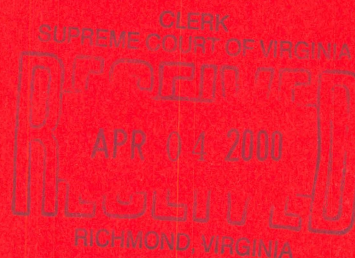


In The
Supreme Court of Virginia

RECORD NO. 992609



MEDIA GENERAL, INC.,

Appellant,

v.

WILLIAM F. SMITH, JR.,

Appellee.

APPENDIX

Michael W. Smith
E. Ford Stephens
Margaret C. Lewis
CHRISTIAN & BARTON, L.L.P.
909 East Main Street, Suite 1200
Richmond, Virginia 23219
(804) 697-4100 Telephone
(804) 697-4112 Facsimile

Counsel for Appellant

Howard P. Smith
JOSEPH SMITH, LTD.
Smith Building
2100 Kecoughtan Road
Post Office Box 1437
Hampton, Virginia 23661-0437
(757) 244-7000 Telephone
(757) 245-7740 Facsimile

Counsel for Appellee

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GLOUCESTER

Circuit Court

Case No. CL97-53

Rule 5:3 and 5A:10

WILLIAM F. SMITH, JR.

v.

GALE A. ALDRICH

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I, the undersigned, certify that the papers listed above and filed herein are the original papers entered in the above-styled case and constitute the true and complete record in such case except for exhibits whose omission is noted in the table of contents.

C. ANN GENTRY, CLERK, Clerk

By: *Chadwick Rhodes*
Deputy Clerk

GLOUCESTER

Circuit Court

Case No. CL 97-53

Rule 5:3 and 5A:10

WILLIAM F. SMITH, JR.

v.

GALE A. ALDRICH

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I, the undersigned, certify that the papers listed above and filed herein are the original papers entered in the above-styled case and constitute the true and complete record in such case except for exhibits whose omission is noted in the table of contents.

C. ANN GENTRY, CLERK

, Clerk

By:


 Deputy Clerk

Gloucester County Circuit Court
P.O. Box N.
Gloucester, Va. 23061

PROOF OF SERVICE

Case No. CL97-53

Gloucester County Circuit Court

William F. Smith, Jr. v. George L. Mahoney, Registered Agent for Media General, Inc.

Gale A. Aldrich 333 East Grace Street
Richmond, Va. 23219

Return shall be made herein, showing service of the:

☒ Notice of Motion for Judgment☐ Order dated☐ Subpoena in Chancery☐

which was issued on:

August 7, 1997

with a copy of the following documents filed on

August 7, 1997

attached:

- ☐ Motion for Judgment
- ☒ Amended Motion for Judgment
- ☐ Third Party Motion for Judgment
- ☐ Counterclaim
- ☐ Interrogatories
- ☐ Request for Admissions
- ☐ Production of Documents

- ☐ Bill of Complaint
- ☐ Bill of Complaint for Notary Acceptance
- ☐ Bill of Complaint for Non-resident Service
- ☐ Amended Bill of Complaint
- ☐ Cross-bill
- ☐ Notice
- ☐ Petition

RETURN OF SERVICE

☐ Personal Service☒ Being unable to make personal service, a copy was delivered in the following manner:

☐ Delivered to family member (not temporary sojourner or guest) age 16 or older at usual place of abode of party named above after giving information of its purport. List name, age of recipient, and relation of recipient to party named above:

Norma Lipscomb Executive Secretary - attached affidavit

☐ Posted on front door or such other door as appears to be the main entrance of usual place of abode, address listed above. (Other authorized recipient not found.)

FOR GARNISHMENT OF FEDERAL WAGES ONLY:

☐ Pursuant to 5 U.S.C. § 5520a, service by certified or registered mail, return receipt requested.☐ not found

M.B. Mitchell

Sheriff

Date: 8-14-97

by A. Atkins

Deputy Sheriff

FORM 100 (1-1995) 1/95 FC (11-1-95) 7/95

Sheriff's fee of \$12.00 collected and retained by Clerk

JOSEPH SMITH, LTD.

ATTORNEYS AND COUNSELLORS AT LAW

JOSEPH SMITH
(1818-1894)

HOWARD R. SMITH
STEPHEN H. PITLER
STEPHEN M. SMITH
ADAM S. RAFAL

(ADMITTED VIRGINIA, NEW YORK & DISTRICT OF COLUMBIA)

Smith Building

2100 KECOUGHTAN ROAD

P.O. BOX 1437

Hampton, Va. 23661-0437

PENINSULA & SOUTHSIDE

(757) 244-7000

FAX (757) 245-7740

September 3, 1997

Charles E. King, Jr.
Gloucester Circuit Court
PO Box N
Gloucester, VA 23061-0570

Re: WILLIAM F. SMITH, Jr. v. GALE ALLEN ALDRICH, et al.
At Law No. 97-53

Dear Mr. King:

Please be kind enough to provide me with a copy of the return for service on George L. Mahoney, Registered Agent for Media General Inc., relative to the above-styled law action. It is my understanding that it was served upon the Registered Agent on August 14, 1997. I enclose a check for \$.50 payable to your order for same, along with a self-addressed stamped envelope.

Thank you for your courtesy.

Very truly yours,

JOSEPH SMITH, LTD.

Stephen M. Smith

bmf
enclosure

JOSEPH SMITH, LTD.

ATTORNEYS AND COUNSELLORS AT LAW

JOSEPH SMITH
(1915-1994)

HOWARD R. SMITH
STEPHEN H. PITLEY
STEPHEN M. SMITH
J.F. HOEN

(*ADMITTED VIRGINIA, NEW YORK & DISTRICT OF COLUMBIA)

Smith Building

2100 KECOUGHTAN ROAD

P.O. BOX 1437

Hampton, Va. 23661-0437

PENINSULA & SOUTHSIDE

(757) 244-7000

FAX (757) 245-7740

July 23, 1998

COPY

Hon. William H. Shaw, III, Judge
Gloucester Circuit Court
Post Office Box N
Gloucester, VA 23061

RE: WILLIAM F. SMITH, Jr. v. GALE ALLEN ALDRICH, and MEDIA GENERAL
At Law Number: 97-53

Dear Judge Shaw:

The above captioned matter is scheduled to be heard on July 28, 1998 at 2:00 p.m. on the Motion of Plaintiff to fix the amount of damages to which he is entitled.

Previously, on March 24, 1998, after considering evidence, it was determined that the defendant, Media General, was in default.

Evidence presented at the hearing revealed that the defendant, Aldrich, was in the scope of his employment as a delivery person for Media General at the time of the collision.

Moreover, the designee of the registered agent for Media General had been properly served with a copy of the Motion for Judgment and with a copy of the Notice of the hearing pertaining to the Motion for default.

I am enclosing herewith the below listed information for the Court's consideration at the time of the hearing on the issue of damages:

1. Statement of Damages
2. All Medicals Relating to the Treatment of Injuries Sustained on 07/24/97.

Notably, Mr. Smith will have a permanent injury. He is 39 years of age and will have a life expectancy of 34.4 years. At the time of the collision, Mr. Smith was the owner of Smith Financial Services, a business that he began in the mid-eighties. He actually started work in the insurance industry in approximately 1980. He has received a master of financial planning and charter life underwriter certifications. Because of the collision, he was actually unable to work between August and February. He could not drive and had a great deal of difficulty in meeting with clients. As a salesman and financial planner, he was simply unable to provide what was required of him to his clients.

Honorable Judge Shaw

July 23, 1998

Page 2

Because of his inability to work, he fell short of the requirements needed by the insurance companies and thus, lost those accounts.

Additionally, his contracts had provided "non compete" clauses which meant that he could not approach previous customers. As such, the collision caused serious financial hardships from which Mr. Smith is just beginning to recover.

Because of the lack of income, he was required to sell a number of his assets including three horses, various parcels of real assets and other assets in addition to taking out personal loans.

As the Court will note from the enclosed reports, Mr. Smith yet requires surgery for the tear of his rotator cuff. He has been reluctant to go forward with this for a number of reasons, including the fact that he will be unable to work for approximately five or six weeks. Nonetheless, he knows that this condition will not improve and he will ultimately be required to undergo the surgery.

We will present evidence in support of the foregoing at the hearing.

With kind regards, I am

Very truly yours,

JOSEPH SMITH, LTD.

Howard P. Smith

HPS/bmf
Enclosures

cc: Kevin Logan, Esq.

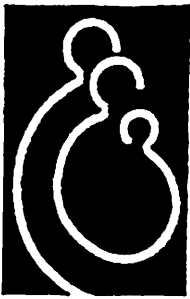
WILLIAM F. SMITH

STATEMENT OF DAMAGES

DATES OF SERVICE	PROVIDER OF SERVICE REFERENCE ITEM	AMOUNT
FROM 08/29/95 TO: 03/26/96	Tidewater Family Health Centers Douglas M. Brown, M.D.	\$1,625.00
FROM: 08/30/95 TO: 09/28/95	Physical Rehabilitation Center Acct: SMIWI000	\$3,107.50
FROM: 08/31/95 TO: 08/31/95	Oyster Point Radiology, Inc. Acct #12384P01	\$514.00
FROM: 10/30/95 TO: 10/30/95	Riverside Reg. Medical Center 000726928-5303	\$114.00
FROM: 04/08/98 TO: 04/08/98	Washington Open MRI MRI on 4/8/98	\$1,076.00
FUTURE MEDICAL EXPENSES:	ROTATOR CUFF SURGERY ESTIMATE	\$10,000.00
TOTALS		\$16,436.50

SUBTOTALS:

MED	\$ 6,436.50
FUTURE MEDICAL:	\$ 10,000.00
LOST WAGES:	WILL SUBMIT AT LATER DATE



TIDEWATER
FAMILY
HEALTH
CENTERS
LTD.



2115 EXECUTIVE DR.
SUITE 5D
HAMPTON, VA 23666
804-827-0767

LINDA SCHWENK M.D., F.A.A.P.
DOUGLAS SHOWN M.D., F.A.A.P.
MARY YOUNG M.D., F.A.A.P.

April 5, 1996

Joseph Smith, Ltd.
Attn: Mr. Howard P. Smith
2100 Kecoughtan Road
Hampton, VA 23661-0437

RE: WILLIAM F. SMITH, JR. D/A: AUGUST 28, 1995

Dear Mr. Smith:

Our patient, William F. Smith, Jr., was first seen on August 29, 1995, for injuries sustained August 28, 1995. He was the driver of a vehicle involved in a head-on

collision; he was going around a curve when struck by a vehicle in his lane. Each was travelling about 45 miles per hour. He was not rendered unconscious nor thrown from the vehicle. He reported that he had been wearing appropriate safety restraints. When first seen, he complained of headaches and neck pain. He was having pain across his left shoulder with paresthesias of the left fingertips. He was having pain throughout his back.

Physical examination revealed no lacerations, abrasions, or contusions of the face or head. His eye grounds were normal, and cranial nerves were intact. Pupils were equal and reactive, and the extraocular movements were full. Deep tendon reflexes were normal and symmetric, as were Babinski and Romberg. There was no ataxia. Examination of the neck revealed intense spasm and tenderness to palpation over the cervical extensor muscles and the anterior cervical muscles. The cervical range of motion was diminished. Examination of the thorax revealed spasm and tenderness to palpation over the posterior musculature. There was spasm over the anterior chest wall. He also had spasm and tenderness to palpation in the lumbosacral area with flattening of the normal lordotic curvature. Straight-leg raising was negative. His left shoulder was tender to palpation. There was limitation of the range of motion of the left shoulder. The right shoulder and extremities were normal to examination. It was felt that he had suffered a stretch injury of the cervical, thoracic, and lumbosacral areas of moderate degree, as well as a contusion of the anterior chest wall and left shoulder. He was not hospitalized, and it was felt that he was not able to work. He was started on Naprosyn as an anti-inflammatory agent, Flexeril as a muscle relaxant, and Vicodin for analgesia. X-rays of the cervical and lumbosacral spine were ordered. No orthopedic appliances or consultations were obtained. He was asked to return again.

He returned on September 8 noting little change in his symptoms since his initial visit. He was still having neck pain with radiation down the left arm. Physical examination showed the cervical range of motion still to be full. There was persisting tenderness and spasm over the upper trapezius, the mid trapezius, and the thoracic paraspinal muscles as far as T8. The lumbosacral range of motion was limited. He had tenderness and spasm to palpation bilaterally from L3-4 to S1. Straight-leg raising was negative. He was instructed to remain out of work. Neurometric examination of the left arm was scheduled.

He was next seen on September 12 noting some slow improvement of his symptoms. He had developed left wrist pain. Physical examination showed the cervical range of motion still to be limited. He had tenderness and spasm of the mid and upper portions of the trapezius and the thoracic paraspinal muscles. The lumbosacral range of motion was limited with tenderness and spasm from L3-4 to S1 bilaterally. Straight-leg raising was negative. The left wrist had minimal swelling and tenderness. It was felt that he was still not able to work. A paraffin treatment to the left wrist was added to his therapy. No changes were made in his medications. The neurometric examination had been done and had shown some median nerve impairment. It was elected not to pursue this further except with the paraffin treatment to the wrist.

By September 19 there still was little change in his symptoms. Physical examination showed the cervical range of motion to be better. There was less tenderness and only mild spasm remaining to palpation of the upper trapezius, the mid trapezius, and the thoracic paraspinal muscles. The lumbosacral range of motion was also improving. There was decreasing tenderness with only mild spasm remaining to palpation from L3-4 to S1 bilaterally. Straight-leg raising was negative. The left wrist was still tender over the distal radius. He was instructed to remain out of work and to continue his medications and therapy.

When seen on September 26 his symptoms were beginning to improve. The cervical range of motion was only minimally limited. He had mild spasm and low grade tenderness remaining from the upper trapezius through the mid trapezius and down the thoracic paraspinal muscles to T8. The lumbosacral range of motion was minimally limited. There was low grade tenderness with mild spasm from L3-4 to S1 bilaterally. The left wrist had less tenderness over the distal radius than previously. No changes were made in his treatment at this time.

On his next visit on October 17 he complained of an increase in neck pain and stiffness with radiation of pain down the left arm. Examination showed minimal restriction of the cervical range of motion. There was an increase in tenderness and spasm over the upper trapezius, the mid trapezius, and the thoracic paraspinal

muscles. The lumbosacral range of motion remained minimally limited. There was persistent low grade tenderness with mild spasm from L3-4 to S1 bilaterally. The left wrist had minimal tenderness over the distal radius. Because of the lack of improvement, an EMG of the left arm was ordered to rule out carpal-tunnel syndrome. His medications and therapy were continued.

His symptoms were unchanged at the time of his next visit on October 24. Physical examination showed no change or improvement. It was felt that his injuries and functions could not clearly be said to be improving. The EMG was rescheduled for October 30, and he was instructed to continue his treatment.

There had been some improvement in his symptoms at the time he was seen again on October 31. He was having less neck pain. He complained of an increase in shoulder pain. Physical examination showed the cervical range of motion to be normal. There was less spasm and tenderness to palpation of the upper and mid portions of the trapezius than before. He still had some mild spasm and tenderness to palpation of the thoracic paraspinal muscles from T4 to T8. There was minimal limitation of the lumbosacral range of motion. He had low grade tenderness with mild spasm to palpation of the lumbosacral paraspinal muscles. The left shoulder had limitation of external rotation and abduction with tenderness over the anterior aspect of the shoulder. The EMG had been normal. An MRI of the left shoulder was ordered to rule out rotator cuff tear. Therapy was decreased to twice a week.

He was not seen again until November 28, at which time he noted that his symptoms were generally improving. The left shoulder was still painful, and the MRI had not been done. Physical examination showed minimal limitation of the cervical spine. There was a decrease in tenderness to palpation of the upper and mid portions of the trapezius with no remaining spasm. He also had tenderness without spasm to palpation of the thoracic paraspinal muscles from T4 to T8. There was minimal limitation of the range of motion of the lumbosacral spine with just a suggestion of tenderness remaining from L3-4 to S1. Examination of the left shoulder showed continued limitation of external rotation and abduction. The MRI of the left shoulder was rescheduled. Therapy was discontinued. He had returned to work part time and was instructed to continue doing this.

Mr. Smith's next visit was December 5, at which time he noted continued improvement of his symptoms. He had been unable to have the MRI done due to claustrophobia. Physical examination showed no restriction of the cervical range of motion. He had low grade tenderness remaining to palpation from the upper trapezius through the mid trapezius and down the paraspinal muscles. The lumbosacral range of motion was normal. There was minimal tenderness to palpation of the lumbosacral paraspinal muscles. The left shoulder

continued to have limitation of the range of motion. There was tenderness over the AC joint. The MRI was rescheduled, and he was given a prescription of Tanax to take before the MRI.

He was next seen on December 10, at which time his symptoms were continuing to improve. He had only low grade tenderness remaining to palpation of the cervical and upper dorsal musculature. He also had low grade tenderness without spasm to palpation of the lumbosacral paraspinal muscles. The left shoulder still had limitation on external rotation. He had been unable to have the MRI done at the time it had been scheduled and was planning on rescheduling it himself. He was instructed to continue doing his exercises at home.

By December 19 he was having slow but steady improvement of his symptoms. He still had some tenderness remaining from the upper trapezius through the mid trapezius and down the thoracic paraspinal muscles. He had some tenderness of the lumbosacral paraspinal muscles as well. It was felt that the injuries were improving, and he was instructed to continue working part time.

When seen on December 26, he noted additional improvement of his symptoms. Physical examination showed minimal tenderness and no spasm from the upper trapezius through the mid trapezius and down the thoracic paraspinal muscles. There was a decrease in tenderness to palpation of the lumbosacral area. No changes were made in his treatment.

By January 9, 1996, his symptoms were continuing to resolve. There was no restriction of the cervical range of motion and no spasm or tenderness to palpation of the cervical or thoracic muscles. There was some minimal limitation of the range of motion of the shoulder with low grade tenderness over the AC joint. He was reminded that he needed to have the MRI of his shoulder done.

Mr. Smith was seen on February 1, at which time he continued to note slow resolution of his symptoms. Physical examination showed no spasm, tenderness, or restriction of the cervical range of motion. There was no spasm or tenderness to palpation of the thoracic paraspinal muscles. The lumbosacral range of motion was normal. There was just a suggestion of tenderness remaining to palpation from L4-5 to S1 bilaterally. Straight-leg raising was negative. His deep tendon reflexes were normal and symmetric. There was minimal tenderness palpable over the AC joint but no restriction of his range of motion.

He returned on February 15 because of an increase in mid back pain and stiffness that had occurred since his previous visit. Physical examination showed tenderness with a recurrence of mild spasm to palpation of the upper and mid portions of the trapezius. This was worse on the left than on the right. He had tenderness with mild

spasm to palpation of the thoracic paraspinal muscles from T4 to T8 as well. This was also worse on the left than on the right. He was given prescriptions of Naprosyn to take for anti-inflammatory effect and Flexeril as a muscle relaxant. Visit heat and massage therapy were restarted.

By his return on February 27 the mid back pain and stiffness were decreasing. Examination showed less tenderness to palpation with only mild spasm remaining of the upper and mid portions of the trapezius. His symptoms remained worse on the left than on the right. There had also been a decrease in the tenderness and spasm to palpation of the thoracic paraspinal muscles. This area was also worse on the left than on the right. It was felt that his injuries were improving, and no changes were made in his treatment.

At the time of his next visit on March 3, he stated that his symptoms were resolving nicely. Physical examination did show some persisting low grade tenderness to palpation of the upper and mid portions of the trapezius with just a suggestion of spasm. As before, these findings were worse on the left than on the right. He had low grade tenderness of the thoracic paraspinal muscles, but the spasm in this area had resolved. He remained more tender on the left than on the right. He was instructed to continue taking his medications. Therapy was stopped, and he was reminded to use heat and do his exercises at home.

He was last seen on March 26, at which time he was having only minimal discomfort. Physical examination showed low grade tenderness remaining without palpable spasm from the upper trapezius through the mid trapezius and down the thoracic paraspinal muscles to T8. It was felt that his injuries and functions had essentially resolved, and he was discharged from further care. His prognosis is excellent, and I expect that the minimal residua he had at the time of discharge to resolve completely over the next few months assuming he has no rotator cuff injury. This cannot be known for sure since the MRI was never done. If he does have a rotator cuff injury, I expect he is going to persist in having some shoulder pain intermittently, particularly with activity. This is a final report.

Sincerely,



Douglas A. Brown, M.D.

DAB/tmt

CIA vehicle which
was struck by another
head-on, crossover
lane ahead & curve involved
~45mph

1/95 Name William F. Smith Date of Acc: 8-28-75 Pos. in Veh. (D) RF R
Sp: 76 BP: 124/80 WT: 194 HT: 5'7 1/2" Allergies: NCA
U: N/A Maj Med Prob: Neck, L. Side Meds: ADUIL
Circumstances: Veh Moving: (yes) no STRUCK--Head On (LEFT) Rear Lt Side Rt Side
Unconscious: (yes) no Thrown from vehicle: (yes) no Restraints: (yes) no
in ER: (yes) no Date _____ Where _____ Therapy _____
X-rays Taken: N/A Results Verified: _____
Subjective: Headache: YES Nausea: NO Vision Problems: NO Sleeping: Bad
Pain: Cer: YES Thor: YES Lum: YES Shoulder: (L) R YES Other: _____
Tarasthesia (L) & numbness SINCE MVA & persistent neck ->
Subjective: Neck Pain / stiffness & persistent
base of neck & shoulder pain, tingling / numbness
Contusions of Face & Head: Shoulder pain, tingling / numbness
E.G. + Cran.N. + Pupils + EOM + DTR + B + F + AT +
NECK: Ext. Sp ++ T ++ ROM ++ Ant ++
THORAX: Post. Sp ++ T ++ Sw ++ Ant ++
L/S AREA: Sp ++ T ++ L.C. ++ St. Leg (+)
SHOULDERS: LT _____ ROM 2 limitation ROM Rot.C 2 extension
RT _____ ROM 3 limitation Rot.C 2 extension
EXTREMITIES: 3 edema
RAISAL: St. Inj. Neck: (yes) no Degree: > moderate
St. Inj. L.B.: (yes) no Degree: _____
CONTUSIONS: UD (+) Lt.Sh (+) Rt.Sh (+) Ant.Ch (+)
ABRASIONS: NONE
HOSPITALIZE: (yes) no
ABLE TO WORK: (yes) no EST. TIME LOSS: ~ 1-2 wk
MEDICATION: Anti-Inf. NAMOSIN 500mg Msc. Relax Flexeril 100mg
Analgesic + Potzidol Other + Percocet
P.THERAPY: (yes) no OFFICE: (yes) no WHERE VICCA
HEAT: (yes) no EXERCISES: (yes) no Flexion ROM Shoulder
X-RAYS: G. Spine, L.S. Spine APPLIANCES: _____
CONSULTATIONS: _____
FOLLOW UP: 1 wk
Physiotherapy Dates: _____
MENTS SENT FOR: ER Slip: (yes) X-Ray Results: (yes)
Other MD Treatment Record: (yes)

Date: SEP 05 1995 Patient: William T. Smith Date: 8/28/95

SUBJECTIVE: Improvement: _____

_____ little since
Exacerbation: initial visit, &

_____ continued neck pain

New Problem: & radiation down LUE

_____ & continued limitation ROM C spine

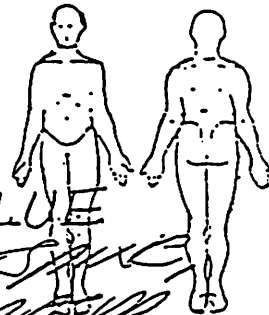
SUBJECTIVE: & persistent tenderness L5/S1

_____ midline tenderness -> thoracic paravertebral

_____ T4-T6 bilat. & continued limitation ROM

PPRAISAL: Injuries Improving: yes no Functions Improving: yes no

Other: SPIN L3-4-5 bilat. SUE



PLAN: Work: YES - LIGHT DUTY - (NO) / Not Before: ~ 1 wk

Medications: Same 1 Change _____

Tests Ordered: Schirmer's Newmark

Exercise: YES NO Physical Therapy: U.E

WOT

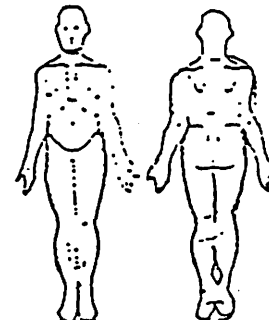
Date: _____ Patient: _____ Date: _____

SUBJECTIVE: Improvement: _____

Exacerbation: _____

New Problem: _____

SUBJECTIVE: _____



PPRAISAL: Injuries Improving: yes no Functions Improving: yes no

Other: _____

PLAN: Work: YES - LIGHT DUTY - NO / Not Before: _____

Medications: Same _____ Change _____

Tests Ordered: _____

Exercise: YES - NO Physical Therapy: _____

P 05 1995

Patient

William T. Smith

Date:

8/28/95

IVE: Improvement:

little since

Exacerbation:

initial visit, to

continued neck pain

New Problem:

to radiation down L arm

to continued limitation ROM

JECTIVE:

to persistent tenderness to touch

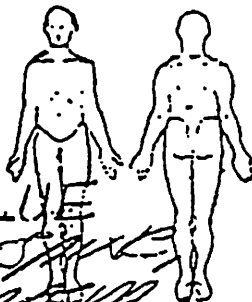
multiple areas - 7 therapeutic modalities

14-15 bilat. to continued limitation ROM

RAISAL:

Injuries Improving: yes no Functions Improving: yes no

Other: 5 from 13-4-5 bilat. SUE



AN:

Work: YES - LIGHT DUTY - (NO) / Not Before:

~ 1/1/95

Medications: Same

Change

Tests Ordered:

Schedule 1/1/95

Exercise: YES - NO

Physical Therapy:

U/E

e: 9/7/95

Patient:

William T. Smith

Date:

8/28/95

JECTIVE: Improvement:

It was not supposed to

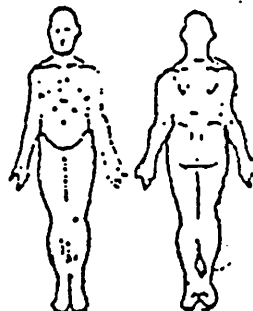
Exacerbation:

be seen today.

Neurologist of U.S. performed

New Problem: this a.m.

