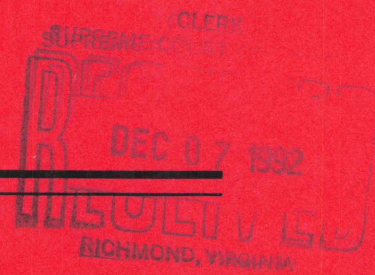


245 Va 367



---

IN THE

# Supreme Court of Virginia

AT RICHMOND

---

RECORD NO. 921138

---

NEW RIVER MEDIA GROUP, INC.,

*Appellant,*

v.

DAVID COLLINS KNIGHTON,

*Appellee.*

---

APPENDIX

---

Marcus H. Long, Jr.  
Darrell L. Tillar  
LONG, LONG & TILLAR, P.C.  
107 Church Street  
P.O. Box 196  
Blacksburg, VA 24063-0196  
(703) 552-1811

*Counsel for Appellant*



## TABLE OF CONTENTS

### Appendix Page

<b>Bill of Complaint filed 2/21/92 and Exhibits thereto . . . . .</b>	<b>1</b>
<b>Notice of Application for Preliminary Injunction and Other Relief filed 2/2/92 . . . . .</b>	<b>8</b>
<b>Excerpts of Transcript of Hearing before the Honorable Duane E. Mink on 3/2/92 . . . . .</b>	<b>9</b>
<b>Decree granting Preliminary Injunction dated 3/2/92 . . . . .</b>	<b>21</b>
<b>Amended Bill of Complaint filed 3/6/92 . . . . .</b>	<b>23</b>
<b>Answer and Cross-Bill of David Collins Knighton filed 3/13/92 . . . . .</b>	<b>26</b>
<b>Demurrer to Cross-Bill filed 3/24/92 . . . . .</b>	<b>30</b>
<b>Order overruling Demurrer to the Cross-Bill entered 4/7/92 . . . . .</b>	<b>32</b>
<b>Answer to Cross-Bill filed 4/9/92 . . . . .</b>	<b>33</b>
<b>Transcript of Trial before the Honorable A. Dow Owens on 3/13/92 . . . . .</b>	<b>35</b>
<b>Testimony of Michael Gummer . . . . .</b>	<b>64</b>
<b>Testimony of David Collins Knighton . . . . .</b>	<b>114</b>
<b>Testimony of Ray Hatley . . . . .</b>	<b>122</b>
<b>Testimony of Ann Dix Maenza . . . . .</b>	<b>127</b>
<b>Judgment Order entered 4/30/92 by Judge Owens . . . . .</b>	<b>143</b>
<b>Assignment of Errors filed 7/18/92 . . . . .</b>	<b>147</b>

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RADFORD

NEW RIVER MEDIA GROUP, INC.	)	
	)	
Plaintiff	)	
	)	
v.	)	BILL OF COMPLAINT
	)	
DAVID COLLINS KNIGHTON	)	
	)	
Defendant	)	

SERVE: David Collins Knighton  
812 Carriage Hill Drive  
Pulaski, VA  
and  
David Collins Knighton  
c/o WRIQ-FM  
Radford, VA

Your plaintiff respectfully represents as follows:

1. Plaintiff, New River Media Group, Inc., (herein called New River Media) is a Virginia corporation that owns and operates WPSK-FM radio station in Pulaski, Virginia.

2. Defendant David Collins Knighton (herein called Knighton) is a former employee of New River Media and is now employed by WRIQ-FM radio station in Radford, Virginia.

3. As a condition of Knighton's employment with New River Media, the Restrictive covenant Agreement dated February 2, 1992, was entered by and between Knighton and New River Media. A copy of such Restrictive Covenant Agreement is attached hereto as Exhibit "A".

4. Such Restrictive Covenant Agreement provides in part

that upon termination of Knighton's employment with New River Media, Knighton will not work for a competing employer within sixty (60) air miles of WPSK-FM's broadcast station for a period of twelve (12) months.

5. On or about February 3, 1992, Knighton terminated his employment with New River Media.

6. Knighton is now employed at WRIQ-FM radio station in Radford, Virginia.

7. The Restrictive Covenant Agreement provides, in part, that New River Media will be entitled to an injunction in the event of a breach of the agreement by Knighton. New River Media alleges that Knighton's breach of the agreement will cause it irreparable injury for which it has no adequate remedy at law.

8. The Restrictive Covenant Agreement further provides in part that Knighton will pay all damages, including costs and attorney's fees, relating to the enforcement of the agreement.

9. New River Media alleges that it has been damaged in the amount of \$ 25,000.00 in addition to the irreparable damage it suffered.

WHEREFORE, plaintiff, New River Media Group, Inc., prays that:

A. This Court issue a temporary injunction enjoining defendant David Collins Knighton from working with WRIQ-FM, a competing employer; and

B. This Court issue a permanent injunction perpetually enjoining defendant David Collins Knighton from violating the

terms of the Restrictive Covenant Agreement.

C. That plaintiff have a judgment against defendant in the sum of \$ 25,000.00, plus costs, interest and attorney's fees.

D. That plaintiff have such other and further relief as to equity may seem meet and the nature of its case may require.

NEW RIVER MEDIA GROUP, INC.

By Marcus H. Long, Jr.  
Of Counsel

Marcus H. Long, Jr.  
LONG, LONG & TILLAR, P.C.  
107 Church Street  
P. O. Box 196  
Blacksburg, VA 24063-0196

**RESTRICTIVE COVENANT AGREEMENT**

**THIS AGREEMENT** is made and entered into on this the 3rd day of February, 1992, by and between David Collins Knighton herein the Employee, and New River Media Group, Inc.[WPSK-FM] a Virginia corporation, herein the Employer;

**WITNESSETH:**

**THAT WHEREAS**, the Employer is primarily engaged in the business of operating a radio broadcasting facility; and,

**WHEREAS**, the Employer primarily broadcasts and sells radio or commercial time in an area generally defined as that geographical area encompassed within a radius of 60 air miles from its broadcast station; and,

**WHEREAS**, the Employer has employed the Employee to render services in the capacity as an "air personality" for the Employer; and,

**WHEREAS**, the Employee will become privy to the existing customer base presently served by the Employer, and has in addition developed and enhanced his status as an "air personality" as a direct result of the promotional time and expense provided by the Employer ; and,

**WHEREAS**, as a condition of this employment arrangement by and between the parties, the Employer has required and the Employee has agreed to all of the covenants and obligations contained herein.

**NOW THEREFORE**, for and in consideration of the premises herein and in consideration of the amount of \$2,000 paid to the employee by empl the parties do hereby agree, bind and obligate themselves as follows:

1. The Employee shall not at any time nor in any manner directly or indirectly divulge, disclose or communicate to any person, firm, corporation or any third party entity in any manner whatsoever any information concerning the matters affecting or relating to the business plans, customer lists and/or financial information of the Employer

All of these provisions regarding the Employee's agreement not to divulge or communicate any information regarding any of the matters pertaining to the Employer's business shall remain in full force and effect for a period of five (5) years after the termination of the employment of the Employee for any reason with or without cause.

2. As an intricate part of the employment of the Employee as an air personality, the Employee agrees that

for a period of twelve (12) months following the termination of the Employee's employment for any reason whatsoever, the Employee will not, directly or indirectly either as an individual or on his own account or as a partner, employee, manager, principal, stockholder, sales person, representative nor in any other capacity whatsoever, engage in any or all of the following activities within the herein described restrictive area or territory:

A. Enter into or engage in any business that in any way competes with the present or future business operations of the Employer. In this regard, it is acknowledged that at this time, the Employer is primarily engaged in the business of radio broadcasting. The providing of any air personality, announcer, production services or "disc jockey" services <sup>ON BEHALF OF ANY COMPETING ENTITY</sup> outside the restricted territory for broadcast in the restricted territory or the providing of any air personality, announcer, production services or "disc jockey" services <sup>ON BEHALF OF ANY COMPETING ENTITY</sup> inside the restricted territory shall constitute "engaging in business" in the restricted territory in violation of this provision.

B. Solicit customers or commercial air time for or the sale of any commercial air time in the restricted territory <sup>for himself</sup> or for any person, firm, association, corporation or any other entity engaged in a business that competes with the Employer's business as described in this Agreement, or the supervising or assisting of any sales agents or representatives engaged in such sales activities.

C. Enter into or engage in any discussion or negotiation or assist in such actions to encourage employees, agents, managers, sales agents or representatives of the Employer to disassociate their relationship with the Employer in order to engage in any business that in

any manner competes with the Employer's business.

D. Promote or assist financially or otherwise any firm, person, association, corporation or any other entity engaged in a business that competes with the Employer's business as described in this Agreement.

3. The area encompassed within the "restricted territory" as above described shall include:

A. That geographic area encompassing a radius of 60 air miles from the broadcast station as maintained by the secured party; and,

B. Any other radio station outside the 60 mile limit that broadcasts to any area within the 60 mile limit and solicits commercial broadcast business from advertisers located within the ~~60~~ mile limit.

A 30  
OK mb

4. The covenants herein on behalf of the Employee are of the essence of the employment arrangement shall be construed as independent of any other provision or agreement and the existence of any claim or cause of action against the Employer, whether predicated on this agreement or otherwise shall not constitute a defense to the enforcement by the Employer of this restrictive covenant. It is expressly agreed that this restrictive covenant and all covenants herein are reasonable as to both duration and distance, are not overly burdensome, are not economically oppressive to the Employee, are not injurious to the public welfare or benefit and are specifically enforceable in a Court of competent jurisdiction as against the Employee. In addition, the Employee acknowledges that the Employer has invested substantial time and money in promoting the Employee as an air personality such that it will be impossible to ascertain the injury or damage to the Employer in the event of a breach of this Agreement by the Employee, and that the Employer shall be entitled to have the provisions of this Agreement specifically enforced as against the Employee.

5. All information, whether written or otherwise, regarding the Employer's business, including information regarding customers, customer lists, costs, earnings, systems, prospective and executed contracts, and



other business arrangements, are presumed to be confidential information of the Employer for purposes of this Agreement, except to the extent that such information may otherwise lawfully and readily be available to the general public. The Employee further agrees that upon termination of the Employee's employment with the Employer, the Employee shall immediately return all books, records, lists and other written, typed or printed materials, whether furnished by the Employer or prepared by the Employee, which contain any information relating to the Employer's business, and the Employee agrees that he/she will neither make nor retain any copies of such materials after termination of employment.

6. In the event of a breach or threatened breach by the Employee of the provisions of this Agreement, the Employer will be entitled to an injunction restraining the Employee from such breach and from rendering any services to any person, firm or entity in breach of this Agreement. Compliance with this Agreement is a condition precedent to the Employer's obligation to make any payments of any nature to the Employee. The Employee further agrees to indemnify and hold harmless the Employer from all damages and costs, including reasonable attorney's fees, relating to the enforcement of this Agreement. Nothing in this Agreement will be construed as prohibiting the Employer from pursuing any other remedies available to it for a breach or threatened breach of this Agreement.

IN WITNESS WHEREOF, this Agreement is executed by the parties effective as of the date first above written.

EMPLOYEE:

  
David Collins Knighton

EMPLOYER:

New River Media Group, Inc.

By:   
Title: GENERAL MANAGER

*Amended*  
VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RADFORD

NEW RIVER MEDIA GROUP, INC. )

Plaintiff )

v. )

DAVID COLLINS KNIGHTON )

Defendant )

NOTICE OF APPLICATION  
FOR PRELIMINARY  
INJUNCTION AND  
OTHER RELIEF

Take notice that I will, on the 28th day of February, 1992, at 9:00 o'clock a.m. at the Courthouse, Radford, Virginia, make application to the Judge of the Circuit Court of the city of Radford, Virginia, for an injunction and other relief as is more fully set forth in the Bill of Complaint attached hereto; when and where you can appear if you see property to protect your interests.

NEW RIVER MEDIA GROUP, INC.

By Marcus H. Long, Jr.

Of Counsel

Marcus H. Long, Jr.  
LONG, LONG & TILLAR, P.C.  
107 Church Street  
P. O. Box 196  
Blacksburg, VA 24063-0196

1           The following cause came on to be heard before the  
2           Honorable Duane E. Mink, Judge of the Circuit Court of the  
3           City of Radford, Virginia, on the 2nd day of March, 1992  
4           when the following proceedings were had:

5  
6           THE COURT:   Do either of you want to say  
7           anything before we get started?

8           MR. LONG:   Judge, I would like to say one  
9           thing that I want to get on the Record. This  
10          Hearing was set for Friday, February 28th at  
11          9 A. M. and at the request of the defendant,  
12          Mr. Knighton, it was continued until today. I want  
13          it on the Record that we objected to it but it was  
14          continued at the Defendant's request.

15          THE COURT:   For the Record, I will  
16          acknowledge that that is so. Mr. Knighton called  
17          with a request for the continuance and I gave it to  
18          him.

19          MR. LONG:   Judge, I don't know if you looked  
20          at the file or not but I requested a Preliminary  
21          Injunction to enforce a Covenant not to Compete as  
22          a result of employment.

23          We feel that the covenant is with reasonable  
24          time and space and is not unduly harsh on anyone.

\* \* \*  
1 covered your positions.

2 Well, I think it is a highly unusual manner  
3 in which to handle this situation that we have.  
4 The vehicle that was used, of course, is a  
5 prospective agreement.

6 On the other hand, it would appear that  
7 basically what the parties agreed to was a Covenant  
8 not to Compete and consideration was given, the  
9 consideration was accepted and then when the  
10 defendant obtained other employment he did go ahead  
11 and cash the check. Excuse me, gave it back,  
12 returned the check.

13 I believe it would be appropriate to grant  
14 the Preliminary Injunction. Then we can move the  
15 case forward with haste if it is going to stay in  
16 Radford. Why is the case in Radford?

17 MR. LONG: I thought the radio station was  
18 in Radford, WRIQ.

19 At this point, Judge, I feel that they asked  
20 for a continuance and any objection to venue is  
21 waived.

22 THE COURT: I don't think that. In any  
23 event, I am going to grant the temporary  
24 injunction.



1           It ought to be heard in 90 days. We have  
2           the \$2,000.

3           MR. SHANKMAN: I would ask for you to set a  
4           trial date right now, Judge.

5           THE COURT: Let me add up my -- I have a  
6           one-track mind. Let me do this addition first.

7           What is your current salary?

8           MR. KNIGHTON: \$300 a week, \$1,200 a month.

9           THE COURT: Do you get commissions or  
10          something for advertising?

11          MR. KNIGHTON: If I sold anything which I  
12          haven't.

13          THE COURT: But if you do you get  
14          commissions?

15          MR. KNIGHTON: Yes, sir.

16          THE COURT: At this point what have you  
17          made; a little over \$2,000?

18          MR. KNIGHTON: About \$2,100.

19          THE COURT: That ought to be tried in 90  
20          days. That is \$6,500.

21          I will set the bond at \$10,000. The  
22          temporary injunction will become effective on the  
23          posting of the bond.

24          MR. LONG: Judge, do we need surety with

1           that? As a good corporation and several stations I  
2           would just ask that the Court determine the order  
3           to say that --

4           MR. SHANKMAN: We don't waive surety; we  
5           want surety.

6           THE COURT: I think they are entitled to  
7           have surety. Do you want a trial date?

8           MR. SHANKMAN: Yes, sir.

9           THE COURT: You want a shot at chancery and  
10          try it before a jury?

11          MR. SHANKMAN: Yes, sir. I would advise the  
12          Court that I am going to file a counterclaim which,  
13          I assume, will be in the area of \$50,000 to  
14          \$75,000.

15          THE COURT: That will be fine.

16          MR. LONG: Judge, if they are going to file  
17          a counterclaim I would like, until we get an issue  
18          here -- you know, we may have a demurrer and all  
19          that to what they file before we set a trial date.

20          THE COURT: There is a man out of work and  
21          I am going to move the case along. Whether I do it  
22          or Judge Owens does it or whatever, this case is  
23          going to be tried and tried forthwith.

24          MR. LONG: Judge, I have no problem with

1           that. We want to set a trial date and they are  
2           threatening counterclaims and all. That is fine.

3           MR. SHANKMAN: It is not a threat.

4           THE COURT: In that case, would you file  
5           your answer within -- when was he served?

6           MR. LONG: Wednesday, the 26th.

7           THE COURT: Go ahead and file your answer  
8           quick, you are the one that wants a speedy trial.  
9           File your answer and your counterclaim, too, within  
10          ten days.

11          You respond within ten days after you  
12          receive the counterclaim and there is not that much  
13          to develop.

14          It looks like you only have two witnesses. I  
15          don't see why we should have any trouble getting  
16          the case ready for trial.

17          MR. LONG: The only thing is that I am  
18          probably going to make some document requests and  
19          so forth at this radio station over here, WRIQ to  
20          see what he does over there and to see who he has  
21          contacted and so forth. I want to get some of  
22          those people and probably depose some of them.

23          THE COURT: Let me get my book.

24          MR. LONG: I guess we need a discovery cut

1 off, too.

2 THE COURT: I will do that. Let me get my  
3 calendar. How about April 13th to try this case?  
4 If we can't get a courtroom and jury in Pulaski we  
5 will bring them over here.

6 MR. SHANKMAN: All right.

7 MR. LONG: Judge, before we get into moving  
8 it over to Pulaski, his broadcasts hit Radford and  
9 that is where part of our damages hurt.

10 I think this is proper venue; I think it is  
11 permissible venue. If the Court on its own wants  
12 to move it, it is permissible venue.

13 I mean, he broadcasts right here. You can  
14 cut the radio on and see where he broadcasts.

15 MR. SHANKMAN: We didn't really raise the  
16 issue, Judge.

17 THE COURT: Do you want to try it here?

18 MR. SHANKMAN: We will just try it here.

19 THE COURT: I will get you a Radford jury.

20 MR. SHANKMAN: All right.

21 THE COURT: We will start at 9:00.

22 MR. LONG: Judge, are we going to get a  
23 discovery cut off? I hate to say this but I have a  
24 busy practice and this is giving me six weeks here



1 and that is not long enough.

