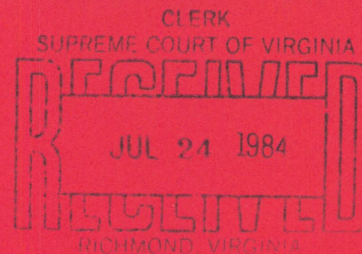


232 Va 441



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IN THE

**Supreme Court of Virginia**

AT RICHMOND

RECORD NO. 831562

GERALD M. MOORE and  
GERALD M. MOORE & SON, INC.,

Appellants,

v.

CHARLES A. FINNEY,

Appellee.

APPENDIX

Daniel Hartnett, Esquire  
AYRES, HARTNETT & CUSTIS  
Court Green  
Accomac, VA 23301

Counsel for Appellants

Herman T. Benn, Esquire  
523 West Washington Street  
P. O. Box 846  
Suffolk, VA 23434

Counsel for Appellee



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VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF NORTHAMPTON

Charles A. Finney,

Plaintiff

v.

Gerald M. Moore  
P. O. Box 227  
Exmore, Virginia 23350

and

Gerald M. Moore and Son, Inc.  
P. O. Box 227  
Exmore, Virginia 23350

Serve:

Gerald M. Moore, Registered Agent  
for Gerald M. Moore and Son, Inc.  
P. O. Box 227  
Exmore, Virginia 23350

Defendants

### MOTION FOR JUDGMENT

Comes now the plaintiff, Charles A. Finney, and moves for judgment against defendants, Gerald M. Moore and Gerald M. Moore and Son, Inc., jointly and severally, on the grounds and in the amount as hereinafter set forth

Count I

1. On or about the 22nd day of May, 1982, between 8 and 9 o'clock A. plaintiff was employed by Moore's Trucking, Inc. at Exmore, Virginia, and was lawfully on the premises of said trucking corporation, standing behind a truck-tractor owned by the said Moore's Trucking, Inc. which is owned and operated by William M. Moore, in the process of repairing same at the request of an agent of Moore's Trucking, Inc., one Kenny Norton, who is employed by Moore's Trucking, Inc. as dispatcher and supervisor.

2. At the same time, date and place, defendant, Gerald M. Moore, was operating a truck on said premises at Exmore, Virginia.

3. Defendant, Gerald M. Moore was an employee and agent of defendant, Gerald M. Moore and Son, Inc. and at the time and place, aforesaid defendant, Gerald M. Moore was acting within the scope of said employment.

4. At said time and place, it was the duty of defendant, Gerald M. Moore to operate the said truck free from negligence and with due regard for the safety of other persons.

5. Notwithstanding said duties, defendant, Gerald M. Moore did then and there so recklessly, carelessly and negligently operate his said vehicle so that it crushed plaintiff when it was backed against him as he stood at the rear of the said truck-tractor, repairing same, and crushed the plaintiff between the two vehicles. The Collision was proximately due to said defendant, Moore's violation of his duties as aforesaid. He was negligent in that he:

(1) failed to keep a proper lookout

(2) failed to give full time and attention to the operation of the said vehicle he was operating;

(3) operated his vehicle in a reckless manner.

6. As a result of the said collision, plaintiff received severe and violent injuries.

## Count II

1. On the 22nd day of May, 1982, between 8 and 9 A. M. , plaintiff was lawfully on premises in Exmore, Virginia shared by defendant, Gerald M. Moore and Son, Inc. and Moore's Trucking, Inc. , performing mechanical work on a truck-tractor owned by said Moore's Trucking, Inc.

2. At said time, date and place, defendant, Gerald M. Moore approached plaintiff and indicated that he wanted to employ plaintiff to do some mechanical work on a station wagon for him.

3. Plaintiff advised said defendant, Moore that he was employed by Moore's Trucking, Inc. and that he would not have time to do any repair work on the station wagon that day.