C. Ladd, MA



JECTIVE:

RAISAL:

Injuries Improving:

yes

no

Functions Improving:

yes

no

Other:

I:

Work: YES - LIGHT DUTY - NO / Not Before:

Medications: Same

Change

Tests Ordered:

Exercise: YES - NO

Physical Therapy:

Date: SEP 12 1995 Patient: William Smith Date: 8/28/95

SUBJECTIVE: Improvement: _____

Exacerbation: _____

New Problem: _____

OBJECTIVE: to slow improve-
ment
to 90° waist pain

PPRAISAL: Injuries Improving: yes no Functions Improving: yes no

Other: minimal swelling/tenderness

PLAN: Work: YES - LIGHT DUTY - (NO) Not Before: Oct X 1wk

Medications: Same _____ Change _____

Tests Ordered: flex 1wk

Exercise: YES - NO _____ Physical Therapy: old PMH
limit

Date: SEP 19 1995 Patient: William Smith Date: 8/28/95

SUBJECTIVE: Improvement: _____

Exacerbation: _____

New Problem: _____

OBJECTIVE: to little Δ since
last visit.

PPRAISAL: Injuries Improving: yes no Functions Improving: yes no

Other: over dorsal muscles

PLAN: Work: YES - LIGHT DUTY - (NO) Not Before: Oct X 1wk

Medications: Same ✓ Change _____

Tests Ordered: flex 1wk

Exercise: YES - NO _____ Physical Therapy: at OTX

8/28/95 Patient: William Smith Date: 8/28/95

VE: Improvement: _____

Exacerbation: CONTINUED
IMPROVEMENT

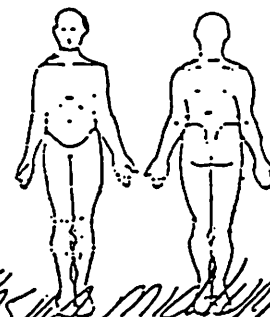
New Problem: _____

EFFECTIVE:

MINIMAL LIMITATION RIAN CSANE
LOW GRADE TENDERNESS / MILD SPASM MIDLINE
TRAPPS - THORACIC PARASPINAL T4 - T6 BITOT
MINIMAL LIMITATION TRAPPS - T5 SPINE

RAISAL:

Injuries Improving: yes no Functions Improving: yes no
Other: BITOT CUMULATIVE TRAUMATIC INJURY
diaphragm rupture



Work: YES - LIGHT DUTY - (NO) / Not Before: _____

Medications: Same _____ Change _____

Tests Ordered: PHX/1000

Exercise: YES - NO Physical Therapy: AT/PT

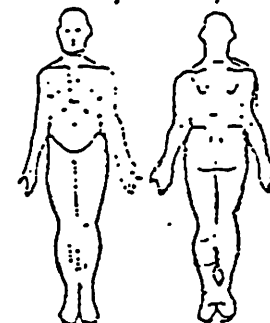
8/28/95 Patient: William Smith Date: 8/28/95

EFFECTIVE: Improvement: _____

Exacerbation: N/S

New Problem: _____

EFFECTIVE:



RAISAL: Injuries Improving: yes no Functions Improving: yes no

Other: _____

Work: YES - LIGHT DUTY - NO / Not Before: _____

Medications: Same _____ Change _____

Tests Ordered: _____

Exercise: YES - NO Physical Therapy: _____

Date: OCT 17 1995 Patient: William Smith Date: 8/28/95

SUBJECTIVE: Improvement: _____

_____ 2 red neck

Exacerbation: stiffness/pain

_____ 2 RADIATION AT

New Problem: RAUL CLAW CLAW

_____ 2 MINIMAL LIMITATION ROM C-5/6

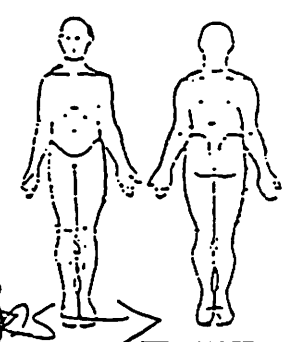
OBJECTIVE: 2 red tenderness / spasm mid upper traps →

thoracic paraspinals T4-T8 bilat 2 MINIMAL

limitation ROM L.S. spine 2 persistent mid upper

APPRAISAL: Injuries Improving: yes Functions Improving: yes 2 no

Other: 2 MINIMAL tenderness distal radius



PLAN: Work: YES - LIGHT DUTY - (NO) / Not Before: _____

Medications: Same _____ Change Schedule. E.M.C.

Tests Ordered: Flu x luk LVE R/O CAPITULUM

Exercise: YES - NO _____ Physical Therapy: Cont. C.TX Symptoms

Date: OCT 24 1995 Patient: William Smith Date: 8/28/95

SUBJECTIVE: Improvement: _____

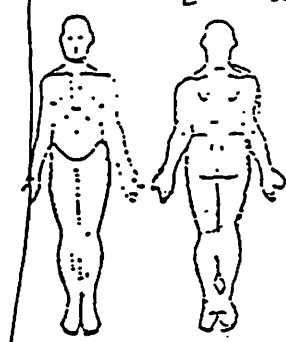
_____ 2 SX UNAE

Exacerbation: _____

New Problem: _____

_____ 2

OBJECTIVE: EXAM REMAINS UNAE



APPRAISAL: Injuries Improving: yes / no Functions Improving: yes / no

Other: _____

PLAN: Work: YES - LIGHT DUTY - (NO) / Not Before: _____

Medications: Same _____ Change Need to Reckle

Tests Ordered: Flu x luk

Exercise: YES - NO _____ Physical Therapy: Cont. C.TX

3/1/95 Patient: William Smith Date: 3/28/95

E: Improvement: _____

Exacerbation: _____

New Problem: _____

CTIVE: _____

ISAL: Injuries improving: yes no Functions Improving: yes no

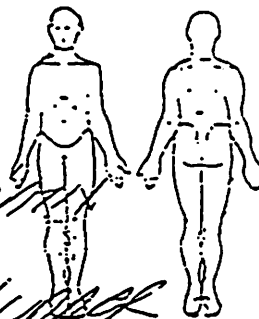
Other: _____

Work: YES - LIGHT DUTY - NO / Not Before: _____

Medications: Same _____ Change _____

Tests Ordered: _____

Exercise: YES - NO Physical Therapy: _____



11/7/95 Patient: William Smith Date: 8/28/95

CTIVE: Improvement: _____

Exacerbation: _____

New Problem: _____

CTIVE: _____

ISAL: Injuries improving: yes no Functions Improving: yes no

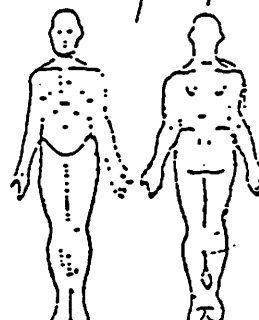
Other: _____

Work: YES - LIGHT DUTY - NO / Not Before: _____

Medications: Same _____ Change _____

Tests Ordered: _____

Exercise: YES - NO Physical Therapy: _____



e: 11/28/95 Patient: William Smith Date: 8/28/95

JECTIVE: Improvement:

Exacerbation: NO EXACERBATION

New Problem: NO NEW PROBLEM

JECTIVE:

RAISAL:

Injuries Improving: yes no Functions Improving: yes no

Other: NO OTHER

N: Work: YES - LIGHT DUTY - NO / Not Before:

Medications: Same NO Change NO

Tests Ordered: NO

Exercise: YES - NO Physical Therapy: NO

DEC 05 1995 Patient: William Smith Date: 8/28/95

JECTIVE: Improvement:

Exacerbation: NO EXACERBATION

New Problem: NO NEW PROBLEM

CTIVE:

AISAL:

Injuries Improving: yes no Functions Improving: yes no

Other: NO OTHER

: Work: YES - LIGHT DUTY - NO / Not Before:

Medications: Same NO Change NO

Tests Ordered: NO

Exercise: YES - NO Physical Therapy: NO

1/12/95 Patient: William Smith Date: 8/28/95

E: Improvement: _____

Exacerbation: 2 CLEAR SX'S
IMPROVED

New Problem: _____

2 LOW GRADE TENDRNESS / 5

CTIVE:

SPASM MULTIPLE TAPPS → THUMB

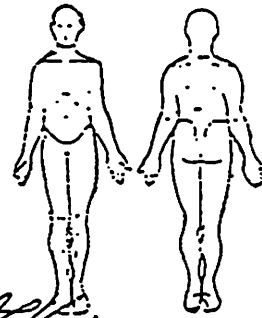
ADROMED T4-T5 BILAT. 2 LOW GRADE

TENDRNESS / 5 SPASM 12-14 BILAT (2)

ISAL:

Injuries Improving: yes no Functions Improving: yes no

Other: _____



Work: YES - LIGHT DUTY - NO / Not Before: Re schedule MRI

Medications: Same _____ Change (patients to schedule app. weekly)

Tests Ordered: PHX 1/11/95

Exercise: YES - NO Physical Therapy: Home Program

12-19-95 Patient: William Smith Date: 8-28-95

CTIVE: Improvement: _____

Exacerbation: 2 SLOW BHT
CATAWIPED IMMEDIATE

New Problem: _____

2 MINIMUM TENDRNESS / 5 SPASM

CTIVE:

MULTIPLE TAPPS → THUMB

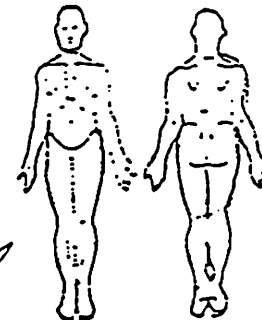
ADROMED T4-T5 BILAT. 2 TENDRNESS

/ 5 SPASM 12-14 BILAT

ISAL:

Injuries Improving: yes no Functions Improving: yes no

Other: _____



Work: YES - LIGHT DUTY - NO / Not Before: Re schedule MRI

Medications: Same _____ Change _____

Tests Ordered: PHX 1/11/95

Exercise: YES - NO Physical Therapy: Home Program

te: 12/19/95 Patient: 2091911 Smith Date: 2/22/96

SUBJECTIVE: Improvement: _____

Exacerbation: _____

New Problem: _____

SUBJECTIVE: MINIMAL TENDERNESSES / 5 SPASMS

T4-T8 bilat, 2 red tenderness / 5

SPASMS 12-4-S bilat

APPRAISAL: Injuries Improving: (yes) no Functions Improving: ~~yes~~ no

Other: _____

AN: Work: YES - LIGHT DUTY - NO / Not Before: _____

Medications: Same _____ Change _____

Tests Ordered: PIVX IUX

Exercise: YES - NO Physical Therapy: Home Program

te: JAN 02 1996 Patient: 2091911 Smith Date: 2/22/96

SUBJECTIVE: Improvement: _____

Exacerbation: CA

New Problem: _____

SUBJECTIVE: _____

APPRAISAL: Injuries Improving: yes no Functions Improving: yes no

Other: _____

AN: Work: YES - LIGHT DUTY - NO / Not Before: _____

Medications: Same _____ Change _____

Tests Ordered: _____

Exercise: YES - NO Physical Therapy: _____

: 1/9/96 Patient: William J Smith Date: 8/28/95

EFFECTIVE: Improvement: NO VISIT - SX

Exacerbation: SLIGHTLY RESOLVING

New Problem: 3 LIMITATION ROM C SPINE, 3

CTIVE:

TENDERNESS 3 SPASM MIDLINE TENDS
THORACIC, PARASPINALS, MINIMAL LIMITATION ROM
R SHOULDER, 2 LOW GRADE TENDRICES AT JOINT

ALISAL: Injuries Improving: yes no Functions Improving: yes no
Other: _____

: Work: YES - LIGHT DUTY - NO / Not Before: _____

Medications: Same ✓ Change Need MRX

Tests Ordered: PHX 2/1/96

Exercise: YES - NO Physical Therapy: Heme Program

JAN 23 1996

: Patient: William J. Smith Date: 8/28/95

EFFECTIVE: Improvement: _____

Exacerbation: NLS

New Problem: _____

CTIVE:

ALISAL: Injuries Improving: yes no Functions Improving: yes no
Other: _____

Work: YES - LIGHT DUTY - NO / Not Before: _____

Medications: Same _____ Change _____

Tests Ordered: _____

Exercise: YES - NO Physical Therapy: _____

FFR 01 1996 Patient: William J Smith Date: 8/28/95

SUBJECTIVE: Improvement: _____

Exacerbation: _____

New Problem: _____

SUBJECTIVE: _____

ASSESSMENT: Injuries Improving: yes no Functions Improving: yes no

Other: _____

AN: Work: (YES) - LIGHT DUTY - NO / Not Before: _____

Medications: Same PRN Change _____

Tests Ordered: D/C

Exercise: YES - NO Physical Therapy: Home Program

te: Patient: Date:

SUBJECTIVE: Improvement: _____

Exacerbation: _____

New Problem: _____

SUBJECTIVE: _____

ASSESSMENT: Injuries Improving: yes no Functions Improving: yes no

Other: _____

AN: Work: YES - LIGHT DUTY - NO / Not Before: _____

Medications: Same Change _____

Tests Ordered: _____

Exercise: YES - NO Physical Therapy: _____

FFR 01 1996

Patient: William J Smith

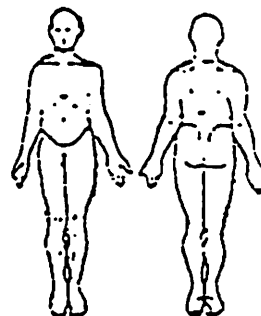
Date: 8/28/95

SUBJECTIVE: Improvement:

Overall \downarrow EX
Exacerbation: RESOLVING

New Problem:

3 limitation ROM C-spine, 3
tenderness, 3 spasm mid/lower
thoracic \rightarrow thoracic paraspinals T4-T8 bilat, 3
limitation ROM R shoulder, 2 minimal tenderness
RAISAL: Injuries Improving: yes no Functions Improving: yes no
Other: L5-S1, 2 minimal tenderness L4-S1
bilat SLR DTR 2 bilat



Work: (YES) - LIGHT DUTY - NO / Not Before:

Medications: Same PRN Change

Tests Ordered:

Exercise: YES - NO

Physical Therapy: Home Program

FEB 10 1996

Patient: William J Smith

Date: 8/28/95

SUBJECTIVE: Improvement:

2 med mid/low back pain
Exacerbation: stiffness post T2
LKS

New Problem:

SUBJECTIVE: 2 tenderness / mild spasm mid/low back
2 R, 2 tenderness / mild spasm
thoracic paraspinals T4-T8 (2 R)

RAISAL: Injuries Improving: yes no Functions Improving: yes no
Other:

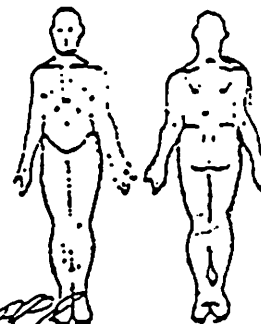
Work: (YES) - LIGHT DUTY - NO / Not Before:

Medications: Same R NIMORIN 375 / Flexeril 150

Tests Ordered:

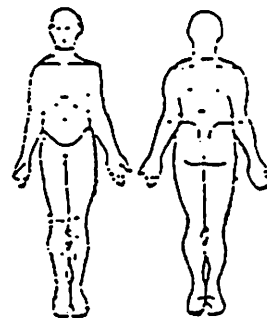
Exercise: YES - NO

Physical Therapy: Flex/Stretch



ate: FEB 22 1996 Patient: William F. Smith Date: 8/28/95

SUBJECTIVE: Improvement: Rescheduled. Unable to
Exacerbation: stay due to on back
and behind schedule.
New Problem: _____



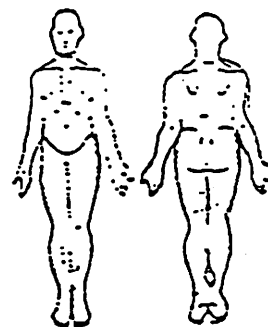
SUBJECTIVE: _____

APPRAISAL: Injuries Improving: yes no Functions Improving: yes no
Other: _____

PLAN: Work: YES - LIGHT DUTY - NO / Not Before: _____
Medications: Same _____ Change _____
Tests Ordered: _____
Exercise: YES - NO Physical Therapy: _____

ate FEB 27 1996 Patient: William F. Smith Date: 8/28/95

SUBJECTIVE: Improvement: 2 led mid-back
Exacerbation: pain/stiffness
New Problem: _____



SUBJECTIVE: 2 led tenderness / mild spasm
mid/upper @ 7 @ 2 led tenderness
/ mild spasm thoracic paraspinals T4-T8 lat @ 7 @

APPRAISAL: Injuries Improving: (yes) no Functions Improving: yes / no
Other: _____

PLAN: Work: (YES) - LIGHT DUTY - NO / Not Before: _____
Medications: Same ✓ Change _____
Tests Ordered: Flexion
Exercise: YES - NO Physical Therapy: Cat.

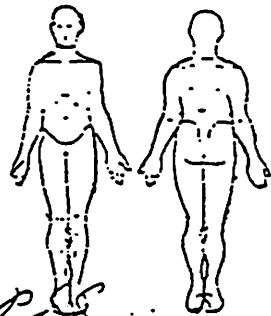
MAR 05 1996

Patient: William J. Smith Date: 8/28/95

ACTIVE: Improvement: _____

_____ 2 cervical-sxs
Exacerbation: resolving

New Problem: _____



ACTIVE:

2 persistent low grade tenderness,
mild spasms mid/upper traps @ 7R, 2
low grade tenderness / 2.5. spasms
thoracic paraspinal T4-T8 bilat

ISAL: Injuries Improving: yes no Functions Improving: yes no
Other: _____

Work: YES - LIGHT DUTY - NO / Not Before: _____

Medications: Same ✓ Change _____

Tests Ordered: _____

Exercise: YES - NO

Physical Therapy: Heme Ingram

MAR 26 1996

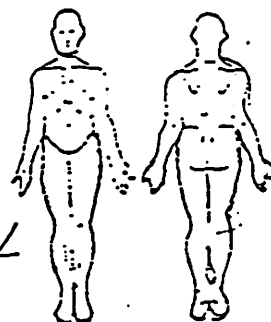
Patient: William J. Smith Date: 8/28/95

ACTIVE: Improvement: _____

_____ 2. minimal
Exacerbation: occasional

New Problem: _____

2 low grade tenderness / no knots
spasms mid/upper traps @ 7R,
2. minimal tenderness / 2.5. spasms
thoracic paraspinal T4-T8 bilat



ACTIVE:

ISAL: Injuries Improving: yes no Functions Improving: yes no
Other: _____

Work: YES - LIGHT DUTY - NO / Not Before: _____

Medications: Same ✓ Change _____

Tests Ordered: D/C

Exercise: YES - NO

Physical Therapy: Heme Ingram

3
PHYSICAL REHABILITATION CENTER, INC.
12511 WARWICK BOULEVARD
NEWPORT NEWS, VA 23606
(804) 930-2118

PATIENT: William J. Smith STARTED TREATMENT ON: 8/30/95
PHONE NUMBER: 930-4931 PRESCRIPTION BY: Douglas Brown
DATE: SEP 28 1995

TREATMENT LIST: THERAPY MODALITIES USED:

SOFT TISSUE MANIPULATION	<input checked="" type="checkbox"/>	IONTOPHORESIS:	_____
NEUROMUSCULAR	<input checked="" type="checkbox"/>	PARAFFIN:	_____
ISOMETRICS	<input checked="" type="checkbox"/>	THERAPEUTIC EXERCISE:	_____
DEEP TRANS/CIR FRICTION	<input checked="" type="checkbox"/>	#10	
ACUPRESSURE	<input checked="" type="checkbox"/>	ULTRASOUND SETTING:	<u>Lumbosacral</u>
COUNTERSTRAIN	<input checked="" type="checkbox"/>	TRACTION	_____ lbs
CRYOTHERAPY PACKS 1 2 3 4	_____	ELECTRIC STIM SETTING	<u>T-10 NA-15</u>
MOIST HEAT PACKS 1 2 3 4	_____		

CERVICAL THORACIC THOROLUMBOSACRAL SHOULDER (L) (R) ELBOW (L) (R)

COMMENTS: Pt having g. LBP + some (L) shoulder
discomfort - R hip's back has improved
greatly - inflammation is down - Pt making
good progress

THERAPIST'S SIGNATURE: W. Wright, CMT DATE: 9/28

PHYSICIAN'S REQUEST:

____ CONTINUE UNDER THERAPIST'S DISCRETION
____ CONTINUE THERAPY FOR _____ WEEKS 1 2 3 4 5 DAYS A WEEK
____ THEN REDUCE FREQUENCY FOR _____ WEEKS 1 2 3 4 5 DAYS A WEEK

COMMENTS: cont. TX w/ O/L TX
shoulder

PHYSICIAN'S SIGNATURE: [Signature] DATE: 11/3/95

PHYSICAL REHABILITATION CENTER, INC.
12511 WARWICK BOULEVARD
NEWPORT NEWS, VA 23606
(804) 930-2118

PATIENT: Wm. Smith
PHONE NUMBER: 599-1700
DATE: OCT 26 1995

STARTED TREATMENT ON: 8/30/95
PRESCRIPTION BY: Dr. Douglas Brown

TREATMENT LIST: THERAPY MODALITIES USED:

SOFT TISSUE MANIPULATION	_____	IONTOPHORESIS:	_____
NEUROMUSCULAR	_____		
ISOMETRICS	_____	PARAFFIN:	_____
DEEP TRANS/CIR FRICTION	_____		
ACCU PRESSURE	_____	THERAPEUTIC EXERCISE:	_____
COUNTERSTRAIN	_____		
		ULTRASOUND SETTING:	_____
CRYOTHERAPY PACKS 1 2 3 4	_____		
		TRACTION	_____ <u>lbs</u>
MOIST HEAT PACKS 1 2 3 4	_____		
		ELECTRIC STIM SETTING	_____

CERVICAL THORACIC THOROLUMBOSACRAL SHOULDER (L) (R) ELBOW (L) (R)

COMMENTS: _____

THERAPIST'S SIGNATURE _____ DATE _____

PHYSICIAN'S REQUEST:

____ CONTINUE UNDER THERAPIST'S DISCRETION
____ CONTINUE THERAPY FOR _____ WEEKS 1 2 3 4 5 DAYS A WEEK
____ THEN REDUCE FREQUENCY FOR _____ WEEKS 1 2 3 4 5 DAYS A WEEK
COMMENTS: _____

PHYSICIAN'S SIGNATURE: _____ DATE: _____

PHYSICAL REHABILITATION CENTER, INC.
12511 WARWICK BOULEVARD
NEWPORT NEWS, VA 23606
(804) 930-2118

PATIENT: William Smith
PHONE NUMBER: 599-1700
DATE: OCT 24 1995

STARTED TREATMENT ON: 8/30/95
PRESCRIPTION BY: Dr. Douglas Brown

TREATMENT LIST: THERAPY MODALITIES USED:

SOFT TISSUE MANIPULATION	_____	IONTOPHORESIS:	_____
NEUROMUSCULAR	_____	PARAFFIN:	_____
ISOMETRICS	_____	THERAPEUTIC EXERCISE:	_____
DEEP TRANS/CIR FRICTION	_____	ULTRASOUND SETTING:	_____
ACUPRESSURE	_____	TRACTION	_____
COUNTERSTRAIN	_____	ELECTRIC STIM SETTING	_____
CRYOTHERAPY PACKS 1 2 3 4	_____		
MOIST HEAT PACKS 1 2 3 4	_____		

CERVICAL THORACIC THOROLUMBOSACRAL SHOULDER (L) (R) ELBOW (L) (R)

COMMENTS:

N/S

THERAPIST'S SIGNATURE _____ DATE _____

PHYSICIAN'S REQUEST:

_____ CONTINUE UNDER THERAPIST'S DISCRETION
_____ CONTINUE THERAPY FOR _____ WEEKS 1 2 3 4 5 DAYS A WEEK
_____ THEN REDUCE FREQUENCY FOR _____ WEEKS 1 2 3 4 5 DAYS A WEEK

COMMENTS: _____

PHYSICIAN'S SIGNATURE: _____ DATE: _____

PHYSICAL REHABILITATION CENTER, INC.
12511 WARWICK BOULEVARD
NEWPORT NEWS, VA 23606
(804) 930-2118

PATIENT: William J. Smith STARTED TREATMENT ON: 8/20/95
PHONE NUMBER: 936-4831 PRESCRIPTION BY: Dr. Douglas Brown
DATE: OCT 20 1995 599-1700

TREATMENT LIST: THERAPY MODALITIES USED:

SOFT TISSUE MANIPULATION	_____	IONTOPHORESIS:	_____
NEUROMUSCULAR	_____	PARAFFIN:	_____
ISOMETRICS	_____	THERAPEUTIC EXERCISE:	_____
DEEP TRANS/CIR FRICTION	_____	ULTRASOUND SETTING:	_____
ACCUPRESSURE	_____	TRACTION _____ lbs	_____
COUNTERSTRAIN	_____	ELECTRIC STIM SETTING	_____
CRYOTHERAPY PACKS 1 2 3 4	_____		
MOIST HEAT PACKS 1 2 3 4	_____		

CERVICAL THORACIC THOROLUMBOSACRAL SHOULDER (L) (R) ELBOW (L) (R)

COMMENTS: CA 10/19

THERAPIST'S SIGNATURE _____ DATE _____

PHYSICIAN'S REQUEST:

____ CONTINUE UNDER THERAPIST'S DISCRETION
____ CONTINUE THERAPY FOR _____ WEEKS 1 2 3 4 5 DAYS A WEEK
____ THEN REDUCE FREQUENCY FOR _____ WEEKS 1 2 3 4 5 DAYS A WEEK

COMMENTS: _____

PHYSICIAN'S SIGNATURE: _____ DATE: _____

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COMMONWEALTH OF VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF GLOUCESTER

MEDIA GENERAL, INC.,

Plaintiff,

v.

CHANCERY NO. (98)304

WILLIAM F. SMITH, JR.,

Defendant.

BILL OF COMPLAINT

COMES NOW, your plaintiff, Media General, Inc. ("Media General"), by counsel, pursuant to §8.01-428(d) of the Code of Virginia and for its Bill of Complaint filed with the judges of this honorable court states as follows:

1. Media General is a Virginia corporation authorized to do business in the Commonwealth of Virginia and is a holding company for a number of media related entities including newspapers, televisions stations, and cable television systems.

