Fickerman			
D.D.S			
	TOTAL		
	AMOUNT THIS CHECK	49 63	
	BALANCE		

160			
2-28 1975			
Benjamin H. Garrett			
	TOTAL		
	AMOUNT THIS CHECK	99 26	
	BALANCE	32,156 41	

161	BAL. BRO'T FOR'D	32,156 3	
2-28 1975			
TO Walter F. Hale			
FOR			
	TOTAL		
	AMOUNT THIS CHECK	49 6	
	BALANCE		

162			
2-28 1975			
TO Mr & Mrs Charles			
B. Herman			
	TOTAL		
	AMOUNT THIS CHECK	148 8	
	BALANCE		

163			
2-28 1975			
TO C. Frawbridge			
Kennedy			
	TOTAL		
	AMOUNT THIS CHECK	99 2	
	BALANCE	31,858 6	

164

BAL.
BRO'T
FOR'D

31,858 61

4

2-28 1975

to Mr & Mrs Thomas
A. Laws

OR

DEPOSITS

TOTAL

AMOUNT THIS CHECK

49 63

BALANCE

165

2-28 1975

to Dr & Mrs Samuel
K. Meek

OR

DEPOSITS

TOTAL

AMOUNT THIS CHECK

99 26

BALANCE

166

2-28 1975

to Mary Ann Moates

OR

DEPOSITS

TOTAL

AMOUNT THIS CHECK

49 63

BALANCE

31,660 09

167

BAL.
BRO'T
FOR'D

31,660 00

2-28 1975

to George E. Mawbray
Jr

FOR

DEPOSITS

TOTAL

AMOUNT THIS CHECK

49 6

BALANCE

168

2-28 1975

to Marvin C. Neal, Jr

FOR

DEPOSITS

TOTAL

AMOUNT THIS CHECK

99 2

BALANCE

169

2-28 1975

to Col. Raymond Z.
Nelson

FOR

DEPOSITS

TOTAL

AMOUNT THIS CHECK

99 2

BALANCE

31,411 9

170

BAL.
BRO'T
FOR'D

31,411 94

4

2-28 1975
R. L. Riggs

DEPOSITS

TOTAL

AMOUNT THIS CHECK

99 26

BALANCE

171

2-28 1975
George L. Richie Jr.

DEPOSITS

TOTAL

AMOUNT THIS CHECK

99 26

BALANCE

172

2-28 1975
Dr Edward F. Koso Jr.

DEPOSITS

TOTAL

AMOUNT THIS CHECK

99 26

BALANCE

31,114 16

173

BAL.
BRO'T
FOR'D

31,114 16

2-28 1975
TO Dr. L. A. Sherbeck

DEPOSITS

FOR

TOTAL

AMOUNT THIS CHECK

99 26

BALANCE

174

2-28 1975
TO Samuel J. Simon

DEPOSITS

FOR

TOTAL

AMOUNT THIS CHECK

148 88

BALANCE

175

2-28 1975
TO C. Robert Wilkrite

DEPOSITS

FOR

TOTAL

AMOUNT THIS CHECK

99 26

BALANCE

30,766 76

176	BAL. BRO'T FOR'D	30,766 76	4
2-28 1975			
Randolph P. Warder			
	DEPOSITS		
	TOTAL		
AMOUNT THIS CHECK		99 26	
BALANCE			
177			
2-28 1975			
Robert M. Goodman			
Assoc.			
	DEPOSITS		
Invest			
	TOTAL		
AMOUNT THIS CHECK		198 51	
BALANCE		30,469 02	
178			
3-5 1975			
Quadel Management			
Comm			
	DEPOSITS		
	TOTAL		
AMOUNT THIS CHECK		1130 19	
BALANCE		30,348 83	

179	BAL. BRO'T FOR'D	30,348 83	
3-5 1975			
TO Quadel Management			
FOR Rent - March			
	DEPOSITS		
	TOTAL		
AMOUNT THIS CHECK		150 00	
BALANCE			
3-6		375 00	
3-6		1125 00	
180			
3-6 1975			
TO Merchants & Business			
Messrs			
FOR Insurance			
	DEPOSITS		
	TOTAL		
AMOUNT THIS CHECK		90 00	
BALANCE			
181			
3-6 1975			
TO Snows Nursery			
and Garden Shop			
FOR Gardening &			
Gravel			
# 1932			
	TOTAL		
AMOUNT THIS CHECK		133 00	
BALANCE		31,595 83	

182

BAL.
BROT
FORD

31,595 83

4

3-10

1975

City of Charlottesville

Water & Gas

DEPOSITS

TOTAL

AMOUNT THIS CHECK

136 52

BALANCE

183

3-10

1975

H&PCo

DEPOSITS

TOTAL

AMOUNT THIS CHECK

15 00

BALANCE

184

3-10

1975

Dr. & Mrs. William
O. Deep

DEPOSITS

TOTAL

AMOUNT THIS CHECK

99 10

BALANCE

31,554 31

185

BAL.
BROT
FORD

31,554 31

3-21

1975

TO H.D. Faulkner Co

FOR Services - Dec 31, 1974
Legal

DEPOSITS

TOTAL

AMOUNT THIS CHECK

1549 96

BALANCE

31,004 31

3-7

3-30

3-186

783 33
325 00
387 50

3-21

1975

TO R.H. M. Goodman

FOR Assoc
Comm - March

DEPOSITS

TOTAL

AMOUNT THIS CHECK

113 35

BALANCE

187

3-21

1975

TO Edward Van Lear

FOR Line Damage
Repair

DEPOSITS

TOTAL

AMOUNT THIS CHECK

928 10

BALANCE

31,558 73

188

BAL.
BRO'T
FOR'D

31,558.73

4

3-21 1975

Edward van Leer

Contractors share
of Savings

TOTAL

AMOUNT THIS CHECK

2,125.16

BALANCE

189

3-24 1975

Gordon, Marshall
and RutchenLaw suit against
Bridge Electronics
Legal

TOTAL

AMOUNT THIS CHECK

100.00

BALANCE

29,333.57

190

3-28 1975

Bottle Gas Corp

of Va

TOTAL

AMOUNT THIS CHECK

149.37

BALANCE

191

BAL.
BRO'T
FOR'D

3-28 1975

TO Bottle Gas Corp
of Va

FOR

Gas

TOTAL

AMOUNT THIS CHECK

142.30

BALANCE

2,261.20

2/28 Bal. 30,469.32
deposits 2,995.83
drawings 4,203.65
3/31 Bal. 29,261.20

4-2 1975

TO Luadel Management

FOR Mgm Fee

April

TOTAL

AMOUNT THIS CHECK

120.10

BALANCE

193

4-3 1975

TO Luadel Management

FOR Oct - April

TOTAL

AMOUNT THIS CHECK

50.00

BALANCE

194		BAL. BRO'T FOR'D
4-2	19 75	
Jenny L. Ballard		
Investor		
TOTAL		
AMOUNT THIS CHECK	119 11	
BALANCE		
Cash 50.00 Rent 250.00 1/10 195		300 00
4-2	19 75	
Dr John R Butterworth III		
TOTAL		
AMOUNT THIS CHECK	119 11	
BALANCE		
196		
4-2	19 75	
Barry L. Cooper		
TOTAL		
AMOUNT THIS CHECK	59 55	
BALANCE		