4. Immediately after said defendant was advised as aforesaid, by the plaintiff, he started a truck which was parked near where the plaintiff was located and as plaintiff was standing at the rear of said truck-tractor in the process of repairing same, defendant, Gerald M. Moore, intentionally assault the plaintiff by means of wantonly, willfully and deliberately backing said truck against plaintiff crushing him between the two said vehicles.

5. Said truck being operated by said defendant, Moore, who was an employee of defendant, Gerald M. Moore and Son, Inc. and at the time and place aforesaid defendant, Gerald M. Moore, was acting within the scope of said employment.

6. At said time and place, it was the duty of defendant, Moore, to operate said truck free of negligence, but instead, he operated same wantonly and willfully crushed plaintiff.

7. As a direct and proximate result of the above stated acts, plaintiff was caused to sustain serious and permanent injuries; has been prevented from transacting his business; has suffered and will continue to suffer great pain of body and mind; has sustained permanent disability, deformity and loss of earning capacity; and has incurred and will incur in the future, hospital, doctors' and related bills in an effort to be cured of said injuries.

Wherefore, plaintiff requests judgment against the defendants, Gerald M. Moore and Son, Inc. and Gerald M. Moore, jointly and severally, in the sum of Three Hundred and Fifty Thousand Dollars (\$350,000.00) and his costs in this behalf expended.

Charles A. Finney

By Herman T. Benn  
Of Counsel

Herman T. Benn  
Benn & Ferguson  
Attorneys At Law  
National Bank Building, Suite 502  
Suffolk, Virginia 23434

Filed in the Clerk's Office on the 14 day of December 1922

*Sherriff*  
Writ Tax \$ 25.00  
Deposit 4.00  
Total Paid \$ 30.00

*Chas E. Mills*; Clerk  
D. C.

LENN & FERGUSON  
ATTORNEYS AT LAW  
UFFOLK, VIRGINIA  
23434

Virginia:

In the Circuit Court for the County of Northampton

Charles A. Finney,

Plaintiff

v.

Gerald M. Moore et al,

Defendants

JOINT ANSWER AND GROUNDS OF DEFENSE

Now come the defendants, Gerald M. Moore and Gerald M. Moore and Son, Inc., by their attorneys, Ayres, Hartnett & Custis, and for their joint answer and grounds of defense to the motion for judgment herein filed say: .

Count I

1. That the undersigned deny that the plaintiff was employed by Moore's Trucking, Inc. at the time and place alleged in paragraph numbered 1 of Count I and further deny he was carrying out any repairs at the request of Moore's Trucking, Inc. and/or its agent as further alleged in said paragraph numbered 1.

2. That they admit the matters alleged in paragraph numbered 2 of Count I.

3. That they admit the matters alleged in paragraph numbered 3 of Count I.

4. That they admit the matters alleged in paragraph numbered 4 of Count I, but here state that the said Gerald M. Moore was guilty of no breach of such duty.

5. That they deny each and every allegation contained in paragraph numbered 5 of Count I.

6. That they deny that the plaintiff was injured in the manner and to the extent alleged in paragraph numbered 6 of Count I but here state that even if the plaintiff was so injured no part thereof was due to the negligence of these defendants.

7. That they deny each and every allegation of fact in said Count I charging them with negligence.

8. That they deny each and every allegation of negligence charged against them in said Count I.

9. That they deny that the plaintiff is entitled to recover any sum of money from them.

10. Such other defenses as may be assigned or that might arise either before or during the trial of this cause.

#### PLEA OF CONTRIBUTORY NEGLIGENCE

Specifically denying negligence on their part, the defendants nevertheless will rely upon the contributory negligence of the plaintiff, should it be necessary to do so.

#### Count II

1. That the undersigned admit that the plaintiff was on the premises shared by Gerald M. Moore and Son, Inc. and Moore's Trucking, Inc., as alleged in paragraph numbered 1 of Count II, but deny he was properly or lawfully performing any mechanical work as further alleged in said paragraph numbered 1.