2. William F. Smith, Jr. was the plaintiff in an action at law filed in this court, designated Law No. 97-53. In that case, Smith alleged that Media General was the employer of Gale Aldrich ("Aldrich"), an individual whom Smith alleged negligently injured him in an automobile accident. Smith's suit claimed damages arising from negligence of Aldrich and was later amended to allege the vicarious liability of Media General as his employer.

3. At the time of the accident which provides the basis of the allegations in the action Media General did not employ nor did it have any contractual or legal relationship with Aldrich.

4. Aldrich maintained a contractual relationship with Richmond Newspapers, Incorporated ("RNI"), the publisher of the Richmond Times-Dispatch, to deliver copies of its newspapers. A copy of Aldrich's carrier contract is attached hereto as Exhibit A.

5. Aldrich's independent contractor status precludes the imposition of vicarious liability against RNI or any other entity for the actions of Aldrich.

6. On April 28, 1997, prior to the amendment of the Motion for Judgment to add Media General as a party, a subpoena *duces tecum* issued by the Gloucester County Circuit Court was served on Media General requesting the production of certain records relating to Mr. Aldrich to the offices of Sinnott, Nuckols & Logan, counsel for Erie Insurance Company. Media General provided a timely response to the subpoena which response included a copy of Mr. Aldrich's carrier contract with RNI.

7. Media General was served with the Amended Motion for Judgment on August 14, 1997. A copy of the proof of service is attached as Exhibit B. It filed no responsive pleadings. On March 24, 1998, this Court entered an Order of default judgment against Media General and at a subsequent hearing, entered an Order awarding damages in the amount of \$405,285 against Media General.

8. Media General cannot locate the Amended Motion for Judgment in any of its corporate records or files.

9. This matter came to the attention of Media General when it received correspondence from Howard P. Smith, Esquire, counsel for William F. Smith, a copy of which is attached as Exhibit C.

10. Media General has no adequate remedy of law.

WHEREFORE, Media General prays this Court, pursuant to its inherent equity power and the provisions of Section 8.01-428(d) enter an Order vacating the judgment against Media General in Case No. CL97-53 and for such other and further relief as this Court deems meet.

Respectfully submitted,

by counsel,

MEDIA GENERAL, INC.



Theodore F. Adams, III
Christian & Barton, L.L.P.
909 East Main Street, Suite 1200
Richmond, Virginia 23219-3095
(804) 697-4142

455914

98 OCT 13 PM 2:54

Margaret Walker

9

MOTOR ROUTE CARRIER CONTRACT

This contract is made this 26 day of JUNE, 1955, between RICHMOND NEWSPAPERS, INC. (hereinafter called "RNI") and GALE A. ALDRICH (hereinafter called "Motor Route Carrier").

WITNESSETH:

1. RNI agrees to sell to Motor Route Carrier and Motor Route Carrier agrees to purchase the number of copies required by this contract of the following Newspaper(s) published by it at the following wholesale rates:

	Home Delivery		Single Copy	
Daily Richmond Times-Dispatch	<u>\$1.603</u>	per copy	<u>\$.3150</u>	per copy
Sunday Richmond Times-Dispatch	<u>\$1.0550</u>	per copy	<u>\$1.0550</u>	per copy
Excess Sunday Richmond Times-Dispatch	<u>\$1.0550</u>	per copy	<u>N/A</u>	per copy

(hereinafter called the "Newspapers"). RNI reserves the right to change such wholesale prices from time to time, such changed prices to be effective upon notice in writing to the Motor Route Carrier, who shall be deemed to accept such price change unless, immediately upon receipt of such notice, Motor Route Carrier shall notify RNI in writing otherwise, and, in such latter event, RNI shall have the right to immediately terminate this contract.

2. It is agreed that RNI shall not be obligated to sell Newspapers hereunder, nor be liable in damages for failure to do so (a) where resulting from acts of God, strikes or other labor disorders or disturbances, shortage of labor, accidents, fire or other casualty, shortages of newsprint or other supplies, delays by railways or other methods of transportation, acts of any government, whether national, state, or local, or any agency or department thereof, or any other cause or causes of like or unlike nature which are beyond the reasonable control of RNI or (b) in the event in RNI's sole opinion it becomes desirable for any reason, whether above enumerated or otherwise, to allocate Newspapers among its carriers and delivery of Newspapers is curtailed as a result thereof.

3. RNI shall bill the Motor Route Carrier at the end of each month for each Newspaper sold to him during that month (the "Billing Period") at the above wholesale rates. The Motor Route Carrier agrees to promptly pay in full each such billing at a time and place to be designated by RNI.

4. The Motor Route Carrier agrees to deliver and sell the Newspapers to such addresses within his area of primary responsibility as defined on Appendix A, attached hereto and made a part hereof as may be designated by RNI from time to time on a list of subscribers (to be furnished the Motor Route Carrier by RNI) who desire delivery to them of the Newspapers sold to the Motor Route Carrier, unless Motor Route Carrier for good and reasonable cause shall notify RNI in writing specifying such cause, that he declines to make such delivery and sale to a named subscriber, in which case RNI reserves the right to cause the delivery and sale of the Newspaper to such subscriber. As supplemented in accordance with the following sentence, such list is hereinafter referred to as the "Subscription List." The Motor Route Carrier agrees to service said subscribers in a proper and reasonable manner, and further agrees to supplement the Subscription List by adding thereon the names and addresses of all subscribers to whom he sells the Newspapers whose names do not appear on the initial Subscription List, it being understood and agreed that for management purposes and in order to conform with U. S. Postal Laws and Regulations and with the requirements of the Audit Bureau of Circulation, it is essential for RNI to maintain an accurate and up-to-date Subscription List. Should any subscriber to whom Motor Route Carrier is obligated hereunder to deliver and sell the Newspaper, fail to receive the Newspaper promptly on any given day, RNI reserves the right to furnish a copy to such subscriber, charging the actual cost of the copy and its delivery to the Motor Route Carrier. The Motor Route Carrier agrees that he will not turn over or deliver the Subscription List to any person or entity nor disclose the name of any subscribers appearing thereon without first obtaining written permission from RNI, such Subscription List and the information contained thereon to remain the sole and exclusive property of RNI at all times. In addition, the Motor Route Carrier shall deliver such Subscription List to RNI upon written request by RNI and upon the termination of this contract, whether the termination be voluntary or for breach by either party.

5. With the concurrence of both parties, any subscriptions paid in advance to RNI will be accepted by it for the account of the Motor Route Carrier, who will be given credit therefor at each billing settlement between the parties.

6. Furthermore, the Motor Route Carrier agrees to deliver Newspapers at least in quantities specified by RNI to the Distribution Points (the "Distribution Points") as may be designated by RNI from time to time on the "Distribution Report" which is attached hereto as Appendix B and made a part hereof, unless the Motor Route Carrier for good and reasonable cause shall notify RNI in writing specifying such cause, that he declines to make such delivery, in which case RNI shall have the right to terminate this contract. RNI reserves the right to sell Newspapers at any location and by any method it chooses, including, but not limited to, through Newspaper racks, which racks RNI, in its sole discretion, may agree to lease to the Motor Route Carrier pursuant to Appendix C attached hereto and made a part hereof and which shall be binding upon any Motor Route Carrier to whom RNI shall release such racks. The Motor Route Carrier agrees to service said Distribution Points in a proper and reasonable manner, and further agrees to supplement the Distribution Report by adding thereon the location and the anticipated daily Newspaper sales for each Distribution Point serviced by the Motor Route Carrier which does not appear on the initial Distribution Report, it being understood and agreed that for management purposes and in order to conform with the requirements of the Audit Bureau of Circulation, it is essential for RNI to maintain an accurate and up-to-date Distribution Report. The Motor Route Carrier agrees that he will not turn over or deliver the Distribution Report to any person or entity nor disclose the contents thereof without first obtaining written permission from RNI, such Distribution Report, as supplemented from time to time, and the information contained thereon to remain the sole and exclusive property of RNI at all times. In addition, the Motor Route Carrier shall deliver such Distribution Report to RNI upon the termination of this contract, whether the termination be voluntary or for breach by either party.

7. In addition, the Motor Route Carrier agrees to deliver, but not purchase, copies of the Newspapers in the quantities specified by RNI to the Points (the "Drop Points") designated by RNI on the "Motor Route Carriers Manifest" which is attached hereto as Appendix D and made a part hereof as it may be amended from time to time, unless the Motor Route Carrier for good and reasonable cause shall notify RNI in writing specifying such cause, that he declines to make such delivery, in which case RNI shall have the right to terminate this contract. RNI reserves the right to deliver Newspapers to any location and by any method it chooses, including, but not limited to, with its own trucks and drivers. The Motor Route Carrier agrees to deliver the Newspapers to the Drop Points in a proper and reasonable manner. The Motor Route Carrier agrees that he will not turn over or deliver the Motor Route Carriers Manifest to any person or entity, nor disclose the contents thereof without first obtaining written permission from RNI, such Motor Route Carriers Manifest and the information contained thereon to remain the sole and exclusive property of RNI at all times. In addition, the Motor Route Carrier shall deliver such Motor Route Carriers Manifest to RNI upon the termination of this contract, whether the termination be voluntary or for breach by either party.

Margaret Walker

10

EXHIBIT


A

Attach Appendices here.

Appendix A — Subscription List
 Appendix B — Distribution Report
 Appendix D — Motor Route Carriers Manifest

Witness, the following signatures the day and year first above mentioned.

WITNESS (as to Circulation Official and Motor Route Carrier)



WITNESS (as to Guarantor)

RICHMOND NEWSPAPERS, INC.

By: 

(Circulation Official)

Title: State circulation Monop

*State a deliver
 (Motor Route Carrier)

The Undersigned consents to the making of the foregoing and hereby guarantees performance of said contract:

CARRIER INFORMATION

USM
 Employer

BLONE LP-34 HAS NORFOLK
 Employer's Address

444-4146 EXT 317
 Business Phone

(Guarantor)

GUARANTOR INFORMATION

SS# _____

Address _____

City _____ State _____ Zip _____

Phone Number _____

Guarantor's Employer _____

Employer's Address _____

Business Phone _____

APPENDIX C

Agreement to Lease Coin Operated Racks

1. RNI agrees to lease to the Motor Route Carrier and the Motor Route Carrier agrees to lease from RNI the following coin-operated newspaper Racks (hereinafter referred to as the "Racks"), the receipt of which is hereby acknowledged by the Motor Route Carrier:

LOCATION	RACK SERIAL NUMBER	LOCK SERIAL NUMBER	METHOD USED TO SECURE RACK
ZOOMS RT 17 GLOVER ST.	TK80 8419438	A1034 MASTER	CEMENT
WALMART RT 17 "	TK84 88 41372	" "	"
MARKET PLACE RT 17 "	TK80 86 61218	" "	"
FAMILY DOLLAR MAIN ST. "	TK80 906823	" "	"
LEE MARKET MAIN ST. "	TK80 8661328	2355 "	"

2. RNI shall bill the Motor Route Carrier a monthly rental rate of \$2.09 per Rack. Such monthly rental shall be included in the Motor Route Carrier's bill, and the Motor Route Carrier agrees to promptly pay in full each such billing in accordance with Paragraph 3 of the Motor Route Carrier Contract. RNI reserves the right to change such monthly rental rates from time to time, such changed rates to be effective upon notice in writing to the Motor Route Carrier, who shall be deemed to accept such rate change unless, immediately upon receipt of such notice, the Motor Route Carrier shall notify RNI in writing otherwise, and, in such latter event, RNI shall have the right to immediately terminate the Motor Route Carrier Contract.

3. As a condition to this agreement to lease the Racks, the Motor Route Carrier agrees to maintain the Racks in proper working order and in acceptable condition. Acceptable condition means compliance with the following criteria:

GENERAL CONDITION. The metal and wire portions of the Newspaper Rack must be undented and free of rust. Racks with dents larger than 4"x4" or rust spots larger than 8 square inches must be repaired or replaced.

GLASS OR PLASTIC WINDOWS. Glass or plastic windows must be unbroken and clear. Broken, yellowed or defaced windows must be replaced.

PAINT. Paint must be of a color approved by RNI. It should be bright with a shiny appearance. Dull or defaced Racks must be repainted.

SECURITY. The Rack must be secured in the location displayed. Security will be deemed adequate if the Rack is attached to a fixed object by the use of chain and lock, or if there are cement loads in the Rack, or if the Rack is inside a store or other business establishment.

RACK CARDS. Rack cards supplied by RNI at no cost to the Motor Route Carrier must be displayed on every Rack having the capability to accept such a card. Cards which are out-dated or defaced must be removed and replaced with Rack cards acceptable to RNI.

ADHESIVE LOGO. Any adhesive sticker or logo applied to the Rack must be supplied by RNI and must not be cracked, peeled or defaced. Any cracked, peeled or defaced sticker or logo must be removed and replaced with a sticker or logo acceptable to RNI.

PROOF OF SERVICE

Case No. CL97-53

Gloucester County 97 AUG 11 AM 11:12 Circuit Court

William F. Smith, Jr. CIVIL SERVICE on: George L. Mahoney, Registered Agent
V. for Media General, Inc.

Gale A. Aldrich 333 East Grace Street
Richmond, Va. 23219

Return shall be made hereon, showing service of the:

☒ Notice of Motion of Judgment

☐ Order dated

☐ Subpoena in Chancery

which was issued on:

August 7, 1997

with a copy of the following documents filed on

August 7, 1997

attached:

- ☐ Motion for Judgment
- ☒ Amended Motion for Judgment
- ☐ Third Party Motion for Judgment
- ☐ Counterclaim
- ☐ Interrogatories
- ☐ Request for Admissions
- ☐ Production of Documents

- ☐ Bill of Complaint
- ☐ Bill of Complaint for Notary Acceptance
- ☐ Bill of Complaint for Non-resident Service
- ☐ Amended Bill of Complaint
- ☐ Cross-bill
- ☐ Notice
- ☐ Petition

RETURN OF SERVICE

☐ Personal Service

☒ Being unable to make personal service, a copy was delivered in the following manner:

☐ Delivered to family member (not temporary sojourner or guest) age 16 or older at usual place of abode of party named above after giving information of its purport. List name, age of recipient, and relation of recipient to party named above:

Mama Lipscomb Executive Secretary - attached

☐ Posted on front door or such other door as appears to be the main entrance of usual place of abode, address listed above. (Other authorized recipient not found.)

FOR GARNISHMENT OF FEDERAL WAGES ONLY:

☐ Pursuant to 5 U.S.C. § 5520a, service by certified or registered mail, return receipt requested.

☐ not found

MB Mitchell

Sheriff

Date: 8-14-97

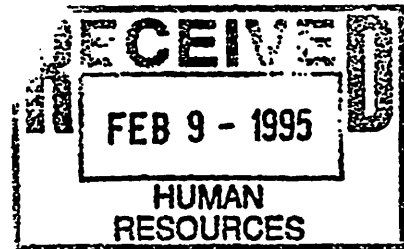
by

A. Atkins

Deputy Sheriff



George L. Mahoney
General Counsel & Secretary

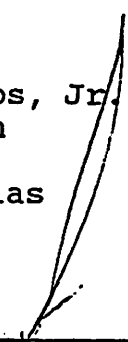


February 9, 1995

To Whom It May Concern:

Frank A. McDonald, Jr., or his designee, is authorized to accept service of process on behalf of Media General, Inc., Richmond Newspapers, Inc., Media General Financial Services, Inc. and the following individuals:

D. Tennant Bryan
J. Stewart Bryan III
Stephen Y. Dickinson
James L. Dillon
James S. Evans
O. Scott Leath
George L. Mahoney
William H. Millsaps, Jr.
Marshall N. Morton
Basil Snider, Jr.
Stephen R. Zacharias



George L. Mahoney
General Counsel and Secretary
Media General, Inc.

Secretary
Richmond Newspapers, Inc.
Media General Financial Services, Inc.

Norma C. Lipscomb is designee for Frank A. McDonald, Jr. and is authorized to accept service of process as stated above.

866111 d3S

JOSEPH SMITH, LTD
ATTORNEYS AND COUNSELLORS AT LAW

JOSEPH SMITH
(1916-1994)

HOWARD R. SMITH
STEPHEN H. PITLER
STEPHEN M. SMITH*
J.F. HOEN

(*ADMITTED VIRGINIA, NEW YORK & DISTRICT OF COLUMBIA)

Smith Building

2100 KECOUGHAN ROAD

P.O. BOX 1437

Hampton, Va. 23661-0137

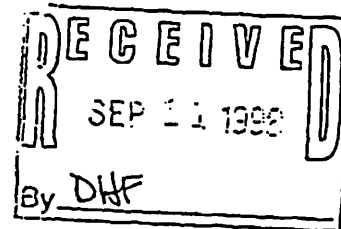
PENINSULA & SOUTHSIDE

(757) 244-7000

FAX (757) 245-7740

September 4, 1998

Mr. J. Stewart Bryan, President
Media General Inc.
333 E. Franklin Street
Richmond, VA 23219



RE: WILLIAM F. SMITH, JR. v. MEDIA GENERAL, INC.
At Law No. 97-53

Dear Mr. Bryan:

Our office represents Mr. William F. Smith, Jr., a local businessman, for severe and permanent injuries that he sustained as a result of a motor vehicle collision that occurred on August 28, 1995. Mr. Smith was driving a Ford Explorer which was demolished when it was struck by a vehicle which was operated by a Media General employee, who was in the course of his employment.

Mr. Smith's injuries were most grievous. He has incurred a number of expenses and will be required to undergo future surgery. Moreover, he experienced considerable financial losses as a direct result of this collision.

Suit was filed in the Circuit Court for the County of Gloucester on April 4, 1997. The suit was amended on August 4, 1997, to include Media General as a party defendant. Service of process was effected upon your designated agent on August 14, 1997. No response was made to the Motion for Judgment.

Subsequently, on January 14, 1998, a Motion was served upon your agent in order to inform your corporation of the plaintiff's intention to move for default judgment. Additionally, on March 13, 1998, a Notice of Hearing was mailed to your agent informing him of the hearing date. The hearing was held on March 24, 1998, in the Circuit Court for the County of Gloucester. The Court, upon hearing the evidence, granted a judgment in favor of Mr. Smith.

On July 28, 1998, a hearing was held to determine the extent of the damages suffered by my client. Upon consideration of the evidence, the Court returned a verdict in the sum of \$405,246.50, together with interest from July 1, 1996. Costs of \$281.00 have been expended. As such, the total amount that is due to my client through September 10, 1998, is in the sum of \$503,785.98. Although this judgment has been entered and is now final, I have asked that the Clerk withhold docketing of same in order to avoid embarrassment to your corporation.

OCT 09 '98 09:15

Handwritten signature 16

8046496190

EXHIBIT

C

Page II
September 4, 1998

I am enclosing herewith a certified copy of the Judgment Order. I will be more than happy to discuss this matter with you if you would like to call me or have your representative do so.

I might add that if I do not hear from you within ten days, I shall assume that your corporation does not intend to honor this obligation and I shall proceed with collection of this debt.

Take due notice hereof and govern yourself accordingly.

Thank you for your courtesy.

Very truly yours,

JOSEPH SMITH LTD.

Howard P. Smith

HPS/bmf

98 OCT 13 PM 2:54

RECEIVED
COURT CLERK
CLERK OF COURT

Margaret Walker
17

COMMONWEALTH OF VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF GLOUCESTER

MEDIA GENERAL, INC,

Plaintiff,

v.

CHANCERY NO. 98-304

WILLIAM F. SMITH, JR.,

Respondent.

ANSWER AND GROUNDS OF DEFENSE

NOW COMES William F. Smith, Jr., Respondent herein, by counsel, and for his Answer and Grounds of Defense says as follows:

1. Your Respondent admits paragraph number 1 of the Bill of Complaint.
2. Your Respondent admits paragraph number 2 of the Bill of Complaint.
3. Your Respondent denies paragraph number 3 of the Bill of Complaint and demands strict proof thereof, but suggests that such issue is not material to the facts at hand.
4. Your Respondent denies the allegations in paragraph number 4 of the Bill of Complaint and demands strict proof thereof, however, your Respondent asserts that such issue is irrelevant to the facts and circumstances involved herein.
5. Your Respondent denies the allegations set forth in paragraph number 5 and demands strict proof thereof.
6. Your Respondent is unable to admit or deny paragraph number 6 although your Respondent admits that he received a copy of the Request for Subpoena Duces

Tecum addressed to Clerk of Gloucester County which requested certain records from Media General related to its relationship with Gale Aldrich, then a defendant in the case.

7. Your Respondent admits paragraph 7 of the Bill of Complaint.

8 Your Respondent is unable to admit or deny paragraph number 8 of the Bill of Complaint, but would aver that according to the records within the file, service was properly effected upon said Plaintiff by the Sheriff of the City of Richmond.

9. Your Respondent is unable to admit or deny paragraph 9 of the Bill of Complaint, however, your Respondent admits that a letter was mailed to the Chairman of the Board of Media General, Inc., a copy of which is attached hereto as Exhibit A. The letter was mailed on September 4, 1998, and was delivered on September 11, 1998, however, no response was received from Media General until after the garnishment proceeding was instituted by the Respondent.

10. Your Respondent denies paragraph number 10 and submits that the issue of agency as to Gale Aldrich is not material to the issue at hand; inasmuch as this is a Court of equity, it is not insignificant for the Court to note the purported relationship between Richmond Newspapers, Inc., and Media General, Inc., its parent corporation.

11. That Media General, Inc. has not provided satisfactory response for its failure to provide an Answer and Grounds of Defense to the Amended Motion for Judgment.

12. That on the 13th day of March, 1998, a copy of a Notice of Hearing was mailed to George L. Mahoney in order to advise Media General, Inc., of the hearing, however, said Media General, Inc., did not appear nor respond thereto in anywise.

That Media General, Inc. ought not be granted the relief it seeks in that its

misfortune was borne of its inattention or lack of diligence and was not a result of the Respondent's actions.

WILLIAM F. SMITH, JR.

By: 

Of Counsel

Howard P. Smith
JOSEPH SMITH, LTD.
2100 Kecoughtan Road
Post Office Box 1437
Hampton, VA 23661-0437
(757) 244-7000

CERTIFICATE

I hereby certify that a copy of the foregoing was mailed to all counsel of record
this ~~23rd~~ day of October, 1998.


Howard P. Smith

98 OCT 26 AM 8:32


20

JOSEPH SMITH, LTD.

ATTORNEYS AND COUNSELLORS AT LAW

JOSEPH SMITH
(1918-1994)

HOWARD P. SMITH
STEPHEN H. PITLER
STEPHEN M. SMITH
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PENINSULA & SOUTHSIDE

(757) 244-7000

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September 4, 1998

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September 4, 1998

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I might add that if I do not hear from you within ten days, I shall assume that your corporation does not intend to honor this obligation and I shall proceed with collection of this debt.

Take due notice hereof and govern yourself accordingly.

Thank you for your courtesy.

Very truly yours,

JOSEPH SMITH, LTD.

Howard P. Smith

HPS/bmf

Wm. Smith

Is your RETURN ADDRESS completed on the reverse side?

SENDER:

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address
2. ☒ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

Mr. J. Stewart Bryan, Pres.
Media General, Inc.
333 E. Franklin St
Richmond VA 23219

HPS/BF

5. Received By: (Print Name)

6. Signature: (Addressee or Agent)

X

4a. Article Number

Z339 015 390

4b. Service Type

- ☐ Registered ☒ Certified
☐ Express Mail ☐ Insured
☐ Return Receipt for Merchandise ☐ COD

7. Date of Delivery

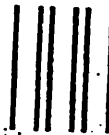
8. Addressee's Address (Only if requested and fee is paid)

PS Form 3811, December 1994

Domestic Return Receipt

Thank you for using Return Receipt Service.

UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Print your name, address, and ZIP Code in this box •

Howard P Smith, Esq.
JOSEPH SMITH, LTD.
P O Box 1437
Hampton, VA 23661



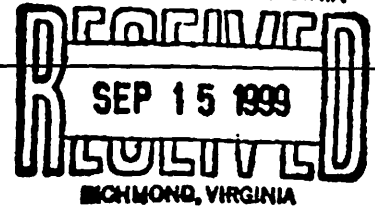
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23

Charles E. King, Jr.

992609

CLERK
SUPREME COURT OF VIRGINIA



V I R G I N I A:

IN THE CIRCUIT COURT FOR THE COUNTY OF GLOUCESTER

MEDIA GENERAL, INC.,

Plaintiff,

VS

IN CHANCERY NO. 98-304

WILLIAM F. SMITH, JR.,

Defendant.

BEFORE: The Honorable WILLIAM SHAW

DATE: December 9, 1998

-----oOo-----

APPEARANCES:

THEODORE F. ADAMS, III, ESQ.
Christian & Barton, L.L.P.
909 East Main Street
Suite 1200
Richmond, Virginia 23219-3095
Counsel on behalf of the Plaintiff

HOWARD P. SMITH, ESQ.
Joseph Smith, Ltd.
2100 Kecoughtan Road
Post Office Box 1437
Hampton, Virginia 23661-0437
Counsel on behalf of the Defendant

Reported By: Courtney C. Kelley, RPR

ORIGINAL

24

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CIRCUIT CLERK OF COURT
GLOUCESTER COUNTY, VIRGINIA
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I N D E X

WITNESS

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EXHIBITS

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1 (The court reporter was sworn.)

2 THE COURT: I apologize to you for being late.
3 All right. Parties ready in Media General, Inc. versus
4 William F. Smith, Jr.?

5 MR. ADAMS: We are, Your Honor.

6 MR. SMITH: Yes, sir. We have two individuals who
7 may be witnesses in addition to Mr. Smith.

8 THE COURT: Okay. All right. Do you want to
9 begin, wish to make a statement?

10 MR. ADAMS: I don't need to make a statement at
11 the beginning of the hearing, Your Honor. I think we'll be
12 brief in our presentation of the evidence and make our
13 conclusions at the end of the evidence.

14 THE COURT: All right. That would be fine.

15 MR. SMITH: That's fine, Judge. Do you want the
16 witnesses to --

17 THE COURT: Is there a motion to separate the
18 witnesses?

19 MR. ADAMS: Not today.

20 THE COURT: All right. No motions. All right.
21 You waive opening statement, Mr. Smith?

22 MR. SMITH: Yes, sir. I guess we'll find out what
23 he's going to --

24 THE COURT: All right. Call your first witness.

25 MR. ADAMS: George Mahoney.

1 THE COURT: George Mahoney.

2 MR. ADAMS: Your Honor, I have a series of
3 exhibits, copies of which I have shared --

4 THE COURT: Let me interrupt just a minute. Did
5 you pull -- okay. Just so it's -- we know where it is.
6 That's all right. You can keep it there, just so we know
7 where it is.