197		BAL. BRO'T FOR'D
4-2	19 75	
TO Dr & Mrs William D. Deep		
FOR		
TOTAL		
AMOUNT THIS CHECK	119 11	
BALANCE		
198		
4-2	19 75	
TO Sherwin R. Fishman D. D. S		
FOR		
TOTAL		
AMOUNT THIS CHECK	59 55	
BALANCE		
199		
4-2	19 75	
TO Benjamin H. Garnett		
FOR		
TOTAL		
AMOUNT THIS CHECK	119 11	
BALANCE		

200

BAL.
BRO'T
FOR'D

4-2

19 75

Walter F. Hale

DEPOSITS

TOTAL

AMOUNT THIS CHECK

✓ 59 55

BALANCE

201

4-2

19 75

Mr & Mrs Charles
B. Herman

DEPOSITS

TOTAL

AMOUNT THIS CHECK

✓ 178 66

BALANCE

202

4-2

19 75

C. Inouebudge
Kennedy

DEPOSITS

TOTAL

AMOUNT THIS CHECK

✓ 119 11

BALANCE

4

203

BAL.
BRO'T
FOR'D

4-2

19 75

TO Mr & Mrs Thomas
A. Laws

DEPOSITS

FOR

TOTAL

AMOUNT THIS CHECK

✓ 59 55

BALANCE

204

4-2

19 75

TO Mr & Mrs Samuel
K. Moak

DEPOSITS

FOR

TOTAL

AMOUNT THIS CHECK

✓ 119 11

BALANCE

205

4-2

19 75

TO Mary Ann Moore

DEPOSITS

FOR

TOTAL

AMOUNT THIS CHECK

✓ 59 55

BALANCE

206

BAL.
BRO'T
FOR'D

4-2 19 75

George Z. Manbray
Jr

DEPOSITS

TOTAL

AMOUNT THIS CHECK

✓ 59 55

BALANCE

207

4-2 19 75

Maxim C. Neal Jr

DEPOSITS

TOTAL

AMOUNT THIS CHECK

✓ 119 11

BALANCE

208

4-2 19 75

Col. Raymond
Z. Nelson, Jr

DEPOSITS

TOTAL

AMOUNT THIS CHECK

✓ 119 11

BALANCE

4

209

BAL.
BRO'T
FOR'D

4-2 19 75

TO

R. R. Riggs

FOR

Paid

DEPOSITS

TOTAL

AMOUNT THIS CHECK

✓ 119 11

BALANCE

210

4-2 19 75

TO

George G. Ruck
Ritchie

FOR

DEPOSITS

TOTAL

AMOUNT THIS CHECK

✓ 119 11

BALANCE

211

4-2 19 75

TO

Dr. Edward J. Ross
Jr

FOR

✓ 119 11

DEPOSITS

TOTAL

AMOUNT THIS CHECK

✓ 119 11

BALANCE

212

BAL.
BRO'T
FOR'D

4-2 1975

Dr. S. A. Sherbeck

DEPOSITS

TOTAL

AMOUNT THIS CHECK

119 11

BALANCE

213

4-2 1975

Samuel J. Simon

DEPOSITS

TOTAL

AMOUNT THIS CHECK

178 66

BALANCE

214

4-2 1975

C. Robert Wilhoite

DEPOSITS

TOTAL

AMOUNT THIS CHECK

119 11

BALANCE

4

215

BAL.
BRO'T
FOR'D

4-2 1975

TO Randolph P.
Waldson

FOR

DEPOSITS

TOTAL

AMOUNT THIS CHECK

119 11

BALANCE

216

4-2 1975

TO Robt M Goodman
Assoc

FOR

DEPOSITS

TOTAL

AMOUNT THIS CHECK

241 34

BALANCE

Rental
Note Payment 4,588.20
Rent 750.00

5,338.20

217

4-7 1975

TO County of Alameda

FOR Real Estate Taxes
1974

DEPOSITS

TOTAL

AMOUNT THIS CHECK

4,973.00

BALANCE

218	BAL. BRO'T FOR'D	
4-8 1975		
Robt M Goodman		
Mg Fee April	DEPOSITS	
TOTAL		
AMOUNT THIS CHECK	✓ 13 35	
BALANCE	✓ 2,295 93	
4-8	✓ 375 00	
4-1		
219		
4-22 1975		
City of Charlottesville		
Water & Gas	DEPOSITS	
TOTAL		
AMOUNT THIS CHECK	✓ 88 96	
BALANCE	✓ 325 00	
Big O Posters 4-24		
220		
4-22 1975		
Edward van Laet		
Fire		
Apr 14	DEPOSITS	
Statement		
TOTAL		
AMOUNT THIS CHECK	✓ 1683 25	
BALANCE		

SEE DEPOSIT 474 & 477 - SAME?

221	BAL. BRO'T FOR'D	
4-24 1975		
TO Mr B Agency, Inc		
FOR Insurance	DEPOSITS	
(Fine)		
TOTAL		
AMOUNT THIS CHECK	✓ 1031 00	
BALANCE	✓ 27432 07	
222		
5-1 1975		
TO Manson & Hethley		
Hethley		
FOR	DEPOSITS	
Acoustical ceiling		
TOTAL		
AMOUNT THIS CHECK	✓ 8,053 00	
BALANCE		
223		
5 5 1975		
TO Guadel Management		
FOR Mg Fee	DEPOSITS	
TOTAL		
AMOUNT THIS CHECK	✓ 375 03	
BALANCE		

224

BAL.
BROT
FOR'D

5-5

19 75

Ladell Management

Rent Fee

TOTAL

AMOUNT THIS CHECK

50 00

BALANCE

225

5-6

19 75

Charlottesville
Service Center
Mortgage

TOTAL

AMOUNT THIS CHECK

8,750 00

BALANCE

Davenport Sep
Mr Hand 226

375 00

783 33

5-6

19 75

R. L. Riggs
To replace
Ch 209
Investor

TOTAL

AMOUNT THIS CHECK

119 00

BALANCE

4

227

BAL.
BROT
FOR'D

5-12

19 75

TO

V & P Co

FOR

Electricity

TOTAL

AMOUNT THIS CHECK

35 1/4

BALANCE

5-20 Commun
Services 228

387 50

5-9

19 75

TO

Bottled Gas
Corp of Va

FOR

TOTAL

AMOUNT THIS CHECK

68 80

BALANCE

Big O Pactors
Frank IX 229

325 00

1125 00

5-15

19 75

TO

Robt M. Gardner

FOR

Mgrr Lee May

TOTAL

AMOUNT THIS CHECK

41 60

BALANCE

272

230

BAL.
BRO'T
FOR'D

5-28 1975

Dr. Clark

Return of
Security Deposit

DEPOSITS

TOTAL

AMOUNT THIS CHECK

250 00

BALANCE

12685 24

Mr Hank - 6-3

Cable Elec. 231 6-3

783 33

1500 00

6-1 1975

Quadel Management

Mgmt Fee - June

DEPOSITS

TOTAL

AMOUNT THIS CHECK

120 19

BALANCE

232

6-1 1975

Quadel Mgmt

Acct June

DEPOSITS

TOTAL

AMOUNT THIS CHECK

50 00

BALANCE

4

233

BAL.
BRO'T
FOR'D

6-3 1975

TO. Lott M. Goodman

Assoc

FOR Mgmt Fee

June

DEPOSITS

TOTAL

AMOUNT THIS CHECK

13 3

BALANCE

Davenport
Refund Info
Comm 234
Travel TX

6/30 1975

375 00

36 5

387 5

1,125 0

16709 1

TO Davenport Insurance

FOR 5/31 Statement

Wrag Copper Pipe

DEPOSITS

TOTAL

AMOUNT THIS CHECK

50 00

BALANCE

235

6/30 1975

TO County of Albemarle

FOR Permit Bldg Insp.