2 They are filing a counterclaim and I will  
3 have document requests. I have got the month of  
4 March almost booked.

5 THE COURT: I am sorry. If I am going to  
6 issue a Preliminary Injunction I am going to move  
7 the case along.

8 I don't want to put anybody in a bind but  
9 that is plenty of time to get the case ready for  
10 trial in my opinion.

11 MR. SHANKMAN: My client, being that he is  
12 from Pulaski County and lives there and that is  
13 where all this took place, he would ask that you do  
14 this in Pulaski.

15 THE COURT: I think it ought to be tried in  
16 Pulaski. This is a Pulaski case. It has no  
17 business being here and I think a Pulaski jury  
18 ought to do it.

19 MR. LONG: Judge, I want it to go on the  
20 Record now that I object to that for two reasons.

21 First of all, they asked that this Hearing  
22 be continued. I did not. He said he contacted a  
23 lawyer at that time when he talked to us on the  
24 conference call with you and myself. Their

1           continuance request waives any objection to venue.

2           Number two, he does broadcast in the City of  
3           Radford as my client does, too, and so I feel it  
4           should be heard here.

5           I will be glad to brief you on the venue  
6           question. I think anybody in here knows that if  
7           you ask for a continuance you waive objections to  
8           venue. That is where we are.

9           MR. SHANKMAN: He hadn't been fully advised  
10          by Counsel and hadn't been served the same day --

11          MR. LONG: There is no case that says,  
12          "Fully advised by Counsel when you were served,"  
13          Judge. There is not a case that has that in there  
14          and I can guarantee that.

15          THE COURT: I am going to transfer it back  
16          to Pulaski. It ought to be tried with a Pulaski  
17          jury.

18          That is where the contract was entered into  
19          and that is where both businesses are located and  
20          that is where the defendant is located and where  
21          the Plaintiff is located.

22          I see no reason to keep it in Radford. It  
23          will be transferred back to Pulaski. I will try it  
24          if Judge Ownes has a conflict. If he is busy on

1 April the 13th, I will come try it.

2 MR. SHANKMAN: All right.

3 THE COURT: We will start at 9:00.

4 I will have your new pleadings and all that  
5 completed within 20 days; right?

6 MR. SHANKMAN: Yes, sir.

7 THE COURT: The discovery will be  
8 completed --

9 MR. LONG: Judge, also, because we had to do  
10 this fairly quickly, I would like the right to  
11 amend my Bill of Complaint and if he needs to  
12 respond all I want to do is clear up a couple of  
13 things that weren't clear to me when I filed the  
14 Bill of Complaint about the manner in which the  
15 employment was terminated.

16 Do you have a problem with that?

17 THE COURT: If you want to clear it up, you  
18 amend within five days and then you respond to the  
19 amended bill within ten days of today.

20 MR. SHANKMAN: Respond to both the original  
21 and the amended?

22 THE COURT: You don't need to I don't think.

23 MR. LONG: This is beyond a rocket docket.

24 THE COURT: Yes, it is but I just think if

1           you have irreparable harm and --

2           MR. LONG: I have no problem there.

3           THE COURT: If you have irreparable harm his  
4           harm is just as great or greater so I think we want  
5           to move.

6           MR. LONG: My associate's wife is having a  
7           baby and he says he can't work, I mean, I don't  
8           know.

9           THE COURT: Now, you are going to amend  
10          within five days and you answer or whatever you  
11          have to and answer within ten days from today. You  
12          have five days to look at your new pleadings so get  
13          them there.

14          MR. LONG: It is a supersonic docket.

15          THE COURT: I didn't get your cut off on  
16          your discovery, did I? April the 3rd and that will  
17          give you ten days to go forward.

18          You asked for a jury trial?

19          MR. SHANKMAN: Yes, sir.

20          THE COURT: You do the issue out of chancery  
21          and the questions that are going to be presented to  
22          the jury for them to answer or the issue to be  
23          presented to the jury.

24          I want that order ready for entry by April



1 3rd so both parties will know what to prepare for  
2 the trial on April the 13th.

3 That is the Court's ruling. The Hearing is  
4 adjourned.

5  
6 (The Hearing was concluded.)

7  
8  
9 \* \* \* \* \*

10  
11  
12 C E R T I F I C A T E

13  
14 COMMONWEALTH OF VIRGINIA  
15 CITY OF ROANOKE

16 I, Jennifer Marie Philie, Notary Public in  
17 and for the Commonwealth of Virginia, at Large, do hereby  
18 certify that the Hearing held on March 2, 1992, was by me  
19 reduced to machine shorthand in the presence of all the  
20 parties, afterwards transcribed under my direction by means  
21 of computer, and that to the best of my ability the  
22 foregoing is a true and correct transcript of the Hearing  
23 as aforesaid.

24 I further certify that this Hearing was taken

1 at the time and place in the foregoing caption specified.

2 I further certify that I am not a relative,  
3 counsel or attorney for either party or otherwise  
4 interested in the outcome of this action.

5 IN WITNESS WHEREOF, I have hereunto set my  
6 hand at Roanoke, Virginia, on this the 9<sup>th</sup> day of March,  
7 1992.

8  
9   
10 Jennifer Marie Philie  
Notary Public

11 My Commission expires February 28, 1995.  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RADFORD

NEW RIVER MEDIA GROUP, INC.

Plaintiff

v.

DAVID COLLINS KNIGHTON

Defendant

)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

DECREE

This cause came this 2nd day of March, 1992, to be heard upon the prayer for a temporary injunction contained in plaintiff's bill, and was argued by counsel.

UPON CONSIDERATION WHEREOF, it appearing to the Court that plaintiff is entitled to the relief prayed for, it is hereby

ORDERED, ADJUDGED and DECREED that defendant be and he is hereby restrained and enjoined from working for WRIQ-FM or any radio station within sixty (60) air miles of Pulaski, Virginia until further order of this Court. This ORDER shall not become effective until plaintiff shall enter into bond before the Clerk of this Court in the sum of \$ 10,000.00 conditioned according to law.

It is further ADJUDGED, ORDERED and DECREED, as follows:

1. Plaintiff shall have five (5) days to file an amended bill of complaint;

2. Defendant shall have ten (10) days from receipt of plaintiff's amended bill of complaint to file responsive pleadings;

3. Plaintiff shall have ten (10) days from receipt of defendant's responsive pleadings to file responsive pleadings to defendant's responsive pleadings;

4. This matter is set for trial on April 13, 1992, at 9:00 a.m. in the Circuit Court of Pulaski County;

5. Defendant has requested an issue out of chancery to be submitted to a jury and that defendant file the specific issue(s)

to be submitted to the jury by April 3, 1992;

6. All discovery shall be completed by April 3, 1992. Plaintiff objects to this matter being transferred to the Circuit Court of Pulaski County on the grounds that the hearing for the temporary injunction was scheduled for February 28, 1992, in the Circuit Court of the City of Radford and was continued on motion of the defendant until March 2, 1992, and that such continuance request waives any objection to venue.

Enter this ORDER this 16th day of  
March, 1992. *Nunc Pro Tunc* 3/2/92

Duane E. Thirk  
JUDGE

Seen and objected to in part:

Marcel D. Long p.q.

Seen:

Syron R. Shanahan p.d.

\* objection:

Defendant objects to the granting of the injunction contained in this decree.



VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RADFORD

NEW RIVER MEDIA GROUP, INC. )

Plaintiff )

v. )

DAVID COLLINS KNIGHTON )

Defendant )

AMENDED  
BILL OF COMPLAINT

SERVE: David Collins Knighton  
812 Carriage Hill Drive  
Pulaski, VA  
and  
David Collins Knighton  
c/o WRIQ-FM  
Radford, VA

Your plaintiff respectfully represents as follows:

1. Plaintiff, New River Media Group, Inc., (herein called New River Media) is a Virginia corporation that owns and operates WPSK-FM radio station in Pulaski, Virginia.

2. Defendant David Collins Knighton (herein called Knighton) is a former employee of New River Media and is now employed by WRIQ-FM radio station in Radford, Virginia.

3. As a condition of Knighton's employment and termination of employment with New River Media, the Restrictive covenant Agreement dated February 3, 1992, was entered by and between Knighton and New River Media. A copy of such Restrictive Covenant Agreement is attached hereto as Exhibit "A".

4. Such Restrictive Covenant Agreement provides in part

that upon termination of Knighton's employment with New River Media, Knighton will not work for a competing employer within sixty (60) air miles of WPSK-FM's broadcast station for a period of twelve (12) months.

5. On or about February 3, 1992, Knighton's employment with New River Media was terminated.

6. Knighton is now employed at WR1Q-FM radio station in Radford, Virginia.

7. The Restrictive Covenant Agreement provides, in part, that New River Media will be entitled to an injunction in the event of a breach of the agreement by Knighton. New River Media alleges that Knighton's breach of the agreement will cause it irreparable injury for which it has no adequate remedy at law.

8. The Restrictive Covenant Agreement further provides in part that Knighton will pay all damages, including costs and attorney's fees, relating to the enforcement of the agreement.

9. New River Media alleges that it has been damaged in the amount of \$ 25,000.00 in addition to the irreparable damage it suffered.

WHEREFORE, plaintiff, New River Media Group, Inc., prays that:

A. This Court issue a temporary injunction enjoining defendant David Collins Knighton from working with WR1Q-FM, a competing employer; and

B. This Court issue a permanent injunction perpetually enjoining defendant David Collins Knighton from violating the

terms of the Restrictive Covenant Agreement.

C. That plaintiff have a judgment against defendant in the sum of \$ 25,000.00, plus costs, interest and attorney's fees.

D. That plaintiff have such other and further relief as to equity may seem meet and the nature of its case may require.

NEW RIVER MEDIA GROUP, INC.  
By Marcus H. Long, Jr.  
Of Counsel

Marcus H. Long, Jr.  
LONG, LONG & TILLAR, P.C.  
107 Church Street  
P. O. Box 196  
Blacksburg, VA 24063-0196

#### CERTIFICATE OF MAILING

The undersigned hereby certifies that a true and correct copy of the foregoing Amended Bill of Complaint was mailed to Byron R. Shankman, Esquire, David Skewes Building, Rt 11, Dublin, VA 24084, on this the 10 day of March, 1992.

Marcus H. Long, Jr.  
Marcus H. Long, Jr.

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF RADFORD

NEW RIVER MEDIA GROUP, INC.	)	
	)	
PLAINTIFF	)	
	)	
V.	)	ANSWER AND CROSS-BILL
	)	
	)	
DAVID COLLINS KNIGHTON	)	
	)	
DEFENDANT	)	

Defendant, David Collins Knighton, by counsel, for his answer to the amended bill of complaint filed against him herein says as follows:

1. The allegations contained in paragraph one (1) and two (2) are admitted, except for the fact that David Collins Knighton is no longer employed anywhere because of the preliminary injunction issued in this matter.

2. It is denied that the restrictive covenant agreement dated February 3rd, 1992 was a condition of Knighton's employment and the termination of that employment.

3. The allegations contained in paragraphs four (4) and five (5) are admitted.

4. It is denied that Knighton is employed anywhere.

5. It is denied that New River Media Group, Inc. is entitled to any form of injunction and it is further denied that any irreparable injury has been incurred by New River Media Group, Inc.

6. The remainder of the amended bill of complaint filed against David Collins Knighton is hereby denied.

#### CROSS-BILL

Defendant, David Collins Knighton, by counsel, files this cross-bill against plaintiff, New River Media Group, Inc. and says:

1. Defendant repeats and realleges the allegations contained in paragraph one (1) of the amended bill of complaint filed herein.

2. Defendant alleges that he was terminated prior to the restrictive covenant agreement dated February 3rd, 1992 without cause and with intent to place him in a precarious position of hardship after the unnoticed and untimely termination by plaintiff.

3. Plaintiff, New River Media Group, Inc. terminated David Collins Knighton without just cause or provocation and no appropriate or adequate consideration was paid for the execution of the subject restrictive covenant agreement.

4. The restrictive covenant agreement upon which this action was based is acquired by New River Media Group, Inc. under circumstances which constitute economic and other forms of duress.

5. Furthermore, said restrictive covenant agreement

unreasonably restrain the ability of David Collins Knighton to become reemployed and said agreement was unduly harsh and oppressive in curtailing any legitimate effort Knighton might make to earn a livelihood.

6. The restraint placed upon Knighton by said agreement was unreasonable and oppressive under the circumstances of which it was executed.

7. The acts of New River Media Group, Inc. in acquiring this agreement under the circumstances then and there existing were willful and deliberate and were committed with knowledge that such acts were unfair and unlawful and would result in very substantial harm to David Collins Knighton.

WHEREFORE, defendant prays that plaintiff's amended bill of complaint be dismissed; that he be awarded compensatory damages in the amount of Twenty Five Thousand Dollars (\$25,000.00); and punitive damages in the amount of Fifty Thousand Dollars (\$50,000.00); and that the Court further order that the restrictive covenant agreement dated February 3rd, 1992 is void and unenforceable; it is respectfully requested that the issues brought forth in the amended bill of complaint and counter-claim as well as the request for compensatory and punitive damages be tried as matters out of chancery by a duly impaneled jury in Pulaski County, Virginia; and that David Collins Knighton be awarded any

further relief as may be deemed necessary under the circumstances of this case.

DAVID COLLINS KNIGHTON

BY Byron R. Shankman  
Of Counsel

Byron R. Shankman  
P.O. Box 1859  
Dublin, Virginia 24084  
Counsel for Defendant

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing Answer and Cross-Bill was mailed to Marcus H. Long, Jr., Esquire, Long, Long, Tillar, P.C.. P.O. Box 196, Blacksburg, Virginia 24063-0196, on this the 13th day of March, 1992.

Byron R. Shankman  
Byron R. Shankman

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF RADFORD

NEW RIVER MEDIA GROUP, INC. )

Plaintiff )

v. )

DEMURRER

DAVID COLLINS KNIGHTON )

Defendant )

Plaintiff, New River Media Group, Inc., by counsel, demurs to the cross-bill filed herein and says that it is not sufficient in law and ought not to be prosecuted on the following grounds:

1. The cross-bill does not meet the requirements of Rule 1:4 (d) of the Supreme Court of Virginia in that it fails clearly to inform plaintiff of the true nature of the claim against it.

2. The cross-bill simply does not state any cause of action. It is merely an extension of defendant's answer.

Respectfully submitted,  
NEW RIVER MEDIA GROUP, INC.

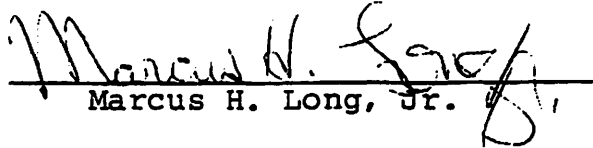
By Marcus H. Long, Jr.  
Of Counsel

Marcus H. Long, Jr.  
LONG, LONG & TILLAR, P.C.  
107 Church Street  
P. O. Box 196  
Blacksburg, VA 24063-0196



CERTIFICATE OF MAILING

The undersigned hereby certifies that a true and correct copy of the foregoing Demurrer was mailed to Bryon R. Shankman, Esquire, P.O. Box 1859, Dublin, VA 24084, on this the 24 day of March, 1992.

  
\_\_\_\_\_  
Marcus H. Long, Jr.

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF PULASKI

NEW RIVER MEDIA GROUP, INC. )

Plaintiff )

v. )

DAVID COLLINS KNIGHTON )

Defendant )

ORDER

This 1st day of April, 1992, came the parties, by counsel,  
and argued plaintiff's demurrer to the cross-bill of defendant.

UPON CONSIDERATION WHEREOF, the Court doth overrule  
plaintiff's demurrer to which plaintiff excepted to on the  
grounds that the cross-bill does not state a cause of action.

Enter this ORDER this 30 day of  
April, 1992.

  
JUDGE

Seen:

Byron R. Shankman p.d.

Seen and objected to:

Marcus A. Long p.q.

VIRGINIA:

IN THE CIRCUIT COURT OF PULASKI COUNTY

NEW RIVER MEDIA GROUP, INC.	)	
	)	
Plaintiff	)	
	)	
v.	)	ANSWER TO CROSS-BILL
	)	
DAVID COLLINS KNIGHTON	)	
	)	
Defendant	)	

Plaintiff, New River Media Group, Inc., by counsel, for its answer to the cross-bill filed against it herein says as follows:

1. Plaintiff admits the allegations contained in paragraph 1 of the cross-bill.

2. Plaintiff denies each and every allegation contained in paragraphs 2, 3, 4, 5, 6 and 7 of the cross-bill.

3. Plaintiff denies each and every allegation contained in the cross-bill which is not expressly admitted herein.

4. Plaintiff affirmatively alleges that the cross-bill does not state a cause of action recognized by the courts of Virginia.

5. Plaintiff affirmatively alleges that the cross-bill does not allege any facts that give rise to punitive damages.

WHEREFORE, plaintiff prays that defendant's cross-bill be dismissed and that plaintiff be awarded the relief prayed for in the bill of complaint.

New River Media, Inc.

By Marcus H. Long, Jr.  
Of Counsel

Marcus H. Long, Jr.  
LONG, LONG & TILLAR, P.C.  
107 Church Street  
P.O. Box 196  
Blacksburg, VA 24063-0196

CERTIFICATE OF MAILING

The undersigned hereby certifies that a true and correct copy of the foregoing Answer to Cross-Bill was mailed to Byron R. Shankman, Esquire, P. O. Box 1859 Dublin, VA 24084, on this the   11   day of April, 1992.

Marcus H. Long, Jr.  
Marcus H. Long, Jr.