8 MR. SMITH: I have the original file.

9 THE COURT: I've got 8304. That's 9753.

10 MR. SMITH: Yes, sir.

11 THE COURT: You can keep it. I just want to make
12 sure where we're at.

13 MR. ADAMS: Procedurally, Your Honor, I have a
14 series of exhibits. I don't know how you want me to hand
15 these to the plaintiff or to the witness and to the Court.

16 THE COURT: Have you seen them?

17 MR. SMITH: Yes, sir, Mr. Adams has shared them
18 with me.

19 THE COURT: All right. Hand them -- give them to
20 me or however you want to do it, both at one time. It
21 doesn't matter.

22

23

24

25

1 GEORGE L. MAHONEY,
2 called as a witness, having been first
3 duly sworn, was examined and testified
4 as follows:

6 DIRECT EXAMINATION

8 BY MR. ADAMS:

9 Q Mr. Mahoney, would you please identify yourself
10 for the Court?

11 A My name is George L. Mahoney. I'm general counsel
12 and secretary of Media General, Inc.

13 Q Where is the corporate headquarters for Media
14 General?

15 A In Richmond, Virginia, 333 East Grace Street.

16 Q And how many people do you have employed at the
17 present time?

18 A Me. I have a secretary, but I am the lawyer for
19 Media General.

20 Q All right. In your capacity as general counsel
21 for Media General, do you serve as registered agent for
22 Media General or any of its companies' subsidiaries?

23 A Yes, I do.

24 Q Which of those are you registered agent for?

25 A A number of our Richmond companies and then a

1 number of our other subsidiaries in other states.

2 Q I'd like to show you a document that's contained
3 in, among other places, the underlined case here. Is this
4 the designation of your status as registered agent for Media
5 General?

6 A Yes, it is.

7 Q As part of your duties as registered agent, have
8 you designated other individuals to receive --

9 MR. ADAMS: Your Honor, I move that be admitted as
10 Plaintiff's Exhibit 1.

11 THE COURT: Any objection?

12 MR. SMITH: Let me make sure I'm up with you,
13 Trey. Are we talking about the --

14 MR. ADAMS: I think you have them in reverse order
15 as I handed them to you. I apologize.

16 MR. SMITH: I have no objection to one or two,
17 sir.

18 THE COURT: One is a certification of Mr. Mahoney
19 as the registered agent.

20
21 (Whereupon, Plaintiff's Exhibit No. 1 was marked
22 for identification and received into evidence.)

23
24 BY MR. ADAMS:

25 Q Let me show you another document. Can you

1 identify that document for the Court?

2 A This is a statement that says that Frank McDonald
3 is designated to receive service for Media General, a number
4 of our other subsidiaries and a number of individuals,
5 generally all of whom are officers of one of the companies
6 mentioned at the top here.

7 Q And --

8 A At the bottom it says that there is a designee for
9 Mr. McDonald, who is also authorized to accept service for
10 these people and companies.

11 THE COURT: Any objection, Mr. Smith?

12 MR. SMITH: No, sir.

13 THE COURT: All right.

14

15 (Whereupon, Plaintiff's Exhibit No. 2 was marked
16 for identification and received into evidence.)

17

18 BY MR. ADAMS:

19 Q Tell me how the service-of-process process works
20 at Media General.

21 A We have papers that come into Mr. McDonald's
22 office. Ms. Lipscomb is his secretary, and they are either
23 brought over to me or sent over to me through interoffice
24 mail when they are served directly on him.

25 Q About how often are you served in your capacity as

1 registered agent for Media General?

2 A I think that I probably get each week five to ten
3 papers that are served or claim letters that come in that
4 require me to send matters to outside counsel.

5 MR. SMITH: Judge, I didn't want to interrupt
6 Mr. Mahoney. I'm going to object because I don't believe
7 that's relevant.

8 THE COURT: All right. I overrule. I'll give him
9 some leeway, Mr. Smith.

10 MR. SMITH: Yes, sir, I understand.

11

12 BY MR. ADAMS:

13 Q Does that number include the service of process on
14 you for some of the other entities for which you are
15 registered agent?

16 A Yes, it does. We have about 20 subsidiaries in a
17 dozen or so states for the southeast.

18 Q And when that process comes to you, what system do
19 you have for addressing the issue raised in the various
20 papers that come to your attention?

21 A What I generally do is try to decide if a matter
22 is an insured matter or if it's something other than
23 insured. If it's something other than insured, I will send
24 it to outside counsel who represent one of our newspapers or
25 represent one of our television stations or something like

1 that.

2 If it is an insured matter, I'll send it over to
3 our risk manager, whose name is Page Cooper, and he will
4 then forward that kind of a pleading over to the insurance
5 companies who retain counsel for us.

6 Q And as part of making that decision of where the
7 paper goes, do you set something up in your office on
8 receipt of suit papers or service papers?

9 A We always set up a file for everything that comes
10 in, and in the case of insured matters, they're generally
11 held within our litigation files.

12 Q Since the institution of this litigation, have
13 you become aware of the underlying claim of Mr. Smith for
14 personal injuries sustained in this county?

15 A Yes.

16 Q I'm going to show you a document. See if you can
17 identify this.

18 A This is a set of papers that came from
19 Mr. Cooper's file I believe, and they are the -- it is the
20 original. The third page here is the original claim letter
21 that came in on this automobile accident.

22 Q And this matter was --

23 MR. ADAMS: Your Honor, I move this as Plaintiff's
24 Exhibit 3.

25 MR. SMITH: Judge, the only objection I have to

1 this set of documents is the second page where it deals with
2 a conclusion of law in my opinion by the staff at Media
3 General. Other than that, I don't have an objection to the
4 fact that these documents were prepared.

5 THE COURT: All right. In other words, it's not
6 offered for the truth of what page two --

7 MR. ADAMS: Not offered to make any legal
8 conclusion with regard to anybody's status or condition.

9 THE COURT: All right. That's fine. With that
10 purpose, admitted as three.

11
12 (Whereupon, Plaintiff's Exhibit No. 3 was marked
13 for identification and received into evidence.)

14
15 THE COURT: I have -- I think it's four pages.

16 MR. ADAMS: Yes, sir. The fourth is the
17 confirmation page of facsimile transmission.

18 THE COURT: Okay.

19 MR. SMITH: And the same objection to number four
20 as far as legal conclusions just to save time.

21
22 BY MR. ADAMS:

23 Q Do you have any specific recollection of receiving
24 this in April of 1996, Mr. Mahoney?

25 A No, I don't.

1 Q Based on the practice in your office, what would
2 you have done in response receipt of this document?

3 A Well, as soon as something like this claim letter
4 would come in, it would go over to Mr. Cooper. I'm not sure
5 in this case how it happened to get to him. It looks like
6 it came in to Mr. Beirne, who is in the circulation
7 department at the Times-Dispatch, and we then responded --
8 no, I believe that this is -- this came over to me, and I
9 think we set up a file at this point on these papers, based
10 on these papers.

11 Q And this is addressed to the Richmond
12 Times-Dispatch; is that correct?

13 A Correct, which is the name of the newspaper.

14 Q And is it not unusual for claims to be made
15 against the Richmond Times-Dispatch for automobile accidents
16 involving our carriers?

17 A It does happen from time to time.

18 THE COURT: Let me interrupt. Who is Mr. Cooper?

19 THE WITNESS: He is the risk manager, Your Honor,
20 the man who handles all insurance for us and the contact
21 between Media General, all of its companies and our
22 carriers.

23 THE COURT: And who is Mr. Beirne?

24 THE WITNESS: He is in the circulation department
25 at the Times-Dispatch. How he happened to get this, I don't

1 know.

2 THE COURT: All right. Mr. Smith sends a letter.
3 Mr. Beirne sends you a memo, and you're saying you did or
4 did not get that memo?

5 THE WITNESS: I did -- I believe that I got it,
6 although I have no recollection of receiving any of these
7 things.

8 THE COURT: It's in the pipeline though?

9 THE WITNESS: It is in the pipeline. It came
10 in -- this set of papers is from Mr. Cooper's file.

11 THE COURT: Okay. All right.

12 MR. ADAMS: I'm going to change the order of my
13 presentation, perhaps explain that a little bit, Your Honor.

14

15 BY MR. ADAMS:

16 Q Mr. Mahoney, we've talked about setting up files.
17 Do your records indicate that you set up a file on this
18 matter that at this point was a claim against a carrier for
19 Richmond Newspapers?

20 A Yes.

21 Q And how do you know you set up a file?

22 A Well, there's a set of all of our files that was
23 produced I believe in April of '96, and it shows -- this
24 happens to be a list of files that were sent to storage or
25 that were marked to be sent to storage. But if we go to --

1 Q Are these -- if I can, Mr. Mahoney, for a minute,
2 are these your records? Is this a document you keep in your
3 office?

4 A Yes, this is maintained by my secretary.

5 MR. ADAMS: Your Honor, I move that we admit this
6 as Plaintiff's Exhibit 5.

7 MR. SMITH: The only objection I would have is as
8 to relevance, Your Honor. I'm not sure how relevant it is.

9 MR. ADAMS: I think that will come as we discuss
10 the contents of this exhibit, Your Honor. I ask that you
11 withhold a ruling on that for just a moment.

12 THE COURT: All right. I'll call it item four for
13 the time being. I've got four. You said five.

14 MR. ADAMS: Let's call that four.

15 THE WITNESS: This is -- it is a list that was
16 prepared. The copy that I have has two yellow tabs on it,
17 and at the second yellow tab at the end, there's a date
18 4/22/97. And that tells me that this was produced -- this
19 list of files was produced 4/22/97.

20

21 BY MR. ADAMS:

22 Q And these were -- this list was produced for what
23 purpose?

24 A It is -- at that point it was the list of all
25 files. This is a description of all the files maintained in

1 my office.

2 Q And on that second yellow tab, is there reference
3 to this case?

4 A Yes, there is. You'll see that there's a
5 number -- a number of these have an X through them, and
6 about halfway down that list is Smith against Aldrich and
7 R&I. R&I is the corporate name for the Times-Dispatch.
8 Times-Dispatch is published by Richmond Newspapers, Inc.

9 Q And that indicates that you set up a file on this
10 matter referencing the defendant or the company that had a
11 contractual relationship with the individual involved in the
12 accident?

13 A Yes, it does.

14 Q Let's go back to the first tab. What does that
15 tell you about these files?

16 A From time to time, I need to send files to
17 storage. It's a matter of space, and so what I will do from
18 time to time is take a list of our current file system, go
19 through it. When my secretary tells me she doesn't have any
20 more file space, go through it and make X's of things that
21 can be sent to storage, and in this case there are a number
22 of X's.

23 There are other notations as to where to move
24 files so they can be consolidated. There's one on this page
25 that says move with benefit plans. These notes are to her

1 to tell her what to do with things. The X's in this case
2 mean send them to storage and her notation on the right-hand
3 side, "To storage 7/97."

4 Q So this document tells you that you not only
5 established a file with reference to this incident, that in
6 July of 1997 that file was sent to storage?

7 A That's what it says.

8 Q Mr. Mahoney, when you became aware of the facts
9 that brought us here today, did you go get that file?

10 A Well, we looked very hard for that file. I do not
11 have that file.

12 THE COURT: Wait a minute. Where is it indicated
13 that it was sent to --

14 THE WITNESS: The first tab, Your Honor, on the
15 right-hand side.

16 THE COURT: Sent to storage 7/97?

17 THE WITNESS: "To storage 7/97."

18 THE COURT: Is this supposed to indicate that the
19 Smith file was sent to storage?

20 THE WITNESS: Yes, sir.

21 THE COURT: Where?

22 THE WITNESS: The Smith file is on the second tab,
23 and it has an X through it.

24 THE COURT: The 4/22/97?

25 THE WITNESS: Yes. That's the date -- see, that's

1 the last page in this listing of all files. So that's the
2 date that it was produced, 4/22/97. Then between April of
3 '97 and July of '97, I mark this and sent the files with X's
4 to storage.

5 THE COURT: Okay. All right.

6

7 BY MR. ADAMS:

8 Q And on receipt of the information that gave rise
9 to this suit, you went to look for that file?

10 A We went to storage to look for that file. We did
11 not find it there. We went through all of the files in
12 anywhere around my office and did not find it there, and I
13 do not know where the file is.

14 I will say we moved offices at the end of May,
15 Memorial Day weekend, at the end of May this past year.
16 It's possible that something happened to it then. I really
17 don't know where it is.

18 Q When you say offices, you actually built a
19 building across the street?

20 A We did. We did, and the storage files -- in the
21 old building, the storage files were kept in the basement of
22 that building, and the current files were kept in our office
23 on the fourth floor. In the new building, all of the files,
24 both current and storage files, are on the same floor that
25 I'm on.

1 So we went through -- I had my secretary go
2 through, and I went through a number of them, all the
3 storage files and all of the active files looking for this
4 file and did not find it.

5 Q But we have located some records at Media General
6 related to this claim; is that correct?

7 A Well, suffice it to say, I got Mr. Smith's letter
8 in -- I got a letter from Mr. Smith that he sent to my
9 chairman, Mr. Bryan, when he was due to execute on his
10 judgment, and that triggered this search because I did not
11 know anything about this case. And we went through trying
12 to find the file, and we went through trying to find
13 anything else that we could find in the course of that.

14 I sent out inquiries to anybody that I thought
15 might have had any connection with this, including
16 Mr. Cooper, our risk manager, and that's how we came upon
17 the papers which are I think marked as Exhibit 3.

18 Q Let me show you another document. See if you can
19 identify that. Did that likewise come to your attention as
20 a result of that review of files in the office?

21 A Yes. This is from Mr. Cooper's file as well.

22 MR. ADAMS: If I have retained, Your Honor, my
23 sense of the numbers, I move that this be admitted as
24 Exhibit 5.

25 MR. SMITH: Judge, I would object to the

1 conclusions of law of this document, but I do not object to
2 the fact that it was written.

3 MR. ADAMS: Again, not submitted for that purpose,
4 Your Honor.

5 THE COURT: Okay. Do you have any objection of
6 the list being admitted as Plaintiff's 4?

7 MR. SMITH: Judge, I still fail to see its
8 relevance, but I understand that -- I can appreciate the
9 fact that a search was made and that a file had been set up
10 and tried to locate that but --

11 THE COURT: All right.

12 MR. ADAMS: Judge, I think the conduct of the
13 defendant in dealing with the institution of litigation is
14 an issue before the Court, and this is evidence about the
15 conduct of the defendant.

16 THE COURT: Well, it might explain it. I'll let
17 it in, Mr. Smith. This will be four. This will be five.

18
19 (Whereupon, Plaintiff's Exhibits No. 4 and 5 were
20 marked for identification and received into evidence.)

21
22 BY MR. ADAMS:

23 Q The letter that you've now got Exhibit 5 dated
24 September 16th, that came to your attention after review of
25 the files across the company for issues related to this

1 matter; is that correct?

2 A Yes, this past fall after I sent out word to
3 Mr. Cooper to try to find anything that he might have for
4 Mr. Smith against the Aldrich case.

5 Q And at this point by September, 1996, had you, to
6 the best of your recollection, been served with anything
7 related to this claim?

8 A No, I don't think so.

9 Q As a result of reviewing the files, did it come to
10 your attention that at some point service of process on a
11 subpoena for records was issued on Media General?

12 A Yes, it did.

13 Q See if you can identify this document.

14 MR. ADAMS: I have this marked as item six, Your
15 Honor.

16 Q Can you identify that document, Mr. Mahoney?

17 A It is a cover letter from Mr. McDonald, and it
18 covers a subpoena duces tecum that was served on us looking
19 for insurance information relating to this accident.

20 Q And on receipt of that subpoena, the record
21 indicates that it was forwarded on to counsel, and you have
22 no reason to believe it wasn't responded to in a timely
23 fashion?

24 A The protocol that we would have for responding to
25 subpoenas like this would be to send them out to Christian

1 Barton, Sandy Welford in particular, who has done work for
2 years with the Times-Dispatch, and we sent this to him and
3 had him supervise the production of documents in response to
4 the subpoena.

5 MR. ADAMS: Your Honor, I move the admission of
6 the documents Plaintiff's 6.

7 MR. SMITH: Are we speaking of the three pages,
8 the letter from Mr. McDonald?

9 MR. ADAMS: It is correspondence with the
10 attachments that are referenced in the one-page subpoena
11 duces tecum and the attachment to the subpoena describing
12 the documents requested to be produced.

13 MR. SMITH: I don't object to this, sir.

14 THE COURT: All right. That will be Plaintiff's
15 Exhibit 6.

16

17 (Whereupon, Plaintiff's Exhibit No. 6 was marked
18 for identification and received into evidence.)

19

20 BY MR. ADAMS:

21 Q Let me show you one more document, Mr. Mahoney.
22 Do you recognize that document?

23 A I've seen it since in preparing for this hearing,
24 yes. It is a copy of the original motion for judgment that
25 was served on Media General in August of 1997.

1 MR. ADAMS: I move that this be admitted as
2 Plaintiff's Exhibit 7. I think it's a function of the court
3 records. Just take judicial notice of it.

4 MR. SMITH: No objection, Your Honor.

5 THE COURT: So admitted.
6

7 (Whereupon, Plaintiff's Exhibit No. 7 was marked
8 for identification and received into evidence.)
9

10 BY MR. ADAMS:

11 Q Do you have any specific recollection of receiving
12 this document?

13 A I do not.

14 Q Is there anything on the document that indicates
15 that you received it?

16 A Yes, there's a notation at the bottom HD to GM
17 eight -- I believe the date is 8/14/97.

18 Q And I know you've had a chance to review the
19 service documents that were made part of the file, the
20 underlying case. Do you have an understanding about who
21 this document came from within Media General?

22 A It came from Mr. McDonald's office.

23 Q Have you had a chance to review your files to
24 determine how you handled the receipt of this document in
25 your office?

1 A Well, as I say, we went through everything trying
2 to find the file in this case. Part of the search that I
3 asked to be conducted, I asked my secretary if she would go
4 through the word memory file, the computer memory file in
5 her computer to see if she had anything. We'd been through
6 all of the paper, all of the files that we could find.

7 So we went through everything that was hard copy,
8 and then I asked her to run an electronic search on her word
9 files, the computer word processing files to see if she put
10 a search through on any of these names if something would
11 pop up.

12 Q Did that result in something?

13 A Yes, it did. We found a copy of a memo
14 transmitting the complaint in this action to Page Cooper
15 from me.

16 Q That memorandum is -- was not found in paper
17 form. It was found in the computer?

18 A This was found electronically, and then we printed
19 it out this fall.

20 Q But that's a copy of a record that is maintained
21 in your computer database?

22 A Yes.

23 MR. ADAMS: I'd move the admission of that as
24 Plaintiff's Exhibit 8.

25 MR. SMITH: I think it's self-serving, Your Honor,

1 and I'd object to it.

2 THE COURT: Sustained.

3
4 BY MR. ADAMS:

5 Q Do you have a recollection of how you handled
6 this and came to write this memorandum to Mr. Cooper?

7 A Well, I don't have a recollection specifically.
8 I can tell you that what it appears that happened here is
9 that I got this complaint from Mr. McDonald's office hand
10 delivered on 8/14/97.

11 Q That was a Thursday?

12 A It is a Thursday. I checked my calendar. It is a
13 Thursday. The next Monday I was scheduled to be out of town
14 in Washington, and my normal practice would have been to
15 come in on Saturday or Sunday and clean up things that had
16 happened during the week and try to get ready for the next
17 week.

18 And as part of that, I typically go through papers
19 that are still in the in box -- in my in box and write notes
20 to my secretary to tell her what to do with things, and what
21 I typically do is write a memo transmitting particular
22 pieces of paper. And I put "dictated but not read" on the
23 yellow page that I write this on because I know that she'll
24 send it when I'm out, and frankly the idea is that so if
25 there's a typo, I've got some backup.

1 So this is a typical kind of a memo that she would
2 have on Monday if I were out of the office written out in
3 hand form, and then she would then type it and presumably do
4 what she was supposed to do with the documents.

5 Q Which in this case would have been to send the
6 memo on?

7 A It would have been to send this complaint to Page
8 Cooper so that we can send it to the carrier for their
9 attention and coverage.

10 Q And did the search of Mr. Cooper's office reveal
11 this document in his office?

12 A No, it didn't.

13 Q Any explanation as to where those papers went?

14 A I have absolutely no explanation. I know what the
15 system is. I know it looks like we triggered the system
16 here, and I have no idea what happened that interfered with
17 the system.

18 I do know from his very diligent search of his
19 office, as you could imagine, that he did not get this
20 document, and he did not get the complaint in the underlying
21 action.

22 MR. SMITH: Well, I object to the hearsay quality
23 of that. I realize it's being offered for --

24 THE COURT: I sustain that.

25 MR. SMITH: Well, thank you.

1
2 BY MR. ADAMS:

3 Q Let me hand you another document.

4 MR. ADAMS: Your Honor, this document was copied
5 out of the file in the underlying case, and I ask the Court
6 to take judicial notice of it and admit it as Plaintiff's
7 Exhibit Number 9.

8 THE COURT: Any objection to that?

9 MR. SMITH: This is the notice for the hearing?

10 THE COURT: Right, for default.

11 MR. ADAMS: This is the notice for the default
12 hearing.

13 MR. SMITH: I have no objection.

14 MR. ADAMS: The file actually contains two, Your
15 Honor. The one absent the handwritten notation that was
16 filed and then this, which was a second notice filed that
17 included the handwritten notation.

18
19 (Whereupon, Plaintiff's Exhibit No. 9 was marked
20 for identification and received into evidence.)

21
22 BY MR. ADAMS:

23 Q Mr. Mahoney, other than preparing for this case,
24 have you ever seen that document before?

25 A No, I have not.

1 Q If you'd received that document, what kind of
2 response or what kind of action would you have taken?

3 MR. SMITH: I think that requires speculation. I
4 realize it may have been his practice, but I don't think
5 it's relevant in this instance.

6 THE COURT: I'll let him answer.

7

8 BY MR. ADAMS:

9 Q What would your process have triggered on receipt
10 of this document?

11 A All sorts of things would have happened just as
12 they began to happen as soon as I received Mr. Smith's
13 letter this past September, but as soon as I saw something
14 about a default judgment, which is what this notice is all
15 about, I would have had a number of people on the phone
16 asking what in the world happened that we got to something
17 like this.

18 I will tell you there has never been a default
19 judgment taken against Media General as far as I know.

20 MR. SMITH: And I believe that's irrelevant, sir.

21 THE COURT: Right. Sustained.

22

23 BY MR. ADAMS:

24 Q Are there any other -- let me show you a document.
25 Is this an additional document that you can identify for the

1 Court?

2 A This is this only other piece of paper that we
3 found relating to the underlying action here. My
4 secretary --

5 Q That shows you as being sent a carbon copy of that
6 correspondence?

7 A Yes, and we found this this past October. My
8 secretary left to work in a different part of the company at
9 the end of June on the 25th I believe. It was a Friday. I
10 then had a series of temporary secretaries who uniformly
11 were not particularly good, and there was a pile of papers
12 left in my now current secretary, who I hired in August, of
13 things that the secretaries did not know what to do with.

14 And so this is -- as we went through the papers
15 this fall trying to find anything having to do with this
16 case, we did find this among papers that those temporary
17 secretaries did not know what to do with.

18 Q And you first saw this document after the
19 institution of the litigation that's got us here today?

20 A As far as I know, yes.

21 MR. ADAMS: I'd ask we admit that document as
22 Plaintiff's Exhibit 10.

23 MR. SMITH: Judge, the the only objection that I
24 would have to this is it was -- just it's self-explanatory I
25 suspect, but it is a letter from Kevin to me proposing an

1 order that was not ultimately entered. I mean, I had
2 drafted a different order, and I'm not sure of its relevance
3 as to this particular case since it was not discovered until
4 October of 1998.

5 THE COURT: Okay.

6 MR. ADAMS: Again, it simply goes to the conduct
7 of the defendant in determining the applicability of the
8 standard for overturning default judgment. I've got to give
9 this Court evidence of the defendant's conduct and
10 procedure.

11 THE COURT: All right. And when was this -- I'll
12 admit it. This is Exhibit 10.

13
14 (Whereupon, Plaintiff's Exhibit No. 10 was marked
15 for identification and received into evidence.)
16

17 THE COURT: And those documents were found?

18 THE WITNESS: In October, Your Honor.

19 THE COURT: October of?

20 THE WITNESS: This year.

21 MR. ADAMS: Were discovered by Mr. Mahoney when
22 reviewing files in response to notice of the judgment that
23 brought us here in October.
24
25

1 BY MR. ADAMS:

2 Q Mr. Mahoney, you have identified yourself as the
3 general counsel for Media General. Is Media General the
4 publisher of the Richmond newspaper?

5 A No, it's not.

6 Q Will you briefly explain the structure of Media
7 General and some of its subsidiaries that are relevant to
8 today's hearing?

9 A Media General is a company that has operations
10 that are newspaper publishing, broadcast television, news
11 print production and finally cable television. Media
12 General is the corporate parent. It is not an operating
13 company. It is in effect only a holding company. It does
14 not have products and services that it offers to the
15 public. It is the parent company. It has a number of
16 subsidiaries that are the actual operating companies, and
17 one of those subsidiaries is Richmond Newspapers,
18 Incorporated, which is the publisher of the Times-Dispatch.

19 Q And Media General doesn't hire people to deliver
20 the Richmond paper?

21 A No, it doesn't. Media General doesn't publish
22 anything, and so it doesn't have carriers of its own.

23 Q But Richmond Newspapers, Incorporated has
24 carriers?

25 A Richmond Newspapers has the Richmond

1 Times-Dispatch, which it delivers, and it hires carriers who
2 are independent contractors uniformly to deliver its
3 publication.

4 MR. SMITH: I have to object to any legal
5 conclusions that may be drawn by the gentleman.

6 THE COURT: Okay. Response.

7 MR. ADAMS: I will direct questions to Mr. Mahoney
8 that deal with factual relationships and then argue the
9 legal import of those factual relationships at the
10 appropriate time.