2. That they deny each and every allegation contained in paragraph numbered 2 of Count II.

3. That they deny the matters alleged in paragraph numbered 3 of Count II.



4. That they deny each and every allegation contained in paragraph numbered 4 of Count II.

5. That they admit the matters alleged in paragraph numbered 5 of Count II.

6. The undersigned admit that the defendant, Moore, had the duty to operate the said truck free from negligence as alleged in paragraph numbered 6 of Count II but denies each and every other allegation contained in said paragraph numbered 6.

7. The undersigned deny that the plaintiff was injured and damaged and suffered in the manner and to the extent alleged in paragraph numbered 7 of Count II but here state that even if the plaintiff was so injured and damaged and did so suffer no part thereof was due to the negligence of these defendants.

8. That they deny that the plaintiff is entitled to recover any sum of money from them.

9. Such other defenses as may be assigned or that might arise either before or during the trial of this cause.

GERALD M. MOORE AND GERALD M.  
MOORE AND SON, INC.

By Counsel

AYRES, HARTNETT & CUSTIS

By 

Court Green  
Accomac, VA 23301

COUNSEL

CERTIFICATE

This is to certify that on the 17th day of January, 1982,  
I mailed a true copy of the foregoing Joint Answer and Grounds

AYRES & HARTNETT  
& CUSTIS  
ATTORNEYS AT LAW

of Defense and Plea of Contributory Negligence to Herman T.  
Benn, Esquire, National Bank Building, Suite 502, Suffolk,  
Virginia 23434, counsel of record for the plaintiff.

Richard M. Smith  
Of Counsel

FILED

Jan. 15 A. D. 1983

TESTE:

W. D. T. G. C. C.

IES & HARTNETT  
& CUSTIS  
TORNEYS AT LAW  
ACCOMAC, VA.

Virginia:

In the Circuit Court for the County of Northampton

Charles A. Finney,

Plaintiff

v.

Gerald M. Moore et al,

Defendants

SPECIAL PLEA

Now come the defendants, Gerald M. Moore and Gerald M. Moore and Son, Inc., by their attorneys, Ayres, Hartnett & Custis, and file their Special Plea to the motion for judgment herein filed and for such Special Plea say:

1. That the plaintiff's motion for judgment alleges in both counts that the plaintiff was acting within the scope of his employment at the time of the accident and injuries complained of and that such injury arose out of such employment.

2. That both counts of the motion for judgment allege that the actor causing the injury was Gerald M. Moore, an agent and employee of the defendant, Gerald M. Moore and Son, Inc., who was also acting within the scope of his employment.

3. That the undersigned here state that the said Charles A. Finney, plaintiff, was at the time of the accident an employee of Gerald M. Moore and Son, Inc. and not Moore's Trucking Inc. as alleged in counts I and II of the motion for judgment.

4. That because of the foregoing recovery under the Virginia Workmen's Compensation Act is the exclusive remedy for the plaintiff herein and the cause of action alleged in counts I and II

of the motion for judgment herein filed should be dismissed for lack of jurisdiction.

WHEREFORE, the undersigned demand that the motion for judgment herein filed against them be dismissed.

GERALD M. MOORE AND GERALD M.  
MOORE AND SON, INC.

By Counsel

AYRES, HARTNETT & CUSTIS

By *Daniel H. Smith*

Court Green  
Accomac, VA 23301

COUNSEL

CERTIFICATE

This is to certify that on the 17th day of January, 1982, I mailed a true copy of the foregoing Special Plea to Herman T. Benn, Esquire, National Bank Building, Suite 502, Suffolk, Virginia 23434, counsel of record for the plaintiff.

*Daniel H. Smith*  
Of Counsel

FILED Jan. 18 A. D. 1982  
TESTE: *Chris. H. Smith* C. C.

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF NORTHAMPTON

CHARLES A. FINNEY,

Plaintiff

v.