DEPOSITS

TOTAL

AMOUNT THIS CHECK

700

BALANCE

273

236

BAL.
BRO'T
FOR'D

6/30 1975

City of Charlottesville

OR Water

DEPOSITS

TOTAL

AMOUNT THIS CHECK

27 64

BALANCE

237

6/30 1975

Elbert Holt Ins Agency

OR Fire, EC U & M

Ins

DEPOSITS

TOTAL

AMOUNT THIS CHECK

400 00

BALANCE

238

6/30 1975

Merchant & Business Men's

OR # 45108978

Ins

DEPOSITS

TOTAL

AMOUNT THIS CHECK

443 80

BALANCE

4

239

BAL.
BRO'T
FOR'D

6/30 1975

TO Merchant & Business
Men's Ins.

FOR

Pol. 45108219

DEPOSITS

TOTAL

AMOUNT THIS CHECK

39 00

BALANCE

240

6/30 1975

TO Vepco

FOR

Electric

DEPOSITS

TOTAL

AMOUNT THIS CHECK

168 14

BALANCE

15,510 57

241

6/30 1975

TO Battliss Gas Corp of Va.

FOR

Gas
2/20 - 4/21

DEPOSITS

TOTAL

AMOUNT THIS CHECK

418 31

BALANCE

15,102 31

242 BAL. BRO'T FOR'D

July 2 1975

Jenny I Ballard

Arvon St Ltd Partnership

and Qtr Distribution

TOTAL

AMOUNT THIS CHECK 198 51

BALANCE

243

July 2 1975

John F. Butterworth III

TOTAL

AMOUNT THIS CHECK 198 51

BALANCE

244

July 2 1975

W. William D. Deep

TOTAL

AMOUNT THIS CHECK 198 51

BALANCE

4

245 BAL. BRO'T FOR'D

July 2 1975

TO Sherwin R. Fishman D.D.

FOR

TOTAL

AMOUNT THIS CHECK 99 21

BALANCE

246

July 2 1975

TO Benjamin H. Garrett

FOR

TOTAL

AMOUNT THIS CHECK 198 51

BALANCE

247

July 2 1975

TO Walter F. Hale

FOR

TOTAL

AMOUNT THIS CHECK 99 21

BALANCE

248

BAL.
BRO'T
FOR'D

July 2 19 75

Lester B. Herman

DEPOSITS

TOTAL

AMOUNT THIS CHECK

297 77

BALANCE

249

July 2 19 75

Louis E. Kennedy

DEPOSITS

TOTAL

AMOUNT THIS CHECK

198 51

BALANCE

250

July 2 19 75

Thomas C. Laws

DEPOSITS

TOTAL

AMOUNT THIS CHECK

99 26

BALANCE

4

251

BAL.
BRO'T
FOR'D

July 2 19 75

TO

Dr. & Mrs. Samuel K. Mosh

FOR

DEPOSITS

TOTAL

AMOUNT THIS CHECK

198 51

BALANCE

252

July 2 19 75

TO

Mary Ann Porter

FOR

DEPOSITS

TOTAL

AMOUNT THIS CHECK

99 26

BALANCE

253

July 2 19 75

TO

George E. Howbray Jr.

FOR

DEPOSITS

TOTAL

AMOUNT THIS CHECK

99 26

BALANCE

254

BAL.
BRO'T
FOR'D

July 2 19 75

Harmon C. Neal Jr.

OR

DEPOSITS

TOTAL

AMOUNT THIS CHECK 198 51

BALANCE

255

July 2 19 75

Raymond J. Nelson Jr.

OR

DEPOSITS

TOTAL

AMOUNT THIS CHECK 198 51

BALANCE

256

July 2 19 75

R L Biggs

DEPOSITS

TOTAL

AMOUNT THIS CHECK 198 51

BALANCE

4

257

BAL.
BRO'T
FOR'D

July 2 19 75

TO George D. Ritchie

FOR

DEPOSITS

TOTAL

AMOUNT THIS CHECK 198 5

BALANCE

258

July 2 19 75

TO Edward F. Rens Jr.

FOR

DEPOSITS

TOTAL

AMOUNT THIS CHECK 198 5

BALANCE

259

July 2 19 75

TO Dr. L. A. Shulock

FOR

DEPOSITS

TOTAL

AMOUNT THIS CHECK 198 5

BALANCE

277

260	BAL. BRO'T FOR'D	July 2 1975	
Ronald J. Ammon		DEPOSITS	
TOTAL			
AMOUNT THIS CHECK		297 77	
BALANCE			
261		July 2 1975	
Barry L. Cooper		DEPOSITS	
TOTAL			
AMOUNT THIS CHECK		99 26	
BALANCE			
262		July 2 1975	
C. Robert Wilhoite		DEPOSITS	
TOTAL			
AMOUNT THIS CHECK		198 51	
BALANCE			

4

263	BAL. BRO'T FOR'D	July 2 1975	
TO Randolph Woodson		DEPOSITS	
FOR			
TOTAL			
AMOUNT THIS CHECK		198 51	
BALANCE			
Common Services		387 50	
Frank IX		1125 00	
Davenport 264		375 00	
		July 2 1975	
TO Robert M. Hoodman Inc.		DEPOSITS	
FOR			
TOTAL			
AMOUNT THIS CHECK		402 27	
BALANCE			
Mr Hank Ridge		783 33	
		2250 00	
265		7-14 1975	
TO Luadel Management		DEPOSITS	
FOR Agn Lee			
July			
TOTAL			
AMOUNT THIS CHECK		120 19	
BALANCE			

272 ✓	BAL. BRO'T FOR'D		
7/28 1975			
Country N. R. Co.			
Retirement for			
Dep on new Policy	DEPOSITS		
TOTAL			
AMOUNT THIS CHECK		500 00	
7/3 BALANCE		17,660 72	
8-1 Refund OEP Co			
273 ✓		218 10	
8-4 1975			
Ralph M. Goodman			
Assoc			
Aug Mgmt Fee	DEPOSITS		
TOTAL			
AMOUNT THIS CHECK		13 35	
BALANCE			
274 ✓			
8-4 1975			
Luadel Mgmt			
Aug Mgmt Fee	DEPOSITS		
TOTAL			
AMOUNT THIS CHECK		120 19	
BALANCE			

275 ✓	BAL. BRO'T FOR'D		
8-6 1975			
TO Charlottesville			
Service Centers			
FOR			
Mortgage	DEPOSITS		
TOTAL			
AMOUNT THIS CHECK		8750 00	
BALANCE			
Big O Pastor		775 00	
Mr. Hank		783 30	
Comm Service		387 50	
Davenport		375 00	
8/7 1975			
TO Battled Gas Corp			
Uca			
FOR			
7/22 Bill			
TOTAL			
AMOUNT THIS CHECK		1 15	
BALANCE			
Redeposit Ins check		1,671 90	
277 ✓			
8-7 1975			
TO Luadel Management			
FOR			
Acct: Aug	DEPOSITS		
TOTAL			
AMOUNT THIS CHECK		50 00	
BALANCE		12436 70	