11 THE COURT: All right.

12

13 BY MR. ADAMS:

14 Q Mr. Mahoney, I show you a document. Can you
15 identify that document for the Court?

16 A It is one of our motor carrier contracts for
17 Richmond Newspapers motor carrier contracts.

18 Q And are you familiar with these motor carrier
19 contracts?

20 A Yes. Every carrier for the Times-Dispatch has a
21 contract like this. It is an independent contractor
22 contract. At paragraph ten of this on the second page,
23 independent contractor status is recited. This particular
24 contract is one that we produced in response to the subpoena
25 duces tecum I believe in this pattern. It is the one for

1 the carrier here who hit Mr. Smith.

2 MR. SMITH: Judge, I don't want to interrupt the
3 gentleman because I realize that is part of Mr. Adams' case,
4 but I don't want to waive my objection. And I'll bring it
5 up at the appropriate time.

6 MR. ADAMS: And I think the use of the word
7 "independent contractor" is in here. It may have some legal
8 import when we get to the end.

9

10 BY MR. ADAMS:

11 Q Let me ask you, Mr. Mahoney. In your involvement
12 as general counsel, are you familiar with circumstances
13 where courts in the Commonwealth have construed this
14 language in this motor carrier contract?

15 A Yes, there have been two that I've been aware of
16 since I've been at Media General over the last five and a
17 half years.

18 Q One of those is a circuit court case?

19 A (Witness nods head.)

20 Q And is one of those a Virginia Supreme Court case?

21 A Yes, it is and it is held that there is --

22 THE COURT: That's --

23 MR. ADAMS: I'll get it in on argument, Your
24 Honor.

25 THE COURT: All right.

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BY MR. ADAMS:

Q But as a matter of practice, in your time at Media General, claims by individuals injured by motor carriers have not resulted in liability against Media General or Richmond Newspapers; is that correct?

A That is correct.

MR. ADAMS: I don't have anything further of Mr. Mahoney.

MR. SMITH: I do have to object to this document as being hearsay.

MR. ADAMS: Your Honor, it's Media General's form motor carrier contract. It is a business record, although if Mr. Smith -- and offered not to prove that there was a particular contract between Mr. Smith and Richmond Newspapers but that the general terms and conditions on which our employees are retained.

THE COURT: Why are we going that far? I mean, your file -- you want --

MR. ADAMS: I need to prove to this Court that there is a good defense to the underlying claim which resulted in a default judgment, and it's really two prong. One is it's not the defendant, not the party that had the contract with the individual driving the automobile, and the individual driving the automobile had a relationship with

1 Richmond Newspapers which precluded imposition of liability
2 as an employee.

3 THE COURT: I'll let him make a record of it, Mr.
4 Smith.

5 MR. SMITH: Yes, sir.

6 THE COURT: That will be 11.

7
8 (Whereupon, Plaintiff's Exhibit No. 11 was marked
9 for identification and received into evidence.)

10

11 MR. ADAMS: Eleven, Your Honor.

12 THE COURT: Mr. Smith.

13 MR. ADAMS: I don't have any further questions.

14 MR. SMITH: Thank you.

15 THE COURT: Let me ask one question.

16 MR. SMITH: Yes, sir.

17 THE COURT: Is Media General stock publicly -- is
18 that publicly owned?

19 THE WITNESS: Yes, sir, it is. Actually, we have
20 two classes of stock. There is the Media General A shares,
21 which are traded publicly, and there are Media General B
22 shares, which are held generally by the Bryan family which
23 are not traded publicly.

24 THE COURT: And what about Richmond Newspapers?
25 Is that solely owned by Media General?

1 THE WITNESS: It is a wholly-owned subsidiary of
2 Media General.

3 THE COURT: Okay. All right. Mr. Smith.
4

5 CROSS-EXAMINATION
6

7 BY MR. SMITH:

8 Q Mr. Mahoney, as I understand it, your office is
9 now on Franklin Street, but at the time of this incident --
10 at the time of all of this, it was on East Grace?

11 A Yes.

12 Q 333 East Grace?

13 A Correct.

14 Q As I understand it, everything was run out of that
15 building, and by everything, I mean Media General, Richmond
16 Newspapers, Incorporated. All of the business was
17 transacted at that particular location?

18 A Well, no, that's not right. All of Media General
19 operations at this point were in two buildings, the 333 East
20 Grace building and there's a 111 North Fourth Street -- East
21 Fourth -- West Fourth. Those are the Media General
22 buildings in Richmond at the time that this suit was
23 instituted.

24 Richmond Newspapers is in a number of locations,
25 including another building on Grace Street and a large

1 printing facility north of town.

2 Q How about the business office for the
3 Times-Dispatch? Is that at --

4 A The operations are spread out. Some of them were
5 in the 333 East Grace Street building.

6 Q Okay. Is that one of the numbers in the telephone
7 book as the main office?

8 A For?

9 Q Maybe you don't look it up in the book for the
10 number. I don't know, but you wouldn't disagree that that
11 was one of the numbers?

12 MR. ADAMS: I'm sorry. What number --

13 MR. SMITH: Telephone numbers.

14 MR. ADAMS: We haven't talked about telephone
15 numbers.

16

17 BY MR. SMITH:

18 Q In the telephone book, would it have been listed
19 Richmond Newspapers or I guess really Richmond
20 Times-Dispatch at 333 East Grace?

21 A I don't know, Mr. Smith.

22 Q As to the relationship between the companies as
23 you reported to Judge Shaw, Media General is the holding
24 company. One of the companies that it holds is Richmond
25 Newspapers, Incorporated?

1 A Correct.

2 Q And a hundred percent of the stock is owned by
3 Media General?

4 A Yes, it is.

5 Q What is Mr. McDonald's relationship? He is a
6 lawyer?

7 A No, he's not.

8 Q What is his --

9 A He's head of human resources, at this time is
10 head of human resources for Richmond Newspapers.

11 Q And did he occupy that position in -- since August
12 of '95?

13 A He did until very recently.

14 Q Let me go a back for a moment. The board's -- you
15 sit on both boards, Richmond Newspapers, Incorporated and
16 Media General?

17 A No, I don't. I am general counsel and secretary
18 to Media General.

19 Q Okay.

20 A I am secretary to Richmond Newspapers, Inc.

21 Q So you're an officer?

22 A I'm not on either board.

23 Q You're an officer of each corporation?

24 A I am.

25 Q And there are essentially interlocking

1 directorates of each corporation; is that fair to say?
2 There are a number of individuals who are officers and/or
3 board members on both of those --

4 A No, I wouldn't say that. The Media General board,
5 with the exception of two -- I'm working from memory --
6 has -- I think there are no people that are on the same --
7 also on the Richmond Newspapers board that are on Media
8 General board that are also common to the Richmond
9 Newspapers board.

10 Q I'm not trying to challenge your memory or your
11 credibility, but there are a lot of people. There are 16
12 people on the -- or at least in '95 there were 16 people on
13 the Media General board and about 13 on the -- or maybe I'm
14 wrong. Let me check.

15 A No, you're wrong. There are about nine people on
16 the Media General board.

17 Q Mr. Woodlief, Graham Woodlief, he would be an
18 officer of Media General, vice president?

19 A He's an officer of Media General. He's the head
20 of our publishing division.

21 Q And he would be a director and vice president of
22 the newspaper for Richmond Newspapers, Incorporated?

23 A It could be. I don't remember.

24 Q Okay. But there's a community of interest between
25 these two companies?

1 A Well, there is a parent and subsidiary
2 relationship.

3 Q Okay. And is Mr. Bryan on both boards?

4 A I believe Mr. Bryan is on both boards. He is the
5 chairman of Media General, and I believe he is also on the
6 board of Richmond Newspapers.

7 Q And how about Mr. Tennant Bryan? I hope I
8 pronounced his name right.

9 A At the time of all of these proceedings, I don't
10 believe Tennant Bryan was actively on the board of Media
11 General. He probably is listed as chairman emeritus. He is
12 effectively retired. He's 92 or 93 years old.

13 Q Oh, okay. Well, good for him. How about
14 Mr. Marshall Morton? Does he not occupy a position on
15 each --

16 A Yes, Mr. Morton would be the other one that I
17 mentioned, Mr. Bryan and Mr. Morton, and I believe
18 Mr. Morton is on -- I don't know if he's on the Richmond
19 Newspapers board or not.

20 Q And you were registered agent for both of those
21 companies?

22 A Yes, sir.

23 Q May I direct you, please, to number -- I think
24 it's number four -- number five?

25 A The ones that I have, Mr. Smith, are not numbered.

1 So if you --

2 Q Okay. Well, it would be the fifth group of
3 papers, Media General --

4 MR. ADAMS: It's the letter from Page Cooper.

5 THE WITNESS: Thank you.

6 MR. SMITH: Thank you, Judge.

7

8 BY MR. SMITH:

9 Q The second paragraph says, "Media General
10 employees and company-owned automobiles are covered by
11 corporate-wide policies. We do not have any known coverage
12 that would cover Mr. Aldrich's vehicle, and I suggest you
13 review Mr. Smith's policy for coverage." Does Media General
14 have transportation available or trucks available for the
15 delivery of papers?

16 A Media General? No.

17 Q Do you know why it was suggested that employees
18 and company-owned automobiles are covered? I mean, is -- I
19 guess what I'm --

20 A Well, Media General has automobile -- I have one.

21 Q Okay. Well, and I need to ask you. It is a fair
22 statement, is it not, Mr. Mahoney, that this letter was
23 never sent to my office? I mean, you show no record of
24 that. You show a copy to Mr. Beirne but no --

25 A I don't know anything more than what it shows on

1 the face of the document.

2 Q All right, sir. And I also need to ask you about
3 number three. May I approach just --

4 A Thank you.

5 Q This was the initial letter.

6 THE COURT: Number --

7 MR. SMITH: It's number three, Your Honor.

8 MR. ADAMS: That's the fax cover page that says
9 circulation department.

10 MR. SMITH: The third page of number three.

11

12 BY MR. SMITH:

13 Q Mr. Mahoney, was any response to your knowledge
14 ever made to my office of this -- to this letter?

15 A I don't have anything in front of me that tells me
16 that it was, and I don't have any recollection of it. So I
17 don't know beyond that.

18 Q Let me ask you also, sir, about the files to
19 storage, which is your number four. It's the very thick
20 document with two yellow tabs.

21 A Yes, sir.

22 Q Just for curiosity's sake, what are alpha files?

23 A It is my old secretary's distinction. There are
24 three sets of files. There are alpha files, which is sort
25 of a general classification covering all of our

1 subsidiaries, and it's sort of an all other category. There
2 are also corporate files, which relate generally to Media
3 General corporate shareholder issues, that sort of thing,
4 and then there are litigation files.

5 So we have three kinds of files. There are
6 litigation files, corporate files and alpha files, and the
7 alpha files are the ones that you see on the top of the very
8 first page.

9 Q Yes, sir. So Mr. Smith's file was not an alpha.
10 It was a litigation file?

11 A It was a litigation file.

12 Q Okay. And --

13 A Which would be consistent with and -- and all
14 claims and all things like that go into the litigation.

15 Q Yes, sir. And it shows that on April 22, 1997, at
16 least according to where the tab is, these files were
17 closed?

18 A No, I think that what we can tell from this is
19 that the list itself was produced on April 22nd, '97.

20 Q Okay.

21 A Then we go to the first tab. We can see that
22 between that April period and July, this list was marked by
23 me, and the files that were sent to storage were sent to
24 storage in July of '97.

25 Q All right, sir. Do you have some idea when it was

1 closed or became inactive?

2 A In July of '97.

3 Q Okay. Do you have any idea as to why it became
4 inactive?

5 A Well, what I would do is go through these lists of
6 files. I would -- remember, the process here is that I'm
7 trying to find space for new files that are coming in, and
8 so what I will do is go through and cross out things that
9 turn old or that I'm not familiar with, things that don't
10 trigger any need for me to have them in active files. And
11 then I will have her -- my secretary takes those files to
12 storage. That's the process.

13 Q All right.

14 A It really is to try to find space in a limited
15 filing area that I've got in my office.

16 Q All right, sir.

17 THE COURT: When you say take to storage, you mean
18 take the actual papers and store them or put them on
19 microfilm and destroy the papers?

20 THE WITNESS: No, they're -- it's an archive
21 storage system. All of the files would go to a room in the
22 basement of the building where they were kept, insurance
23 files and storage. So if we wanted them retrieved, we would
24 retrieve them in archive.

25 THE COURT: Go ahead, Mr. Smith.

1 MR. SMITH: Thank you, Judge.

2
3 BY MR. SMITH:

4 Q Let me just ask you one other thing. You did get
5 my letter of September, 1998, that I wrote to Mr. Bryan?

6 A You wrote to Mr. Bryan, and he brought it over to
7 me.

8 Q Yes, sir. But there was no response to my letter.

9 A Well, the response to your letter was to send it
10 down to Christian Barton, which we did, and I believe they
11 got back in touch with you.

12 Q Well, are you aware that it took the filing of a
13 garnishment action before any response was made?

14 A I'm not aware of that. That may have been. If
15 that is in fact the case, it may have been a timing issue
16 because Christian Barton had that letter very quickly.

17 Q Okay. And as I understand, you made a diligent
18 search in the basement or I guess in your new building for
19 any hard copy of a file, and you have nothing at all as far
20 as the file is concerned?

21 A Mr. Smith, I can tell you that we tore the place
22 apart. You can imagine. I'm the general counsel. I'm
23 sitting with a letter that you've sent to my chairman saying
24 you're about to execute on a half-million-dollar judgment
25 that I have absolutely no knowledge of. I went through

1 every shred of paper that we could find and then the
2 electronic file as well.

3 Q Let me ask you just a few more questions to get
4 the other side in I guess. Are you aware that people who
5 answer the telephone at the Times-Dispatch indicate that the
6 owner of the company is Media General?

7 A No, I'm not, and if they did, that would be
8 incorrect. I believe that what they answer is Richmond
9 Newspapers and Media General. It is a common owner.

10 Q I apologize. You're right. Are you aware when
11 people are asked who the owner of the company is that
12 they're told Media General or have been told Media General?

13 A Who the owner of --

14 Q The Times-Dispatch is.

15 A I'm not aware of it.

16 Q Let me --

17 A It's not correct obviously.

18 MR. SMITH: May I approach the witness, Your
19 Honor?

20 THE COURT: Yes.

21
22 BY MR. SMITH:

23 Q Let me ask you, sir, if you can identify this.

24 A It's the front page of the Times-Dispatch,
25 Wednesday, November 18, 1998.

1 Q Yes, sir. Let me direct you, please, to right
2 under the written Times-Dispatch where it says "Virginia's
3 News Leaders," and that says, what, "A Media General" --

4 A It says, "A Media General newspaper," which is a
5 branding designation. This is on -- we have 21 dailies and
6 about a hundred weeklies, and this is supposed to be on
7 every single one of these.

8 Q Okay.

9 A So this is -- this is -- the idea is to build the
10 brand image of Media General through the southeast, and
11 that's why it's here.

12 Q You may have previously identified some of these,
13 and I apologize. Let me try to -- I don't know. Have you
14 seen this letter, sir?

15 MR. SMITH: Trey, these are the ones I showed you.

16 MR. ADAMS: Yes.

17 THE WITNESS: I don't think I've seen -- I saw
18 this letter until this morning when you were discussing them
19 with Mr. Smith -- with Mr. Adams.

20 MR. SMITH: Okay.

21 THE COURT: Can you give it a letter number or
22 item number?

23 MR. SMITH: Yes, sir. Maybe A if Your Honor would
24 allow.

25 THE COURT: All right.

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BY MR. SMITH:

Q And that is a letter of January 9th from Mr. Kevin Logan to my brother, Stephen Smith, with what appears to be a carbon copy going to you as registered agent?

A Yes, sir.

Q You may have mentioned this before. I don't know. Let me show you what I'm going to mark as Exhibit Number B, which is a letter to Mr. King, the clerk of this court, indicating that a default judgment or notice of a default judgment and showing a carbon copy to you as registered agent.

A No, this one is a new -- a new paper to me. I have not seen it before or at least I didn't see it until I was preparing for this hearing.

Q Okay. I think it's in the court file, but I am not -- I believe it's in the court file. Let me also show you a letter of February 4, 1998. I'm sorry, sir. Which I'm going to mark number C, which purports to be a letter from Kevin Logan to me about depositions in this case in the case of, it says, Smith versus Aldrich, but it shows a carbon copy going to you. Do you have any recollection of receiving that letter?

A I do not.

Q Likewise, let me show you what was attached to

1 that letter or purportedly attached to it, Exhibit Number D,
2 which is a notice of taking the deposition of Mr. Smith, and
3 it shows Media General as being the defendant. Do you have
4 any recollection or notice of receiving that?

5 A Mr. Smith, I don't. I can tell you if I got it, I
6 think I would remember.

7 Q I think this is one that we've already done. And
8 let me finally hand you two sheets of paper which are from
9 the Internet which speak of Media General companies, and I
10 will ask to mark that as number F -- number E rather. Is it
11 true that it shows the Richmond Times-Dispatch as a
12 newspaper -- I'm going to say published. That may be the
13 wrong word. A company held by Media General?

14 A It -- well, this is the -- let me just identify
15 what this is.

16 Q Yes, sir. Go right ahead.

17 A When you log on to Media General's home page.

18 Q Yes, sir.

19 A This first page that says online is the page that
20 comes up, and then there are a number of our publications
21 and one of our financial information services, Media General
22 financial services shown on here. This is not, however, all
23 of Media General's publications.

24 Q Let me ask you if they mention Richmond
25 Newspapers, Incorporated in any way. If it did, I

1 overlooked it.

2 A No, it shows -- what it shows is the mast of the
3 Richmond Times-Dispatch. It's the typeface, the font that's
4 used for Times-Dispatch along with these others; and
5 actually this must be -- I guess this is a listing of -- I
6 don't recognize this particular page from our Web site, but
7 this appears to be the publications and services in Virginia
8 within the Media General family.

9 MR. SMITH: Judge, I would like to offer these and
10 together with the November newspaper collectively as Exhibit
11 E if I may.

12 MR. ADAMS: No objection.

13 THE COURT: No objection.

14 MR. SMITH: Thank you, Your Honor.

15 THE COURT: I think he's marked them. Did you
16 mark the newspaper?

17 MR. SMITH: I put it as part of E if Your Honor
18 please.

19 THE COURT: All right.

20
21 (Whereupon, Defendant's Exhibit A through E were
22 marked for identification and received into evidence.)

23
24 BY MR. SMITH:

25 Q I have just a few more questions, Mr. Mahoney. Do

1 you know if the Richmond Newspapers, Incorporated has had a
2 business license since I think 1988? Are you aware of
3 whether they've had a business license in the City of
4 Richmond?

5 A I suspect they've had a business license since
6 before 1988, Richmond Newspapers, Inc.

7 Q And is it a fair statement, sir, that the account
8 into which checks written to the Richmond Times-Dispatch,
9 checks written to the newspaper, is it a fair statement that
10 they go into the Media General account?

11 A You know, I don't know the answer to that. As a
12 control measure, they may because I don't think that there
13 are -- but I'm not certain about this. I do not think there
14 are separate accounts maintained by any of our
15 subsidiaries. I think that they're all deposited into a
16 Media General account, and that could be in Florida or
17 Louisiana or anywhere as a corporate control matter so that
18 all those accounts are swept daily I believe and money is
19 transferred from individual states back to Richmond.

20 Q But in Richmond at the Crestar Bank, Media General
21 does have an account into which newspaper funds go?

22 A I don't know that. I would not be surprised to
23 hear it.

24 MR. SMITH: Thank you for your candor, sir.

25 THE WITNESS: Thank you.

1 THE COURT: Wait a minute. Do you have any --

2 MR. ADAMS: I have no redirect, Your Honor.

3 THE COURT: All right. You may stand down.

4 (The witness was excused.)

5 THE COURT: Next witness.

6 MR. ADAMS: I have no further witnesses, Your
7 Honor.

8 THE COURT: All right. Plaintiff rests.
9 Mr. Smith.

10 MR. SMITH: Judge, Mr. Adams and Mr. Mahoney
11 really have both been very straightforward in presenting
12 their evidence. I have asked Kevin Logan, who was the
13 defense counsel in this case, to come to court in order to
14 provide evidence as to several documents that the gentleman
15 I think had conceded may or may not have come. I don't
16 believe he was aware of them, and I'll be happy to have
17 Mr. Logan testify that he indeed was the author of those
18 several letters.

19 THE COURT: Mr. Adams.

20 MR. ADAMS: I have no objection to the documents
21 that have come in in the correspondence from Mr. Logan's
22 office.

23 THE COURT: So what purports to be authored by
24 Mr. Logan was in fact authored by Mr. Logan. Is that -- all
25 right. Is there anything else you want to --

1 MR. SMITH: Judge, yes, sir, I guess. Mr. Logan
2 was in court on March the 24th, 1998, and some of these
3 issues came up. Media General was not in court. I don't
4 know if -- there's been no evidence about it, and I don't
5 know that we need to go there or waste the Court's time, but
6 Judge Hoover, who heard --

7 THE COURT: All right. Mr. Adams, I guess you
8 know. I did not --

9 MR. ADAMS: I know you're not --

10 THE COURT: It was already done at that point. So
11 I don't know. I'd be curious, but I don't know that that --
12 I think it's probably done. I don't know.

13 MR. ADAMS: I have no interest in introducing
14 evidence of the facts surrounding the hearing on the 24th of
15 March.

16 THE COURT: All right.

17 MR. ADAMS: But can't say that I would object if
18 Mr. Smith desires to do so.

19 MR. SMITH: That's okay. Judge, Trey Adams has
20 been very forthright about this, and we too wanted to be
21 forthright. That's why Kevin agreed to come down because I
22 really don't have anything to hide. This was a very
23 straightforward situation. I was a little surprised Media
24 General didn't appear, but for that reason, he came.

25 I also have Ms. Feamster of our office who

1 obtained -- maybe I -- I think maybe I better ask her to
2 take the stand.

3

4

BONNIE FEAMSTER,

5

called as a witness, having been first

6

duly sworn, was examined and testified

7

as follows:

8

9

DIRECT EXAMINATION

10

11 BY MR. SMITH:

12

Q Would you please identify yourself for the Court

13

and counsel and tell them where you work?

14

A My name is Bonnie Feamster, and I work for Joseph

15

Smith, Ltd.

16

Q Were you the secretary in charge of handling the

17

William Smith file?

18

A Yes.

19

Q And when it became time to include Media General

20

as a party to this, would you please tell the Court -- or

21

let me rephrase that. When it came time to add the Richmond

22

Times-Dispatch as a party; what did you do?

23

A I had first called the Richmond city treasurer's

24

office to see how the Richmond Times-Dispatch business

25

license read and was informed that they had no license.

1 Q The Times-Dispatch?

2 A The Times-Dispatch. I then called the State
3 Corporation Commission and was told that there was no
4 corporation under the Richmond Times-Dispatch. On the
5 advice of the clerk at the State Corporation Commission, I
6 called the Richmond Times-Dispatch and asked who the owner
7 and corporate name were and was told Media General, Inc.

8 Q Okay.

9 THE COURT: How did you learn the identity of the
10 registered agent?

11 THE WITNESS: I called the State Corporation
12 Commission back.

13 THE COURT: Okay. Anything else?

14 MR. SMITH: No, sir.

15 THE COURT: Cross?

16 MR. ADAMS: No questions.

17 THE COURT: Stand down, please.

18 (The witness was excused.)

19 MR. SMITH: Judge, we have one further piece of
20 evidence, and I would seek to introduce it through the
21 plaintiff. I can tell the Court that Mr. Smith placed an ad
22 in the Richmond Times-Dispatch for his business and paid for
23 it with his check and was advised that it had gone through a
24 Media General account, which gave rise to the garnishment
25 action.

1 I don't know if the Court wants to compare the
2 garnishment papers. I'd be happy to have him testify in
3 that regard.

4 THE COURT: Accept a proffer?

5 MR. ADAMS: The check, Your Honor, doesn't
6 indicate whose account it went into. So standing by itself,
7 I'm not sure it provides anything. So I suggest we might
8 have to have some testimony.

9 MR. SMITH: Go ahead, Bill, please. May I
10 approach, Your Honor?

11 THE COURT: Certainly.

12
13 WILLIAM F. SMITH, JR.,
14 called as a witness, having been first
15 duly sworn, was examined and testified
16 as follows:

17
18 DIRECT EXAMINATION

19
20 BY MR. SMITH:

21 Q Identify yourself for the record, please.

22 A My name is William F. Smith, Jr.

23 Q All right. After this thing got going, did you
24 place an ad with the Richmond newspaper?

25 A Yes, I did.

1 Q Times-Dispatch. And is that a copy of the check
2 that you used to pay for the ad?

3 A Yes, it is.

4 Q After the check was cashed, did you make any
5 telephone calls in order to find out what had occurred?

6 A Well, what happened was I got a letter from the
7 newspaper saying that my account was delinquent, and it had
8 been turned over for collections. And I called the
9 newspaper back and told them that I have a copy of the
10 check, that I paid it.

11 So I called my bank, and I said please verify the
12 account that this check was cashed on. And when I called
13 Crestar --

14 MR. ADAMS: I object, Your Honor, to the extent we
15 have some hearsay.

16 THE COURT: All right. Hearsay.

17
18 BY MR. SMITH:

19 Q Based on your conversation with the bank, did you
20 provide information to me in order to file a garnishment
21 action?

22 A Yes, I did.

23 MR. ADAMS: I think we're trying to work around
24 the hearsay again, Your Honor.

25 MR. SMITH: Yes, sir, I am. I'm trying --

1 THE COURT: I'll stain it. I'll sustain it.

2 MR. SMITH: I'm trying. All right, sir. I don't
3 know if the Court will accept the check.

4 THE COURT: He wrote a check. Would that -- you
5 don't --

6 MR. ADAMS: I think he's identified a document. I
7 just don't think it -- I don't think it proves what he seeks
8 to move other than the fact that he wrote a check to
9 Richmond Times and the check was cashed and deposited in
10 Crestar Bank.

11 THE COURT: All right. You don't need the check.
12 All right. Stand down. Do you have any questions?

13 MR. ADAMS: I don't, Your Honor.

14 THE COURT: Stand down.

15 (The witness was excused.)

16 THE COURT: Anything else, Mr. Smith?

17 MR. SMITH: No, sir, that is our evidence.

18 THE COURT: Any rebuttal evidence?

19 MR. ADAMS: None, Your Honor.

20 THE COURT: All right. Let's take a recess, and,
21 counsel, if I could see you in chambers.

22 (Brief Recess)

23 THE COURT: All right. What we'll do now in lieu
24 of oral arguments now, I think it would be -- especially in
25 view of the fact, as far as today's proceedings, the facts

1 are not really in dispute. It's really a question of law.