GERALD M. MOORE

and

GERALD M. MOORE and SON, INC.,

Defendant's

MOTION FOR LEAVE TO AMEND  
MOTION FOR JUDGEMENT

Comes now, the plaintiff, Charles A. Finney, by counsel, and moved for leave to amend his motion for judgement previously filed herein, as follows:

Paragraph six of count one is to be amended to read as follows; As a direct and proximate result of defendant's negligent and careless acts as aforesaid, plaintiff has been caused and will in the future continue to suffer great physical pain and mental anguish; has been permanently disabled, has been and will in the future be prevented from transacting his business and has incurred and will continue to incur medical expenses in an effort to be cured of his condition.

Charles A. Finney

By Herminia B.  
Of Counsel



Herman T. Benn P. Q.  
Herman T. Benn  
Benn & Ferguson  
502 National Bank Building  
Suffolk, Virginia 23434

Certificate

I certify that a copy of this motion for leave to amend was mailed to  
Daniel Hartnette, Esquire, at P. O. Box 216, Accomac, Virginia, 23301,  
counsel of record for defendant's, on the 24th day of February, 1983.

FILED Mar. 3 A. D. 1983 Herman T. Benn  
TESTE: Chas. S. Kibb C. C.

BENN & FERGUSON  
ATTORNEYS AT LAW  
SUFFOLK, VIRGINIA  
23434

VIRGINIA:

In the Circuit Court of the County of Northampton, on Tuesday, the 22nd day of March, in the year of our Lord, One Thousand Nine Hundred and Eighty-three (1983).

Present: The Honorable N. Wescott Jacob, Judge.

CHARLES A. FINNEY,

Plaintiff

v.

GERALD M. MOORE

and

GERALD M. MOORE and SON, INC.,

Defendant

#### ORDER

This day came the plaintiff, by counsel, and moved for leave to amend his motion for judgement, a copy of said motion having been delivered to counsel of record for defendant's and he having interposed no objection thereto.

UPON CONSIDERATION WHEREOF, the court being of the opinion that substantial justice would be promoted by allowing such an amendment, it is,

ORDERED, the plaintiff's motion for judgement be and it is hereby amended so that paragraph six of count one will read as follows: As a direct and proximate result of defendant's negligent and careless acts as aforesaid, plaintiff has been caused and will in the future continue to suffer great physical pain and mental anguish; has been permanently disabled, has been and will in

the future be prevented from transacting his business and has incurred and will continue to incur medical expenses in an effort to be cured of his condition.

and it is further

ORDERED that a copy of this order be mailed to defendant's counsel and that defendant file such responsive pleadings to the amended motion for judgement as he may be advised on or before the 12th day of April 1983.

ENTERED: March 22, 1983  
N. W. [Signature]  
Judge

I ASK FOR THIS:

Herman T. Benn p. q.  
Herman T. Benn  
502 National Bank Building  
Suffolk, Virginia 23434

SEEN:

Daniel Hartnette p. d.  
Daniel Hartnette, Esquire  
P. O. Box 216  
Accomac, Virginia 23301

A FERGUSON  
ATTORNEYS AT LAW  
SMITH VIRGINIA

*Civil*  
Recorded in Common Law  
Order Book No. 3 p 229  
Northampton County Circuit Court

IN & FERGUSON  
ATTORNEYS AT LAW  
FOLK, VIRGINIA  
23434

1           GERALD M. MOORE, defendant, called as a witness on  
2 behalf of the plaintiff, having been first duly sworn, was  
3 examined and testified as follows:  
4

5                                 DIRECT EXAMINATION  
6

7 BY MR. BENN:

8           Q         Would you state your name, please, sir.

9           A         Gerald M. Moore.

10          Q         What is your address?

11          A         Exmore, Virginia..

12          Q         How old are you?

13          A         Seventy-two.

14          Q         Are you engaged in any business and, if so,  
15 what's the name of the business?

16          A         Gerald M. Moore and Son, Exmore, Virginia.

17          Q         Is that a corporation?

18          A         It is.

19          Q         A Virginia corporation; is that right?

20          A         That's right.

21          Q         Who is the president of that?

22          A         I am.

23          Q         What kind of work does this company engage in?

24          A         Road building, home driveways, hauling fill.

25          Q         Do you have -- does the company own some



1 trucks?