V\_I\_R\_G\_I\_N\_I\_A

IN THE CIRCUIT COURT FOR THE  
COUNTY OF PULASKI

-----  
NEW RIVER MEDIA GROUP, INC.,

Plaintiff

-vs-

DAVID COLLINS KNIGHTON,

Defendant  
-----

APRIL 13, 1992  
9:00 A.M.

HEARD BEFORE:

THE HONORABLE A. DOW OWENS

CENTRAL VIRGINIA REPORTERS  
P.O. BOX 12628  
ROANOKE, VIRGINIA 24027  
(703) 380-5017

1 APPEARANCES:

2 LONG, LONG & TILLAR, ESQS.  
3 Blacksburg, Virginia  
4 BY: MARCUS H. LONG, JR., ESQ.

5 Counsel on behalf of the Plaintiff

6 BYRON R. SHANKMAN, ESQ.  
7 Dublin, Virginia

8 Counsel on behalf of the Defendant

9 \* \* \* \* \*

10 I N D E X

11 WITNESS DIRECT CROSS REDIRECT RECROSS

12 FOR THE PLAINTIFF:

13 Michael Gummer 30 56 68 70

14 Plaintiff Rests - 73

15 FOR THE DEFENDANT:

16 David Collins Knighton 80 86 - - - -

Ray Hatley 88 92 - - - -

17 Ann Dix Maenza 93 - - - -

18 Defendant Rests - 95

19 \* \* \* \* \*

20 E X H I B I T S

21 NUMBER DESCRIPTION PAGE

22 FOR THE PLAINTIFF:

23 1 Agreement dated 2-3-92 37

2 Cashier's Check 45

24 3 Bill for Attorneys' Fees 55

\* \* \* \* \*

1           The following cause came on to be heard before The  
2 Honorable A. Dow Owens, Judge of the Circuit Court of  
3 Pulaski County, and a Jury of seven, sitting at Pulaski,  
4 Virginia, at 9:00 A.M., on this, the 13th day of April 1992.

5           Patricia J. Jensen, RPR, Court Reporter, was duly  
6 sworn, and the following took place:

7  
8           THE COURT: Good morning, ladies and  
9 gentlemen. Is the Jury present?

10          THE CLERK: Yes, sir. Respond as I call your  
11 name, please.

12  
13                   (All prospective jurors are present. )

14  
15          THE COURT: All right. Court reporter, have  
16 you been sworn?

17          THE REPORTER: Yes, sir.

18          THE COURT: Is the Plaintiff ready to  
19 proceed?

20          MR. LONG: Yes, sir.

21          THE COURT: Is the Defense ready to proceed?

22          MR. SHANKMAN: Yes, sir.

23          THE CLERK: Will the following persons please  
24 come into the jury box: Judy Hager, Barbara Lee,

1 Adelene Newman, Joseph Morehead, James Zint, Hazel  
2 Pauley, Dortha Phipps, James R. Wright, Larry E.  
3 Sams, Cheryl Sawyers, Curtis Smith, John Steger,  
4 Richard Stoots.

5  
6 (The prospective jurors entered the  
7 jury box and were duly sworn. )  
8

9 THE COURT: What are the call letters,  
10 whatever you call the radio station?

11 MR. LONG: WPSK, Your Honor.

12 THE COURT: And where is it located?

13 MR. LONG: In Pulaski out on Memorial Drive  
14 -- Bobwhite Boulevard, excuse me. It is right here  
15 in Pulaski.

16 THE COURT: Ladies and gentlemen, today we  
17 are going to try a case brought by New River Media  
18 Group, Inc., the operators and owners of the WPSK  
19 radio station, represented by Mr. Marcus Long,  
20 against David Collins Knighton, who is seated to our  
21 right, who is represented by Mr. Byron Shankman.

22 Mr. Knighton was an employee of WPSK, and I  
23 suppose you use the term "disc jockey". He played  
24 records and conducted interviews and made remarks.



1           New River Media, WPSK, has brought an action  
2           to enjoin Mr. Knighton from engaging in his  
3           profession as a radio announcer or disc jockey, I  
4           believe for a period of a year and within a 60-mile  
5           radius. Am I wrong in that?

6           MR. SHANKMAN: That is correct.

7           THE COURT: Mr. Knighton has filed a  
8           counterclaim alleging that any contract that was  
9           obtained by WPSK was obtained as a result of duress  
10          and fraud.

11          He has sued for damages for being prohibited  
12          from his trade or his profession or his skills as a  
13          disc jockey since the date of the temporary  
14          injunction that was issued. The temporary  
15          injunction is by no means an adjudication of the  
16          rights of the people involved in this case.

17          Are any of you related by blood or marriage  
18          to David Knighton, who is seated to our right in the  
19          dark suit?

20          THE JURORS: (No response. )

21          THE COURT: Do any of you know him  
22          personally?

23          THE JURORS: (No response. )

24          THE COURT: Are any of you employees or

1 stockholders or agents of or do you in any way  
2 furnish services to WPSK or are any of you engaged  
3 in purchasing advertising from WPSK?

4 THE JURORS: (Indicating.)

5 THE COURT: Would that fact that you have  
6 done so in any way prejudice you -- and, if it does,  
7 tell me which way -- either for or against the  
8 Plaintiff or Defendant?

9 JUROR, MR. ZINT: I would probably have  
10 troubles.

11 THE COURT: All right. I excuse you.

12  
13 (The prospective juror was excused. )

14  
15 THE CLERK: Gary R. Umberger.

16  
17 (The prospective juror entered the jury box. )

18  
19 THE COURT: Mr. Umberger, are you in any way  
20 related by blood or marriage to David C. Knighton or  
21 do you in any way furnish services to or connected  
22 with WPSK or do you purchase advertising time or are  
23 you a stockholder or are you in any way associated  
24 with it?

1 JUROR, MR. UMBERGER: No, sir.

2 THE COURT: Are any of you aware of any bias  
3 or prejudice that you might feel toward either of  
4 these parties?

5 THE JURORS: (No response. )

6 THE COURT: Now, it is possible that some of  
7 you have read some news accounts involving this  
8 matter. The accounts are not contending to be  
9 factual accounts of what the evidence might be.

10 The accounts in the newspapers and radio or  
11 television or whatever might be accurate or may not  
12 be accurate. Have any of you read or heard anything  
13 about the case?

14 THE JURORS: (Indicating.)

15 THE COURT: There is one, two, three, four,  
16 five, six. I will address this to each of you.  
17 Does the mere fact that you have read something  
18 about it or heard something about it in any way  
19 predispose you to a verdict one way or the other,  
20 either in favor of the radio station or in favor of  
21 the disc jockey, or can you stand here today neutral  
22 and indifferent to the cause and be willing and able  
23 to base your decision on the evidence that you hear  
24 from this witness stand, the reasonable inferences

1           that you can draw from that evidence, and the  
2           instructions of the Court setting forth the law of  
3           the case and just not be affected by what you have  
4           read? Does anybody have any problem with that?

5           THE JURORS: (No response. )

6           THE COURT: And the main question is: do any  
7           of you know of any reason whatsoever that you cannot  
8           give both the Plaintiff and the Defendant and  
9           cross-Plaintiff a totally fair and impartial trial  
10          to be based on the evidence that you hear from this  
11          stand?

12          THE JURORS: (No response. )

13          THE COURT: All right. It is expected we  
14          will finish this case today. There are thirteen of  
15          you here. The trial body will consist of seven  
16          people.

17          To the extent that each of the attorneys may  
18          strike or remove three of you, they will have an  
19          opportunity to ask you questions.

20          If you have an answer to a question, let us  
21          know. Don't hesitate to do so. Answer that one  
22          specific question only. Please don't just volunteer  
23          additional information. All right. Plaintiff's  
24          Counsel?

1 MR. LONG: Yes, sir. Ladies and Gentlemen of  
2 the Jury, as Judge Owens has said, my name is Marc  
3 Long. I am representing New River Media Group,  
4 which is the corporation that owns WPSK radio  
5 station here in Pulaski.

6 I want to ask you very few questions about  
7 what may be any biases you may have regarding this  
8 case today to make sure that both sides get a fair  
9 and impartial hearing.

10 Some of you raised your hand when you said  
11 that you had heard some publicity or seen some  
12 publicity or read some publicity regarding this  
13 case. I believe, Miss, you were one of them. What  
14 is your name?

15 JUROR, MS. PHIPPS: Dortha Phipps.

16 MR. LONG: What did you see or hear?

17 JUROR, MS. PHIPPS: It was just rumors.

18 MR. LONG: And you don't feel that they would  
19 in any way bias you?

20 JUROR, MS. PHIPPS: No.

21 MR. LONG: Who else has heard something?  
22 What is your name?

23 JUROR, MR. SMITH: Curtis Smith.

24 MR. LONG: Mr. Smith, what did you see or

1 hear?

2 JUROR, MR. SMITH: Just what was in the  
3 paper.

4 MR. LONG: Do you think that would in any way  
5 bias you against either party?

6 JUROR, MR. SMITH: No.

7 MR. LONG: Sir?

8 THE JUROR: The same also, just out of the  
9 paper.

10 MR. LONG: And you don't feel that it would  
11 bias you against the employer or the employee?

12 THE JUROR: No, sir.

13 MR. LONG: Any other?

14 JUROR, MR. SAMS: All I heard was they were  
15 taking up a fund for him.

16 MR. LONG: Does that bias you?

17 JUROR, MR. SAMS: I don't even know what  
18 happened to it.

19 MR. LONG: What is your name, sir?

20 JUROR, MR. SAMS: Larry Sams.

21 MR. LONG: Anybody else? Sir?

22 JUROR, MR. UMBERGER: Gary Umberger.

23 MR. LONG: What did you see or hear or read?

24 JUROR, MR. UMBERGER: Just what I read.

1 MR. LONG: Do you feel that that would bias  
2 you in any fashion?

3 JUROR, MR. UMBERGER: No.

4 MR. LONG: Do you have any bias in favor of  
5 the employer or employee?

6 JUROR, MR. UMBERGER: No, sir.

7 MR. LONG: Anybody else?

8 THE JUROR: I read the newspaper article.

9 MR. LONG: Just the newspaper article. Does  
10 that bias you?

11 THE JUROR: No.

12 MR. LONG: Anybody else?

13 THE JUROR: Just what I read in the paper and  
14 maybe heard on the TV. I really can't say I know  
15 that much about it.

16 MR. LONG: You didn't form any opinions based  
17 on what you read or saw?

18 THE JUROR: No, sir.

19 MR. LONG: Thank you. Have any of you or any  
20 members of your immediate families been parties in  
21 an employment suit?

22 THE JURORS: (No response. )

23 MR. LONG: Have any of you been terminated  
24 you feel wrongfully from a job?

1 THE JURORS: (No response. )

2 MR. LONG: Are any of you parties to a  
3 lawsuit?

4 THE JURORS: (No response. )

5 MR. LONG: Do any of you have signed  
6 employment agreements?

7 THE JURORS: (No response. )

8 MR. LONG: As Judge Owens asked you, can you  
9 think of any other biases that you may have  
10 regarding this matter today, which involves a  
11 written employment agreement?

12 THE JURORS: (No response. )

13 MR. LONG: Thank you very much.

14 THE COURT: All right. Mr. Shankman.

15 MR. SHANKMAN: I might quickly ask: are there  
16 any loyal listeners of WPSK here?

17 THE JURORS: (Indicating.)

18 MR. SHANKMAN: In that regard, do you  
19 remember when Collins Knighton was the morning  
20 announcer at that station?

21 THE JURORS: (No response. )

22 MR. SHANKMAN: While he was the morning  
23 announcer, he certainly said things and did things  
24 in the public eye.



1 I want to know whether any of you feel like  
2 that would sway you one way or the other based on  
3 what he did on the radio.

4 THE JURORS: (No response. )

5 MR. SHANKMAN: It wouldn't block your mind  
6 from a fair and impartial decision today?

7 THE JURORS: (No response. )

8 MR. SHANKMAN: On the other side of that  
9 coin, being the fact that you are listeners of WPSK,  
10 would it direct you towards WPSK against someone  
11 else who is no longer with them since you listen to  
12 them on a daily basis or frequently?

13 THE JURORS: (No response. )

14 MR. SHANKMAN: No problem there either?

15 THE JURORS: (No response. )

16 MR. SHANKMAN: Do any of you harbor the idea  
17 that, if you sign a writing, possibly a contract but  
18 a writing, that you are irrevocably bound regardless  
19 of the fact that there may be defenses to that  
20 contract?

21 THE JURORS: (No response. )

22 MR. SHANKMAN: In this case we believe the  
23 evidence might show legal malice, which is basically  
24 interpreted as intentionally harming somebody

1 without legal justification.

2 If we prove that in the evidence, it could  
3 give rise to what we call punitive damages under the  
4 law. Punitive damages mean that they are damages  
5 that are assessed against someone else just to make  
6 a statement to the public and the world that this  
7 type of thing should not be allowed to happen.

8 Do any of you harbor feelings that that type  
9 of damages is not something that should be done in  
10 any kind of case?

11 THE JURORS: (No response. )

12 MR. SHANKMAN: Thank you very much.

13 THE COURT: Gentlemen, you may strike. You  
14 may go back to the back and do it or whatever.

15  
16 (Counsel left the courtroom. )

17  
18 THE COURT: Ladies and Gentlemen of the Jury,  
19 have you tried any cases before, maybe one or two?  
20 Have you tried any?

21 THE JURORS: Yes.

22 THE COURT: You remember that we will start  
23 out by each attorney making an opening statement if  
24 they want to outlining their theory of the case.

1           Nothing said by myself or the attorneys is to  
2           be considered by you as evidence because it isn't,  
3           so don't consider it as evidence in the case.

4           Confine yourself to the testimony that comes from  
5           the stand and the reasonable inferences that you can  
6           draw from that testimony.

7           Now, you are going to be called on probably  
8           to judge the validity and the truthfulness of the  
9           witnesses. You are the sole ones to conclude who is  
10          telling you the truth and who isn't telling you the  
11          truth. You just judge the calibration of the  
12          witnesses and their reliability.

13          Please remember that you must understand what  
14          is said. If you don't, let me know because you have  
15          to remember it. Once you start your deliberations,  
16          you cannot come back out and say, Judge, did this  
17          witness say this or did that witness say that?

18          You got to remember it. So, if you don't  
19          understand it or you want it repeated, don't  
20          hesitate to let me know.

21          Don't start considering this case or making  
22          your mind up until you have heard all the evidence  
23          in the case, until you have heard the instructions  
24          of the Court, and the argument of Counsel.

1 Don't discuss the matter with each other or  
2 let anybody discuss it with you or in your presence.  
3 When we adjourn for lunch, go directly into the jury  
4 room please and don't linger in the hall or back out  
5 in the courtroom. I feel confident we will complete  
6 this case by the end of the day.

7 If from time to time there is an objection  
8 made by one of the attorneys to a question asked, I  
9 will have to decide out of your presence whether  
10 that answer is admissible or not, so you may well  
11 hear a question that is asked and never hear the  
12 answer.

13 If that occurs, don't hold that against the  
14 attorney. We are simply trying to abide by rules of  
15 evidence. Nobody is trying to hide anything from  
16 you, because we want you to know everything that our  
17 rules of evidence say you can or should know.

18 The rules of evidence are the only sensible  
19 way you can conduct trials. Otherwise, it would be  
20 just total chaos. This may not happen a single  
21 time. It may happen every two minutes. I don't  
22 know. We will just have to wait and see, but don't  
23 hold it against the attorney.

24 At the conclusion of the case and argument of

1 Counsel and instructions, you will retire. The  
2 first thing you do is elect a foreman, and you will  
3 then reach a verdict. The verdict form that I will  
4 provide for you will be signed by the foreman.

5 The verdict you reach, whatever it is, must  
6 be with the consent of each of you. You probably  
7 will be asked if this is your verdict.

8 Does anybody have any questions about  
9 anything?

10 THE JURORS: (No response. )  
11

12 (Counsel returned to the courtroom. )  
13

14 THE COURT: Gentlemen, are you through?

15 MR. SHANKMAN: Yes, sir, Your Honor.

16 THE CLERK: Will the following persons please  
17 step out of the jury box: Judy Hager, Richard  
18 Stoots, Joseph Morehead, Hazel Pauley, Cheryl  
19 Sawyers, and John Steger.  
20

21 (The above-named jurors left the jury box. )  
22

23 THE CLERK: The rest of you might want to try  
24 to get a little closer together so you can hear the

1 evidence better. All right. Will the seven of you  
2 please stand and raise your right hand.

3

4 (The Jury was duly sworn. )

5

6 THE COURT: Those of you on the side who are  
7 not serving on this panel or this Jury, you are  
8 excused to come back either tomorrow or both  
9 tomorrow and Friday, or you may remain and listen to  
10 the case.

11 Let me have everybody who is going to testify  
12 in this matter line up in front of the bar here  
13 before the Jury.

14

15 (All witnesses were duly sworn. )

16

17 THE COURT: I am going to separate the  
18 witnesses. Are these Plaintiff's witnesses or  
19 Defense witnesses or a mix of both?

20 MR. SHANKMAN: It is a mix.

21 THE COURT: Which is the witness for the  
22 Plaintiff, the radio station? You are, of course,  
23 and you are. You are for this gentleman here.

24 I am going to just let you all go back here

1 together rather than put you all out in the hall  
2 because it is very uncomfortable out there. It is  
3 cool and we just have metal chairs. There is a room  
4 back here, and I think you can all just stay back  
5 there together.

6 Don't discuss this matter with each other or  
7 with anybody else. You wait there until you are  
8 called or until you are released for lunch. There  
9 is some coffee for you back here if you want it.  
10 All right. All the witnesses go back here. The  
11 parties may remain.

12  
13 (The witnesses left the courtroom. )

14  
15 THE COURT: Does the Plaintiff wish to make  
16 on opening statement?

17 MR. LONG: Yes, sir, Your Honor. Ladies and  
18 Gentlemen of the Jury, as I told you before, my name  
19 is Marc Long. I am an attorney from Blacksburg,  
20 Virginia, and I work with the firm of Long, Long and  
21 Tillar.