284 ✓

BAL.
BRO'T
FOR'D

10 - 1 1975

Lualaba Management

acct Oct

DEPOSITS

TOTAL

AMOUNT THIS CHECK

50 00

BALANCE

Overport Insul ✓ 375 00
 raden Indus (air Motor) 650 00
 Mr Hark 285 ✓ 783 33
 Sig O Pastors ✓ 775 00
 10-27 1975

Dr John Butterworth

Investor

DEPOSITS

TOTAL

AMOUNT THIS CHECK

198 51

BALANCE

edge - Sept ✓ 2,252 00
 mm Services / 237 18
 Merchant & Bessier 427 03
 288 512 60
 Budget 780 00
 10-27 1975

Jenny S Ballard

Investor

DEPOSITS

TOTAL

AMOUNT THIS CHECK

198 51

BALANCE

16,778 16

4

287

BAL.
BRO'T
FOR'D

10-27 1975

TO Barry L. Capper

FOR Investor

DEPOSITS

TOTAL

AMOUNT THIS CHECK

99 21

BALANCE

288

10-27 1975

TO Dr & Mrs William
D. Deep

FOR

DEPOSITS

TOTAL

AMOUNT THIS CHECK

198 51

BALANCE

289

10-27 1975

TO Sherwin R.
Fushman

FOR

DEPOSITS

TOTAL

AMOUNT THIS CHECK

99 21

BALANCE

290

BAL.
BROT
FORD

10-27 1975

Benjamin H.
Garrett

DEPOSITS

TOTAL

AMOUNT THIS CHECK

198 51

BALANCE

291

10-27 1975

Walter F. Hale

DEPOSITS

TOTAL

AMOUNT THIS CHECK

99 26

BALANCE

292

10-27 1975

Mr + Mrs Charles
F. Herman

DEPOSITS

TOTAL

AMOUNT THIS CHECK

297 77

BALANCE

4

293

BAL.
BROT
FORD

10-27 1975

TO C. Lawbridge
Kennedy

DEPOSITS

FOR

TOTAL

AMOUNT THIS CHECK

198 51

BALANCE

294

10-27 1975

TO Mr + Mrs Thomas
A. Laws

DEPOSITS

FOR

TOTAL

AMOUNT THIS CHECK

99 26

BALANCE

295

10-27 1975

TO Dr + Mrs Samuel
K. Moak

DEPOSITS

FOR

TOTAL

AMOUNT THIS CHECK

198 51

BALANCE

281

296

BAL.
BRO'T
FOR'D

10-27 1975

Mary Ann Matas

DEPOSITS

TOTAL

AMOUNT THIS CHECK

99 26

BALANCE

297

10-27 1975

George E. Mowbray
jr

DEPOSITS

TOTAL

AMOUNT THIS CHECK

99 26

BALANCE

298

10-27 1975

Maurice C. Neal
jr

DEPOSITS

TOTAL

AMOUNT THIS CHECK

198 51

BALANCE

4

299

BAL.
BRO'T
FOR'D

10-27 1975

TO Col. Raymond Z
Nelson, jr

DEPOSITS

FOR

TOTAL

AMOUNT THIS CHECK

198 51

BALANCE

300

10-27 1975

TO R. L. Regis

DEPOSITS

FOR

TOTAL

AMOUNT THIS CHECK

198 51

BALANCE

301

10-27 1975

TO George H.
Ritchie, jr M.D.

DEPOSITS

FOR

TOTAL

AMOUNT THIS CHECK

198 51

BALANCE

302

BAL.
DRO'T
FOR'D

10-27 1975

Edward F.
Lass, Jr

DEPOSITS

TOTAL

AMOUNT THIS CHECK

198 51

BALANCE

303 ✓

10-27 1975

Dr. L. A. Shepherd

DEPOSITS

TOTAL

AMOUNT THIS CHECK

198 51

BALANCE

304

10-27 1975

Samuel G.
Linnion

DEPOSITS

TOTAL

AMOUNT THIS CHECK

297 77

BALANCE

4

305

BAL.
DRO'T
FOR'D

10-27 1975

TO C. Robert Wilkrite

DEPOSITS

FOR

TOTAL

AMOUNT THIS CHECK

198 51

BALANCE

306

10-27 1975

TO Randolph P.
Wadden

DEPOSITS

FOR

TOTAL

AMOUNT THIS CHECK

198 51

BALANCE

307

10-27 1975

TO Robert M.
Goodman Assoc

DEPOSITS

FOR

TOTAL

AMOUNT THIS CHECK

402 27

BALANCE

12802 67

308

BAL.
BRO'T
FOR'D

11/10

1975

gmc

DEPOSITS

Comm. Recaps
(mgt. fee)

TOTAL

AMOUNT THIS CHECK

194 73

BALANCE

adler Industries /
Big O Pastors
Greenport 309650 00
387 50
375 00

11/10

1975

Rob't m. Goodman
Assoc.