2 A Seven dump trucks.

3 Q What?

4 THE COURT: Seven what?

5 THE WITNESS: Seven dump trucks. I believe  
6 it's six or seven.

7  
8 BY MR. BENN:

9 Q What ton are they?

10 A They are ton and a half to two ton.

11 Q I see. Are you employed by this company --  
12 corporation? You work for the company; is that right?

13 A That's right. I'm retired.

14 Q Do you have employees and, if so, about how  
15 many?

16 A Three to five to seven.

17 Q Did you have that many on May 22, 1982?

18 A No, sir.

19 Q How many did you have at that time?

20 A Just me. This is Saturday morning.

21 Q No, I'm not talking about that particular  
22 Saturday morning. I mean how many employees did you have?  
23 I'm not talking about those who might be -- that was present  
24 on that day, but how many employees do you have -- did you  
25 have at that time?

1           A        You would have to look in the record to find  
2 out that.

3           Q        Did you have more than two?

4           A        Working, you mean?

5           Q        No, not working, but on your payroll?

6           A        Yes, sir.

7           Q        Do you know how many more that you had?

8           A        Well, Saturdays we don't work at all.

9           Q        I'm not talking about Saturdays. I mean  
10 generally.

11          A        Three to five to seven. It varies.

12          Q        What are the jobs of these employees?

13          A        Driving the trucks.

14          Q        And you said your business was located at  
15 Exmore; is that right?

16          A        Well, that's mailing address.

17          Q        How long have you been in that particular  
18 business and at that location?

19          A        Fifteen years all told.

20          Q        Did Charles A. Finney, the plaintiff here,  
21 work for your corporation, Gerald M. Moore and Son?

22          A        Yes, sir.

23          Q        Do you recall approximately when he first was  
24 employed?

25          A        No, not the date.

1 Q But, I mean, how many months before May 22nd  
2 when the accident happened had he been employed approximately?

3 A Two and a half, three, roughly.

4 Q And what was his job?

5 A He was a mechanic.

6 Q Is there another business operating in the same  
7 area where your company is located?

8 A Moore's Trucking.

9 Q And who is the president of that company?

10 A William Moore.

11 Q And what relation is William Moore to you?

12 A Son.

13 Q So you are president of Gerald M. Moore and Son  
14 and Mr. William Moore, your son, is president of Moore's  
15 Trucking Company; is that right?

16 A Correct.

17 Q Does Moore's Trucking Company, is that a  
18 corporation, too?

19 A Yes, sir.

20 Q What kind of work does that company do?

21 A Long-distance hauling.

22 Q Does that company own trucks also? Does  
23 Moore's Trucking Company own trucks?

24 A Yes, sir.

25 Q And where are they parked?

1 A Over on a separate section of the yard.

2 Q And did both corporations use the same area for  
3 parking and working on the trucks?

4 A No, they are supposed to stay over to the side  
5 where the shop is.

6 Q But both of them are in the same area, aren't  
7 they?

8 A Well, across -- we have maybe a sixty-foot  
9 road there. They are across the road from there.

10 Q And sometimes some of your employees work for  
11 Moore's Trucking Company; is that right?

12 A Once in a great while.

13 Q And don't they -- as a mechanic, did not  
14 Mr. Finney also repair some trucks for Moore's Trucking  
15 Company?

16 A Yes. If they broke down, he repaired them.

17 Q All right. Now, when your employees worked  
18 for Moore's Trucking Company, who tells them what to do?

19 MR. HARTNETT: Wait a minute, Your Honor please.

20 He didn't say that. He said they did work for  
21 Moore's Trucking Company, not that were employed by  
22 Moore's Trucking Company. I don't want the issue to  
23 be decided by Mr. Benn putting words in this witness's  
24 mouth. I realize he's an adverse witness.