22 Today I represent the Plaintiff in this  
23 matter, New River Media, Inc., which owns WPSK, a  
24 radio station which is located here in Pulaski,

1 Virginia.

2 First of all, I would like to thank you for  
3 serving on the Jury today. This is a very important  
4 part of our judicial system and you make that  
5 possible for each and every one of us.

6 I know sometimes it is hard to take off from  
7 your work and your homes, but this is very important  
8 to everybody in this room, and I want to thank you  
9 for taking your time to serve.

10 New River Media, Inc., is a corporation, a  
11 Virginia corporation, which owns WPSK radio station  
12 here in Pulaski. It plays country music. It plays  
13 Reba McIntyre, George Strait, and all the great  
14 country stars.

15 It employs twelve people here in Pulaski. It  
16 has been in business a number of years. It is  
17 active in the community. It is a member of the  
18 chamber of commerce. It gives public service time;  
19 it gives time for public service organizations.

20 Ladies and Gentlemen, it is not some cold  
21 hard corporation. It is a member of this community  
22 just like every one of us.

23 In May of 1991 WPSK employed David Knighton  
24 as an on-air personality, what I call a disc jockey.



1 In the radio business they call it an on-air  
2 personality. During the course of his employment,  
3 he rose to be the operations manager of WPSK.

4 As part of his duties as operations manager,  
5 he was an on-air personality, he helped with  
6 promotions for their advertisers, he worked with the  
7 day-to-day operations of the radio station, he  
8 produced and performed commercials, and he even  
9 hired and fired employees as part of his job as  
10 operations manager.

11 Ladies and Gentlemen, what is going to be the  
12 big issue and what you are going to hear a lot about  
13 today in this trial is that he was terminated from  
14 this job on February 3, 1992.

15 As part of that termination -- and this  
16 agreement will be introduced to you as evidence  
17 today, and you will have an opportunity to read it  
18 -- he signed what we call a restrictive covenant  
19 agreement.

20 The terms of this agreement in short -- and  
21 you will have time to read the whole thing if you  
22 want to. It is fairly big print and it is only four  
23 pages. Sometimes in our business that is a short  
24 agreement. You will certainly have time to read it.

1           The gist of the agreement is that he agreed  
2           not to work for a competing radio station within 60  
3           miles of WPSK for a period of 12 months.

4           Ladies and Gentlemen, one thing the evidence  
5           will show many times is this does not prohibit him.  
6           This agreement in no way prohibits him from working.  
7           It prohibits him from working within 60 miles for a  
8           12-month period. He can work anywhere anytime  
9           outside of 60 miles, and after 12 months he can work  
10          anywhere anytime. That is what the terms of the  
11          agreement say.

12          For this, he was paid the sum of \$2,000.  
13          Here is the cashier's check that was delivered to  
14          him and which he took with him on February 3.

15          Ladies and Gentlemen, on February 3 he left  
16          WPSK radio station down here on Bobwhite Boulevard  
17          and took a signed copy of this agreement and this  
18          check with him.

19          On February 17 he became employed by WRIQ  
20          radio station, which is located in Radford,  
21          Virginia, which is approximately 14 or 15 miles from  
22          WPSK. He was what we call an on-air personality  
23          again, a disc jockey, at that time.

24          He became employed on February 17 and he

1 actually went on the air on February 19 the evidence  
2 will show you.

3 My client, WPSK, at that time sought to get a  
4 temporary injunction against him to ask the Court to  
5 make him honor the terms of the agreement.

6 As Judge Owens has told you, that is in no  
7 way controlling on us today, but a temporary  
8 injunction was issued against him on February 3  
9 because he went to work for a competing radio  
10 station.

11 The evidence will show you that WRIQ down in  
12 Radford plays country music just like WPSK does. It  
13 will show that it is probably their closest  
14 competitor and their biggest competitor.

15 Now, on February 17, the day that he became  
16 employed by WRIQ, he returned this check back up to  
17 WPSK because he had become employed. He hadn't  
18 cashed it, no doubt, but he returned it. He had  
19 kept it with him for two weeks.

20 Now, Ladies and Gentlemen, he is going to  
21 claim that he signed this agreement under duress.  
22 He is going to claim it was financial duress, that  
23 he had to take the money.

24 I think, Ladies and Gentlemen, you will see

1 from the evidence that this agreement was signed by  
2 him. You will see the circumstances surrounding it,  
3 that he took the agreement, went back to his office  
4 or went back to a private office, called a lawyer,  
5 called an agent, and even called Mr. Ray Hatley who  
6 is the manager of WRIQ.

7 He then came back and met with Mr. Gummer,  
8 who is the station manager of WPSK here in Pulaski,  
9 and made some changes in the agreement about what he  
10 could do within that radius.

11 He wanted to be able to serve as a disc  
12 jockey at private parties or functions. He  
13 shortened one of the mileages so that he could deal  
14 with advertisers within 30 miles.

15 So he made changes in the agreement and he  
16 kept the check for two weeks, and now he is coming  
17 into court today and claiming that he signed it  
18 under duress.

19 Ladies and gentlemen, the evidence will show  
20 you and the facts will show that no one forced him  
21 to sign this agreement. No one threatened any  
22 illegal action against him. No one forced him at  
23 all to sign the agreement.

24 He made changes, he took the agreement with

1 him that day, and he took the check. There was  
2 nothing about duress.

3 Now, Ladies and Gentlemen, Mr. Knighton is  
4 also claiming that my client, WPSK, is interfering  
5 with his right to work.

6 Ladies and Gentlemen, the evidence will show  
7 that he signed the agreement. He is the one that  
8 agreed to the restrictive covenant. I think the  
9 evidence will show that he participated in the  
10 agreement just as much as WPSK.

11 Again, I want to emphasize that this  
12 agreement does not prohibit him from working. It  
13 just prohibits him from working for a competitor of  
14 WPSK, and he was paid \$2,000 to do this.

15 Ladies and Gentlemen, the parties should be  
16 bound by their written agreements, and I think the  
17 facts will show this. I think the facts will show  
18 also that he wasn't under duress and didn't stay  
19 under duress for that two-week period that he kept  
20 the check.

21 As we go through and the witnesses testify --  
22 and there will not be a great number of them today;  
23 there will just be several -- I think you will see  
24 that some facts are undisputed.

1           We have a signed agreement, undisputed. The  
2           agreement is clear and unambiguous. Nobody has  
3           claimed that the agreement was confusing or  
4           ambiguous.

5           WPSK delivered a signed agreement to  
6           Mr. Knighton after he made changes along with the  
7           \$2,000 check which he took with him, and he kept it  
8           for two weeks. He kept it until he became employed.  
9           If he was under such duress, why didn't he bring it  
10          back sooner than he became employed?

11          Ladies and Gentlemen, the facts are clear  
12          that a temporary injunction has been issued against  
13          him forbidding him from working for WRIQ or working  
14          within the space, that being the 60 miles, and the  
15          time, that being the 12 months, of WPSK.

16          Again, I thank you for serving on the Jury,  
17          and I ask you to consider the statements made by the  
18          witnesses today. They are the ones that know the  
19          true facts.

20          Mr. Shankman and I will certainly be arguing  
21          for our clients, but what we say is not evidence.  
22          The true evidence comes from the witness stand here  
23          today. Again, thank you.

24          THE COURT: Mr. Shankman.

1 MR. SHANKMAN: Thank you, Your Honor. As  
2 Mr. Long told you, I am Byron Shankman. I have an  
3 office in Dublin and I represent Collins Knighton.

4 I think what is going to be revealed to you  
5 today is a scenario surrounding the execution of a  
6 piece of paper which restricts a man's right to  
7 work. The scenario that you will hear is not what  
8 we normally consider being the circumstances where  
9 such an agreement is executed.

10 It is very important to note that Mr. Collins  
11 Knighton had been told he was terminated in December  
12 1991. He begged on and stayed on the job for  
13 approximately two more months looking all over the  
14 country for jobs.

15 During that time his child support  
16 obligations came down on him. Before that time he  
17 had had a car repossessed. He was not in the  
18 greatest shape financially. This was all known to  
19 his employer.

20 The transaction which you heard Mr. Long talk  
21 about involving the signing of this agreement took  
22 place in a time frame of 15 to 20 minutes.

23 You will find in the evidence that my client  
24 did try to call a lawyer but was told that the

1 lawyer represented the station and couldn't talk to  
2 him.

3 You will also find that he did try to call  
4 two or three other people to no avail and did go in  
5 and take the \$2,000 for a short period of time. He  
6 gave it back on the 17th, but you will find in the  
7 evidence that he communicated much sooner than that  
8 that he was giving the check back.

9 The reality of the workplace, even though he  
10 needed that \$2,000, told him he better look around  
11 here and find whatever he could, and he did.

12 I am just kind of summarizing it right now.  
13 There will be a lot of other factors that come into  
14 play. We are going to ask you, as a Jury, to apply  
15 the standards of fairness to this case.

16 You are speaking for the community today.  
17 You tell us whether, under what happened today, it  
18 is fair to restrict a man's right to work.

19 You tell us whether it is reasonable. You  
20 tell us whether they intentionally tried to harm  
21 this man and keep him from working or whether they  
22 had a justification that you can find anywhere.

23 Mr. Long keeps referring to the temporary  
24 injunction. Yes, there was a temporary injunction.



1 A temporary injunction only gets us to today. The  
2 reason for a temporary injunction is to give the  
3 community a chance to speak its mind on such a case  
4 as this nature. That is why we are here.

5 You will also see in the evidence that,  
6 besides putting forth evidence to you that this  
7 agreement is unenforceable, we are going to say that  
8 they intentionally interfered with his right to  
9 work, and we have claimed damages because of that.

10 We will put forth proof of damages, not only  
11 through ourselves, but through witnesses that were  
12 initially subpoenaed by the Plaintiff.

13 I think in the end our job, as the attorneys  
14 and the witnesses in this case, is just to bring it  
15 out to you and let you as a community apply those  
16 standards I talked about.

17 I will come back at the end of the case and  
18 ask you whether you think there was an even playing  
19 field when this so-called agreement was executed and  
20 whether the circumstances under which that agreement  
21 was executed were reasonable and whether they had a  
22 justification for even putting him under such an  
23 agreement. Thank you.

24 THE COURT: Call your first witness, please.

1 MR. LONG: Your Honor, we would call Mr. Mike  
2 Gummer.

3  
4 MICHAEL GUMMER

5  
6 was called as a witness and after having first been duly  
7 sworn to tell the truth, the whole truth and nothing but the  
8 truth, was examined and testified as follows:

9  
10 DIRECT EXAMINATION

11  
12 BY MR. LONG:

13 Q Please state your name.

14 A My name is Michael Gummer.

15 Q And your occupation?

16 A I am the general manager of WPSK radio.

17 THE COURT: Let me suggest very strongly that  
18 you speak up. There is a lot of construction noise  
19 in the back. There may be jackhammers going and  
20 front end loaders and back end loaders and side  
21 loaders, gravel trucks, sand trucks, and all kinds  
22 of stuff.

23 THE WITNESS: Yes. Is the microphone  
24 working?

1 THE COURT: That microphone does not amplify.  
2 The Jury wants to hear you, so you have to speak up.  
3 I will tell you again, because I am going to bug you  
4 about it.

5 THE WITNESS: I appreciate that. Thank you,  
6 sir.

7 MR. LONG: Ladies and Gentlemen of the Jury,  
8 if you can't hear something from any witness up  
9 here, please feel free to say you didn't hear it or  
10 whatever, because we want you to hear everything.  
11

12 BY MR. LONG:

13 Q How long have you been employed as general  
14 manager at WPSK?

15 A Since the end of October in 1990.

16 Q You have been in the radio business quite a  
17 while?

18 A Yes, I have.

19 Q How long is that?

20 A I entered the radio business in 1966.

21 Q And you have had various duties in that  
22 business?

23 A I started as an announcer. My very first job  
24 was as an announcer at a little radio station. I started

1 for \$1.25 an hour, minimum wage in those days.

2 Q You are now general manager of WPSK?

3 A That is correct.

4 Q If you would, please describe WPSK-FM, if you  
5 will. What type of music does it play?

6 A We are a country music radio station. We  
7 program modern country music to an audience in Pulaski  
8 County and throughout the New River Valley.

9 We are involved in broadcasting throughout  
10 the valley both from our studios and we also do live  
11 broadcasts sometimes, what we call remote broadcasts,  
12 throughout locations in the valley.

13 Q What area does WPSK cover?

14 A Primarily, the New River Valley area. Our  
15 total signal strength goes about 60 miles. It is not an  
16 exact circle, but it approximates a 60-mile circle based on  
17 the measurements from our engineering firm.

18 Q Who primarily are your advertisers?

19 A Mostly local businesses throughout the New  
20 River Valley. We have very few national advertisers or  
21 regional advertisers. We mostly provide advertising  
22 services to businesses in the general location, mostly  
23 locally owned businesses.

24 Q Do you offer public service time to

1 organizations?

2 A Yes, we do. Part of what we do is to provide  
3 free air time to --

4 MR. SHANKMAN: Your Honor, I object. This  
5 doesn't have any relevance.

6 THE COURT: It is required anyway, so it is  
7 no gift. Mr. Long, is it not required by the FCC?

8 MR. LONG: Yes, sir.

9 THE COURT: That has nothing to do with this  
10 trial, Ladies and Gentlemen. Of course, the station  
11 gives free radio time. It has to if it wants to be  
12 licensed, so that has nothing to do with this case.

13 MR. LONG: Judge, I just wanted to show it  
14 was a member of the community. That was my purpose.

15 THE COURT: So is this gentleman.

16 MR. LONG: Yes, sir, I understand.

17

18 BY MR. LONG:

19 Q How many employees does WPSK have?

20 A Generally, about a dozen employees.

21 Q Mike, you are familiar with David Collins  
22 Knighton; is that correct?

23 A Yes, I am.

24 Q What was the approximate date that you hired

1 him?

2           A           Mr. Knighton came to work for us, I think, on  
3 May 14 of last year, 1991.

4           Q           What were his duties at that time?

5           A           He was hired as our operations manager and  
6 our morning air personality, and he had a wide range of  
7 duties for our radio station. He was our morning announcer  
8 and our highest profile air personality.

9                       If I could explain just a little bit, in  
10 radio the most important time of your broadcast day is in  
11 the morning. That is when the most people listen as they  
12 are driving to work and getting up. Mr. Knighton held down  
13 that slot for us on the air. He was our morning air  
14 personality.

15                      Additionally, beyond that, he was involved in  
16 a wide range of other activities at our radio station. As  
17 our operations manager, there were very few areas of our  
18 operations in which to one degree or another he was not  
19 involved.

20                      Mr. Knighton coordinated technical issues  
21 with our engineering firm, or engineering staff I should  
22 say, our contract engineer. Mr. Knighton was involved in  
23 helping the radio station develop promotions and contests.

24                      Mr. Knighton produced commercials for our

1 radio station on behalf of our clients. On occasions he  
2 would go with our staff and visit clients and work with them  
3 in developing the commercials.

4 He also had the air staff. The other  
5 announcers at our staff reported to him. He was their  
6 direct supervisor.

7 Also, he was influential in making personnel  
8 decisions that involved the air staff, that is, hiring  
9 individuals and assigning them to specific slots on the  
10 radio station lineup.

11 Q Now, when did his employment terminate at  
12 WPSK?

13 A His final day with us was on February 3 of  
14 1992. That was his last working day.

15 Q Now, prior to that though, you had discussed  
16 his leaving; is that right?

17 A Yes, we had.

18 Q When did you first discuss his leaving?

19 A We discussed it first with Mr. Knighton on  
20 December 16, 1991.

21 Q What was said?

22 A At that meeting I had informed Mr. Knighton  
23 that his employment was going to be ending with our company.  
24 I gave him some reasons for that termination. I told him

1 that I heard from a variety of sources outside the radio  
2 station --

3 Q You can't say what these people told you.

4 A No, I can't.

5 Q You just told him in December that you were  
6 going to terminate him; is that right?

7 A Yes, I did.

8 Q He looked for a job after that; is that  
9 right?

10 A I am sure that he did, yes.

11 Q Did he take time off to look for a job?

12 A Yes, he did.

13 Q Was that time paid?

14 A Yes, it was. He was paid in full during that  
15 time.

16 Q Now, on February 3 of 1992 you met with  
17 Mr. Knighton to tell him that that was his last day; is that  
18 right?

19 A That is correct.

20 Q Now, as part of that you asked him to sign  
21 this agreement, which is called a restrictive covenant  
22 agreement?

23 A That is correct.

24 Q What is the date of that agreement?



1           A       February 3.

2           Q       And the parties?

3           A       David Collins Knighton and the New River  
4 Media Group.

5                   MR. LONG: I would like to ask that this be  
6 introduced as Plaintiff's Exhibit 1.

7                   MR. SHANKMAN: No objection.

8  
9                   (The Agreement dated 2-3-92 was marked  
10 Plaintiff's Exhibit Number 1 and was  
11 entered into the Record.)  
12

13 BY MR. LONG:

14           Q       Mike, I am going to ask you a couple  
15 questions from this agreement. I would ask you to look just  
16 above Paragraph 1 there where it says "Now, therefore".

17                   Let me just back up one second. In this  
18 agreement David Collins Knighton is called the Employee and  
19 New River Media Group is called the Employer; is that  
20 correct?

21           A       That is correct.

22           Q       Now, if I could ask you to look just above  
23 Paragraph 1 there on the first page where it says  
24 "consideration paid", how much consideration was paid to

1 Mr. Knighton for this agreement?

2 A He was given a cashier's check in the amount  
3 of \$2,000.

4 Q If I could ask, just basically what does that  
5 agreement -- if you could, just characterize it, summarize  
6 the agreement. What does it do?

7 A The agreement as is written essentially says  
8 that Mr. Knighton will not work for any competing radio  
9 station for a period of one year.