DEPOSITS

mgt. fee

TOTAL

AMOUNT THIS CHECK

21 65

BALANCE

310

11-12

1975

Quadel Management

DEPOSITS

Mgmt Fee
Nov

TOTAL

AMOUNT THIS CHECK

120 00

BALANCE

4

311

BAL.
BRO'T
FOR'D

11-12

1975

TO

Quadel Management

FOR

Acct Nov

DEPOSITS

TOTAL

AMOUNT THIS CHECK

50 00

BALANCE

Ridge - Act ✓
Mr Hank ✓
Comm Serv 3122,250 00
783 33
427 03

11-14

1975

TO

Charlottesville
Service Center

FOR

Mortgage

DEPOSITS

TOTAL

AMOUNT THIS CHECK

8750 00

BALANCE

Badger - Parvahan
Big O Pastors 313 ✓9539 15
780 00
387 50

11-14

1975

TO

Albemarle County
Service

FOR

Water Sewer

DEPOSITS

TOTAL

AMOUNT THIS CHECK

274 54

BALANCE

9432 11

314

BAL.
BRO'T
FOR'D

12-1 1975

Quadel Mgm
Corp

Mgm Fee

TOTAL

AMOUNT THIS CHECK

180 00

BALANCE

315

12-1 1975

Capt M. Goodman

Mgm Fee

TOTAL

AMOUNT THIS CHECK

13 35

BALANCE

316

12-1 1975

Quadel Mgm
Corp

Asst Fee

TOTAL

AMOUNT THIS CHECK

50 00

BALANCE

4

317

BAL.
BRO'T
FOR'D

12-1 1975

TO Snows Nursery

FOR

Landscaping

TOTAL

AMOUNT THIS CHECK

837 00

BALANCE

8551 76

Borden Indus
Davenport 318

650 00

375 00

9376 76

19

TO

FOR

Card

TOTAL

AMOUNT THIS CHECK

BALANCE

Mr Hank
Common Serv 319

783 33

427 03

12-3 1975

TO County of Allegheny
Va

FOR

1975 Real
Estate Taxes

TOTAL

AMOUNT THIS CHECK

3881 24

BALANCE

6705 10

320

BAL.
BRO'T
FOR'D

1-31 1976

Albemarle County
Service Authority

OR Water

TOTAL

AMOUNT THIS CHECK

206 70

2 Badger Pavilion
radin
in Serv
import 1
1/2 arch
Post 1-31-76 19

BALANCE

700 00
650 00
427 03
375 00
783 33
581 25
10,015 77

Jenny Ballard

OR Investor

TOTAL

AMOUNT THIS CHECK

99 25

Big O. Paxler

BALANCE

775 00

322

1-31 1976

Dr John F
Butterworth

OR

TOTAL

AMOUNT THIS CHECK

99 25

BALANCE

4

323

BAL.
BRO'T
FOR'D

1-31 1976

TO Barry S. Cooper

FOR

TOTAL

AMOUNT THIS CHECK

49 6

BALANCE

324

1-31 1976

TO Dr & Mrs William
Deerp

FOR

TOTAL

AMOUNT THIS CHECK

99 25

BALANCE

325

1-31 1976

TO Sherwin R.
Fishman

FOR

TOTAL

AMOUNT THIS CHECK

49 6

BALANCE

326

BAL.
BRO'T
FOR'D

1-31 1976

Benjamin H
Harnett

DEPOSITS

TOTAL

AMOUNT THIS CHECK

99 25

BALANCE

327

1-31 1976

Walter F. Hale

DEPOSITS

TOTAL

AMOUNT THIS CHECK

49 63

BALANCE

328

1-31 1976

Mr & Mrs Charles
B. Herman

DEPOSITS

TOTAL

AMOUNT THIS CHECK

149 89

BALANCE

4

329

BAL.
BRO'T
FOR'D

1-31 1976

TO C. Trumbidge
Kennedy

FOR

DEPOSITS

TOTAL

AMOUNT THIS CHECK

99 25

BALANCE

330

1-31 1976

TO Mr & Mrs Thomas
A. Laws

FOR

DEPOSITS

TOTAL

AMOUNT THIS CHECK

49 12

BALANCE

331

1-31 1976

TO Mr & Mrs Samuel
K. Moak

FOR

DEPOSITS

TOTAL

AMOUNT THIS CHECK

99 25

BALANCE

332

BAL.
BRO'T
FOR'D

1-31 1976

Mary Ann Monte

DEPOSITS

TOTAL

AMOUNT THIS CHECK

49.13

BALANCE

333

1-31 1976

George E. Newberry

DEPOSITS

TOTAL

AMOUNT THIS CHECK

49.63

BALANCE

334

1-31 1976

Merrin C Neal
Jr

DEPOSITS

TOTAL

AMOUNT THIS CHECK

99.25

BALANCE

4

335

BAL.
BRO'T
FOR'D

1-31 1976

TO Cal Raymond
Nelson, Jr

DEPOSITS

TOTAL

AMOUNT THIS CHECK

99.2

BALANCE

336

1-31 1976

TO B. L. Riggs

DEPOSITS

TOTAL

AMOUNT THIS CHECK

99.2

BALANCE

337

1-31 1976

TO George L. Ritchie

DEPOSITS

TOTAL

AMOUNT THIS CHECK

99.2

BALANCE

338		BAL. BRO'T FOR'D	
1-31 1976			
Dr Edward F. Lass, Jr			
OR		DEPOSITS	
TOTAL			
AMOUNT THIS CHECK		99 25	
BALANCE			
339			
1-31 1976			
Dr. L.A. Sherbeck			
OR		DEPOSITS	
TOTAL			
AMOUNT THIS CHECK		99 25	
BALANCE			
340			
1-31 1976			
General J. Senior			
OR		DEPOSITS	
TOTAL			
AMOUNT THIS CHECK		148 89	
BALANCE			

4

341		BAL. BRO'T FOR'D	
1-31 1976			
TO C. Robert Wilharte			
FOR		DEPOSITS	
TOTAL			
AMOUNT THIS CHECK		99 25	
BALANCE			
342			
1-31 1976			
TO Randolph L. Waldson			
FOR		DEPOSITS	
TOTAL			
AMOUNT THIS CHECK		99 25	
BALANCE			
343			
1-31 1976			
TO Robt M Goodman Assoc			
FOR		DEPOSITS	
TOTAL			
AMOUNT THIS CHECK		201 19	
BALANCE		8604 52	

344 /		BAL. BRO'T FOR'D	
2-11 1976			
Quadel Management			
OR Act Fee		DEPOSITS	
Jan, Feb.			
TOTAL			
AMOUNT THIS CHECK		100 00	
BALANCE			
Nov		2,250 00	
Wash		783 33	
Spaas Insul 345 /		375 00	
In Industries		650 00	
2-11 1976			
Quadel Management			
OR Mgm Fee		DEPOSITS	
Jan, Feb			
TOTAL			
AMOUNT THIS CHECK		320 00	
BALANCE		12,742 85	
346 /			
2-11 1976			
Albanyville			
County Service			
Auth			
Water			
TOTAL			
AMOUNT THIS CHECK		100 84	
BALANCE			

347 /		BAL. BRO'T FOR'D	
2-11 1976			
TO S. H. Williamson			
Co Inc			
FOR		DEPOSITS	
Household			
TOTAL			
AMOUNT THIS CHECK		213 0	
BALANCE		11,929 0	
Comm Service		427 0	
Badger Pout 348		620 0	
2-14 1976			
TO Charlotteville			
Service Center			
FOR		DEPOSITS	
Mtg Payment			
TOTAL			
AMOUNT THIS CHECK		8750 0	
BALANCE		3606 0	
Ridge - Dec 349 /		2,250 00	
Badger Pout 348		6476 0	
3-1- 1976			
TO Quadel Management			
FOR Mgm Fee			
March			
TOTAL			
AMOUNT THIS CHECK		160 0	
BALANCE			

350 ✓	BAL. BRO'T FOR'D	
3-1 1976		
Quadel Management		
Acct Fee	DEPOSITS	
March		
TOTAL		
AMOUNT THIS CHECK	50 00	
BALANCE		
Graden Indus	650 00	
Mr Hank	783 33	
Davenport 351 ✓	375 00	
3-10 1976	-1	
Albemarle County		
Water	DEPOSITS	
TOTAL		
AMOUNT THIS CHECK	85 46	
BALANCE		
Big Electronics - Jof	2,250 00	
in sew 352 ✓	427 03	
3-10 1976		
Clower Realty		
Commission	DEPOSITS	
TOTAL		
AMOUNT THIS CHECK	94 50	
BALANCE	10,571 74	

4

353 ✓	BAL. BRO'T FOR'D	
4-2 1976		
Quadel Management		
FOR	DEPOSITS	
Mar Fee		
April		
TOTAL		
AMOUNT THIS CHECK	160 0	
BALANCE		
354 ✓		
4-2 1976		
Quadel Management		
FOR	DEPOSITS	
Acct Fee		
April		
TOTAL		
AMOUNT THIS CHECK	50 0	
BALANCE		
Big O. Poster	775 00	
Big O. Posters	775 00	
Graden 355 ✓	650 00	
Davenport	375 00	
4-12 1976	12,936 00	
TO S. D. Aberson & Co		
Auditing	DEPOSITS	
FOR Auditing Fee		
TOTAL		
AMOUNT THIS CHECK	425 0	
BALANCE		