2 Counsel is to apply briefs on a schedule we'll now
3 set. If oral argument is needed later on, we'll address
4 that if it comes. Right now when would you like to have to
5 get your brief in?

6 MR. ADAMS: It would be a week from Friday on
7 December 18th, Your Honor.

8 THE COURT: That's fine. I'll give you more time
9 if you want.

10 MR. ADAMS: That will be sufficient.

11 THE COURT: All right. And you want -- do you
12 want to say ten days because that's going to run you into --

13 MR. SMITH: Yes, sir.

14 THE COURT: That Friday. We might have some
15 mighty angry employees unless you type, Mr. Smith.

16 MR. SMITH: Ms. Feamster.

17 THE COURT: All right. And I'll do it as quickly
18 as I can after that. All right. Is there anything else
19 that needs to be done? There were no -- for the record, did
20 you want to proffer the check? I mean, I don't see where it
21 has any -- he's testified what he did, but I don't know that
22 the check adds anything to that. It's payable -- it's on
23 the record payable to Richmond Times-Dispatch, right?

24 MR. SMITH: Yes, sir.

25 THE COURT: Okay.

1 MR. SMITH: And I believe I'm correct in saying
2 that -- I know I'm correct in saying it gave rise to the
3 garnishment action at Crestar Bank, but that may be
4 irrelevant.

5 THE COURT: Okay.

6 MR. SMITH: Judge, the only purpose was to show
7 the relationship between the newspaper and Media General,
8 and Mr. Mahoney was kind enough to recognize that.

9 THE COURT: I don't know that we turned anything
10 else -- excluding anything else, did we?

11 MR. ADAMS: I don't think there were any other
12 exhibits offered that weren't introduced.

13 THE COURT: All right.

14 MR. SMITH: Judge, I guess for the record we
15 should at least refer to and perhaps incorporate file 9753,
16 which is Smith versus Aldrich and Media General.

17 THE COURT: All right. So ordered. Okay. That's
18 fine. So ordered. What we'll do, if it goes that far, we
19 may need to designate part of that and send it up.

20 MR. SMITH: Yes, sir.

21 THE COURT: But right now we'll incorporate that
22 into this record. We'll address that later. All right.
23 Can we just do this? How many exhibits do you -- I think I
24 have plaintiff's exhibits. I think we have -- is it 11?

25 THE BAILIFF: Eleven plaintiff.

1 MR. ADAMS: Eleven and through E for the
2 defendant.

3 THE BAILIFF: Through E on the defense.

4 MR. ADAMS: Howard, or, Mr. Smith, you shared
5 those with me beforehand. Do you have copies?

6 MR. SMITH: I failed to do that. I will get
7 copies to you.

8 MR. ADAMS: Okay.

9 MR. SMITH: Trey.

10 THE COURT: All right. We can adjourn. If you
11 all want to -- let's get these things -- we're off the
12 record now.

13

14 -----oOo-----

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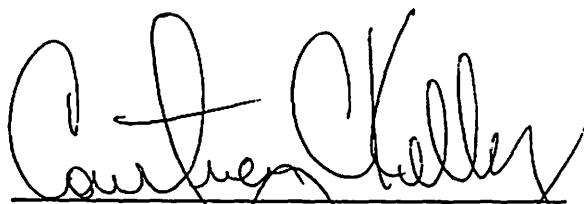
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1
2
3
4 COMMONWEALTH OF VIRGINIA,
5 GLOUCESTER COUNTY, to-wit:
6

7 I, Courtney C. Kelley, RPR, do certify that
8 the foregoing pages are a true and accurate transcript of
9 the proceedings had at the time and place mentioned.

10 This 4th day of January, 1999.
11

12
13
14 
15 COURTNEY C. KELLEY, -RPR
16 Court Reporter
17

18 My Commission Expires January 31, 2001
19
20
21
22
23
24
25

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Commonwealth of Virginia



State Corporation Commission

I Certify the Following from the Records of the Commission:

GEORGE L. MAHONEY, the registered agent for MEDIA GENERAL, INC., was appointed on August 03, 1995. The registered office, located in RICHMOND CITY, is:

333 EAST GRACE STREET

RICHMOND VA 23219-0000

Nothing more is hereby certified.

~~COMMONWEALTH~~
PLAINTIFF
~~DEFENDANT~~, Exhibit No. 1
Filed in open Court
12-9-98
WJH:sm

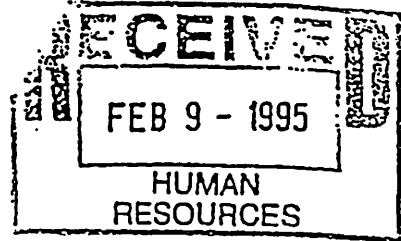


Signed and Sealed at Richmond
on this Date: January 23, 1998

William J. Bridge
William J. Bridge, Clerk of the Commission



George L. Mahoney
General Counsel & Secretary



February 9, 1995

To Whom It May Concern:

Frank A. McDonald, Jr., or his designee, is authorized to accept service of process on behalf of Media General, Inc., Richmond Newspapers, Inc., Media General Financial Services, Inc. and the following individuals:

D. Tennant Bryan
J. Stewart Bryan III
Stephen Y. Dickinson
James L. Dillon
James S. Evans
O. Scott Leath
George L. Mahoney
William H. Millsaps, Jr.
Marshall N. Morton
Basil Snider, Jr.
Stephen R. Zacharias

~~COMMONWEALTH~~
PLAINTIFF
DEFENDANT, Exhibit No. 2
Filed in open Court
12-9-98
WHS:2

George L. Mahoney
General Counsel and Secretary
Media General, Inc.

Secretary
Richmond Newspapers, Inc.
Media General Financial Services, Inc.

Norma C. Lipscomb is designee for Frank A. McDonald, Jr. and is authorized to accept service of process as stated above.

Richmond
Newspapers, Inc.

CIRCULATION DEPARTMENT
TELECOPIER COVER LETTER

Date: 4-17-96 Time: _____

To:

Person: George Mahoney

of Pages: 1 (including cover sheet)

Telecopier #: 6898

Fr:

Person: Am Beiner

Telecopier #: (804)775-2801

Message: Please Call if I Can be of any
Assistance. Thanks.

An affiliate of Media General, Inc., P.O. Box 85333, Richmond, VA 23253-0001 (804)649-6000

COMMONWEALTH
PLAINTIFF
DEFENDANT, Exhibit No. 3
Filed in open Court
12-9-98
WHS
92

[23] From: John B. Beirne at RNI_NEWS 4/19/96 12:16PM (872 bytes: 12 ln)
 To: George Mahoney at MGCF
 cc: Allen A. Walton
 Subject: GALE ALDRICH

----- Message Contents -----

I sent you the letter from Joseph Smith, Ltd., regarding an accident involving his client and the above carrier.

For your information-

According to our district manager, Randy Capps, the accident took place in Gloucester on Featherbed Lane (state route 614) close to the intersection with O'Neil Road. This is approximately four miles from what we believe to be the carrier's last delivery at 4750 Warner Hall Rd (state route 629)-subscriber Powell. According to Randy, the carrier had completed his route and was on his way to work at his job with the U.S. Navy.

JOSEPH SMITH, LTD.

ATTORNEYS AND COUNSELLORS AT LAW

JOSEPH SMITH
(1913-1994)HOWARD P. SMITH
STEPHEN H. PITLER
STEPHEN M. SMITH
ADAM S. RAFAL

(*ADMITTED VIRGINIA, NEW YORK & DISTRICT OF COLUMBIA)

Smith Building

2100 KEOUGHAN ROAD

P.O. BOX 1437

Hampton, Va. 23661-0437

PENINSULA & SOUTHSIDE

(804) 244-7000

FAX (804) 245-7740

April 12, 1996

Richmond Times Dispatch
Attention: Claims Department
333 E. Grace Street
Richmond, Virginia 23219

RE: William F. Smith, Jr. v. Gale Aldrich and Richmond Times Dispatch

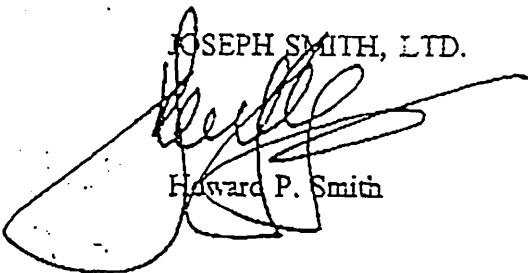
Dear Sir/Madam:

Please be advised that our office represents William F. Smith with respect to injuries and damages he sustained as the result of a motor vehicle collision that occurred on August 28, 1995. Mr. Smith was involved in a collision with Gale Aldrich in Gloucester. At the time of the collision, Mr. Aldrich was delivering newspapers on behalf of your company. It is our position that he was acting as an agent, servant, and employee of your company and performing an act on behalf of the company at the time the collision occurred. Accordingly, please be advised that a claim will be made on behalf of Mr. Smith for the damages and losses he has sustained.

If you have any questions, I would appreciate it if you would call me.

Yours truly,

JOSEPH SMITH, LTD.


Howard P. Smith

HPS/js

RNI CIRCULATION

(AUTO)

THE FOLLOWING FILE(S) ERASED

FILE	FILE TYPE	OPTION	TEL NO.	PAGE	RESULT
008	TRANSMISSION		6898	02	OK

ERRORS

- 1) HANG UP OR LINE FAIL 2) BUSY 3) NO ANSWER 4) NO FACSIMILE CONNECTION



FILE COPY

D. Page Cooper
Assistant Secretary and
Risk Manager

September 16, 1996

Ms. Pamm Holsinger
Claims Adjuster I
Erie Insurance Company
P.O. Box 577
Sandston, VA 23150

COMMONWEALTH
PLAINTIFF
~~DEFENDANT~~, Exhibit No. 5
In open Court
12-9-98
WTF

RE: Erie Claim 010410044376
Signet Auto, Inc. - William F. Smith
DOL: 8/29/95
Gale Aldrich

Dear Ms. Holsinger:

This letter is to confirm our discussion of the insurance issues in your August 29, 1996, letter to Mr. John Burn at the Richmond Times-Dispatch. Mr. Gale Aldrich is not an employee of Richmond Newspapers, Inc. He delivers newspapers as an independent contractor.

Media General employees and company-owned automobiles are covered by corporate-wide policies. We do not have non-owned coverage that would cover Mr. Aldrich's vehicle. I suggest you review Mr. Smith's policy for coverage.

Very truly yours,

D. Page Cooper

cg
cc: Mr. John Burn

*file
SR*

Richmond Newspapers, Inc.

Frank A. McDonald, Jr. S.P.H.R.
Vice President and Director of Human Resources

April 30, 1997

Alexander Wellford
Christian, Barton, Epps, Brent
& Chappel
1200 Mutual Building
909 E. Main Street
Richmond, Virginia 23219-3095

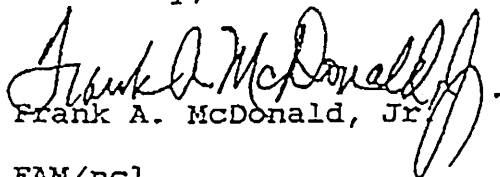
Re: William F. Smith, Jr. vs. Gale Aldrich
Subpoena Duces Tecum

Dear Sandy:

Attached is a copy of the file we have on Gale Aldrich. We are also including the subpoena received concerning the case. As you can see, there is a request for our automobile liability policy which we hesitate to furnish without your authorization.

If you need any information, please let me know.

Sincerely,


Frank A. McDonald, Jr.

FAM/ncl
Enclosures

c: George Mahoney
Page Cooper ✓

COMMONWEALTH
PLAINTIFF

~~DEFENDANT~~, Exhibit No. 6

Filed in open Court

12-9-98

WHSw

Media
General

With Fam. on 4/28/97.
See

SUBPOENA DUCES TECUM (CIVIL CASE) Rule 4:9(c) Case No. CL97-53

Gloucester County Circuit Court

P.O. Box N., Gloucester, Va. 23061 (804) 693-2502

William F. Smith, Jr. ADDRESS TELEPHONE NUMBER

CUSTODIAN: Gale A. Aldrich REQUESTING PARTY:

Custodian of Records Kevin V. Logan

Media General (804) 378-7600

333 East Grace Street

Richmond, Va. 23219

TO: Sheriff of Richmond or any authorized officer:

You are commanded to serve this Subpoena Duces Tecum on the Custodian.

TO THE CUSTODIAN:

You or someone acting in your behalf are commanded to produce the documents and tangible things designated and described ☐ in the attached request ☐ below for issuance of this Subpoena Duces Tecum as follows:

ITEMS TO BE PRODUCED:

SEE ATTACHMENT

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ATTACHMENT

A true and complete copy of all documentation, including insurance policies, employment records of Gale Aldrich, etc. that supports Media General's claim that

"Media General employees and company-owned automobiles are covered by corporate wide policies. We do not have coverage that would cover Mr. [Gale] Aldrich's vehicle,"

as stated in a letter to Pamm Holsinger from D. Page Cooper dated September 16, 1996.

FILED

97 APR 17 PM 12:33

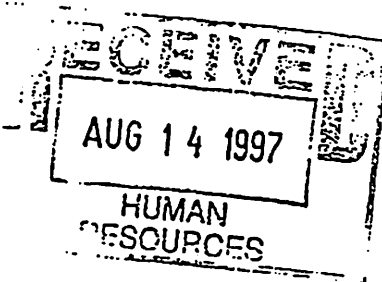
RECEIVED
CLERK OF THE COURT
CHARLOTTE, NORTH CAROLINA

BY _____ DC

COMMONWEALTH OF VIRGINIA



VA. CODE § 8.01-275.1
RULE 3:3



NOTICE OF MOTION FOR JUDGMENT

Case No. CL97-53

Gloucester County

Circuit Court

6489 Main Street, P.O. Box N., Gloucester, Va. 23061

ADDRESS

TO:

George L. Mahoney, Registered Agent
for Medial General, Inc.

~~COMMONWEALTH~~

PLAINTIFF

~~DEFENDANT~~, Exhibit No. 7

Filed in open Court

12-9-98

You are hereby notified that unless within twenty-one (21) days after service of the notice of Motion for Judgment on you, response is made by filing in the clerk's office of this court a pleading in writing, in proper legal form, judgment may be entered against you by default.

Done in the name of the Commonwealth of Virginia.

August 8, 1997
DATE

Charles E. King Jr.,

Clerk

by

Angela L. King
DEPUTY CLERK

*Hd to JM
8/14/97*

MEMORANDUM

August 18, 1997

TO: D. Page Cooper
FROM: George L. Mahoney
RE: Insured Litigation -- Smith v. Media General

As you'll see, we received the attached complaint this past Thursday. The claim is said to have arisen from a 1995 automobile accident involving a Media General employee named Gale A. Aldrich.

I'd appreciate it if you'd forward these papers to our carrier for immediate attention and let me know if you're familiar with the underlying incident. If so, would you give me a brief report?

Many thanks.

GLM:

GLM:cc
[Dictated but not read.]

~~COMMONWEALTH~~
PLAINTIFF
~~DEFENDANT~~, Exhibit No. 8
Filed in open Court
12-9-98
WHS

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF GLOUCESTER

WILLIAM F. SMITH, JR.,

Plaintiff,

v.

At Law Number: 97-53

GALE ALLEN ALDRICH,

and

MEDIA GENERAL, INC.

Defendants.

~~COMMONWEALTH~~
PLAINTIFF

~~DEFENDANT~~, Exhibit No. 9

Filed In open Court

12-9-98

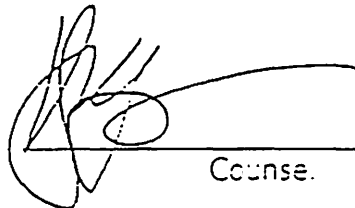
WFS

NOTICE

TAKE NOTICE that on the 24th day of March, 1998, at 1 p.m. or as soon thereafter as counsel may be heard, Howard P. Smith, counsel for the plaintiff herein will move this Honorable Court for entry of an Order granting judgment against the defendant, MEDIA GENERAL, INC., herein by default.

Take due notice hereof and govern yourself accordingly.

WILLIAM F. SMITH, JR.


Counsel.

Howard P. Smith, p.q.
JOSEPH SMITH, LTD.
Smith Building
2100 Kecoughtan Road
Post Office Box 1437
Hampton, Virginia 23661-0437

FILED

98 MAR 19 AM 11:37

CIRCUIT COURT CLERK
GLOUCESTER COUNTY, VIRGINIA
FILED IN OPEN COURT

I certify that this notice was mailed to
Geo L Mahoney, Register Agent on March 13, 1998
102

SINNOTT, NUCKOLS & LOGAN

A PROFESSIONAL LAW CORPORATION

13811 VILLAGE MILL DRIVE
MIDLOTHIAN, VIRGINIA 23113
TEL (804) 378-7600
FAX (804) 378-2610

RAYMOND J. SINNOTT, III
OTIS W. NUCKOLS
KEVIN V. LOGAN

THOMAS G. HASKINS
HELENE E. NEGLER
MARK C. NANAVATI
ARPITA SIKDER

June 29, 1998

Howard P. Smith, Esquire
Joseph Smith, Ltd.
Post Office Box 1437
Hampton, Virginia 23661-0437

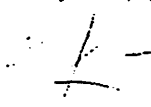
Re: William F. Smith, Jr. v. Gale A. Aldrich
At Law No. 97-53

Dear Howard:

I understand from your conversation with my paralegal that you are willing to endorse a Non-Suit Order for Gale Aldrich and Erie Insurance Company in this case. I have drafted the enclosed Motion and Order. Please let me know if you would like me to make any additions or correction. If not, please sign and forward both documents to the Court for entry.

Thank you for your cooperation in this matter.

Very truly yours,


Kevin V. Logan

KVL/dd
Enclosure

cc: George L. Mahoney, Registered Agent
Pamm Holsinger
(010-410044376; 08/29/95)

~~COMMONWEALTH~~
PLAINTIFF

~~DEFENDANT~~, Exhibit No. 10

Filed in open Court

12-9-98

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF GLOUCESTER

WILLIAM F. SMITH, JR.,

Plaintiff,

At Law No. 97-53

V.

GALE A. ALDRICH,
and
MEDIA GENERAL, INC.,

Defendants.

MOTION FOR NON-SUIT OF DEFENDANT
ALDRICH AND ERIE INSURANCE COMPANY


Comes now the plaintiff, William F. Smith, Jr., by counsel, and moves the Court, pursuant to Section 8.01-380 of the Code of Virginia, 1950, to non-suit defendant Gale A. Aldrich and Erie Insurance Company, served with process herein as underinsured motorist carrier, for the following reasons:

1. There have been no other nonsuits in this cause of action and therefore the plaintiff is entitled to nonsuit Defendant Gale A. Aldrich and Erie Insurance Company as matter of right.

2. No cross-claims or third-party claims have been filed in this action.

WHEREFORE, Plaintiff William F. Smith, Jr., moves the Court to grant his request to non-suit only Defendant Gale A. Aldrich and Erie Insurance Company from this action.

WILLIAM F. SMITH, JR.



Of Counsel

Howard P. Smith, Esquire
Joseph Smith, Ltd.
Post Office Box 1437
Hampton, Virginia 23661-0437

CERTIFICATE

I hereby certify that a true copy of the foregoing Motion for Non-Suit was mailed,
postage prepaid, this _____ day of June, 1998 to Kevin V. Logan, Esquire, Sinnott, Nuckols
& Logan, P.C., 13811 Village Mill Drive, Midlothian, Virginia 23113 and George L. Mahoney,
Registered Agent for Media General, Inc., 333 East Grace Street, Richmond, Virginia.

Howard P. Smith

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF GLOUCESTER

WILLIAM F. SMITH, JR.,

Plaintiff,

At Law No. 97-53

V.

GALE A. ALDRICH,
and
MEDIA GENERAL, INC.,

Defendants.

ORDER OF NON-SUIT

Comes now the plaintiff, William F. Smith, Jr., by counsel, upon his Motion for Non-Suit of Defendant Gale A. Aldrich and Erie Insurance Company, and the Court finding that for good cause shown a non-suit of Defendant Aldrich and Erie Insurance Company should be granted:

It is therefore ORDERED that Defendant Gale A. Aldrich and Erie Insurance Company are hereby nonsuited.

Let the Clerk send attested copies of the entered Order to all counsel of record.

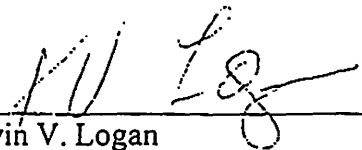
ENTER: /

Judge

I ASK FOR THIS:

Howard P. Smith, Esquire
Joseph Smith, Ltd.
Post Office Box 1437
Hampton, Virginia 23661-0437
(757) 244-7700

SEEN AND AGREED:



Kevin V. Logan
Sinnott, Nuckols & Logan, P.C.
13811 Village Mill Drive
Midlothian, Virginia 23113
(804) 378-7600

MOTOR ROUTE CARRIER CONTRACT

This contract is made this 26 day of JUNE, 1955, between RICHMOND NEWSPAPERS, INC. (hereinafter called "RNI") and GALE A. Aldrich (hereinafter called "Motor Route Carrier").

WITNESSETH:

1. RNI agrees to sell to Motor Route Carrier and Motor Route Carrier agrees to purchase the number of copies required by this contract of the following Newspaper(s) published by it at the following wholesale rates:

	Home Delivery		Single Copy	
Daily Richmond Times-Dispatch	<u>\$1.603</u>	per copy	<u>\$1.3150</u>	per copy
Sunday Richmond Times-Dispatch	<u>\$1.0850</u>	per copy	<u>\$1.0550</u>	per copy
Excess Sunday Richmond Times-Dispatch	<u>\$1.0550</u>	per copy	<u>N/A</u>	per copy

(hereinafter called the "Newspapers"). RNI reserves the right to change such wholesale prices from time to time, such changed prices to be effective upon notice in writing to the Motor Route Carrier, who shall be deemed to accept such price change unless, immediately upon receipt of such notice, Motor Route Carrier shall notify RNI in writing otherwise, and, in such latter event, RNI shall have the right to immediately terminate this contract.

2. It is agreed that RNI shall not be obligated to sell Newspapers hereunder, nor be liable in damages for failure to do so (a) where resulting from acts of God, strikes or other labor disorders or disturbances, shortage of labor, accidents, fire or other casualty, shortages of newsprint or other supplies, delays by railways or other methods of transportation, acts of any government, whether national, state, or local, or any agency or department thereof, or any other cause or causes of like or unlike nature which are beyond the reasonable control of RNI or (b) in the event in RNI's sole opinion it becomes desirable for any reason, whether above enumerated or otherwise, to allocate Newspapers among its carriers and delivery of Newspapers is curtailed as a result thereof.

3. RNI shall bill the Motor Route Carrier at the end of each month for each Newspaper sold to him during that month (the "Billing Period") at the above wholesale rates. The Motor Route Carrier agrees to promptly pay in full each such billing at a time and place to be designated by RNI.

4. The Motor Route Carrier agrees to deliver and sell the Newspapers to such addresses within his area of primary responsibility as defined on Appendix A, attached hereto and made a part hereof as may be designated by RNI from time to time on a list of subscribers (to be furnished the Motor Route Carrier by RNI) who desire delivery to them of the Newspapers sold to the Motor Route Carrier, unless Motor Route Carrier for good and reasonable cause shall notify RNI in writing specifying such cause, that he declines to make such delivery and sale to a named subscriber, in which case RNI reserves the right to cause the delivery and sale of the Newspaper to such subscriber. As supplemented in accordance with the following sentence, such list is hereafter referred to as the "Subscription List." The Motor Route Carrier agrees to service said subscribers in a proper and reasonable manner, and further agrees to supplement the Subscription List by adding thereon the names and addresses of all subscribers to whom he sells the Newspapers whose names do not appear on the initial Subscription List, it being understood and agreed that for management purposes and in order to conform with U. S. Postal Laws and Regulations and with the requirements of the Audit Bureau of Circulation, it is essential for RNI to maintain an accurate and up-to-date Subscription List. Should any subscriber to whom Motor Route Carrier is obligated hereunder to deliver and sell the Newspaper, fail to receive the Newspaper promptly on any given day, RNI reserves the right to furnish a copy to such subscriber, charging the actual cost of the copy and its delivery to the Motor Route Carrier. The Motor Route Carrier agrees that he will not turn over or deliver the Subscription List to any person or entity nor disclose the name of any subscribers appearing thereon without first obtaining written permission from RNI, such Subscription List and the information contained thereon to remain the sole and exclusive property of RNI at all times. In addition, the Motor Route Carrier shall deliver such Subscription List to RNI upon written request by RNI and upon the termination of this contract, whether the termination be voluntary or for breach by either party.

5. With the concurrence of both parties, any subscriptions paid in advance to RNI will be accepted by it for the account of the Motor Route Carrier, and will be given credit therefor at each billing settlement between the parties.

6. Furthermore, the Motor Route Carrier agrees to deliver Newspapers at least in quantities specified by RNI to the Distribution Points (the "Distribution Points") as may be designated by RNI from time to time on the "Distribution Report" which is attached hereto as Appendix B and made a part hereof, unless the Motor Route Carrier for good and reasonable cause shall notify RNI in writing specifying such cause, that he declines to make such delivery, in which case RNI shall have the right to terminate this contract. RNI reserves the right to sell Newspapers at any location and by any method it chooses, including, but not limited to, through Newspaper racks, which racks RNI, in its sole discretion, may agree to lease to the Motor Route Carrier pursuant to Appendix C attached hereto and made a part hereof and which shall be binding upon any Motor Route Carrier to whom RNI shall release such racks. The Motor Route Carrier agrees to service said Distribution Points in a proper and reasonable manner, and further agrees to supplement the Distribution Report by adding thereon the location and the anticipated daily Newspaper sales for each Distribution Point serviced by the Motor Route Carrier which does not appear on the initial Distribution Report, it being understood and agreed that for management purposes and in order to conform with the requirements of the Audit Bureau of Circulation, it is essential for RNI to maintain an accurate and up-to-date Distribution Report. The Motor Route Carrier agrees that he will not turn over or deliver the Distribution Report to any person or entity nor disclose the contents thereof without first obtaining written permission from RNI, such Distribution Report, as supplemented from time to time, and the information contained thereon to remain the sole and exclusive property of RNI at all times. In addition, the Motor Route Carrier shall deliver such Distribution Report to RNI upon the termination of this contract, whether the termination be voluntary or for breach by either party.