25 THE COURT: He's an adverse witness. The

1 question was who directs him what to do.

2 MR. BENN: That's right.

3 THE COURT: I think it's a proper question.

4  
5 BY MR. BENN:

6 Q When Mr. Finney is working repairing trucks  
7 for Moore's Trucking Company, who tells him what to do?

8 A Well, the truck comes in there and whatever is  
9 wrong the mechanic -- if he's on the job -- the mechanic is  
10 supposed to fix it.

11 Q All right. Now, as president of Moore's --  
12 Gerald M. Moore and Sons, you don't tell him what to do when  
13 he's working for Moore's Trucking Company, do you?

14 A If necessary. If there is nobody there and  
15 something needs being doing.

16 Q I'm talking about when he's doing repair work  
17 for Moore's Trucking Company, who tells him what truck to  
18 work on?

19 A Now, we have a shop foreman. I don't know.

20 Q Do you recall his name?

21 A Delton Locklear.

22 THE COURT: What was the name?

23 THE WITNESS: Delton Locklear.

24 MR. HARTNETT: I think he's answered the  
25 question. What is the situation now?



1 THE COURT: Mr. Locklear was not with you at  
2 the time of this accident?

3 THE WITNESS: No.

4  
5 BY MR. BENN:

6 Q Do you know a person by the name of  
7 Mr. Northam -- Kenneth Northam?

8 A He's truck dispatcher.

9 Q Right, and for whom did he dispatch trucks?  
10 Who did he work for?

11 A He worked for Moore's Trucking.

12 Q All right. When he was there, was he there in  
13 May 22, 1982? He was working there then?

14 A Is that the morning he was hurt?

15 Q When he was there, he was the one that told the  
16 mechanics what to do; is that right?

17 A I don't know. I don't know anything about that  
18 part.

19 Q Anyway, you did not tell them what to do?

20 A No, sir.

21 Q Do your employees usually work on Saturdays?

22 A No, sir.

23 Q On May 22nd, had you told anybody to come to  
24 work besides yourself?

25 A No, sir.

1 Q Did you see the plaintiff, Charles A. Finney, on  
2 Saturday, May 22, 1982?

3 A Positively no.

4 Q You didn't see him?

5 A No.

6 Q Did you see him at all that morning?

7 A After I bumped into him, yes.

8 Q Tell us about how you bumped into him.

9 A He had moved a truck or the truck was blocking  
10 the entrance. When I backed up, I couldn't see him. He  
11 wasn't in my mirror. I backed -- I was gassing the truck up  
12 and circled around and backed up and when I hit something,  
13 she choked off. I jumped out of the truck and run back to  
14 see what was wrong.

15 MR. BENN: Your Honor, I would like to have  
16 this document marked for identification purposes,  
17 Plaintiff's Exhibit Number 1.

18 THE COURT: All right. Plaintiff's Exhibit 1.

19  
20 BY MR. BENN:

21 Q I show you what has been marked as Plaintiff's  
22 Exhibit 1. Do you recognize what that is?

23 A Yes, sir. That's the old shop.

24 Q And that was there on May 22, 1982?

25 A Yes, sir.

1 MR. BENN: All right, Your Honor. I would like  
2 to have it introduced.

3 THE COURT: You have no objection to this?

4 MR. HARTNETT: No, sir.

5 THE COURT: The picture will be introduced as  
6 Plaintiff's Exhibit 1.

7 (Marked in evidence by the Court as Plaintiff's  
8 Exhibit Number 1.)