10 A competing radio station as defined by the  
11 agreement would be a radio station within a 60-mile radius  
12 of Pulaski where our station is located.

13 There were a few other provisions in the  
14 agreement as well involving radio stations outside the  
15 60-mile limit which broadcast within and sell within, but  
16 the primary point in the agreement was that Mr. Knighton  
17 would not go to work for a competing radio station within 60  
18 miles of Pulaski.

19 Q If I could ask you to turn to Page 2 of that  
20 agreement --

21 A Yes, sir.

22 Q -- if you would please, read the first  
23 paragraph of Paragraph 2.

24 A The first paragraph of Paragraph 2?

1 Q Yes.

2 A Where it starts "As an intricate part"?

3 Q Yes.

4 A "As an intricate part of the employment of  
5 the Employee as an air personality, the Employee agrees  
6 that, for a period of 12 months following the termination of  
7 the Employee's employment for any reason whatsoever, the  
8 Employee will not directly or indirectly, either as an  
9 individual or on his own account or as a partner, employee,  
10 manager, principal stockholder, salesperson, representative,  
11 nor in any other capacity whatsoever, engage in any or all  
12 of the following activities within the herein described  
13 restrictive area or territory."

14 Q So that first part of Paragraph 2 says within  
15 12 months; is that correct?

16 A That is correct.

17 Q If I could ask that you read Paragraph 2(a)  
18 just below that, please.

19 A "Enter into or engage in any business that in  
20 any way competes with the present or future business  
21 operations of the Employer. In this regard it is  
22 acknowledged that at this time the Employer is primarily  
23 engaged in the business of radio broadcasting.

24 "The providing of any air personality,

1 announcer, production services, or disc jockey services on  
2 behalf of any competing entity outside the restricted  
3 territory for broadcast in the restricted territory or the  
4 providing of any air personality, announcer, production  
5 services, or disc jockey services on behalf of any competing  
6 entity inside the restricted territory shall constitute  
7 engaging in business in the restricted territory in  
8 violation of this provision."

9 Q Mike, if I could ask you to now turn to  
10 Page 3 of the agreement.

11 A (Witness complies).

12 Q I ask that you read Paragraph 3, just  
13 Paragraph 3(a) and (b).

14 A "The area encompassed within the restricted  
15 territory as above described shall include that geographic  
16 area encompassing a radius of 60 air miles from the  
17 broadcast station as maintained by the secured party and any  
18 other radio station outside the 60-mile limit that  
19 broadcasts to any area within the 60-mile limit and solicits  
20 commercial broadcast business from advertisers located  
21 within a 30-mile limit."

22 Q If you would, just read the entire Paragraph  
23 4 right below that, please.

24 A Okay. "The covenants herein on behalf of the

1 Employee or of the essence of the employment arrangement  
2 shall be construed as independent of any other provision or  
3 agreement" --

4 THE COURT: Start that over again.

5 THE WITNESS: Yes, sir, I will. I will try  
6 to read louder. Thank you.

7 THE COURT: No, I just want to hear it. You  
8 said, "the essence of the employment agreement"?

9 THE WITNESS: "Arrangement". I misread that.  
10 "The covenants herein on behalf of the Employee or  
11 of the essence of the employment arrangement shall  
12 be construed" --

13 THE COURT: "Employment arrangement"? Is  
14 that what you are saying?

15 THE WITNESS: Yes, sir. That is what the  
16 agreement says.

17 THE COURT: He is terminating --

18 THE WITNESS: Yes, sir.

19 THE COURT: -- so there is no employment  
20 arrangement. Employment arrangement predisposes  
21 that you are doing this when he first seeks  
22 employment with you, does it not? The term you use  
23 there says, I am going to work for you today.

24 THE WITNESS: Yes, sir. I wouldn't interpret

1           that. At the time the agreement was signed, I think  
2           both of us clearly understood it was at his  
3           termination.

4           THE COURT: I don't care what you understood.

5           THE WITNESS: Yes, sir.

6           THE COURT: It is what the contract says that  
7           we are all interested in.

8           THE WITNESS: Yes, sir.

9

10       BY MR. LONG:

11           Q       It says "employment arrangement", does it  
12       not?

13           A       Yes, it does.

14           Q       And at this time he was being terminated?

15           A       That is correct.

16           THE COURT: He wasn't being employed. He was  
17       being terminated. This was not a contract that was  
18       entered into when he first sought employment with  
19       you.

20           THE WITNESS: No, sir, it was not.

21           THE COURT: But only when you fired him?

22           THE WITNESS: Yes, sir.

23           THE COURT: And you called it an employment  
24       contract?

1 THE WITNESS: That is the word in the  
2 agreement, yes, sir.

3 THE COURT: Did you draw the contract?

4 THE WITNESS: No, sir, I did not personally  
5 draw the contract.

6 THE COURT: Did you have it drawn?

7 THE WITNESS: It was drawn by our law firm.

8 THE COURT: Did you have the contract drawn?

9 THE WITNESS: Did I personally have it drawn?

10 THE COURT: Did your company have the  
11 contract drawn?

12 THE WITNESS: Yes, sir, it did.

13 THE COURT: All right. Go ahead.

14

15 BY MR. LONG:

16 Q If you could, continue to read that.

17 A "The covenants herein on behalf of the  
18 Employee or of the essence of the employment arrangement  
19 shall be construed as independent of any other provision or  
20 agreement, and the existence of any claim or cause of action  
21 against the Employer, whether predicated on this agreement  
22 or otherwise, shall not constitute a defense to the  
23 enforcement by the Employer of this restrictive covenant.

24 "It is expressly agreed that this restrictive

1 covenant and all covenants herein are reasonable as to both  
2 duration and distance and are not overly burdensome, are not  
3 economically oppressive to the Employee, are not injurious  
4 to the public welfare or benefit, and are specifically  
5 enforceable in a court of competent jurisdiction against the  
6 Employee.

7 "In addition, the Employee acknowledges that  
8 the Employer has invested substantial time and money" --

9 Q If I could stop you right there, it says the  
10 Employer "has invested", past tense?

11 A Yes, sir.

12 Q Okay. I just wanted to make sure.

13 A Yes, sir. "In addition, the Employee  
14 acknowledges that the Employer has invested substantial time  
15 and money in promoting the Employee as an air personality  
16 such that it will be impossible to ascertain the injury or  
17 damage to the Employer in the event of a breach of this  
18 agreement by the Employee and that the Employer shall be  
19 entitled to have the provisions of this agreement  
20 specifically enforced as against the Employee."

21 Q Mike, if I can ask you again to turn to  
22 Paragraph 6 of the agreement.

23 A (Witness complies. ) Yes, sir.

24 Q Basically, if you could read the next to the



1 last sentence of that paragraph.

2 A "The Employee further agrees to indemnify and  
3 hold harmless the Employer from all damages and costs,  
4 including reasonable attorneys' fees relating to the  
5 enforcement of this agreement."

6 MR. LONG: Ladies and Gentlemen of the Jury,  
7 if any of you should like to look at this agreement,  
8 please feel free to. I will lay it right there if  
9 any of you want to see it.

10

11 BY MR. LONG:

12 Q At the time that agreement was signed, did  
13 you give Mr. Knighton a check in the amount of \$2,000, a  
14 cashier's check?

15 A Yes, I did.

16 Q Is this the check?

17 A Yes, sir, this is the check.

18 THE COURT: Any objection?

19 MR. SHANKMAN: No.

20 MR. LONG: Plaintiff's Exhibit Number 2.

21

22 (The Cashier's Check was marked Plaintiff's  
23 Exhibit Number 2 and was entered into the  
24 Record.)

1 BY MR. LONG:

2 Q Mike, was that check handed to Mr. Knighton?

3 A Yes, it was.

4 Q Did he accept it?

5 A Yes, he did.

6 Q That is a cashier's check?

7 A Yes, it is.

8 Q You can't stop payment on it?

9 A No.

10 Q Did he leave the station on February 3 with  
11 that agreement?

12 A He took the check with him, yes, sir.

13 Q And the agreement as well?

14 A He took a copy of the agreement.

15 Q Was it a signed copy?

16 A It was signed by me. I don't know if he  
17 signed his copy or not.

18 Q Certainly, the original copy here with the  
19 Jury is signed.

20 A Yes, he signed that copy.

21 MR. LONG: Ladies and Gentlemen of the Jury,  
22 if you want to take a look at the check, here it is.  
23  
24

1 BY MR. LONG:

2 Q Subsequent to February 3, 1992, to your  
3 knowledge, did Mr. Knighton become employed elsewhere?

4 A Could you please repeat that.

5 Q Did he become employed elsewhere after  
6 February 3?

7 A Yes, he did.

8 Q Where was that?

9 A He was employed at WRIQ radio in Radford.

10 Q Do you know on what date he became employed?

11 A I believe he became employed on February 17.

12 Q Do you know what date he went on the air?

13 A February 19.

14 Q What was he doing on the air, if you could  
15 tell me?

16 A He was doing a morning radio show.

17 Q Did he return that check to WPSK?

18 A He brought the check back to the station on  
19 February 17.

20 Q That was the very day he became employed at  
21 WRIQ?

22 A I believe that is correct, yes.

23 Q What type of music does WRIQ play?

24 A They play similar music to us. They play

1 modern country music.

2 Q Would you characterize them as one of your  
3 competitors?

4 A They are our most direct competitor in the  
5 area, yes, sir.

6 Q How far are they located from your station?

7 A It is about a 14-mile drive from our studios  
8 here in Pulaski to the WRIQ studios located in Fairlawn.

9 Q Do you all vie for the same advertisers?

10 A Same advertisers, yes.

11 Q Same audiences?

12 A I think we are trying to attract the  
13 identical audience.

14 Q Now, if we can go back to the time that the  
15 agreement was signed -- and while the Jury looks at it --  
16 about what time did you meet with Mr. Knighton on that date?

17 A The meeting started at 2:00 as I recall it.

18 Q What was said?

19 A The first thing that was said to Mr. Knighton  
20 was that this would be his final day of employment, and we  
21 discussed that briefly. At that point I told Mr. Knighton  
22 that I was authorized by the company to make him an offer,  
23 and I outlined the offer.

24 Q Did you give him a copy of the agreement?

1           A           First I told him what the basic provision of  
2           the agreement was, that it was a non-competition agreement.  
3           I told him verbally first that there were a number of  
4           points, but the primary point was that the agreement would  
5           say that he would not go to work for any radio station  
6           within a distance of 60 miles for one year.

7                       At that point I gave him a copy of the  
8           agreement and told him he should read it thoroughly before  
9           he made a decision as to whether or not he would accept the  
10          offer.

11           Q           What did he do?

12           A           He looked at it briefly and asked if he could  
13          contact an attorney.

14           Q           Do you know whether he did or not?

15           A           I believe that he did, yes. He left my  
16          office and went to his office and was in his office for a  
17          period of about twenty minutes.

18           Q           How long did you meet with him before he went  
19          to his office?

20           A           I would say approximately ten minutes, not  
21          exceeding that.

22           Q           So you met with him for ten minutes and then  
23          he went back to his office for twenty minutes?

24           A           Yes.

1 Q And you know he called at least one attorney?

2 A I believe that is correct, yes.

3 Q Do you know whether he called anyone else?

4 A I believe he made other phone calls as well.

5 Q Do you know who else he called?

6 A He said I think that -- he said he contacted  
7 his agent who was representing him in a job search, and he  
8 might have also called the general manager of WRIQ radio.

9 Q Who is that, Ray Hatley?

10 A Yes, sir.

11 Q Did you talk to him during this twenty-minute  
12 period?

13 A Yes, I did.

14 Q What did you say to him?

15 A I went back to his office shortly after he  
16 had gone there. He had asked to call an attorney. I could  
17 see, because the phone lights on my desk are very easy for  
18 me to see, he made a series of phone calls. I went back to  
19 ask if he had contacted an attorney, and he said he had not  
20 yet done so.

21 Q And then you went back to your office?

22 A I went back to my office.

23 Q Did you ever go back to his office?

24 A I went back to his office sometime later. I

1 again went back to see if he was proceeding and getting  
2 closer to making a decision. He was on the phone at that  
3 point wrapping up a conversation, so I waited outside his  
4 office at that point.

5 I went in and spoke to him briefly and  
6 stepped back outside his office and waited about a minute  
7 while he wrapped up his telephone conversation. At that  
8 point we both came back to my office.

9 Q You went back to your office?

10 A That is correct.

11 Q Did you discuss the agreement with him at  
12 that time?

13 A When we came back to my office, Mr. Knighton  
14 asked if he could make some changes in the agreement as it  
15 was written, if we would be willing to do that. We said  
16 that, yes, we would be willing to talk about it if he wanted  
17 to change some of the provisions of the agreement.

18 Q Did he, in fact, make changes?

19 A Yes. There were three separate changes that  
20 were made to the agreement.

21 Q If you would, tell Judge Owens and the Jury  
22 what those changes were.

23 A The first change that Mr. Knighton asked for  
24 -- he sat back down and, after he asked if we could make

1 some changes, he said, Okay, Paragraph 2 or Point 2

2 Paragraph A.

3 He said that the way the agreement had been  
4 drafted it said that he could not provide disc jockey  
5 services, and he asked if we would be willing to modify that  
6 in such a way that he could provide disc jockey services of  
7 a private nature.

8 That would be being a disc jockey at a  
9 nightclub or a disc jockey for a private party. He said he  
10 felt the way it was worded that the agreement would prevent  
11 him from doing that.

12 We talked about it and I said we didn't  
13 consider that competitive, so we added a line to it that  
14 said "disc jockey services on behalf of any competing  
15 entity".

16 I asked Mr. Knighton to initial that and he  
17 asked me to initial it as well, and we initialed it on both  
18 of the copies because he was getting a copy and we were  
19 going to retain a copy. We both initialed it. We talked  
20 about that.

21 We got down to the next paragraph, and he  
22 said that he might like to maybe open up his own advertising  
23 agency or perhaps do production work, that is, voice work  
24 for clients.



1                   To do that he would have to go in and seek  
2                   those clients, but the wording said that he would not  
3                   solicit customers within the restricted territory for  
4                   himself or any person, firm, association, or corporation.

5                   He asked if we thought that that would be  
6                   competitive. We said we didn't think so, so we simply  
7                   removed the words "for himself" and agreed that he could  
8                   then do such a thing.

9                   Then he asked for one other change. That was  
10                  on the third page, Section 3(b). He indicated to us that he  
11                  had a job possibility, a possibility only, in Lynchburg and  
12                  asked if we thought that going to Lynchburg would compete  
13                  with us.

14                  We discussed it and decided that no,  
15                  Lynchburg would not -- none of the stations in Lynchburg we  
16                  felt were competitive. He said the way the agreement was  
17                  drafted that it would prevent him from going to Lynchburg.

18                  I looked at it and I said the way it is  
19                  drafted it might do that, so we decided to change some of  
20                  the mileage restrictions so that he could go and work in  
21                  Lynchburg if he wanted to accept a job there if he was  
22                  offered a job there.

23                  We changed -- I will read what it said, if I  
24                  may, and then how we changed it. It said, "The area

1 encompassed within the restricted territory shall include  
2 any other radio station outside the 60-mile limit that  
3 broadcasts to any area within the 60-mile limit and solicits  
4 commercial broadcast business from advertisers located  
5 within the 60-mile limit."

6                   We didn't believe that any of the Lynchburg  
7 stations, while they might broadcast within the limit,  
8 actually sold very close to our sales area, so we reduced  
9 that sales restriction from 60 miles to 30 miles.

10                   This would have meant, if a Lynchburg station  
11 sold advertising in Roanoke, that would not prohibit under  
12 this agreement Mr. Knighton from working for that radio  
13 station. He would be free to do that.

14                   Q           These changes were all at his request?

15                   A           Yes, they were all made at his request.

16                   Q           Now, Mike, Paragraph 6 of the agreement says,  
17 if there is a breach of the agreement, that Mr. Knighton as  
18 the employee agrees to pay your attorneys' fees and expenses  
19 in enforcing the agreement; is that correct?

20                   A           That is correct.

21                   Q           I hold before me a bill from our law firm for  
22 these attorneys' fees and expenses and ask you to recite how  
23 much that is.

24                   A           The total amount is \$4,479.

1           Q       And you are asking that you be compensated  
2 for your expenses; is that correct?

3           A       Yes, sir, we are.

4           MR. LONG: Judge, we would ask that this be  
5 entered as Plaintiff's Exhibit 3.

6           MR. SHANKMAN: Subject to requesting an  
7 itemization.

8           MR. LONG: Judge, I have got that if Byron  
9 wants that, no problem.

10          THE COURT: All right.

11  
12                   (The Bill representing attorneys' fees was  
13 marked Plaintiff's Exhibit Number 3 and  
14 was entered into the Record.)

15  
16 BY MR. LONG:

17          Q       Mike, once Mr. Knighton became employed at  
18 WRIQ, you sought an injunction against him; is that right?

19          A       Yes, we did.

20          MR. LONG: Answer any questions that Judge  
21 Owens or Mr. Shankman may have.

22  
23  
24

## CROSS-EXAMINATION

BY MR. SHANKMAN:

Q We will go in reverse order here. You sought the injunction on what day?

A I believe we sought the injunction on the -- I am trying to think. I think it was the 21st of February.

Q And at that time you were aware of the fact that the \$2,000 check had been given back and not endorsed?

A The check had been returned on the 17th.

Q Had you had any other contact with Collins after February 3 and up until the 17th?

A No, I had no contact with him.

Q Had your office had any contact with him during that time?

A I believe Mr. Knighton had called the office on occasion, yes, sir.

Q Who had he talked to?

A I believe he talked with Regina Delph, who is our receptionist.

Q She is the one who generally answers the phone?

A Normally, yes, sir.

Q And represents the company out front locally;

1 is that right?