7. In addition, the Motor Route Carrier agrees to deliver, but not purchase, copies of the Newspapers in the quantities specified by RNI to the Points (the "Drop Points") designated by RNI on the "Motor Route Carriers Manifest" which is attached hereto as Appendix D and made a part hereof as it may be amended from time to time, unless the Motor Route Carrier for good and reasonable cause shall notify RNI in writing specifying such cause, that he declines to make such delivery, in which case RNI shall have the right to terminate this contract. RNI reserves the right to deliver Newspapers to any location and by any method it chooses, including, but not limited to, with its own trucks and drivers. The Motor Route Carrier agrees to deliver the Newspapers to the Drop Points in a proper and reasonable manner. The Motor Route Carrier agrees that he will not turn over or deliver the Motor Route Carriers Manifest to any person or entity, nor disclose the contents thereof without first obtaining written permission from RNI, such Motor Route Carriers Manifest and the information contained thereon to remain the sole and exclusive property of RNI at all times. In addition, the Motor Route Carrier shall deliver such Motor Route Carriers Manifest to RNI upon the termination of this contract, whether the termination be voluntary or for breach by either party.

8. To the extent the Motor Route Carrier desires to purchase Newspapers in addition to those specified on the Subscription List or the Distribution Report, including Newspapers to be sold in Newspaper racks leased by the Motor Route Carrier pursuant to Appendix C (if applicable), the Motor Route Carrier shall so notify RNI seven (7) days prior to the time for pickup thereof, and RNI shall use its best efforts to furnish the Motor Route Carrier with such requested Newspapers. To the extent the Motor Route Carrier has Newspapers which remain unsold, the Motor Route Carrier agrees to return each such paper to RNI within two (2) weeks of the Motor Route Carrier billing date for the week in which the Newspaper was published, for a credit equal to the wholesale price, as specified in Paragraph 1 above, for that paper. RNI reserves the right to limit returns for credit to 50 % of the gross number sold to the Motor Route Carrier for single copy distribution and to require that unsold papers for which credit is allowed be returned within the period designated by this paragraph.

9. In consideration of Motor Route Carrier's performance of its obligation under this contract, including those contained in paragraph seven, RNI agrees to pay the Motor Route Carrier the sum of \$4,200 per year, which shall be divided into equal installments and which shall be credited to the Motor Route Carrier's account during each billing period.

10. Motor Route Carrier is a separate independent contractor and is responsible for providing the equipment and/or supplies necessary for the satisfactory performance of this contract and so long as the good will, business reputation, or circulation of RNI and/or its Newspapers is not injured thereby, shall conduct his business as he deems best, according to his own means and methods, without the supervision or control of RNI. Motor Route Carrier acknowledges and agrees that, as an independent contractor, he is not covered by workers' or unemployment compensation insurance provided by RNI and expressly waives any such coverage. Motor Route Carrier agrees to be solely responsible for the payment and withholding of any applicable Federal, State, local or other taxes from his own earnings and from the compensation paid to his agents or employees, if any. However, RNI, in order to maintain and promote the goodwill and quality of its Newspapers with readers, advertisers and others, has the right to require the prompt delivery of such Newspapers, and any Newspapers sold hereunder, to subscribers on the Subscription List and to determine what constitutes a complete Newspaper package and Motor Route Carrier will assure that the Newspaper package, when delivered or resold, is as specified by RNI. The Motor Route Carrier shall not add material to or subtract material from such complete Newspaper package prior to resale or delivery by him. Further, if the Motor Route Carrier is unable to make such prompt delivery for any reason, he shall provide a substitute over whom the Motor Route Carrier shall have full and complete control and responsibility. The Motor Route Carrier shall not be required to perform any services for RNI other than those set forth in this contract, and RNI shall not have an exclusive right to the Motor Route Carrier's services.

11. During the term of this contract, RNI representatives will provide to the Motor Route Carrier such basic information as will be essential to the satisfactory performance of this contract. Their relationship with the Motor Route Carrier will be strictly in an advisory capacity.

12. The parties recognize that the financial feasibility of RNI publishing its Newspapers is dependent upon procuring sufficient advertising revenues which, in turn, require broad circulation. Therefore, the Motor Route Carrier agrees, as an independent contractor using his own means and methods, to maintain, promote, and enlarge the volume of sales and circulation of the Newspapers. RNI shall have the right to terminate this contract immediately if, at the end of any period of two (2) calendar months, the Motor Route Carrier's average bona-fide daily net sales of Newspapers (adjusted for seasonal fluctuation) is less than ninety-five percent (95%) of his average such daily net sales on the date of this contract (as determined from the initial Motor Route Carrier's Report; or at the beginning of such two (2) month period, whichever is higher; or if the Motor Route Carrier utilizing Newspaper Racks fails to maintain such racks at his Distribution Points in accordance with the specifications set forth on Appendix B attached hereto and made a part hereof. To assist RNI with the enforcement of this provision, the Motor Route Carrier agrees to inspect each of the Newspaper Racks he is utilizing every three calendar months and to complete an inspection report in the form provided by RNI. RNI may, from time to time, offer incentives to the Motor Route Carrier for securing additional net sales, such as cash, merchandise, or trips, but the Motor Route Carrier's participation in such incentive programs is optional. RNI may, from time to time, use independent sales solicitors to secure new subscribers. These subscribers agree to be serviced in the same manner as all subscribers received on the initial Subscription List and Distribution Report.

13. The Motor Route Carrier agrees to establish and maintain a bond with the bonding company or companies utilized by RNI during the term of this contract in the amount of two and one-half (2 1/2) times the size of the Motor Route Carrier's monthly bill or five hundred dollars, whichever amount is greater. This contract will not become effective unless within twenty-one (21) days of the date first written above RNI has received notice that Motor Route Carrier shall have established said bond. This bond will secure the Motor Route Carrier's obligations to RNI, and RNI may at any time apply to the bonding company for payment of Motor Route Carrier's past due obligations. Additionally from any time before to within six months after commencement of operation of the Motor Route Carrier's business, either under this contract or under a previous contract with RNI not materially different from this contract, and if commenced under such a previous contract there having been no interruption in the operation of the Motor Route Carrier's business from said commencement through the time of signing this contract, Motor Route Carrier shall not be required to make payments for the said bond, to RNI for supplies (not including Newspapers) if any, and for equipment or rentals thereof, if any, in excess of \$499 in the aggregate. In no event shall any such obligations incurred by the Motor Route Carrier in excess of \$499 be discharged, and the Motor Route Carrier shall be required to pay the excess amount to the bonding company and/or to RNI, as then following the six month period after its commencement of operation as aforesaid.

14. This contract may be terminated by either party at the end of any billing period provided thirty (30) days prior notice is given to the other party. Either party may terminate this contract at any time effective immediately in the event of a breach by the other party of any of the provisions or covenants of this contract. In no event shall the termination of this contract cancel any liability due either party by the other, and all monies owing by the Motor Route Carrier shall be and become due and payable forthwith. Upon termination, the Motor Route Carrier shall additionally pay to RNI a sum equal to the total amount which the Motor Route Carrier shall have collected or may collect in advance from the subscribers serviced by him for subscriptions covering any period subsequent to the date of such termination. Upon the failure of the Motor Route Carrier to remit any amounts owed RNI hereunder, RNI may collect the same from the Motor Route Carrier's bond and/or may bring an action to collect the same and may recover its costs of such collection along with reasonable attorney's fees.

15. The Motor Route Carrier shall not assign this contract or his rights and/or duties hereunder without the prior written consent of RNI, and any attempt by the Motor Route Carrier to assign this contract or his rights and/or duties hereunder without such prior consent shall be null and void.

16. This contract supercedes and cancels any and all contracts heretofore made between the parties, except for: NONE and the parties do hereby release each other from any claim, demand, cause of action and/or liability of every kind or character known and unknown arising out of any and all former contracts, other than those specified above, and/or dealings thereunder between the parties and/or any and all cancellations thereof, except for any monies or debts owed RNI by Motor Route Carrier and interest accruing thereon for Newspapers sold or equipment rented by RNI to Motor Route Carrier. The Motor Route Carrier hereby acknowledges that he has no proprietary rights other than those contained in this contract in or to the purchase, distribution or sale of the Newspapers. The Motor Route Carrier further acknowledges that any proprietary rights he has under this contract shall terminate with this contract. This contract covers the entire agreement between the parties and cannot be changed except in writing signed by both parties.

COMMONWEALTH
PLAINTIFF

DEFENDANT, Exhibit No. 11

Filed in open Court

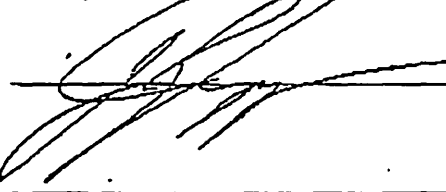
12-9-88

Attach Appendices here.

Appendix A — Subscription List
 Appendix B — Distribution Report
 Appendix D — Motor Route Carriers Manifest

Witness, the following signatures the day and year first above mentioned.

WITNESS (as to Circulation Official and Motor Route Carrier)



WITNESS (as to Guarantor)

RICHMOND NEWSPAPERS, INC.

By: 

(Circulation Official)

Title: State circulation Manager

X State a driver

(Motor Route Carrier)

The Undersigned consents to the making of the foregoing and hereby guarantees performance of said contract.

CARRIER INFORMATION

USN
 Employer

B LONG LP-34 WAS NORFOLK
 Employer's Address

444-4146 EXT 317
 Business Phone

(Guarantor)

GUARANTOR INFORMATION

SS# _____

Address _____

City _____

State _____

Zip _____

Phone Number _____

Guarantor's Employer _____

Employer's Address _____

Business Phone _____

APPENDIX C

Agreement to Lease Coin Operated Racks

1. RNI agrees to lease to the Motor Route Carrier and the Motor Route Carrier agrees to lease from RNI the following coin-operated newspaper Racks (hereinafter referred to as the "Racks"), the receipt of which is hereby acknowledged by the Motor Route Carrier:

LOCATION	RACK SERIAL NUMBER	LOCK SERIAL NUMBER	METHOD USED TO SECURE RACK
ZOOMS RT 17 GLOUCESTER	TK80 8419438	A1034 MASTER	CEMENT
WAL-MART RT 17 "	TK84 88 41372	" "	"
MARKET PLACE RT 17 "	TKP086 61218	" "	"
FAMILY DOLLAR MAINE ST. "	TK80 906823	" "	"
LEE MARKET MAIN ST. "	TK80 8661328	2355 "	"

2. RNI shall bill the Motor Route Carrier a monthly rental rate of \$ 2.09 ⁴⁰ per Rack. Such monthly rental shall be included in the Motor Route Carrier's bill, and the Motor Route Carrier agrees to promptly pay in full each such billing in accordance with Paragraph 3 of the Motor Route Carrier Contract. RNI reserves the right to change such monthly rental rates from time to time, such changed rates to be effective upon notice in writing to the Motor Route Carrier, who shall be deemed to accept such rate change unless, immediately upon receipt of such notice, the Motor Route Carrier shall notify RNI in writing otherwise, and, in such latter event, RNI shall have the right to immediately terminate the Motor Route Carrier Contract.

3. As a condition to this agreement to lease the Racks, the Motor Route Carrier agrees to maintain the Racks in proper working order and in acceptable condition. Acceptable condition means compliance with the following criteria:

GENERAL CONDITION. The metal and wire portions of the Newspaper Rack must be undented and free of rust. Racks with dents larger than 4"x4" or rust spots larger than 8 square inches must be repaired or replaced.

GLASS OR PLASTIC WINDOWS. Glass or plastic windows must be unbroken and clear. Broken, yellowed or defaced windows must be replaced.

PAINT. Paint must be of a color approved by RNI. It should be bright with a shiny appearance. Dull or defaced Racks must be repainted.

SECURITY. The Rack must be secured in the location displayed. Security will be deemed adequate if the Rack is attached to a fixed object by the use of chain and lock, or if there are cement loads in the Rack, or if the Rack is inside a store or other business establishment.

RACK CARDS. Rack cards supplied by RNI at no cost to the Motor Route Carrier must be displayed on every Rack having the capability to accept such a card. Cards which are out-dated or defaced must be removed and replaced with Rack cards acceptable to RNI.

ADHESIVE LOGO. Any adhesive sticker or logo applied to the Rack must be supplied by RNI and must not be cracked, peeled or defaced. Any cracked, peeled or defaced sticker or logo must be removed and replaced with a sticker or logo acceptable to RNI.

NEWSPAPER INDEPENDENT CONTRACTOR BOND
 RICHMOND NEWSPAPERS, INC.
 FIDELITY INSURANCE

ONE APPLICATION PER APPLICANT REGARDLESS OF THE NUMBER OF ROUTES

OR PRINT

No. TPI-501

effective on

for of

Richmond

Richmond

State of Applicant in Full

Local Security #

Address

Resided here since

State below previous residence addresses during the past 5 years and length of residence at each:

1. SPUR DRIVE NEWPORT NEWS VA 23062

2. DAVENPORT NEWPORT NEWS VA 23066

Married, single or divorced?

What will be your business address?

Do you hold any interest in real estate?

Location of such realty

Description of such realty

Description of your personal property

Is your life insured?

Give details of your personal debts (other than real estate mortgages) and your payment schedules

18. If you were ever discharged from any position, give details with dates

19. Have you ever failed in business or compromised with creditors?

20. Have you ever had a bond declined or cancelled?

21. PREVIOUS EMPLOYMENT Show in the following schedule how you have been occupied during the past FIVE years to D:

From To Former Employer's Name and Address Name and Address of Immediate Supervisor Why did you leave?

12/88 6/95 UNITED STATES NAVY PERRY SMALL STILL EMPLOYED

22. Personal Bank

23. Credit Reference

Credit Reference

24. Next of Kin (NOT SPOUSE)

In consideration of TRANSAMERICA PREMIER INSURANCE COMPANY, A CALIFORNIA CORPORATION, its subsidiaries and related companies, (hereinafter called the Company) issuing the bond herein applied for, I hereby agree to protect and immediately indemnify the Company against any and all loss, liability, costs, damages, charges and expense of whatsoever nature it may sustain or become liable for including counsel and attorney fees which it may incur in connection with any litigation relative to its rights or interests by reason of the issuance of the said bond of any changes in or renewal thereof, in my present or any other position, I further agree that all vouchers and other evidence of payment of any such loss, liability, costs, damages, charges, or expenses of whatsoever nature incurred by the Company or its attorneys, shall be taken as prima facie evidence against me and my estate, of the fact and extent of my liability to the Company.

I hereby further agree that the Company shall have the absolute right to decline to issue any such bond, or if any such bond be issued to decline to renew or continue same, and to cancel at any time any such bond or any renewal or continuation thereof, and that the Company shall be under no obligation to disclose its reasons therefor, to give any information in connection therewith, the provisions of any law to the contrary being expressly waived by me.

25. IN WITNESS WHEREOF, I have set my hand this 26 day of 1995

26. Witness: Type or Print

27. Signature of Applicant as an individual

28. Signature of Spouse, is required for bond limit of \$25,000 or more

29. Name of Corporation

30. Signature of Applicant and Role in above corporation

1a. Guarantor for (Name of Carrier)

I hereby apply for coverage under said Blanket Bond

in the amount of \$ 500.00

Richmond Newspapers Inc

Newspaper

Richmond

State of Applicant in Full

Local Security #

Address

Resided here since

State below previous residence addresses during the past 5 years and length of residence at each:

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Description of such realty

Description of your personal property

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12/88 6/95 UNITED STATES NAVY PERRY SMALL STILL EMPLOYED

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Credit Reference

24. Next of Kin (NOT SPOUSE)

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I hereby further agree that the Company shall have the absolute right to decline to issue any such bond, or if any such bond be issued to decline to renew or continue same, and to cancel at any time any such bond or any renewal or continuation thereof, and that the Company shall be under no obligation to disclose its reasons therefor, to give any information in connection therewith, the provisions of any law to the contrary being expressly waived by me.

25. IN WITNESS WHEREOF, I have set my hand this 26 day of 1995

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30. Signature of Applicant and Role in above corporation

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in the amount of \$ 500.00

Richmond Newspapers Inc

Newspaper

Richmond

State of Applicant in Full

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Description of such realty

Description of your personal property

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12/88 6/95 UNITED STATES NAVY PERRY SMALL STILL EMPLOYED

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23. Credit Reference

Credit Reference

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In consideration of TRANSAMERICA PREMIER INSURANCE COMPANY, A CALIFORNIA CORPORATION, its subsidiaries and related companies, (hereinafter called the Company) issuing the bond herein applied for, I hereby agree to protect and immediately indemnify the Company against any and all loss, liability, costs, damages, charges and expense of whatsoever nature it may sustain or become liable for including counsel and attorney fees which it may incur in connection with any litigation relative to its rights or interests by reason of the issuance of the said bond of any changes in or renewal thereof, in my present or any other position, I further agree that all vouchers and other evidence of payment of any such loss, liability, costs, damages, charges, or expenses of whatsoever nature incurred by the Company or its attorneys, shall be taken as prima facie evidence against me and my estate, of the fact and extent of my liability to the Company.

I hereby further agree that the Company shall have the absolute right to decline to issue any such bond, or if any such bond be issued to decline to renew or continue same, and to cancel at any time any such bond or any renewal or continuation thereof, and that the Company shall be under no obligation to disclose its reasons therefor, to give any information in connection therewith, the provisions of any law to the contrary being expressly waived by me.

25. IN WITNESS WHEREOF, I have set my hand this 26 day of 1995

26. Witness: Type or Print

27. Signature of Applicant as an individual

28. Signature of Spouse, is required for bond limit of \$25,000 or more

29. Name of Corporation

30. Signature of Applicant and Role in above corporation

INDEPENDENT CONTRACTOR BOND

Agent _____

- The acceptance by the Company of this application as indicated hereon shall constitute a schedule endorsement to the bond.
- DO NOT WRITE HERE**

[illegible]

26. IN WITNESS WHEREOF, I have hereunto set my hands this _____ day of _____, 19____.

(Motor Route Carrier)

Gloucester County

MOTOR

ROUTE

SUBSIDY

WORKSHEET

ROUTE # 002-505

08/11/95

ROUTE DATA	DAILY	SATURDAY	SUNDAY
DRAW (TOTAL) 1.	75	2. 83	3. 120
HOME DELIVERY 4.	40	5. 40	6. 40
DEALERS 7.	20	8. 20	9. 64
RACKS 10.	15	11. 23	12. 16
MILEAGE 13.	71	71	14. 78
TIME 15.	2.50	2.50	16. 3.25
PAPER CHARGES DAILY.	\$0.1603	SUN. \$1.0850	EXCESS SUN. \$1.0550
SINGLE COPY DAILY.	0.3150	SUN. 1.0550	

MONTHLY

CHARGES HOME DELIVERY

SUBSIDY 17.	\$350.00	DAILY 44.	\$166.71
MAINT.TIME 18.	20.00	SATURDAY 45.	\$0.00
SUPPLIES 19.	6.00	SUNDAY 46.	\$187.92
% BILLED 20.	0.70	EXCESS SUNDAY 47.	\$0.00
# OF RACKS 21.	4	DEALER @ RACKS	
COLLECTIONS		DAILY 48.	200.66
HOME DELIVERY		SATURDAY 49.	7.64
DAILY 22.	\$278.00	SUNDAY 50.	255.82
SATURDAY 23.	\$0.00	RACK RENT 51.	\$8.36
SUNDAY 24.	\$259.80	SUPPLIES 52.	\$6.00
DEALERS		TOTAL 53.	\$833.10
DAILY 25.	\$145.49	SUBSIDY 54.	\$350.00
SATURDAY 26.	\$0.00	GROSS BILL 55.	\$483.10
SUNDAY 27.	\$244.42		
RACK SALES		GROSS PROFIT 56.	\$665.87
DAILY 28.	\$136.39	EXPENSES	
SATURDAY 29.	\$12.12	TOTAL DAILY MILES 57.	1846
SUNDAY 30.	\$72.74	SUNDAY MILEAGE 58.	338
TOTAL COLLECTIONS 31.	\$1,148.97	TOTAL MILEAGE 59.	2184
GROSS BILLING:		MILEAGE EXPENSE 60.	\$436.75
DAILY PAPERS CHARGED		NET PROFIT 61.	\$229.12
HOME DELIVERY 32.	40		
DEALER 33.	14	NET PROFIT PER HOUR	
RACKS 34.	11	TOTAL DAILY TIME 62.	65.00
TOTAL LINE 33+34 35.	25	TOTAL SUNDAY TIME 63.	14.07
		MAINTENANCE TIME 64.	20.00
		TOTAL TIME 65.	99.07
SAT.PAPERS CHARGED		NET PROFIT PER HR 66.	\$2.31
HOME DELIVERY 36.	0	OPTIMUM SUBSIDY	
DEALER 37.	0	TIME @ \$5.00 HR. 67.	\$495.36
RACKS 38.	6	EXPENSE 68.	\$436.75
TOTAL LINE 37+38 39.	6	SUBSIDY 69.	\$350.00
		TOTAL 70.	\$1,282.11
SUNDAY PAPERS CHARGED		GROSS PROFIT 71.	\$665.87
HOME DELIVERY 40.	40	OPTIMUM SUBSIDY 72.	\$616.24
DEALERS 41.	45	INCREASE/DECREASE 73.	\$266.24
RACKS 42.	11		
TOTAL LINE 41+42 43.	56		

increase 100.00
to 450
effective 8/1/95

ROUTE SUBSIDY WORKSHEET

ROUTE NUMBER

002-505

DATE

8-95

ROUTE DATA

DAILY

SATURDAY

SUNDAY

DRAW (TOTAL

1 752 833 120

HOME DELIVERY

4 405 406 40

DEALERS

7 208 209 64

RACKS

10 1511 2312 16

MILEAGE

13 7114 78

DELIVERY TIME

15 2 1/216 3 1/4

HOME DELIVERY RATES

DAILY \$.1603SUNDAY \$ 1.0850EXCESS SUN \$ 1.0550

SINGLE COPY RATES

DAILY \$.3150SUNDAY \$ 1.0550

MONTHLY

CURRENT SUBSIDY 17 350.00MAINTENANCE TIME 18 20 hrs.MAX. RETURNS PERCENTAGE 19 30SUPPLIES 20 6.00NUMBER OF COIN RACKS CHARGED 21 4

DISTRICT MANAGER

DIVISION MANAGER

METRO MANAGER

SINNOTT, NUCKOLS & LOGAN

A PROFESSIONAL LAW CORPORATION

13811 VILLAGE MILL DRIVE
MIDLOTHIAN, VIRGINIA 23113
TEL (804) 378-7600
FAX (804) 378-2610

RAYMOND J. SINNOTT, III
OTIS W. NUCKOLS
KEVIN V. LOGAN

THOMAS G. HASKINS
HELENE E. NEGLER
MARK C. NANAVATI
MICHAEL A. MONTGOMERY
ARPITA SIKDER
JEFFREY W. SAUNDERS

January 9, 1998

Stephen M. Smith, Esquire
JOSEPH SMITH, LTD.
Post Office Box 1437
Hampton, Virginia 23661-0437

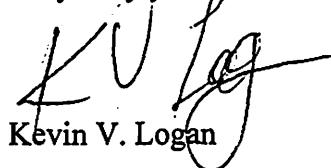
COMMONWEALTH
~~PLAINTIFF~~
DEFENDANT, Exhibit No. A
Filed in open Court
12-9-98
[Signature]

Re: William F. Smith, Jr. v. Gale A. Aldrich
At Law No. 97-53

Dear Mr. Smith:

My paralegal has called your office four times to schedule the deposition of the plaintiff in this case. To date, she has not been able to schedule the deposition. I understand that the holidays have intervened and communication is more difficult, but I feel that I must proceed with the plaintiff's deposition in this matter. Therefore, I have chosen a date sufficiently in the future that I hope it will be convenient for you and your client. I enclose a Notice for the deposition.

Very truly yours,


Kevin V. Logan

KVL/dd

cc:

George L. Mahoney, Registered Agent
Pamm Holsinger
(010-410044376; 8-28-95)

JOSEPH SMITH, LTD.

ATTORNEYS AND COUNSELLORS AT LAW

JOSEPH SMITH
(1918-1994)

HOWARD P. SMITH
STEPHEN H. PITLER
STEPHEN M. SMITH*
J.F. HOEN

(*ADMITTED VIRGINIA, NEW YORK & DISTRICT OF COLUMBIA)

Smith Building

2100 KECOUGHTAN ROAD

P.O. BOX 1437

Hampton, Va. 23661-0437

PENINSULA & SOUTHSIDE

(757) 244-7000

FAX (757) 245-7740

January 13, 1998

FILE COPY

Charles E. King, Jr.
Gloucester Circuit Court
PO Box N
Gloucester, VA 23061-0570

RE: WILLIAM F. SMITH, JR. v. GALE ALLEN ALDRICH and MEDIA GENERAL INC.
At Law Number: 97-53

Dear Mr. King:

I enclose herewith, for filing with the other pleadings in the above-styled law action, a Motion for Entry of Judgment by Default.

I have, of course, forwarded a copy of same to all counsel of record herein.

Thank you for your courtesy, I am

Very truly yours,

JOSEPH SMITH, LTD.


Stephen M. Smith

COMMONWEALTH
PLAINTIFF

DEFENDANT, Exhibit No. B

Filed in open Court

12-9-98

bmf
enclosure

cc: Kevin V. Logan, Esq.
George L. Mahoney, Registered Agent
for MEDIA GENERAL INC.

SINNOTT, NUCKOLS & LOGAN

A PROFESSIONAL LAW CORPORATION

13811 VILLAGE MILL DRIVE
MIDLOTHIAN, VIRGINIA 23113
TEL (804) 378-7600
FAX (804) 378-2610

RAYMOND J. SINNOTT, III
OTIS W. NUCKOLS
KEVIN V. LOGAN

THOMAS G. HASKINS
HELENE E. NEGLER
MARK C. NANAVATI
MICHAEL A. MONTGOMERY
ARPITA SIKDER
JEFFREY W. SAUNDERS

February 4, 1998

Howard P. Smith, Esquire
Joseph Smith, Ltd.
Post Office Box 1437
Hampton, Virginia 23661-0437

Re: William F. Smith, Jr. v. Gale A. Aldrich
At Law No. 97-53

Dear Mr. Smith:

I am enclosing a Deposition Notice for the parties in this case. We have contacted Farnsworth and Taylor Court Reporters to be present to record the testimony. I have also subpoenaed the defendant to the depositions. I understand the you will make your client available.