356	BAL. BROFT FORD	12511 44	4
4-12	1976		
Albemarle County Service Authority			
Wales			
TOTAL			
AMOUNT THIS CHECK		103 36	
BALANCE		783 33	
Hand Insurance		670 00	
357			
4-12	1976		
Nationwide Mutual Life Insurance Co			
Ins			
TOTAL			
AMOUNT THIS CHECK		467 00	
BALANCE		427 03	
Comm Services		13821 44	
358			
4-16	1976		
Quadel Management			
103.25 4th QTR			
326.60 1st "			
TOTAL			
AMOUNT THIS CHECK		429 85	
BALANCE			

355	BAL. BROFT FORD	13391 5	
4-19	1976		
TO Jenny Ballard			
FOR			
TOTAL			
AMOUNT THIS CHECK		138 96	
BALANCE			
360			
4-19	19		
TO Dr John F Butterworth			
FOR			
TOTAL			
AMOUNT THIS CHECK		138 96	
BALANCE			
361			
4-19	19		
TO Barry L. Cooper			
FOR			
TOTAL			
AMOUNT THIS CHECK		69 48	
BALANCE			

362		BAL. BRO'T FOR'D	12,744	19
4/19		19	76	
Dr & Mrs William Reep				
OR				
TOTAL				
AMOUNT THIS CHECK		138	96	
BALANCE				
363				
4/19		19		
Sherrin R Fehman				
OR				
TOTAL				
AMOUNT THIS CHECK		69	48	
BALANCE				
364				
4/19		19		
Benjamin H Marrett				
OR				
TOTAL				
AMOUNT THIS CHECK		138	96	
BALANCE				

365		BAL. BRO'T FOR'D	12,376	
4/19		19	76	
TO Walter F. Hale				
FOR				
TOTAL				
AMOUNT THIS CHECK		69	4	
BALANCE				
366				
4/19		19		
TO Mr & Mrs Charles B. Herman				
FOR				
TOTAL				
AMOUNT THIS CHECK		208	44	
BALANCE				
367				
4/19		19		
TO C. Inghambridge Kennedy				
FOR				
TOTAL				
AMOUNT THIS CHECK		138	96	
BALANCE				

368		BAL. BRO'T FOR'D		979	91
April 19 1976					
Mr & Mrs Thomas					
A Laws					
DEPOSITS					
TOTAL					
AMOUNT THIS CHECK		69 48			
BALANCE					
369		BAL. BRO'T FOR'D		979	91
4-19 19					
Dr & Mrs					
Samuel K. Moore					
DEPOSITS					
TOTAL					
AMOUNT THIS CHECK		138 96			
BALANCE					
370		BAL. BRO'T FOR'D		979	91
4-19 19					
Mary Ann					
Moates					
DEPOSITS					
TOTAL					
AMOUNT THIS CHECK		69 48			
BALANCE					

371		BAL. BRO'T FOR'D		979	91
April 19 1976					
TO George E. Mearns					
FOR					
TOTAL					
AMOUNT THIS CHECK		69 48			
BALANCE					
372		BAL. BRO'T FOR'D		979	91
4-19 19					
TO Maxine C. Neal					
for					
FOR					
TOTAL					
AMOUNT THIS CHECK		138 96			
BALANCE					
373		BAL. BRO'T FOR'D		979	91
4-19 19					
TO Col Raymond Z					
Nelson					
FOR					
TOTAL					
AMOUNT THIS CHECK		138 96			
BALANCE					

380	RAL. BRO'T FOR'D	10,451 35	4
April 19 1976			
Randolph P. Warden			
	DEPOSITS		
	TOTAL		
AMOUNT THIS CHECK		138 96	
BALANCE			
381			
April 19 1976			
Quadel Mgt. Corp.			
	DEPOSITS		
Webb Watson Stewart			
Austin return			
	TOTAL		
AMOUNT THIS CHECK		281 59	
BALANCE		10,330 80	
382			
5-3 1976			
Quadel Management			
	DEPOSITS		
Mgm Fee			
May			
	TOTAL		
AMOUNT THIS CHECK		275 00	
BALANCE			

383	RAL. BRO'T FOR'D	
5-3 1976		
TO Quadel Management		
	DEPOSITS	
FOR Acad Fee		
May		
	TOTAL	
AMOUNT THIS CHECK		50 00
BALANCE		10,005 80
384		
5-13 1976		
TO Charlottesville		
Service Center		
	DEPOSITS	
FOR Mtg payment		
	TOTAL	
AMOUNT THIS CHECK		8,750 00
BALANCE		1,255 80
5-14		
Mr. Hank		
Graden Amos		
Davenport		
5-15 1976		
TO Albemarle County		
Service Authority		
	DEPOSITS	
FOR Water		
	TOTAL	
AMOUNT THIS CHECK		88 50
BALANCE		

386

BAL.
DRO'T
FOR'D

5-15

1976

Nationwide
Mutual Insurance

Ins

DEPOSITS

TOTAL

AMOUNT THIS CHECK

467 00

BALANCE

7 Comm Serv.

427 03

387

2955 59

5-19

1976

Cohen, Aheloff
and Staples

Legal

DEPOSITS

TOTAL

AMOUNT THIS CHECK

48 00

BALANCE

388

5-25 1976

Quadel Management

4th QTR - Management
Fee Adj -

DEPOSITS

TOTAL

AMOUNT THIS CHECK

153 52

BALANCE

4

389

BAL.
DRO'T
FOR'D

5-25

1976

TO Robert H. Friedman

FOR 4th Qtr Adj.
Management Fee

DEPOSITS

TOTAL

AMOUNT THIS CHECK

61 9

BALANCE

2672 0

390

6-1-

1976

TO Quadel Management

FOR Auct Fee
June

DEPOSITS

TOTAL

AMOUNT THIS CHECK

50 0

BALANCE

6-9-76
Kroger Indirect
Mr Harp
Big O Party

650 00

825 00

1,550 00

6-1-

1976

TO Quadel Management

FOR Mgmt Fee June

DEPOSITS

TOTAL

AMOUNT THIS CHECK

275 00

BALANCE

5372 0

392

BAL.
BRYT
FOU'D

6-22

1976

TO

Albemarle County

Service Authority

FOR

Water

TOTAL

AMOUNT THIS CHECK

13 92

6-22 - Davenport

BALANCE

375 00

6-29 - Badger 393

5673 17

850 00

6-29

1976

TO

Nationwide

FOR

Mutual Ins Co

TOTAL

AMOUNT THIS CHECK

467 00

BALANCE

6056 17

(- 8 23)

6047 94

BK Lux. Chg. from
Printing Chg. 394

7-2

1976

TO

Ludell Management

FOR

Mgm Fee July

TOTAL

AMOUNT THIS CHECK

275 00

BALANCE

EDWARD VAN LAER

INCORPORATED

General Contractors
110-B Second Street, N. E.
Charlottesville, Virginia 22901

April 11, 1975

Avon Street Limited Partnership
2922 Hathaway Road
Richmond, Virginia 23225

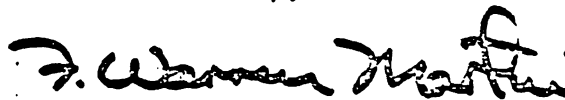
Gentlemen:

We estimate repairs of the windstorm damage to the roof of the warehouse on Avon Street Extended to be Eight Thousand Nine Hundred and Forty-Eight Dollars (\$8,948.00). Breakdown of this figure is listed below.