9 MR. BENN: I would like to pass it around to  
10 the jury.

11  
12 BY MR. BENN:

13 Q In backing up, did you look before you backed  
14 your truck?

15 A Always look.

16 Q Did you see the truck behind you?

17 A No, sir.

18 Q Was there anything keeping you from seeing the  
19 truck behind you?

20 A I was backing out backing around the circle.  
21 He wasn't in my view nowhere.

22 Q Do you have rearview mirrors on your truck?

23 A Yes, sir.

24 Q What was it that kept you from seeing him?

25 A He wasn't in my view.

1 Q Well, if you had looked back there, you would  
2 have seen it, wouldn't you?

3 A (No response)

4 Q Mr. Moore, if you had looked back, you could  
5 have seen the truck behind which Mr. Finney was standing,  
6 couldn't you not?

7 A I gassed my truck up, and started backing. When  
8 I looked there wasn't a thing back there. Nothing.

9 Q Was anything between you and the truck to keep  
10 you from seeing him?

11 A No, sir.

12 Q What kind of a truck was it that you backed  
13 into him?

14 A I guess it was a White Freight Lines trailer.  
15 Tractor. Just a tractor.

16 Q Who owned that?

17 A Moore's Trucking.

18 Q How large was it? You said it wasn't anything,  
19 but the truck -- tractor; is that right?

20 A That's right.

21 Q Do you know what ton it was?

22 A Pardon?

23 Q In other words, was it a two-ton or -- do you  
24 have any idea?

25 A I couldn't tell you. It's a large truck. I

1 couldn't tell you what ton it was.

2 Q But it was a large tractor?

3 A Yes. Ten-wheeler.

4 Q You said it was how many wheels?

5 A Large truck.

6 Q But you don't know exactly what tonnage?

7 A No.

8 Q What kind of truck were you operating?

9 A Ford dump truck.

10 Q And what tonnage was that?

11 A Ton and a half to two ton.

12 Q Didn't have any side-view mirrors where you  
13 could look in?

14 A Yes, sir.

15 Q And the truck you were driving at that time  
16 belonged to who?

17 A Gerald M. Moore and Son.

18 Q And that's a corporation, you said?

19 A That's right.

20 Q Are you paid a salary by Gerald M. Moore and Son?  
21 Are you paid a salary by that company?

22 A Say it again.

23 Q Are you paid a salary by Gerald M. Moore and  
24 Son?

25 A Yeah.



1 Q And you were paid a salary at the time of the  
2 accident?

3 A Yes.

4 Q And why did you come in on that Saturday when  
5 you said that most of the time people don't work -- your  
6 employees don't work on Saturday?

7 A I'm the owner. I go up there every Saturday  
8 morning. I'm always around there.

9 Q What were you about to do when you were backing  
10 the truck around?

11 A Get a load of sand.

12 Q Were you angry for any reason at Charles?

13 A Was I what?

14 Q Were you angry for any reason at Mr. Finney  
15 here -- Charles Finney?

16 A Never had an argument or word with him. Didn't  
17 know he was on the yard.

18 Q I see. All right. Now, after you said you  
19 backed up and struck the truck and ran into and crushed  
20 Mr. Finney, what did you do after you did that, after that  
21 happened?

22 A I jumped out and run to see what had happened.  
23 Stopped sudden.

24 Q Did you hear him say anything and, if so, what  
25 did you hear him say?

1           A           I didn't see where he was, but he was running  
2 and I run up alongside of him.

3           Q           Did you hear him say anything?

4           A           Oh, my Lord.

5           Q           I see. Was your truck loaded with anything at  
6 the time?

7           A           No, sir.

8           Q           It wasn't? Now, you say you ran along beside  
9 him after you struck him. What happened after that?

10          A           The lady inside the office and the dispatcher  
11 brought a blanket out there, laid it on the ground and I  
12 steered him over to the blanket. She got a pillow and put  
13 under his head.