Thank you for your cooperation in this matter.

Very truly yours.


Kevin V. Logan

KVL/dd
Enclosure

cc: George L. Mahoney, Registered Agent
Pamm Holsinger
(010-410044376; 08/29/95)

COMMONWEALTH
PLAINTIFF
DEFENDANT, Exhibit No. C
Filed in open Court
12-9-98
WFS

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF GLOUCESTER

WILLIAM F. SMITH, JR.,

Plaintiff,

At Law No. 97-53

V.

GALE A. ALDRICH,
and
MEDIA GENERAL, INC.,

Defendants.

DEPOSITION NOTICE

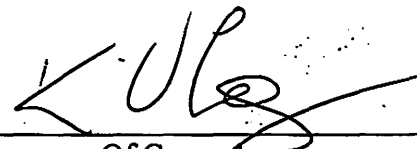
To: Stephen M. Smith, Esquire
Joseph Smith, Ltd.
Post Office Box 1437
Hampton, Virginia 23661-0437

George L. Mahoney, Registered Agent
Media General, Inc.
333 East Grace Street
Richmond, Virginia 23219

PLEASE TAKE NOTICE that Erie Insurance Company, by counsel, will take the deposition of William F. Smith, Jr. and Gale A. Aldrich on March 24, 1998 at 9:00 a.m., or as soon thereafter as may be heard, at the offices of Joseph Smith, Ltd., 2100 Kecoughtan Road, Hampton, Virginia 23113, before a notary public or other duly authorized agent.

The taking of said deposition will be continued from time to time and place to place as necessary, until completed. You are invited to attend.

ERIE INSURANCE COMPANY



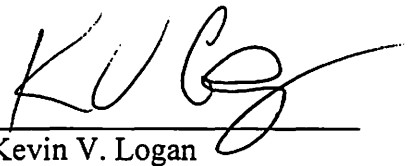
Of Counsel

~~COMMONWEALTH~~
~~PLAINTIFF~~
DEFENDANT, Exhibit No. D
Filed in open Court
12-9-98
W. F. Smith

Kevin V. Logan
Sinnott, Nuckols & Logan, P.C.
13811 Village Mill Drive
Midlothian, Virginia 23113
(804) 378-7600

CERTIFICATE

I hereby certify that a true copy of the foregoing Deposition Notice was mailed, postage prepaid, this 4th day of February 1998 to Stephen M. Smith, JOSEPH SMITH, LTD., Post Office Box 1437, Hampton, Virginia 23661-0437; Gale A. Aldrich, 10696 Harpers Farm Way, Gloucester, Virginia; and George L. Mahoney, Registered Agent for Media General, Inc., 333 East Grace Street, Richmond, Virginia.



Kevin V. Logan

Virginia

These links lead to websites of newspapers, magazines or services owned by Media General in Virginia.

Please visit them by clicking on the icons.



[Richmond Times-Dispatch](#)



[Richlands News-Press](#)



[Danville Register & Bee](#)



[Charlottesville Daily Progress](#)



[Virginia Business Magazine](#)



[Culpeper Star-Exponent](#)



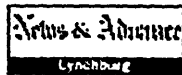
[Bristol Herald Courier Online](#)



[Potomac News Online](#)



[Media General Cable](#)



[Lynchburg News & Advance](#)



[Clinch Valley News
Richlands News-Press](#)



[Suffolk News-Herald](#)



[Manassas Journal Messenger](#)



[Waynesboro News Virginian](#)



[WSLS](#)



[Media General Financial Services](#)

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COMMONWEALTH

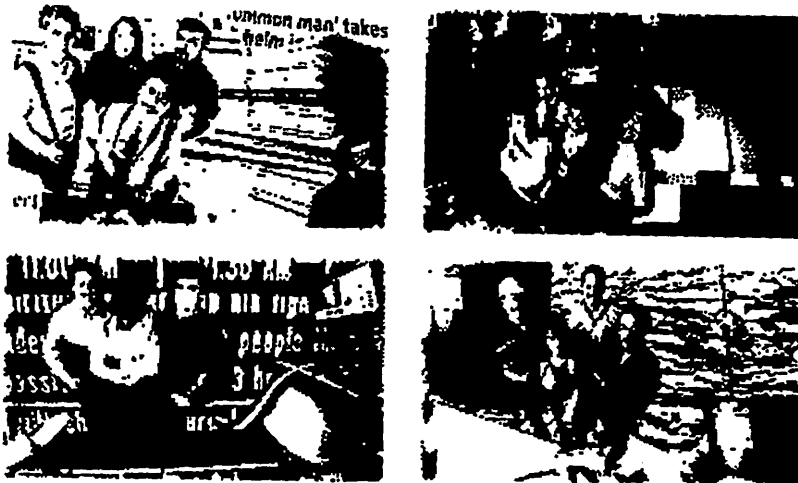
PLAINTIFF

DEFENDANT, Exhibit No. E

Filed in open Court

12-9-98

ONLINE



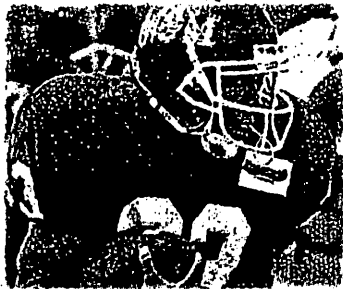
Media General is an independent, publicly owned communications company situated primarily in the Southeast, with interests in newspapers, broadcast and cable television, recycled newsprint production, and diversified information services.

Our corporate mission is to be a leading provider of high quality news, information, and entertainment services in the Southeast by continually building our position of strength in strategically located markets.

Corporate Headquarters
Media General, Inc.
333 East Franklin Street
Richmond, Virginia 23219
(804) 649-6000

Mailing Address
P.O. Box 85333
Richmond, Virginia 23293-0001

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In the clear

W&M's tailback
overcame
difficult childhood

Sports /E1



Talking turkey

Thanksgiving
made easy

Food/F1

WEDNESDAY

Sunny today
39; partly
high 61, low

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ONLINE http://

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ONE-STAR EDITION

Richmond Times-Dispatch

RICHMOND, VIRGINIA 23293

VIRGINIA'S NEWS LEADER
A MEDIA GENERAL NEWSPAPER

WEDNESDAY, NOVEMBER 18, 1998

Reynolds on track to back NASCAR

*Tobacco proposal
protects sponsorship*

BY REA McLEROY

TIMES-DISPATCH STAFF WRITER

The Winston Cup Series doesn't
look as though it's going up in
smoke.

The R.J. Reynolds Tobacco Co.



Star may stra

*Obstruct
may go b*

©NEW Y

WASHINGTON — I
the House Judiciary

JUDGES

SAMUEL T. POWELL, III
P.O. Box 385
WILLIAMSBURG, VA 23187
(757) 229-4711

PRENTIS SMILEY, JR.
P.O. Box 371
YORKTOWN, VA 23690
(757) 890-3367

THOMAS B. HOOVER
P.O. Box 98
NEW KENT, VA 23124
(804) 966-9525

WILLIAM H. SHAW, III
P.O. Box 576
GLOUCESTER, VA 23061
(804) 693-1358



COMMONWEALTH OF VIRGINIA
NINTH JUDICIAL CIRCUIT

May 27, 1999

COURTS

CHARLES CITY COUNTY
GLOUCESTER COUNTY
JAMES CITY COUNTY
KING AND QUEEN COUNTY
KING WILLIAM COUNTY
MATHEWS COUNTY
MIDDLESEX COUNTY
NEW KENT COUNTY
YORK COUNTY
CITY OF POQUOSON.
CITY OF WILLIAMSBURG

Theodore F. Adams, III, Esquire
Christian & Barton, L.L.P.
909 East Main Street, Suite 1200
Richmond, VA 23219-3095

Howard P. Smith, Esquire
Joseph Smith, Ltd.
P. O. Box 1437
Hampton, VA 23661-0437

Re: Media General Inc. v. William F. Smith, Jr.
Chancery No. 98-304 - Gloucester Circuit Court

Dear Messrs. Adams and Smith:

This matter is before the Court on the Bill of Complaint of Media General, Inc. (Media General) requesting that the Court set aside the judgment entered against it by order entered July 13, 1998, in the case of William F. Smith, Jr. v. Gale A. Aldrich, et al., Case No. 97-53. The action is brought under Virginia Code Section 8.01-428(D).

I have reviewed the pleadings, transcript, arguments and authorities, and I conclude that the requested relief should not be granted.

A brief review of the relevant facts is necessary. William F. Smith, Jr. (Smith) alleged in the aforementioned suit that Gale A. Aldrich (Aldrich) negligently injured him in an automobile accident on August 28, 1995, in Gloucester County. Aldrich was a regular carrier of the Richmond Times-Dispatch. Prior to suit, Howard P. Smith of Joseph Smith, Ltd., Smith's counsel, sent a notice of claim to the newspaper on April 12, 1996, but received no response. By letter dated September 16, 1996, D. Page Cooper (Cooper), Media General's Risk Manager, responded to an August, 1996, inquiry from Pamm Holsinger, Claims Adjuster for Erie Insurance Company (Erie), the uninsured motorist carrier, stating in part:

"Media General employees and company owned automobiles are covered by corporate-wide policies. We do not have non-owned coverage that would cover Aldrich's vehicle."

Apparently a copy was not sent to plaintiff's counsel.

Theodore F. Adams, III, Esquire
Howard P. Smith, Esquire
Page Two
May 27, 1999

Smith filed his original motion for judgment against Aldrich on April 7, 1997, in the Circuit Court of Gloucester County and served both Aldrich and Erie. Kevin V. Logan (Logan) of the law firm of Sinnott, Nuckols & Logan, P. C., represented Erie. On April 16, 1997, Logan filed a request for a subpoena duces tecum to Media General requesting information regarding insurance policies, employment records, etc., relating to Aldrich, and incorporated the quoted passage from Cooper's September 16, 1996, letter. It was properly served on April 28, 1997.

Smith filed an amended motion for judgment on August 4, 1997, adding Media General as a party defendant. Service upon Media General was properly obtained on August 14, 1997. George L. Mahoney (Mahoney), General Counsel, Secretary and Registered Agent of Media General, who received, reviewed and distributed for action suits filed against Media General and its subsidiaries, acknowledges receiving the pleadings and by cover memo purported to send them along to Cooper for distribution. Cooper did not receive the documents from Mahoney. The suit papers were misplaced and have not been located, although the files were stored on computer. Media General filed no responsive pleadings.

During litigation, Logan sent a letter dated January 9, 1998, to Stephen M. Smith of Joseph Smith, Ltd., enclosing a notice to take the plaintiff's deposition; a copy of the letter was sent to Mahoney. By letter to the clerk dated January 13, 1998, Stephen M. Smith filed a motion for default judgment against Aldrich and Media General, and sent a copy to Logan and Mahoney. On February 4, 1998, Logan sent a letter to Howard P. Smith enclosing a notice to take the depositions of the plaintiff and Aldrich and he sent a copy of the letter to Mahoney. He also certified on the notice that he sent a copy of it to Mahoney.

On March 13, 1998, Howard P. Smith, gave notice by regular mail to Mahoney, as registered agent for Media General, of a hearing scheduled for March 24, 1998, on a motion for default judgment. Mahoney denies that he received it. No response was made. Default judgment was granted by the Court at the hearing without appearance by Media General, and was memorialized by order entered July 13, 1998, nunc pro tunc March 24, 1998. At a subsequent hearing on July 28, 1998, the Court granted judgment in the sum of \$405,246.50, with interest from July 1, 1996, by order entered July 31, 1998. By letter dated September 4, 1998, Howard P. Smith informed J. Stewart Bryan, President of Media General, about the judgment but received no immediate response. The initiation of garnishment proceedings did elicit a response, culminating in this action filed October 13, 1998.

Of additional relevance is that a copy of the April 12, 1996, claim letter was sent by inter-office memo to Mahoney and that Mahoney and Cooper were each sent a copy of a letter dated April 30, 1997, from Frank A. McDonald, Jr., a Vice President of Richmond Newspapers, Inc., to outside counsel regarding the subpoena duces tecum Logan had requested. Mahoney has no specific recollection of receiving such correspondence, nor the letters or notices filed by Logan. He further testified that he did not receive Stephen M. Smith's letter enclosing the motion for default judgment (nor presumably a copy of the motion filed). By affidavit, Cooper noted

Theodore F. Adams, III, Esquire
Howard P. Smith, Esquire
Page Three
May 27, 1999

that he had in his files copies of the April 12, 1996, September 16, 1996, and April 30, 1997, correspondence.

The Richmond Times Dispatch is published by Richmond Newspapers, Inc., (RNI) a Virginia corporation wholly owned by Media General. The companies share some board members and officers and some corporate duties or activities are shared. Mahoney, for example, is Secretary of Richmond Newspapers, Inc. Media General argues that Aldrich was an independent contractor with Richmond Newspapers, Inc., according to their agreement proffered to the Court, and had no connection with Media General. Under these and other circumstances in ascertaining Aldrich's employer, if there was one, it was not unreasonable for Mr. Smith to assume that Media General was a proper party defendant.

Media General argues that it would be unconscionable to let the default judgment stand, because Media General's failure to respond was an excusable mistake, and a full hearing on the merits would reveal that it has no liability for Aldrich's negligence because he was an independent contractor. The parties agree that Media General has no adequate remedy at law.

Section 8.01-428(D) of the Code of Virginia (1950), as amended, states:

This section does not limit the power of the Court to entertain at any time an independent action to relieve a party from any judgment or proceeding, or to grant relief to a defendant not served with process as provided in Section 8.01-322, or to set aside a judgment or decree for fraud upon the court.

The Virginia Supreme Court has stated that paragraph D (then paragraph C) must be given a narrow construction because "judicial proceedings must have a certainty of result, and a high degree of finality must attach to judgments." Charles v. Precision Tune, Inc., 243 Va. 313, 317 (1992); Byrum v. Lowe & Gordon, Ltd., 225 Va. 362, 365 cert. denied, 464 U.S. 961 (1983); Basile v. American Filter Service, Inc., 231 Va. 34, 37 (1986). The language "does not create any new rights or remedies, but merely preserves a court's inherent equity power to entertain an independent action". Charles v. Precision Tune, Inc., 243 Va. at 317 (other citations omitted).

As stated in Charles v. Precision Tune, Inc.:

The elements of this independent action are: (1) a judgment which ought not, in equity and good conscience, to be enforced; (2) a good defense to the alleged cause of action on which the judgment is founded; (3) fraud, accident, or mistake which prevented the defendant in the judgment from obtaining the benefit of his defense; (4) the absence of fault or negligence on the part of the defendant; and (5) the absence of any adequate remedy at law.

243 Va. at 317-318, citing National Surety Co. of New York v. State Bank of Humboldt, 120 F. 593, 599 (8th Cir. 1903). Relief may be obtained in this action only

Theodore F. Adams, III, Esquire
Howard P. Smith, Esquire
Page Four
May 27, 1999

by proving all of the necessary elements. *Id.* By this strict standard, Media General was not free from fault or negligence. Media General did not respond to pleadings admittedly served on it, nor did it respond to notices given by Smith's attorneys. Nothing Smith or his attorneys did prevented Media General from asserting a defense, nor was the cause of its own misfortune beyond its control.

3rd
factor

Media General invites the Court to review Media General's fault or negligence by the more liberal or flexible standard of "excusable neglect" found in Rule 60(b) of the Federal Rules of Civil Procedure (FRCP) and in other federal rules and statutes, a standard which many states have adopted. Federal Rule 60(b)(1), *inter alia*, permits courts to reopen judgments for reasons of "mistake, inadvertence, surprise, or excusable neglect". A motion filed pursuant to Rule 60(b) constitutes a separate proceeding from the independent equity action recognized in Section 8.01-428(D). See Bankers Mortgage Company v. United States, 423 F.2d 73 (5th Cir. 1970). Some courts have construed the fault element of an independent action in terms of the excusable neglect standard where the jurisdiction has adopted a counterpart to FRCP 60(b). See e.g., Dudley v. Keller, 521 P.2d. 175 (Colo. App. 1974). Neither by statute nor case law has Virginia expressly adopted the excusable neglect standard of review. The Virginia Supreme Court recognized in Charles v. Precision Tune, Inc., *supra*, that National Surety Co. of New York v. State Bank of Humboldt, *supra*, predated the FRCP, yet chose to approve its description of the elements of an independent action without expressly defining or recognizing excusable neglect as a basis upon which to grant equitable relief. Media General argues that the court should do so in this case.

Even if the excusable neglect standard obtained, however, Media General is not entitled to the relief it seeks. The United States Supreme Court in Pioneer Investment Services Company v. Brunswick Associates Limited Partnership, 507 U.S. 380 (1993), dealing with a bankruptcy matter construed excusable neglect in various contexts, including FRCP 60(b)(1). The Court defined neglect as encompassing negligence that does not include failure due to circumstances beyond one's control. Therefore, excusable neglect contemplates granting relief to one who is not free from fault or negligence. The Court held that once the neglect is established, it must then be determined whether it is excusable by considering all relevant circumstances surrounding the party's negligence. These include the dangers of prejudice to the other party, the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith. 507 U.S. at 395. Normally, the failure to file pleadings within a prescribed time period is not excusable neglect. Canfield v. Van Atta Buick/GMC Truck, Inc., 127 F. 3rd 248 (2nd Cir. 1997).

Media General's failure to file responsive pleadings was due to its own carelessness, i.e., negligence. Though Media General touts its own procedure for handling claims, what happened here illustrates the weakness of its system: there was no check or "tickler" to determine whether a document sent through the corporate pipeline reached its intended destination, much less generated a response.

Theodore F. Adams, III, Esquire
Howard P. Smith, Esquire
Page Five
May 27, 1999

The error is particularly egregious because Media General and its subsidiaries regularly receive numerous adverse claims. Media General spends much effort separating its corporate existence from Mahoney, its "attorney", arguing and citing authority for the notion that the negligence of chosen counsel should not inure to the detriment of the client. (The Pioneer court expressly discounts the distinction.) Even if otherwise valid, the argument does not apply here. Mahoney is an officer and employee of Media General and although he is an attorney, he was not Media General's litigation attorney. Despite Media General's efforts to call it so, this case is not an "attorney neglect" case in the usual sense. The negligence is Media General's.

The cases cited by the plaintiff apply the excusable neglect standard, but none is dispositive of this case. Many of the cases involve an appellate court's review of the trial court's action according to an abuse of discretion standard. Most deal with a state law that expressly allowed setting aside a judgment upon excusable neglect grounds, e.g. Gartland v. Geisler, 604 P.2d. 1238 (Nev. 1964). Likewise, almost all involve an error by outside counsel, rather than by a party, e.g., Dudley v. Keller, supra. In some cases, the party which obtained the default judgment either intentionally or in some other manner contributed to the defaulting party's negligence or mistake, e.g., Westring v. Cheyenne National Bank, 393 P.2d. 119 (Wyo. 1964); Florida Inv. Enter., Inc. v. Kentucky Co., 160 So. 2d. 733 (Fla. App. 1964). Generally, the default judgment was entered only a matter of days or weeks after initial pleadings were due, e.g., Becker v. Pescaglia, 320 N.E. 2d. 615 (Ill. App. 1974) (one day) and the defaulting party took prompt action to correct the error, e.g., Partrade, Inc. v. Marchiano, 566 So.2d 588 (Fla. Dist. Ct. App. 1990).

Media General's neglect in this case is not excusable, even assuming that it has a meritorious defense. Media General made no response to pleadings it admittedly received. Although receipt was either denied or not recalled, numerous cues to action were given to Media General by letter or notices, not only by Smith's counsel, but (of special note) also by Erie's counsel and by officers or employees of Richmond Newspapers, Inc. or the newspaper staff. The failure of its inter-office routing system was entirely within its own control. Media General's failure to plead was not the product of fraud, accident or mistake induced or set in motion by Smith or by his attorneys or otherwise occurring in the absence of Media General's fault. Moreover, Smith did not rush to obtain a default judgment: Media General was in default in early September, 1997, and the default judgment was not granted until March, 1998. Indeed, ultimately Media General did not respond to the claim until about 14 months after the papers were served.

Under these circumstances, the adverse impact on judicial proceedings, the degree of Media General's negligence, and its sole responsibility for the delay, preclude relief to Media General.

Finally, Media General argues that it was an improper party. The evidence clearly suggests such a degree of interchange between Media General, RNI and the Richmond Times-Dispatch, that Media General is a proper defendant (Charles v.

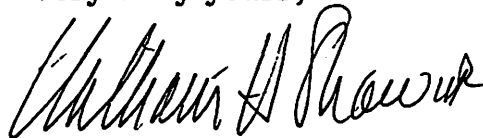
Theodore F. Adams, III, Esquire
Howard P. Smith, Esquire
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Precision Tune, Inc.), at least to the point that permitting the judgment to stand does not shock the conscience of the court because of the failure to join Richmond Newspapers, Inc. as a party defendant. If, at this late date, Media General were allowed to pursue the defense that Media General was an improper party, and prevail, arguably Smith might be barred by the statute of limitations from seeking relief from Richmond Newspapers, Inc., a circumstance obviously prejudicial to Smith.

Media General's request for relief is denied.

Mr. Smith shall prepare the order incorporating this ruling.

Very truly yours,

A handwritten signature in black ink, appearing to read "William H. Shaw, III". The signature is fluid and cursive, with the first name "William" being the most prominent.

William H. Shaw, III
Judge

WHS/III/ljm

VIRGINIA: IN THE CIRCUIT COURT FOR THE COUNTY OF GLOUCESTER
MEDIA GENERAL INC.

Complainant,

v.

Chancery No. 98-304

WILLIAM F. SMITH

Respondent.

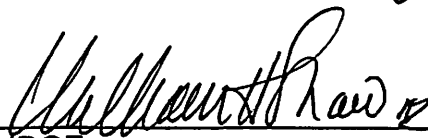
FINAL DECREE

THIS CAUSE came to be heard upon the Bill of Complaint filed herein, Answer and Grounds of Defense and upon evidence adduced at the hearing which was held on December 9, 1998, and upon briefs and arguments submitted by counsel.

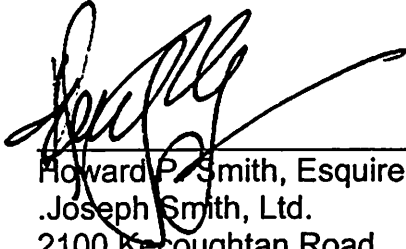
UPON CONSIDERATION whereof and for good cause shown, it is ADJUDGED, ORDERED AND DECREED that the relief sought by the complainant herein be denied and the Bill of Complaint be and hereby is dismissed.

The letter opinion of the Hon. William H. Shaw, III, Judge of the Circuit Court for the County of Gloucester under date of May 27, 1999, sets forth the opinion of the Court and it is incorporated herein.

Enter this 11th day of August, 1999

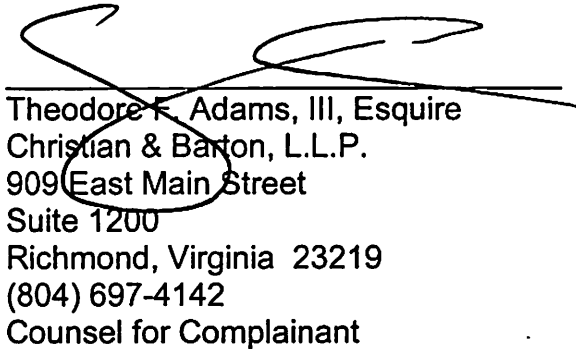

JUDGE

I ask this:



Howard P. Smith, Esquire
Joseph Smith, Ltd.
2100 Kecoughtan Road
Hampton, Virginia 23661
(804) 244-7000
Counsel for Respondent

Seen and objected to for the reasons set forth in the Bill of Complaint and briefs submitted by the complainant and on the grounds that the Court's factual findings were erroneous and its conclusions of law incorrect, including its finding that complainant was negligent and its conclusions as to the applicable legal standard.



Theodore F. Adams, III, Esquire
Christian & Barton, L.L.P.
909 East Main Street
Suite 1200
Richmond, Virginia 23219
(804) 697-4142
Counsel for Complainant

ASSIGNMENTS OF ERROR

1. The trial court erred in finding that Media General was not free from fault or negligence, and that any neglect was not excusable, where Media General, pursuant to its system of accepting documents served on it and routing them to the appropriate person for handling, had properly responded to a subpoena served on it earlier in the Underlying Action and properly received and directed the Amended Motion for Judgment to the appropriate person for handling.

2. The trial court erred in finding that Media General was not free from fault or negligence, and that any neglect was not excusable, based on the fact that Media General's system of accepting documents served on it and routing them to the appropriate person for handling did not have a "tickler," where the system had worked well in the past without a "tickler" and where there was no testimony that would support a conclusion that a "tickler" was necessary.

3. The trial court erred in concluding that Media General was a proper defendant in the Underlying Action where Aldrich was not a Media General employee, but rather an independent contractor of one of Media General's subsidiary corporations.

4. The trial court erred in finding that the \$400,000 plus default judgment against Media General did not shock the conscience where Media General could not have been held liable for the alleged obligations of its corporate subsidiary, and its corporate subsidiary could not have been held liable for the negligence of its independent contractor.

5. The trial court erred in refusing to adopt the excusable neglect standard as an alternative standard for review of negligence under Va. Code § 8.01-428(D), a more

modern standard that has supplanted the “fault or negligence” standard both in federal courts and in the courts of many states throughout the country.

6. The trial court erred in finding that any neglect of Media General was not excusable based on the fact that Media General’s Bill of Complaint was filed 14 months after service of the Amended Motion for Judgment, where Aldrich filed for bankruptcy after Media General had been served, and Media General first learned of the default judgment in September of 1998 and filed its Bill of Complaint seeking relief in October of 1998.

7. The trial court erred in finding that any neglect of Media General was not excusable based on its conclusion that Smith would be prejudiced if the default judgment were set aside because of a possible limitations defense by its corporate subsidiary, where that same defense would have been present had Media General responded to the Amended Motion for Judgment, and Smith would still have the same argument under Va. Code § 8.01-6 to combat such a defense.

8. The trial court erred in refusing to admit evidence that Media General’s system for accepting documents served on it and routing them to the appropriate person had not resulted in any other default because the system’s track record was relevant not only to show that it had worked, and therefore Media General was not negligent in relying on it, but also to refute the trial court’s notion that a “tickler” was necessary.

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