Temporary repairs	\$ 755.00
Roofing repair	7,265.00
Supervision	100.00
Taxes and Insurance	<u>13.00</u>
	\$ 8,133.00
Commission	<u>815.00</u>
Total	\$ 8,948.00

We hope this meets with your approval and if we can be of further service to you please let us know.

Yours truly,



F. Warren Martin
President

FWM/rwe

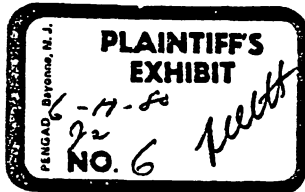
PLAINTIFF'S EXHIBIT 5



Polly P. McGavock
Realtor



CITY AND COUNTRY PROPERTY



Exclusive Authorization to Sell

.....Charlottesville....., VIRGINIA

In consideration of the services ofPolly P. McGavock, Realtor....., hereinafter called the Agent, to be rendered by said Agent to me, I hereby list for sale with said Agent, exclusively and irrevocably, until the *first*.... day of *October*....., 19*76*....., at six o'clock P.M., the following property situated in the ...*county*.....of *Albemarle*....., in the State of Virginia, to-wit:

.....*Approximately 10 acres and warehouse thereon at Avon*.....
.....*Street Extended.*.....

.....and I hereby give and grant said Agent an exclusive and irrevocable right to sell the same within the time specified at and for the price of \$. *650,000.00*....., on the following terms, to-wit:

.....*Assumption of an existing 1st Deed of Trust of approximately*.....
.....*\$412,000.00 at an interest rate of 7½%. Balance due and payable*.....
.....*cash at closing.*.....

.....or for such price or upon such terms as I may hereafter agree to; and I further authorize said Agent to accept a deposit from any purchaser on account of the purchase of said property.

And in further consideration of the services of said Agent, I agree to pay to said Agent as commission, in the event of the sale of said property, *ten*..... percent of the sale price, said commission to be payable in cash.

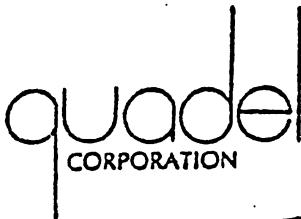
In the event a sale is made of said property, I further agree to convey the same to the purchaser procured by said Agent free from all encumbrances, save and except such as may be hereinabove mentioned, by good and sufficient deed, with general warranty of title, executed and acknowledged by both spouses, if any grantor in said deed be married.

If said property shall be sold at any time within *ninety*..... (*90*) days after the expiration of the time limit mentioned above to a purchaser or purchasers with whom said Agent negotiated regarding the sale thereof before such expiration, I will pay to said Agent in cash a commission on the sale price calculated upon the same percentage thereof stated above.

If the property shall be sold by me before the expiration of the time limit mentioned above with or without assistance from any person, the Agent's Commission, calculated as hereinabove set out, shall be paid by me to said Agent.

Agent hereby agrees to use all reasonable diligence to procure a purchaser for said property on the terms hereinabove stated.

WITNESS the following signature and seals, this *30th*... day of *March*....., 19*76*.....



BETHESDA, MD.
RICHMOND, VA
ATLANTA, GA.



7315 WISCONSIN AVE.
SUITE 1200W
BETHESDA, MD. 20814
(301) 656-0250

October 24, 1975

Limited Partners
Avon Street Limited Partnership

Dear Ladies & Gentlemen:

Enclosed herewith for your review is a copy of the Third Quarter, 1975 operating statement representing operations from the period July 1, 1975, to September 30, 1975. Also, enclosed is your distribution check representing approximately a 10% annualized return on your initial capital investment.

As many of you know, the Partnership Meeting held on September 19, 1975, was attended by 6 out of 22 partners. As of this date 18 out of the 22 proxies have been returned to us. None have been negative. Enclosed is a list of those limited partners who have not responded to our solicitation. At the request of one of the limited partners at the meeting, we have provided additional information with the operating reports, specifically cash balances, accounts payable and accounts receivable information.

You will be pleased to learn that effective December 1 we will be 100% leased.

The windstorm damage mentioned in our last correspondence has been repaired and insurance proceeds were adequate to cover all repair costs.

If you have any further questions regarding operations of the partnership, please feel free to call us.

Sincerely,

Thomas D. Webb III
Vice President

TDW/jmv
Enclosures



PROPOSAL

W. A. LYNCH ROOFING COMPANY, INC.

REGISTERED VIRGINIA CONTRACTOR NO: 8491

1234 River Road, Charlottesville, Va. 22901

Telephone 293-2302

• All Types of Roofing
and Sheet Metal Work

PROPOSAL SUBMITTED TO:

Date March 21, 1978

to: Polly P. McGavock Job Name: Avon Street Extended
Warehouse #1 & #2 (North End)
Address: #1 Boars Head Lane Architect: _____
City: Charlottesville State: Va. City: _____ State: _____
Attn: Doug Zerkel

I hereby submit following Proposal for: Replacement of built-up roof, approximately 500 sq. ft., damaged by high winds.

1. Remove existing built-up roofing and install back one layer 1" thick Celotex roof insulation. Insulation will be secured to metal deck with Lexsuko Nail/Disc System.
2. Over insulation, furnish and install asbestos smooth surface built-up roof as manufactured by Celotex, equal to existing roofing.
3. Furnish and install all flashing necessary for a complete and weathertight job.

DEFENDANT'S EXHIBIT 1

We hereby propose to furnish labor and materials—complete in accordance with the above specifications, for the sum of Seven Thousand Four Hundred and Fifty Nine Dollars (\$7,459.00) with payment to be made as specified in terms on reverse side.

Authorized Signature William A. Lynch, Jr.

ACCEPTED

The foregoing Proposal with Terms and Conditions on reverse side is hereby agreed to and accepted.

Date March 27, 1978

Signature _____ (Seal)

Note: This Proposal may be withdrawn by us if not accepted within 30 days. 302



PROPOSAL

• All Types of Roofing
and Sheet Metal Work

W. A. LYNCH ROOFING COMPANY, INC.

REGISTERED VIRGINIA CONTRACTOR NO. 8491

1234 River Road, Charlottesville, Va. 22901

Telephone 293-2302

DEFENDANT'S EXHIBIT 2

PROPOSAL SUBMITTED TO:

Date April 11, 1975

Name: Edward van Laer, Inc. Job Name: Avon Street Limited Partnership
Warehouse #1 occupied by
Street: 110-B Second St. N. E. Architect: Motorola Communications System
City: Charlottesville State: Va. City: State: 22901

We hereby submit following Proposal for: Replacing built-up roof (approximately 6600 square feet) damaged by high winds on above building and as detailed below:

1. Remove existing built-up roof and install back one layer 1" thick, Celotherm roof insulation. Insulation will be secured with Perma-fastener screws and discs to metal roof deck.
2. Over insulation, furnish and install asbestos smooth-surface built-up roof as manufactured by Celotax - to equal existing roof.
3. Furnish and install new gravelstop at West end of building and approximately 50 ft. on North end of building.
4. Replace approximately 60 linear ft. expansion joint where buildings #1 and #2 join together.
5. Furnish and install all other flashing necessary for a complete and weathertight job.

Upon completion all debris will be removed from owner's premises leaving a clean and thorough job.

Note: The cost for labor and material for temporary repairs is the separate sum of (\$755.00) Dollars. (Not included in price below).