2 A Yes, sir.

3 Q Now then, on the day that this agreement --  
4 we will call it -- was executed, you had already told  
5 Collins back in December, I believe, that he was terminated;  
6 is that correct?

7 A Yes, sir.

8 Q Why was he allowed to stay on that additional  
9 approximate two months?

10 A He pleaded for his job and --

11 THE COURT: Excuse me, Mr. Long. I would  
12 like to look at the contract.

13 MR. LONG: (Complies. )

14 THE COURT: You may continue. I am sorry for  
15 the interruption.

16

17 BY MR. SHANKMAN:

18 Q You told him in December he was terminated?

19 A On December 16, yes, sir.

20 Q But he pleaded and said, Keep me on, or  
21 whatever?

22 A Yes, sir, he did.

23 Q And, out of the goodness of your heart, you  
24 did so?

1           A           With some empathy for Mr. Knighton and also  
2           in listening to some of his logical points regarding why it  
3           might be advantageous to us both for him to stay on at the  
4           station for a while longer.

5           Q           Now, on February 3 had there been any more  
6           discussions between you and he about when he was going to be  
7           terminated?

8           A           No, not on -- you are asking me between the  
9           16th and February 3?

10          Q           Yes.

11          A           No, I don't believe we had any further  
12          discussions. We had told him on the 16th that we would  
13          guarantee his continued employment at least until January 15  
14          and possibly sometime longer than that.

15          Q           And that was the end of that discussion as  
16          far as when you were finally going to let him go until  
17          February 3?

18          A           That is correct.

19          Q           And on February 3 you approached him and  
20          directly told him that was it?

21          A           That is correct.

22          Q           What was he doing at the time you told him  
23          that?

24          A           He was sitting in my office.

1 Q You brought him into your office?

2 A Yes, sir.

3 Q At what time?

4 A 2:00.

5 Q Had he been told anything previously to that?

6 On that day had he been told what the purpose of the meeting  
7 was?

8 A No, he hadn't been told that.

9 Q So you brought him in at 2:00 and you said  
10 this is the day -- use your words.

11 A I think I told him that we had -- I will try  
12 to recount it as best I can. He sat down and I said,  
13 Collins, you know, as you recall, we talked on December 16.  
14 I referred back to the previous meeting, and I told him that  
15 today would be the day that we would terminate his  
16 employment.

17 Q Then did you tell him about the \$2,000 you  
18 had for him?

19 A I told him that I was authorized by the  
20 company to make him an offer, yes, sir.

21 Q Then you told him that you had this agreement  
22 or document he had to sign to get the money?

23 A Essentially, yes, sir. I told him there was  
24 a non-competition agreement that we were asking him to sign.

1 Q What was his first response to that?

2 A His first response was to glance at the  
3 agreement. His next response was he said he would like to  
4 have a few days to think about it.

5 Q Did you say he couldn't have that many days?

6 A I said that the offer would be on the table  
7 for that day only.

8 Q That day only?

9 A Yes, sir.

10 Q Prior to that you, I guess, had reviewed the  
11 agreement extensively before you gave it to him?

12 A Yes, sir, I had reviewed it. I knew what it  
13 said.

14 Q And there was no question in anybody's mind  
15 prior to that day that he had been terminated before you  
16 gave him this agreement?

17 A No question at all. He was being terminated.  
18 That was made clear.

19 Q He was terminated on December 16 and again on  
20 February 3 before you gave him the agreement?

21 A He wasn't terminated on December 16 because  
22 he worked for another seven weeks.

23 Q But he was given notice of termination?

24 A Correct.



1 Q There was no question of the termination.  
2 The first thing you said to him on this day was this is the  
3 day?

4 A That is correct.

5 Q And yet the agreement you gave him -- and you  
6 agree to this -- says that this was a condition of his  
7 employment arrangement?

8 A It says that.

9 Q But that is not what it is supposed to say?

10 A We were both fully aware that it was his  
11 final day.

12 Q In Paragraph 2 it says "As an intricate part  
13 of the employment of the Employee"?

14 A Yes, I believe it says that.

15 Q Are you now saying he wasn't an employee?

16 A He was a terminated employee as of  
17 February 3.

18 Q A terminated employee?

19 A As of February 3, yes, sir.

20 Q And in Paragraph 4 it says, "This is the  
21 essence of the employment arrangement." The arrangement was  
22 over, wasn't it?

23 A It was ending at that time, yes, sir.

24 Q Did you go over those terms that I just

1 brought up with him?

2 A No, I didn't go over the terms. I asked him  
3 to read the agreement thoroughly and fully before he made a  
4 decision.

5 Q So did you give him any time limit when you  
6 said it had to be signed this day or the offer was off the  
7 table?

8 A No other time limits, no, sir.

9 Q Was he allowed to leave the building?

10 A He didn't request to leave the building.

11 Q You don't recall any statement like, You  
12 can't leave the premises?

13 A I don't recall such a statement.

14 Q Then he went back to his office, and you saw  
15 the lights going and you went back there to see what was  
16 going on?

17 A I went back to see if he had called an  
18 attorney, yes, sir.

19 Q And you came back to your office after you  
20 went back there?

21 A Yes, sir.

22 Q Then you went back again?

23 A Sometime later, yes, sir.

24 Q And both times you stuck your head in the

1 door and said what?

2           A           The first time I went into his office, I  
3 asked him if he had called an attorney. He said he hadn't  
4 done so yet. Following that, I went back to my office.

5                       It was about close to twenty minutes later  
6 when I went back to see how he was proceeding, and I told  
7 him that I would like to proceed. I wanted to know if he  
8 could make a decision.

9                       He was on the phone and saw me, but I don't  
10 recall that he broke his conversation to acknowledge the  
11 question. So I stepped back outside his office as he  
12 wrapped up his conversation, and that took about a minute.

13           Q           Then he came back up the hall behind you?

14           A           We walked up together as I recall.

15           Q           Do you recall him saying anything else about  
16 wanting more time when he got back to your office?

17           A           He said at the time that we were signing the  
18 agreement -- and I can't frame this, whether this came prior  
19 to his signing it or even after he signed it. He made an  
20 indication he would have liked to have had a few more days.

21           Q           Let me ask you this: During that hiatus  
22 between December 16 and February 3 and maybe even before  
23 that time, were you aware of his financial situation?

24           A           I was clearly aware of his financial

1 situation to the degree that I was. I didn't have an  
2 intimate knowledge, but he seemed to be in need --

3 Q He was pretty open about it, wasn't he?

4 A Very open about it. You couldn't miss that  
5 he had financial problems.

6 Q And he complained about it openly to you? He  
7 didn't try to hide it from you?

8 A No. He didn't try to hide it from anyone.

9 Q You knew that it revolved around his agent  
10 putting a deduction against his check and his wife putting a  
11 deduction against his check?

12 A They might have been factors.

13 Q You also knew that he had a car repossessed  
14 and he was a little embarrassed about that?

15 A Yes, because it had a lot of station  
16 equipment in it when it got repossessed.

17 Q You had to go up to Roanoke to get your stuff  
18 back out --

19 A We had to find the car and fish the equipment  
20 back out of it, yes.

21 Q What else did he tell you about his financial  
22 situation other than what I am asking you about?

23 A I don't recall anything specifically.

24 Q Was it just generally then that you knew he

1 was in trouble financially?

2 A I think everybody at the station knew that he  
3 had financial problems or presumed him to have financial  
4 problems, yes, sir.

5 Q So you didn't believe him when he said that?

6 A I didn't say that. I didn't disbelieve it.

7 Q Talking about the Radford radio station, have  
8 you ever made any statements to Collins about that Radford  
9 station?

10 A We talked about competitors when he was on  
11 our staff, yes, sir.

12 Q Did you tell him you didn't consider them  
13 competition?

14 A No, sir.

15 Q How did he get that idea that you said that?

16 A You would have to ask him that question.  
17 They are clearly competitors of ours.

18 Q Is this type of agreement we have here used  
19 with any other employees at the station or has it been --

20 MR. LONG: Your Honor, I object. This is  
21 between the parties here today. Whether they use it  
22 for all or none, I don't think that is relevant.

23 MR. SHANKMAN: The practice of the trade,  
24 Your Honor, and custom.

1 MR. LONG: Judge, it is still not relevant to  
2 the matter today.

3 THE COURT: This is not a termination  
4 contract. This is an employment contract. I will  
5 sustain the objection at this point and take it  
6 under advisement.

7

8 BY MR. SHANKMAN:

9 Q Let me ask you this: You keep up with the  
10 books and the sales and contracts of the business, don't  
11 you?

12 A Yes, sir.

13 Q Since February 1992 have you had a decrease  
14 or increase in the volume of your sales?

15 MR. LONG: Judge, again I object.

16 THE COURT: You may answer the question, and  
17 I will note your exception.

18 THE WITNESS: Shall I answer, sir?

19 THE COURT: Yes.

20 THE WITNESS: Our sales have been strong.  
21 Since February 3, 1992, our sales are higher, but I  
22 might add they usually go higher in the months  
23 following January.

24

1 BY MR. SHANKMAN:

2 Q And the revenues are up also?

3 A Yes. We would expect that the revenues would  
4 be higher, yes, sir.

5 MR. SHANKMAN: That is all I have of this  
6 witness.

7 THE COURT: Mr. Long?

8 MR. LONG: I have some redirect. Judge,  
9 could I have the agreement, please.

10 THE COURT: Sure. Do you have an extra copy  
11 of that?

12 MR. LONG: Yes, sir. I have got plenty of  
13 them.

14 THE COURT: Give me one, if you don't mind.

15 MR. LONG: (Complies. ) Judge, I have a copy  
16 for everybody here if they want one. I promise you  
17 it is an exact copy. If anybody would like a copy  
18 while we are going over it --

19 MR. SHANKMAN: What was that, Your Honor?

20 THE COURT: He said he had a copy for every  
21 member of the Jury. Any objection to that?

22 MR. SHANKMAN: No.

23 MR. LONG: Would you all like a copy to look  
24 at while we are going over it?

1 THE JURORS: (Indicating. )

2 MR. SHANKMAN: Do the jurors want to read  
3 that in full before we proceed?

4 THE COURT: No. I think they can just follow  
5 as he goes through it.

6

7 REDIRECT EXAMINATION

8

9 BY MR. LONG:

10 Q Mike, turn to Page 3.

11 A (Witness complies. )

12 Q Paragraph 4. That agreement refers to the  
13 employment arrangement; is that right?

14 A Yes, it does.

15 Q On down in the very last sentence, if you  
16 could start where it says "In addition", do you see that?

17 A Yes.

18 Q If you could, read that sentence.

19 A "In addition, the Employee acknowledges that  
20 the Employer has invested substantial time and money in  
21 promoting the Employee as an air personality such that it  
22 will be impossible to ascertain the injury or damage to the  
23 Employer in the event of a breach of this agreement by the  
24 Employee, and that the Employer shall be entitled to have



1 the provisions of this agreement specifically enforced as  
2 against the Employee."

3 Q That clearly says "has invested"; is that  
4 right?

5 A Yes.

6 Q Not "is going to invest", but "has invested"?

7 A "Has invested", yes, sir.

8 Q And this agreement was clearly signed after  
9 Mr. Knighton was terminated?

10 A That is correct.

11 Q Now, if we can go back to February 3, what  
12 time did he leave the station that day?

13 A He left the station at approximately 3:00 in  
14 the afternoon.

15 Q After he signed this agreement, did you have  
16 any discussion with him?

17 A I sat and continued to talk to Mr. Knighton  
18 for about another ten minutes after he signed the agreement.

19 Q What did he say and what did you say?

20 A I simply told Mr. Knighton that I regretted  
21 that things hadn't worked out and wished him well. He told  
22 me about, as I recall, some job possibilities outside the  
23 area that he was interested in.

24 He gave me some views, some parting views, on

1 his ideas about the operations of the station. I think we  
2 simply exchanged some final thoughts to one another before  
3 he left.

4 Q Then he left with the agreement and the  
5 check?

6 A That is correct.

7 MR. LONG: That is all, Your Honor.

8 MR. SHANKMAN: I have recross on one issue,  
9 Judge.

10

11 RECROSS-EXAMINATION

12

13 BY MR. SHANKMAN:

14 Q Prior to February 3, 1992, were you aware of  
15 the fact that he was seeking employment?

16 A Generally so, yes.

17 Q Were you aware of the fact that he had been  
18 unsuccessful prior to February 3, 1992?

19 A He hadn't accepted a position prior to  
20 February 3. He didn't discuss his job search with me and I  
21 didn't ask about it.

22 Q How did you become aware of his job search?

23 A I think I was in the station every day and I  
24 presumed him to be looking for a job. We had talked about

1 it on December 16.

2 Q You were in the station every day and you saw  
3 this man preparing resumes and --

4 A I was aware that he was doing it, yes, sir.

5 Q And making a very concerted effort to try to  
6 get a job as far as you could tell?

7 A I presumed he was, yes, sir.

8 MR. SHANKMAN: That is all I have.

9 THE COURT: You knew then that on the 3rd day  
10 of February you were going to terminate him?

11 THE WITNESS: Yes, sir.

12 THE COURT: And he didn't know it until you  
13 told him?

14 THE WITNESS: That is correct.

15 THE COURT: You told him back in December  
16 that he would be, but he didn't know it was going to  
17 be on the 3rd of February?

18 THE WITNESS: That is correct.

19 THE COURT: And you had the contract then; is  
20 that right?

21 THE WITNESS: That is right.

22 THE COURT: Looking on Page 1 of the  
23 contract, the sixth paragraph, it says, "Whereas, as  
24 a condition of this employment arrangement, the

1 Employer has required and the Employee has agreed to  
2 all the covenants and obligations contained".

3 You are speaking of an employee/employer  
4 relationship, aren't you?

5 THE WITNESS: It would address that, yes,  
6 sir.

7 THE COURT: Yes, sir, it sure does, but he  
8 had been fired at this point. He had been  
9 terminated.

10 THE WITNESS: Yes, sir.

11 THE COURT: So he is no longer an employee.  
12 Paragraph 2 on Page 2, "As an intricate part of the  
13 employment of the Employee". He was no longer an  
14 employee, was he?

15 THE WITNESS: No, sir.

16 THE COURT: All right, sir. On Page 3,  
17 Paragraph 4, "The covenants herein on behalf of the  
18 Employee are of the essence of the employment  
19 arrangement". He was no longer an employee, was he?

20 THE WITNESS: No. He had been terminated.

21 THE COURT: All right. He had already been  
22 terminated. On Page 4, the fourth line down, "The  
23 Employee further agrees that, upon termination of  
24 the Employee's employment with the Employer". He

1 had already been terminated, hadn't he?

2 THE WITNESS: Yes, sir, he had.

3 THE COURT: Does this not read more like a  
4 contract that you would enter into at the beginning  
5 of employment rather than a contract that you would  
6 make at the end of employment?

7 THE WITNESS: Your Honor, in those regards it  
8 may very well.

9 THE COURT: It does indeed. All right, sir.  
10 You made the contract. You drew it. It is  
11 ambiguous, and it will be construed against you.

12  
13 (Witness excused.)

14  
15 THE COURT: All right. You may call your  
16 next witness.

17 MR. LONG: Judge, we rest.

18 MR. SHANKMAN: Your Honor, before proceeding  
19 further, we have a motion to make.

20 THE COURT: Make it.

21 MR. LONG: Do you want to do this outside the  
22 presence of the Jury?

23 THE COURT: If you want. Ladies and  
24 Gentlemen of the Jury, go back to the jury room for

1 just a moment please.

2  
3 (At 10:47 A.M. the Jury left the courtroom.)  
4

5 MR. SHANKMAN: Your Honor, my motion  
6 primarily lies in the areas that you were  
7 questioning and that I asked about too.

8 This agreement on its face is ambiguous and  
9 susceptible to several different interpretations.  
10 According to the most recent pronouncements that we  
11 have from the Virginia Supreme Court, such an  
12 agreement has to be construed against the employer.

13 THE COURT: Any contract is construed against  
14 the person who prepared it, including insurance and  
15 everything.

16 MR. SHANKMAN: Based on its ambiguity and its  
17 susceptibleness to several interpretations, I would  
18 ask the Court to rule right at this point that it is  
19 not enforceable in this case.

20 THE COURT: All right. Mr. Long?

21 MR. LONG: Judge, this is the first  
22 allegation that has been made that this agreement is  
23 ambiguous. They have said duress. There is no  
24 allegation in the pleadings or anywhere else except

1           for just this moment that the agreement was  
2           ambiguous.

3           It is initially clear that this language  
4           talks about an employment arrangement, but it is  
5           also initially clear that the parties knew -- and  
6           the evidence has been not objected to -- the parties  
7           knew that it was signed after the termination.

8           Judge, Paragraph 4 of the agreement says that  
9           the employer has invested substantial time, the past  
10          tense, in promoting the employee.

11          Judge, something that is unique about this  
12          agreement as opposed to what you would characterize  
13          as a customary employment agreement is that they  
14          paid him \$2,000 at this time in addition for his  
15          agreement not to compete, which he took.

16          Judge, the facts are clear to the parties  
17          that this was signed after the termination. It has  
18          past tense in it, "has invested" time. He took  
19          money in addition to his employment arrangement for  
20          this covenant not to compete.

21          I think it is a question of fact. I don't  
22          think it is a question of law. If the Jury believes  
23          that it should be interpreted against the employer,  
24          then I think that is a question of fact for them to

1 decide in their deliberations.

2 THE COURT: Mr. Long, this contract is a  
3 contract that is difficult to understand. It is not  
4 clear. It is subject to various interpretations.  
5 To me, it speaks more of a contract of employment  
6 and not a contract of termination. It is not clear.

7 According to the established principals of  
8 law, I will consider this in derogation of the  
9 interest of the person who had it made because he  
10 did not make it clear. I will declare the contract  
11 null and void.

12 The only issue remaining is the compensation  
13 to be awarded for the loss of his employment. I  
14 note your exception. Call the Jury back in.

15 MR. LONG: Judge, could we have a brief  
16 recess at this time.

17 THE COURT: Sure. We will take a ten-minute  
18 recess.

19  
20 (At 10:50 A.M. a recess was taken.)

21  
22 (At 11:02 A.M. all Parties returned  
23 to the courtroom. )  
24



1 THE COURT: Let the Record show that Mr. Long  
2 wishes to state some objections into the Record.

3 MR. LONG: Judge, it would be my  
4 understanding that you have stricken the evidence as  
5 to the validity of this agreement on the basis that  
6 it was ambiguous and was an employment agreement  
7 rather than a termination agreement.

8 Judge, we, of course, except to that ruling.

9 It would be my understanding from your ruling  
10 that you are this day refusing to issue us a  
11 permanent injunction.

12 THE COURT: That is correct. You are not  
13 entitled to a permanent injunction. He can work  
14 wherever he wants to work.

15 MR. LONG: Okay. That is the Court's ruling  
16 as to the enforcement of the contract.

17 THE COURT: Yes. I note your exception to  
18 the Court's ruling.

19 MR. LONG: Of course, we object and we feel  
20 we are entitled to a permanent injunction.

21 THE COURT: I understand.

22 MR. LONG: Judge, I think these were  
23 questions of fact, that the Jury should have been  
24 able to decide the issues that were to go to them.

1                   Now, it is my understanding now as to the  
2                   damage testimony that you are not going to allow any  
3                   punitive damages --

4                   THE COURT:   No punitive damages.

5                   MR. LONG:   -- and no damages as to any  
6                   commissions that he may receive.

7                   THE COURT:   Right.   Damage to his loss of  
8                   wages and reputation for unlawful injunction or  
9                   improper injunction I will permit.

10                  MR. LONG:   His loss of wages and any  
11                  disability in the future for him to become  
12                  employable.

13                  THE COURT:   That is right, any damage to his  
14                  reputation.   That would be it.   Bring the Jury in.

15                  MR. SHANKMAN:  Judge, the only exception I  
16                  would make for the Record on that is that I felt  
17                  that we should be able to try to at least prove the  
18                  commission side of it.

19                  THE COURT:   I understand.   The Court will  
20                  note your exception to that.

21  
22                                 (At 11:05 A.M. the Jury returned  
23                                 to the courtroom. )  
24

1 THE COURT: Let's get the original of the  
2 agreement in the Court file, Mr. Long, so we don't  
3 lose it.

4 Ladies and Gentlemen of the Jury, at the  
5 conclusion of the evidence of the Plaintiff, I have  
6 held as a matter of law that this contract is not  
7 enforceable, that it is void.

8 The contract speaks not to a contract of  
9 termination but to a contract of initial employment.  
10 It is vague. It is subject to interpretations. It  
11 is difficult to know what it is speaking of.

12 Under those circumstances, the law is quite  
13 clear that the contract is to be construed against  
14 the person who had it made, and the radio station  
15 had it made.

16 So you won't get into the question of whether  
17 it was made under duress or not, because I have  
18 ruled as a matter of law that it was void. This man  
19 is free to work anyplace he wishes, down the street  
20 from WPSK if he wants to, and he can't be stopped.

21 Now, we still have the issue of damages. I  
22 will not permit punitive damages because I don't  
23 think there is any punitive act in concert and mind  
24 on the part of the radio station.

1                   You will be asked to assess damages for his  
2                   loss of wages as a result of what I have held to be  
3                   an improper injunction -- he has been prohibited  
4                   from working because of a temporary injunction that  
5                   the Court properly issued. I didn't do it, but  
6                   another Court. That was only to last until today,  
7                   that is all -- as well as to any damage to his  
8                   reputation.

9                   So, Mr. Shankman, you may proceed with your  
10                  evidence on damages.

11                  MR. SHANKMAN: Your Honor, we will call  
12                  Mr. Knighton to the stand.

13  
14                  DAVID COLLINS KNIGHTON

15  
16                  was called as a witness and after having first been duly  
17                  sworn to tell the truth, the whole truth and nothing but the  
18                  truth, was examined and testified as follows:

19  
20                  DIRECT EXAMINATION

21  
22                  BY MR. SHANKMAN:

23                  Q           Tell His Honor who you are and where you  
24                  live, please.

1           A       My name is David Collins --

2                   THE COURT: Mr. Long, you can get our  
3 witnesses into the courtroom unless you might use  
4 them.

5                   MR. LONG: I will excuse them, if that is  
6 okay.

7                   THE COURT: Yes, sir.

8                   MR. SHANKMAN: Who are you excusing?

9                   MR. LONG: Just Regina. You don't need her,  
10 do you?

11                  MR. SHANKMAN: No.

12

13                               (Brief interruption. )

14

15 BY MR. SHANKMAN:

16                  Q       You are the Defendant who had the injunction  
17 imposed against you while you were working down at Radford;  
18 is that correct?

19                  A       Yes, sir.

20                  Q       What station were you working at at the time?

21                  A       WRIQ in Radford, located in Fairlawn.

22                  Q       It is located in Pulaski County, is that  
23 correct, on this side of the bridge?

24                  A       Yes, sir.

1 Q When did you go to work there, sir?

2 A I went to work for them, sort of prework I  
3 guess, on February 17. I went actually on the air for WRIQ  
4 on February 19.

5 Q Let me rephrase that. When did they start  
6 paying you?

7 A On February 17.

8 Q What was your employment contract, be it oral  
9 or written, that you had with them?

10 A The station manager, Ms. Ann Dix, and I had  
11 come to an oral agreement which we were going to put in  
12 writing. We just never got around to it because everything  
13 with the injunction and so forth happened so quickly.

14 We negotiated a \$300-a-week salary or \$1,200  
15 a month, which was approximately \$800 less than I had been  
16 making at my previous employer. To make up for that loss, I  
17 was told that I would be allowed to sell advertising and  
18 could make up that \$800.

19 THE COURT: Mr. Shankman --

20 MR. SHANKMAN: I am sorry. We can't get into  
21 that part of it.

22

23 BY MR. SHANKMAN:

24 Q Your salary was \$300 a week?

1           A           My base salary, yes, sir.

2           Q           How long did you stay on the air or work for  
3 them?

4           A           From February 19 until March 2 when the  
5 injunction was done.

6           Q           Were you paid for that period of time?

7           A           Yes, sir. Excuse me, from out of work? How  
8 long did I work?

9           Q           How long did you work?

10          A           Yes, sir, from February 17 to March 2.

11          Q           And you were paid --

12                   THE COURT: March 2?

13                   THE WITNESS: Yes, sir. That is when the  
14 injunction was enforced.

15

16 BY MR. SHANKMAN:

17          Q           You were paid for that time?

18          A           Yes, sir. My base salary, yes, sir.

19          Q           So you have been out of work since March 2  
20 because of the injunction that the Plaintiff placed against  
21 you?

22          A           Yes, sir.

23          Q           And it was your agreement that you had with  
24 them that you were going to be a full-time employee and work

1 until terminated; is that right?

2 A Yes, sir.

3 Q There wasn't any specific term on how long  
4 you would be there or anything else?

5 A No, sir, not at all.

6 Q So it would have been your belief, but for  
7 the injunction, you would have worked during the whole time  
8 frame that you have been off?

9 A Absolutely, yes, sir.

10 Q During that time and because of the  
11 injunction, have you explored other channels of employment?

12 A Starting in December -- actually, I started  
13 making calls on the day that I was told I was going to be  
14 terminated back on December 16, and then on December --

15 MR. LONG: Judge, I object. That doesn't get  
16 into the time he was away from work during the  
17 injunction period.

18 THE COURT: The only thing we are interested  
19 in, Mr. Shankman -- and you will restrict it to this  
20 -- is after the injunction.

21 MR. SHANKMAN: All right, sir.

22

23 BY MR. SHANKMAN:

24 Q After the injunction, because of the



1 injunction.

2           A           Yes, sir. Through two agents I had hired to  
3 help me find work plus through specific ads and blind boxes  
4 in a publication called "Radio & Records", which is an  
5 industry handbook for radio people where they advertise job  
6 availabilities and where you can write and send tapes and  
7 resumes and so forth. I have done that up to this day as a  
8 matter of fact.

9           Q           Have you been successful?

10          A           No, sir.

11          Q           Have you ever been questioned about the  
12 litigation you are in when seeking this employment?

13                   MR. LONG: Judge, I object. That calls for  
14 hearsay.

15                   THE COURT: Not if he has been questioned  
16 about it. That is what you said, wasn't it?

17                   MR. SHANKMAN: Yes, sir, has he been  
18 questioned about it. I didn't ask for the truth or  
19 falsity of the matter. I just asked if he had been  
20 questioned about it.

21                   MR. LONG: Judge, it is what somebody else  
22 said. I think they need that person here.

23                   THE COURT: To him. No, no, I think it is  
24 admissible. I note your exception.

1 THE WITNESS: Having been an operations  
2 manager and hiring myself, I would ask the same  
3 question, and that is, what happened at your other  
4 radio station? Then I would tell them.

5

6 BY MR. SHANKMAN:

7 Q Has that been brought up on more than one  
8 occasion?

9 A It is hard to avoid because people want to  
10 know about your previous employer. I mean, there is no real  
11 way around it.

12 Q Has it been brought up on more than one  
13 occasion?

14 A Yes, sir.

15 Q Has it been brought up on several occasions?

16 A Yes, sir.

17 MR. SHANKMAN: I think that is all I have,  
18 Judge.

19 THE COURT: Mr. Long.

20

21 CROSS-EXAMINATION

22

23 BY MR. LONG:

24 Q Mr. Knighton, what I calculate is that you

1 have been out of work from WRIQ approximately 52 days; is  
2 that correct? That would be from --

3 A That sounds right, yes.

4 Q Excuse me, 42 days. Approximately six weeks,  
5 a month and a half?

6 A Right.

7 Q It would be from March 2 to April 13, which  
8 is 42 days?

9 A That is correct.

10 Q Which is six weeks, a month and a half?

11 A Yes.

12 Q And you make \$300 a week there?

13 A Base salary, yes, sir.

14 Q Do you know whether or not you are going to  
15 go back to work there?

16 A Yes, sir.

17 Q You are?

18 A Yes, sir.

19 Q So really the only time you have been out of  
20 work is this six-week period?

21 A Yes, sir.

22 MR. LONG: Those are all the questions I  
23 have.

24 THE COURT: Thank you, sir.

1 (Witness excused. )

2

3 MR. SHANKMAN: Mr. Ray Hatley.

4 THE COURT: Come around here, Mr. Hatley, and  
5 take the witness stand. I believe you have been  
6 sworn.

7 THE WITNESS: Yes.

8 THE COURT: Let me encourage you to speak up.  
9 There is a lot of background noise, so speak up so  
10 we can all hear you.

11 THE WITNESS: I will do my best, sir.

12

13 DIRECT EXAMINATION

14

15 BY MR. SHANKMAN:

16 Q Ray, will you tell the Jury and His Honor who  
17 you are and where you reside.

18 A I am Raymond L. Hatley. I am general manager  
19 of WRAD-WRIQ, Radford, Virginia. I live at 805 Walker  
20 Street, Radford, Virginia.

21 Q In your position at the radio station, did  
22 you have occasion to communicate with Collins Knighton?

23 A Yes, I did.

24 Q Did these conversations lead to his

1 employment at your station?

2 A I only had one conversation with him, sir.  
3 After that conversation he called me back the next day and  
4 he was turned over to a Ms. Dix, who is my assistant or  
5 station manager at the station.

6 Q She negotiated the package for hiring him?

7 A Yes, sir, she did.

8 Q How long have you been in the radio business,  
9 Mr. Hatley?

10 A I have been in Radford, Virginia, since  
11 October 25, 1958.

12 Q Have you been continuously in the radio  
13 business in Radford since that time?

14 A Yes, sir, I have.

15 Q I believe you are actually a representative  
16 of a bigger corporation that owns several radio stations; is  
17 that correct?

18 A That is right. Until October 1 of last year,  
19 I was over Dix Communication Radio Division with radio  
20 stations in Brewster, Ohio; Cumberland, Maryland; Ocala,  
21 Florida; as well as the two in Radford, Virginia.

22 Q And it is your job to what, oversee all of  
23 those stations?

24 A Yes, sir. I was the general manager over all

1 of them.

2 Q In that position did you participate in  
3 decisions on hiring and termination?

4 A Yes, I did, sir.

5 Q In the instant case, you know basically what  
6 has happened to Collins Knighton by the injunction and you  
7 know the facts of the case; is that correct?

8 A Yes, sir, I do.

9 Q Do you have any opinions as to how that might  
10 affect his employability in his profession?

11 MR. LONG: Judge, I am going to object. I  
12 don't think that is his call. I think that is the  
13 call for an economist familiar with the radio  
14 business. I think that is too open-ended --

15 THE COURT: A call for an economist?

16 MR. LONG: Yes, sir.

17 THE COURT: That gentleman testified that he  
18 had been engaged in the radio profession or business  
19 since 1958, and he is manager of some five stations,  
20 I believe.

21 THE WITNESS: Seven.

22 THE COURT: That you participated in hiring  
23 and firing?

24 THE WITNESS: Right.

1 THE COURT: You might qualify him a little  
2 more. I think he knows more about -- I can he can  
3 probably qualify as an expert in that field.

4 MR. LONG: I am not disputing that Mr. Hatley  
5 knows the radio business. I am just disputing that  
6 he can calculate damages.

7 THE COURT: He is not going to ask him a  
8 figure.

9 MR. LONG: Okay.

10 THE COURT: I think he is qualified to  
11 testify as to whether or not this whole thing would  
12 be of a damaging nature to this gentleman's  
13 reputation in the radio industry.

14 Now, you may ask him that and I will permit  
15 that answer. I will note your objection and  
16 exception, Mr. Long.

17

18 BY MR. SHANKMAN:

19 Q Based on what the Judge just talked about, in  
20 your own personal experience, do you have an opinion as to  
21 how this might affect Collins' reputation and employability  
22 in the radio industry?

23 MR. LONG: I object to that question. I hate  
24 to do this, but it is calling for a very speculative

1 answer. How is it going to affect his  
2 employability? How can we say? That is most  
3 speculative.

4 THE COURT: Mr. Hatley, from your experience  
5 in the radio business or industry since 1958, do you  
6 feel qualified to express an opinion as to the  
7 effect of this entire matter on the reputation and  
8 employability of Mr. Knighton here?

9 THE WITNESS: I can only speak for Dix  
10 Communications, Your Honor. In our organization, it  
11 definitely would affect our employment of a person  
12 of this caliber.

13 THE COURT: All right.

14 MR. SHANKMAN: That is all I sought from this  
15 gentleman, Your Honor.

16  
17 CROSS-EXAMINATION  
18

19 BY MR. LONG:

20 Q Mr. Hatley, you are going to rehire  
21 Mr. Knighton, aren't you?

22 A I haven't fired Mr. Knighton, sir.

23 Q You haven't fired him?

24 A No.



1           Q       He has stated that he will be employed by  
2       WRIQ and you know no different, do you?

3           A       I know no differently, no.

4               MR. LONG: That is all.

5               THE COURT: Anything else?

6               MR. SHANKMAN: No, sir.

7

8                       (Witness excused. )

9

10               THE COURT: Any further evidence?

11               MR. SHANKMAN: Yes, sir, Ms. Dix.

12               THE COURT: Come in and take the stand. You  
13       have been sworn?

14               THE WITNESS: Yes.

15

16                       ANN DIX MAENZA

17       was called as a witness and after having first been duly  
18       sworn to tell the truth, the whole truth and nothing but the  
19       truth, was examined and testified as follows:

20

21                       DIRECT EXAMINATION

22

23       BY MR. SHANKMAN:

24           Q       Now, if you would please tell the Jury your

1 full name and your position with the radio industry.

2 A My name is Ann Dix Maenza. I am a sales  
3 person at WRAD Broadcasting and also assistant manager.

4 Q In your position as assistant manager, were  
5 you involved in negotiating the employment package with  
6 Collins Knighton?

7 A Yes, I was.

8 Q In that negotiation did you reach a base  
9 salary that he was to be paid on a weekly basis?

10 A Yes, we did.

11 Q What was that amount?

12 A It was \$300 a week.

13 Q But for the injunction that was granted in  
14 this proceeding, would he have continued to make that amount  
15 of money through the present?

16 A Oh, yes.

17 MR. SHANKMAN: Answer any questions the other  
18 side might have.

19 MR. LONG: I have no questions.

20 THE COURT: Thank you, ma'am.

21

22 (Witness excused. )

23

24 THE COURT: Do you have any further evidence?

1 MR. SHANKMAN: That is my evidence.

2 THE COURT: Any rebuttal?

3 MR. LONG: No, sir.

4 THE COURT: Ladies and Gentlemen, it is not  
5 going to take us long to do these instructions. It  
6 is going to take us probably about five minutes to  
7 get the instructions.

8 These gentleman want to argue some. Do you  
9 have any idea how long your argument might take?

10 MR. SHANKMAN: Probably not more than five  
11 minutes.

12 MR. LONG: I think I can do it in one breath.

13 THE COURT: We are talking about 15 minutes  
14 to give this case to you. Do you want to wait and  
15 settle this case now and decide it or do you want to  
16 come back after lunch?

17 THE JURORS: Settle it.

18 THE COURT: All right.

19

20 (At 11:22 A.M. the Jury left the courtroom.)

21

22 (The Court and Counsel discussed  
23 instructions in chambers. )

24

1 THE COURT: Mr. Long, you wanted to state  
2 something for the Record.

3 MR. LONG: Yes, sir. Judge, I would move to  
4 strike their case in that he clearly had an at-will  
5 contract. I think the law in Virginia is certainly  
6 clear that in an at-will contract you can be  
7 terminated at any date.

8 I understand that he has been re-employed,  
9 but I don't think, because this is an at-will  
10 contract, that he has proven any damages to this  
11 point.