We hereby propose to furnish labor and materials—complete in accordance with the above specifications, for the sum of Seven Thousand Two Hundred & Sixty Five Dollars (\$7,265.00) with payment to be made as specified in terms on reverse side.

Authorized Signature

William A. Lynch

ACCEPTED

The foregoing Proposal with Terms and Conditions on reverse side is hereby agreed to and accepted.

Date , 19

Signature (Seal)

Note: This Proposal may be withdrawn by us if not accepted within 30 days.

W. A. LYNCH ROOFING COMPANY, Inc.

Roofing and Sheet Metal Work

1234 RIVER ROAD • CHARLOTTESVILLE, VA. 22901 Telephone 293-2302

DATE April 25, 1975

Development Corp. of Virginia
Ednam Forest
Charlottesville, Va.

THIS ACCOUNT IS DUE AND PAYABLE ON OR BEFORE THE 10TH DAY OF THE MONTH FOLLOWING THE DATE OF THIS STATEMENT AND IF NOT PAID BY THE LAST DAY OF THE MONTH FOLLOWING THE DATE OF THIS STATEMENT THE ACCOUNT WILL BE CONSIDERED PAID. ON ALL PAST DUE ACCOUNTS THERE IS IMPOSED A FINANCE CHARGE COMPUTED BY A "PERIODIC RATE" OF 1½% PER MONTH (OR A MINIMUM FINANCE CHARGE OF 50¢ PER MONTH) WHICH IS AN ANNUAL PERCENTAGE RATE OF 18% APPLIED TO THE PREVIOUS BALANCE AFTER DEDUCTING CURRENT PAYMENTS AND/OR CREDITS APPEARING ON THIS STATEMENT. CHARGES OR OTHER EXTENSIONS OF CREDITS AND PAYMENTS AND OTHER CREDITS MADE AFTER THE LAST DAY OF THE MONTH WILL APPEAR ON NEXT MONTH'S STATEMENT.

DESCRIPTION	CHARGES	PAYMENTS & CREDITS	NEW BALANCE
FINANCE CHARGE \$ _____	PREVIOUS BALANCE \$ _____		
Ridge Electronics Corp. Avon Street Extended Building			
To furnish and install nine (9) roof flashings	550.00		
To furnish and install hood and Jen air exhaust fan	806.00		1356.00

80% TO
CHARGE - MET CORP.

DEFENDANT'S EXHIBIT #3

BETTER LIVING

INC

SINCE 1893 CHARLOTTESVILLE LUMBER COMPANY
10 AVON STREET, CHARLOTTESVILLE, VA. 22902 PHONE 296-5111

August 20, 1975

Mr. Glade Knight
7th & Franklin Blvd.
Richmond, Virginia 23219

Dear Mr. Knight:

This is in regards to your phone call requesting us to check the roofs on the building located on Avon Extended next to Ridge Electronics.

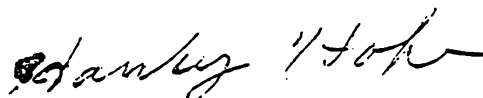
As far as we can tell the roofs are in good shape and appear to be leak free.

If I can be of any further help please call.

Thank you.

Sincerely,

BETTER LIVING, INC.



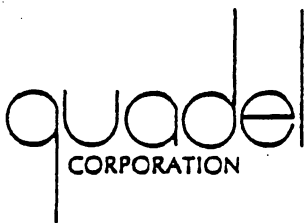
Harvey Hoke, Mgr.
Roofing Department

HH:jc

DEFENDANT'S EXHIBIT 4

305

Virginia's Most Complete Home Center



BETHESDA, MD.
RICHMOND, VA.

120 WYCK STREET
P.O. BOX 2952
RICHMOND, VA. 23232
(804) 276-3838

August 26, 1975

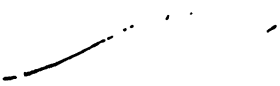
Mr. Harvey Hoke
Manager
Roofing Department
Better Living, Inc.
310 Avon Street
Charlottesville, VA 22902

Dear Mr. Hoke:

Persuant to our telephone conversation of yesterday, I should like to request that your company make minor roofing repairs at our Avon Street Warehouse. The repair needed is around the roof air conditioner unit over "Mr. Hank Originals, Ltd." warehouse space. Please make billing to Quadel Management Corporation, Seventh & Franklin Building, Suite 1512, Richmond, VA 23219.

If you have any questions, please give me a call.

Sincerely,



Glade M. Knight

GMK/dh

DEFENDANT'S EXHIBIT 5



D 6

Communication Services

RT. 6 - BOX 402 - AVON ST. EXT. - CHARLOTTESVILLE, VA. 22901 - (804) 295-7963

September 15, 1975

Mr. Ben T. Austin III
Executive Vice President
Quadel Corporation
7315 Wisconsin Avenue
Suite 1200 W.
Bethesda, Maryland 20014

Dear Mr. Austin:

Thank you for your letter of September 10, 1975. We were unaware that the time for renewal of our lease had passed. We do, of course, wish to continue occupancy. The new monthly rent is satisfactory, also.

For the past three or four months, we have been requesting repairs that are of a most urgent nature. The wall between us and Davenport Insulation is leaning in toward our shop. Should it fall, it would do extensive damage to our inventory and equipment stored in that area. We have talked with Mr. Knight several times concerning this. Although he has assured us each time that the wall would be repaired, it has not been.

The roof is still leaking. We have been told by the company that has done previous work on the roof that the repairs made were more of a "stop-gap" measure than of a permanent nature.

We regret that we have to take this stand, but in an effort to emphasize the need for expediency in making the repairs we have outlined, we are withholding payment of the \$237.18 covering the monthly increase in rent from April 1 through September 30 until such repairs are made. We do hope that these problems will be corrected very soon so that we may forward this amount to you.

Beginning October 1, we will pay our rent in the amount of \$427.03.

Very truly yours,

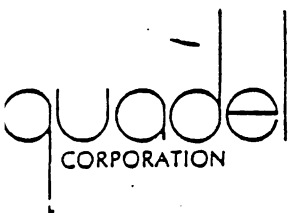
Dale Schulz
COMMUNICATION SERVICES

fs

RECEIVED

SEP 18 1975

QUADEL MANAGEMENT CORPORATION



120 WYCK STREET
P.O. BOX 2952
RICHMOND, VA. 23132
(804) 276-3838

BETHESDA MD
RICHMOND, VA.

September 26, 1975

Mr. Dale Shulz
Communication Services
Route 6, Box 402
Avon Street Extended
Charlottesville, VA 22901

Dear Mr. Shulz:

Please accept my apologies for your leaky roof and leaning wall. I was under the impression that both had been repaired. Some time ago I requested that Davenport Insulation have one of their men repair the wall, which they agreed to do, and on August 20 I contacted Mr. Harvey Hoke with Better Living, Inc. and requested that he give me a complete roof inspection. I have enclosed a copy of his return letter.

This morning I again contacted Better Living and they will be sending a man out to check the roof again and make any necessary repairs. Also, Randy Rinehart with Development Corporation of Virginia will be in touch with you Monday or Tuesday of next week to make the necessary repairs to your divider wall.

I again apologize for any inconvenience these two items have caused you.

Cordially yours,

Glade M. Knight

GMK/dh

Enclosure

DEFENDANT'S EXHIBIT 7