12 THE COURT: Indeed it could have been, but  
13 they chose to take this route, so they changed the  
14 status of an at-will contract. By doing so, they  
15 have damaged this man.

16 MR. LONG: Judge, I would also like to make  
17 the motion that they have proven nothing other than  
18 he was out of work for six weeks. There has been no  
19 dollar figure on any other damages whatsoever.

20 THE COURT: There is no dollar figure, but  
21 there does not have to be. It is just reasonably  
22 ascertained.

23 MR. LONG: There is no evidence to ascertain  
24 about.

1 THE COURT: I think the instructions will  
2 cover it. I overrule your motion. I am going to  
3 let it go to the Jury. I think it should. Bring  
4 the Jury in.

5  
6 (At 11:33 A.M. the Jury returned  
7 to the courtroom. )  
8

9 THE COURT: Ladies and Gentlemen, the  
10 instructions are short. Remember, after you hear  
11 the argument of the attorneys, you will go to the  
12 jury room and elect a foreman and reach a verdict  
13 that is agreeable to each of you. When you have  
14 done so, the foreman will fill in the amount on the  
15 verdict form and sign it.

16 Now, the Court instructs the Jury that the  
17 burden is on the Plaintiffs -- in this case the  
18 Plaintiff being Mr. Knighton -- to prove by the  
19 greater weight of the evidence that he has sustained  
20 damages.

21 He is not required to prove the exact amount  
22 of his damages, but he must show sufficient facts  
23 and circumstances to permit you to make a reasonable  
24 estimate of them. If he fails to do so, then he

1 cannot recover for that item only.

2 The Court instructs the Jury that a verdict  
3 must not be based in whole or in part on surmise,  
4 conjecture, or sympathy for either of the parties,  
5 but must be based solely upon the evidence and the  
6 instructions of the Court.

7 Now what you are to consider in the nature of  
8 damages is the lost wages that he has sustained as a  
9 result of what the Court has deemed as a matter of  
10 law to be an improper injunction as well as the  
11 damages to his reputation.

12 All right. Mr. Shankman?

13 MR. SHANKMAN: I won't bother you too long.  
14 The Judge has instructed you as to what we are  
15 dealing with today.

16 Before you you have very clearly the amount  
17 of wages that he lost because of the actions of the  
18 local radio station. I don't think there is any big  
19 reason to go over that. The lady stated that he was  
20 making \$300 a week. Thanks to Mr. Long, we figured  
21 that out to be about six weeks.

22 I think a very important item though for you  
23 to consider -- and I am not trying to puff here, but  
24 I am only appealing to your common sense -- is that,

1 if a man is forced into litigation against his own  
2 employer, that besmirches his reputation.

3 Everybody wants to know about it and any  
4 future job providers are definitely going to  
5 question about it. Mr. Hatley made that clear.  
6 Mr. Hatley, a very nice man of 33 years experience,  
7 very clearly said -- and this is evidence before you  
8 -- that this would impact upon his reputation in the  
9 future.

10 We have to have Mr. Hatley as an expert in  
11 that area to qualify legally to bring that issue  
12 before you, but I think everybody in this room  
13 including you all can apply your common sense to  
14 that item of the damages and come up with a fair and  
15 equitable amount that should be afforded this man  
16 because of the improper unjustified actions of the  
17 local radio station here.

18 This shouldn't have happened to him. It  
19 shouldn't be on his record. It is on his record. I  
20 wish we could just go back and wash it clean and act  
21 like it never happened, but we can't.

22 Under our system of justice, there is only  
23 one way to remedy that. It is not adequate, but it  
24 is the only remedy we have, and that is dollar

1 amount damages.

2 So, besides his lost wages, I ask you to very  
3 seriously consider what the impact is upon this  
4 young man. Obviously, he is young. We didn't put  
5 his age into evidence, but he has got a long way to  
6 go in his work career. I would ask you to give very  
7 serious consideration to that.

8 I am not asking you to just go on sympathy or  
9 conjecture. I am asking you to take the evidence of  
10 Mr. Hatley and your own common experience and derive  
11 a reasonable amount of damages and so award it to my  
12 client. He deserves it.

13 We thank you for your attention. That is all  
14 we have to say.

15 THE COURT: Mr. Long.

16 MR. LONG: Ladies and Gentlemen of the Jury,  
17 again I would like to thank you for serving on the  
18 Jury today. I wish you would have had more to  
19 decide, but you didn't. We are here simply on the  
20 issue of damages to Mr. Knighton.

21 You have heard their evidence as to the  
22 damages and the Court's instructions. Judge Owens  
23 has instructed you that your verdict should not be  
24 based on sympathy, surmise, or conjecture for either



1 party, but solely upon the evidence presented before  
2 you.

3 I submit to you all that the evidence before  
4 you is that he was out of work for six weeks. At  
5 \$300 a week that comes to \$1,800.

6 There has been no financial number placed on  
7 his loss of his reputation. Mr. Hatley said that it  
8 probably would hurt his reputation, and he has been  
9 in the radio business many many years.

10 I ask you, Ladies and Gentlemen of the Jury,  
11 it must not have bothered him too much because he  
12 has still got a job. Mr. Knighton said he still had  
13 a job there and Mr. Hatley said he still had a job  
14 there, so, if it hurt his reputation so much, why is  
15 he still there?

16 I am submitting he was out of work for six  
17 weeks. There are no punitive damages. There is  
18 nothing here to punish my client. The Judge has  
19 ruled on that. My client was trying to enforce his  
20 contract which Judge Owens has said is not  
21 enforceable today.

22 They did nothing with malice. They were  
23 merely trying to stand up for their legal rights in  
24 this court of law.

1 I ask you, when you go back there to make  
2 your deliberations, is there any number that you can  
3 ascertain from what Mr. Hatley or Mr. Knighton said  
4 as to the damage to his reputation? Was his  
5 reputation even damaged?

6 Their expert said he was going to keep him  
7 hired. He said he never was fired because of it.  
8 He never lost his job because of it. The only  
9 reason he lost his job was because a Court issued a  
10 temporary injunction against him for this six-week  
11 period.

12 So, Ladies and Gentlemen, I think it is very  
13 clear that his damages are the \$300 a week. That is  
14 the only number before you today.

15 Again, thank you. I ask that you seriously  
16 consider the evidence before you when you go back in  
17 the jury room. Thank you.

18 THE COURT: Any reply?

19 MR. SHANKMAN: Very quickly, Your Honor. I  
20 just ask you not to let the good graces of the local  
21 radio station in Radford tear you from assessing a  
22 proper and adequate damage amount.

23 Just because they did not disemploy him does  
24 not speak to what is on his record and what he is

1 going to have to deal with for the rest of his  
2 professional career. Thank you.

3 THE COURT: Ladies and Gentlemen, when you  
4 reach a verdict, knock on the door. If by chance  
5 you decide you want to break for lunch, let me know.  
6 Thank you. Remember to elect your foreman and  
7 remember you must each agree.

8  
9 (At 11:40 A.M. the Jury left the courtroom.)

10  
11 (At 12:01 P.M. the Jury returned  
12 to the courtroom. )

13  
14 THE COURT: Mr. Foreman, have you reached a  
15 verdict?

16 THE JURY FOREMAN: Yes, we have.

17 THE COURT: Is it unanimous?

18 THE JURY FOREMAN: Yes.

19 THE COURT: Ladies and Gentlemen of the Jury,  
20 your foreman has stated that the verdict given to  
21 the clerk is with the consent of each of you. Does  
22 anybody disagree with that?

23 THE JURORS: No.

24 THE COURT: All right.

1 THE CLERK: We, the Jury, upon finding our  
2 verdict in favor of David Collins Knighton do affix  
3 his damages at \$15,000. Signed, James R. Wright,  
4 Foreman.

5 THE COURT: Does anybody wish to poll the  
6 jury?

7 MR. LONG: Yes, Your Honor, I do.

8 THE COURT: Now, Ladies and Gentlemen of the  
9 Jury, the Clerk will call your name. If this is  
10 your verdict, answer by saying yes.

11 THE CLERK: Barbara H. Lee?

12 JUROR, MS. LEE: Yes.

13 THE CLERK: Adelene Newman?

14 JUROR, MS. NEWMAN: Yes.

15 THE CLERK: Gary Umberger?

16 JUROR, MR. UMBERGER: Yes.

17 THE CLERK: Dortha Phipps?

18 JUROR, MS. PHIPPS: Yes.

19 THE CLERK: James R. Wright?

20 JUROR, MR. WRIGHT: Yes.

21 THE CLERK: Larry Sams?

22 JUROR, MR. SAMS: Yes.

23 THE CLERK: Curtis D. Smith?

24 JUROR, MR. SMITH: Yes.

1 THE COURT: Was everybody's name called?

2 THE JURORS: (Indicating. )

3 THE COURT: Okay. Thank you so much. You  
4 will be lucky enough to have another judge tomorrow.  
5 I will be in Giles County, but I will see you  
6 Friday.

7

8 (The Jury was excused at 12:02 P.M.)

9

10 THE COURT: Any motions?

11 MR. LONG: Yes, Your Honor. I would like to  
12 move to set aside the damage verdict as not being  
13 supported by the evidence before the Court.

14 The only evidence before the Court was  
15 damages of \$1,800. Anything else was purely  
16 speculative, and obviously it was to get to the sum  
17 of \$15,000. I just don't think that was supported  
18 by the evidence.

19 Judge, again I would like to renew my  
20 objection to our Plaintiff's evidence being struck  
21 in this matter.

22 I think we all know that, when the motion to  
23 strike the evidence is before the Court, the Court  
24 must take the evidence at that time in the light

1           most favorable to the Plaintiff.

2           The Court's own ruling was that the contract  
3           was ambiguous, and at that time we should have taken  
4           it in the light most favorable to the Plaintiff;  
5           therefore, the evidence should not have been struck  
6           for my client.

7           I would ask the Court to reconsider that and  
8           order a new trial.

9           I guess the last motion that I have, Your  
10          Honor, is that my client definitely intends to  
11          appeal this matter. We do have a \$10,000 bond  
12          posted. I would like the Court to state what bond  
13          it would like in addition.

14          THE COURT: I think \$15,000.

15          MR. LONG: \$15,000 in addition would be  
16          sufficient for appeal?

17          THE COURT: Yes.

18          MR. LONG: Judge, it is my understanding that  
19          this request was for a permanent injunction and that  
20          you have denied that request and that we can appeal  
21          within 15 days to the Supreme Court and get a  
22          hearing on our injunction.

23          THE COURT: In reference to your motions, I  
24          will overrule them for the reasons previously

1           stated. I note your exception.

2           On the question of damages, the gentleman who  
3           has been with the radio station since 1958 -- I have  
4           forgotten his name -- I think is qualified to  
5           testify that this type of thing would indeed damage  
6           the reputation of this man. The very nature of it  
7           is such that you cannot put an exact figure on it.

8           It is not an outrageous verdict. If it had  
9           been outrageous, I would have probably put them on  
10          terms to reduce it. So I would overrule your  
11          motions and note your exception.

12                 MR. LONG: Thank you, Your Honor.

13                 THE COURT: Thank you, gentlemen.

14

15                         (Court adjourned at 12:04 P.M.)

16

17

18

19

20

21

22                                 \* \* \* \* \*

23

24

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

COMMONWEALTH OF VIRGINIA

COUNTY OF ROANOKE

I, Patricia J. Jensen, RPR, Notary Public in and for the Commonwealth of Virginia, at Large, do hereby certify that the Trial held on April 13, 1992, was by me reduced to machine shorthand in the presence of all Parties, afterwards transcribed under my direction by means of Computer, and that to the best of my ability, the foregoing is a true and correct transcript of the Trial as aforesaid.

I further certify that this Trial was taken at the time and place in the foregoing caption specified.

I further certify that I am not a relative, counsel or attorney for either party or otherwise interested in the outcome of this action.

IN WITNESS WHEREOF, I have hereunto set my hand at Roanoke, Virginia, on this the \_\_\_\_ day of April 1992.

\_\_\_\_\_  
PATRICIA J. JENSEN, RPR  
Notary Public

My Commission expires October 31, 1993.



VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF PULASKI

NEW RIVER MEDIA GROUP, INC. )

Plaintiff )

v. )

DAVID COLLINS KNIGHTON )

Defendant )

JUDGMENT

*File No. H92-99*

This day came again the parties to the above-entitled action upon the complaint of Plaintiff and the crossclaim of Defendant, in person and by their respective attorneys, and likewise came the jurors sworn to try the issues herein joined pursuant to prior orders of this Court directing that certain issues be tried out of chancery.

And the Plaintiff proceeded to present its evidence and at the conclusion of the Plaintiff's evidence the Defendant, by counsel, moved the Court to strike Plaintiff's evidence on the argument that the restrictive covenant agreement dated February 3rd, 1992, was clearly ambiguous and unenforceable; and not applicable un the circumstances, after maturely considering the arguments of both counsel on this motion, Defendant's notice to strike said evidence was granted by the Court with Plaintiff's exceptions thereto on the basis that the Defendant had not previously alleged ambiguity, that there was no evidence before the Court from any testimony that the agreement was ambiguous

and that an agreement is not unenforceable merely because it is ambiguous. The Plaintiff further excepted to the Court's ruling on the grounds that the evidence should be taken in a light most favorable to the nonmoving party at the time of a motion to strike and even if the agreement was ambiguous, it should have been taken in a light most favorable to Plaintiff.

In conjunction with the courts ruling on Plaintiff's motion to strike the Court further held that the restrictive covenant agreement was not enforceable and refused to grant, extend, or enlarge the injunctive relief requested by the Plaintiff. Plaintiff noted its exception to the denial of this relief and these exceptions were noted on the record.

Thereafter, the Defendant, David Collins Knighton, proceeded to present his evidence on the issue of damage only, both sides having previously objected to rulings by the Court on which damage items should be presented to the jury with their exceptions being duly noted as more fully set forth in the transcript of these proceedings.

And the jurors aforesaid then having heard all of the evidence and arguments of counsel and having received the instructions of the Court, retired to their room to consider their verdict and after some time returned into Court with following verdict, to-wit:

"We the jury upon finding our verdict in favor of David Collins Knighton do affix this damages at Fifteen Thousand Dollars (\$ 15,000.00)."

James R. Wright, Foreman

Upon the verdict of the jury rendered in favor of the Defendant, Plaintiff moved the Court to set aside the jury's damage verdict as not being supported by the evidence, which said motion was denied. Plaintiff renewed its objection to the striking of its evidence and asked the court to reconsider its action and order a new trial which said motion was denied, it is therefore

ADJUDGED and ORDERED, pursuant to the aforesaid verdict of the jury that the Defendant, David Collins Knighton, recover of Plaintiff, New River Media Group, Inc., the sum of Fifteen Thousand Dollars (\$ 15,000.00) with interest thereon at the rate of eight percent (8%) per annum from April 13, 1992, until paid.

The Plaintiff, by counsel, has indicated that it is considering taking an appeal from this judgment and a suspension of the execution of the Judgment as far as the same relates to damages would be sought in such appeal. Accordingly, it is ordered that the Plaintiff should take an appeal in accordance with Section 8.01-676.1 of the Code of Virginia, the appeal bond for said Plaintiff shall be in the amount of Fifteen Thousand Dollars (\$ 15,000.00), with surety to be approved by this Court, conditioned and in the form according to law. Upon the proper filing of such appeal notice and bond by Plaintiff in the manner required by law, the execution of this judgment will be suspended to said Plaintiff pending the timely and proper prosecution of any such appeal.

It is ordered that the Clerk of this Court docket this

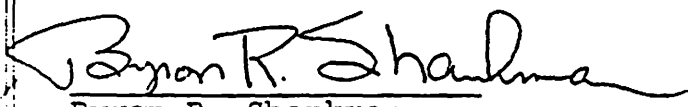
judgment against the Plaintiff and furnish certified copies of this Order to counsel of record upon entry.

This matter is stricken from the docket of this Court.

Enter this 30 day of April, 1992

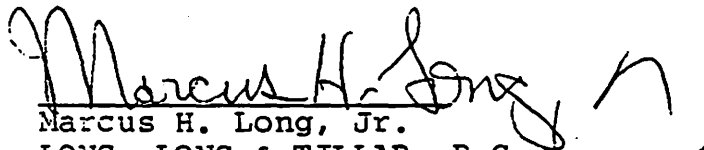
  
JUDGE

I ASK FOR THIS:

  
Byron R. Shankman  
P.O. Box 1859  
Dublin, VA 24084  
Counsel for Defendant

(exception being made to the Court's ruling on punitive damages and the presentation of evidence concerning lost commissions).

SEEN AND OBJECTED TO:

  
Marcus H. Long, Jr.  
LONG, LONG & TILLAR, P.C.  
P. O. Box 196  
Blacksburg, VA 24063-0196

(exception being made to the Court's striking of Plaintiff's evidence and the allowance of damages not supported by the evidence).

A TRUE COPY

TESTE:

R. GLENN WOOD LOOKABILL, CLERK

BY: 

### ASSIGNMENT OF ERRORS

1. The trial court erred in transferring venue from the City of Radford to Pulaski County. The bill of complaint and application for temporary injunction were filed in the Circuit Court of the City of Radford. Defendant requested a continuance without raising any objection to venue and the defendant thereby waived any such objection.

2. The trial court erred in overruling the plaintiff's demurrer to defendant's cross-bill in that defendant's cross-bill did not state a cause of action recognized by the courts of Virginia.

3. The trial court erred in striking plaintiff's evidence on the grounds that the contract was ambiguous and therefore void. An ambiguous contract is not void as a matter of law.

4. The trial court erred in refusing to grant a permanent injunction. The covenant not to compete was reasonable to protect plaintiff's legitimate business interest, was not unduly harsh and oppressive, and was reasonable from the standpoint of sound public policy.

5. The trial court erred in refusing to set aside the damage verdict in favor of defendant on his cross-bill in that it was not supported by the evidence.