14          Q           And what happened after that?

15          A           We called the ambulance.

16          Q           Did you go to see him after he went to the  
17 hospital?

18          A           Several times.

19          Q           Did you have any conversation with him?

20          A           Just hope that he would hurry up and get well.

21          Q           Is that all you said?

22          A           That's all I remember saying.

23          Q           You could have said something else?

24          A           Yes.

25                   MR. BENN: All right. Answer Mr. Hartnett.

1 THE COURT: Do you wish to examine now,  
2 Mr. Hartnett?

3 MR. HARTNETT: Just one or two questions. I  
4 may bring him back later on.  
5

6 CROSS-EXAMINATION  
7

8 BY MR. HARTNETT:

9 Q Mr. Moore, I think you told us that the  
10 plaintiff, Charles Finney, he was employed as a mechanic?

11 A That's right.

12 Q And he was employed as a mechanic for Gerald  
13 M. Moore and Sons?

14 A That's right.

15 Q Now, Gerald M. Moore and Sons, the mechanics  
16 did all the maintenance, didn't they?

17 A That's right.

18 Q Did they do the maintenance for -- did they do  
19 maintenance for Moore's? *Truck &*

20 A Yes.

21 Q Did they do maintenance on anything that came  
22 into that shop?

23 A Yes.

24 Q Was that his job?

25 A Yes, sir.

1 Q So anything that came in he was to do it?

2 A That's right.

3 MR. HARTNETT: That's all.

4 THE COURT: Do you have anything further?

5 MR. BENN: No, sir.

6 THE COURT: You may stand down, Mr. Moore.

7 Thank you, sir.

8 MR. BENN: Mr. Northam.

9 THE COURT: Mr. Northam. You were sworn  
10 earlier. Have a seat right here, please.

11  
12  
13 -----OO-----  
14  
15

16 KENNETH M. NORTHAM, called as a witness on behalf of  
17 the plaintiff, having been first duly sworn, was examined  
18 and testified as follows:

19  
20 DIRECT EXAMINATION

21 BY MR. BENN:

22 Q Would you please state your name.

23 A Kenneth M. Northam.

24 Q What's your present address?  
25

1 A Mappsville, Virginia.

2 Q Were you employed at one time by Moore's  
3 Trucking Company?

4 A Right.

5 Q And were you so employed on May 21, 1982?

6 A I guess that was the date. It was on Saturday.  
7 If that's the time you're talking about.

8 Q You were working for them the day before that  
9 Saturday also, weren't you?

10 A Yes, I work most of the time. Six days a week.

11 Q May 21, 1982?

12 A I was working the day before.

13 Q What capacity were you working for Moore's  
14 Trucking?

15 A I was dispatcher.

16 Q How long had you been so employed?

17 A Since in December the previous year.

18 Q The previous year. I see. So about six months  
19 or something like that?

20 A Roughly.

21 Q And what were your duties?

22 A Well, mainly I dispatched the trucks. Got the  
23 loads for them and they would have to check -- call in with  
24 me so I would know where they were to pick up the return  
25 load and so forth and so on.

1 Q Now, certain times, assuming that something  
2 happened to a truck that needed repair, did you have any  
3 responsibility in that regard?

4 A If it was something minor probably I would,  
5 maybe, but nothing major. I left that up to the boss.

6 Q When you had those minor repairs done for  
7 Moore's Trucking Company did you tell the employees, you know,  
8 what you wanted done?

9 A Sometimes I would and sometimes Mr. Moore would.

10 Q I see.

11 A On minor repairs.

12 Q So part of your duties along with dispatching  
13 the trucks was to keep them running -- in running condition;  
14 is that right?

15 A Well, mainly I would normally tell Mr. William  
16 Moore, you know, what was wrong and most of the time he would  
17 see that it got taken care of or -- most of our work we got  
18 done away from there. Salisbury, in fact.

19 Q So either you or Mr. William Moore who is  
20 part of Moore's Trucking Company would tell the employee what  
21 to do?

22 MR. HARTNETT: Your Honor please, I object to  
23 leading the witness. This man is not an adverse  
24 witness. He's not in the employ of the defendant.  
25 He was at that time, but he's not now and there is not

1 the sufficient interest there to make him adverse. I  
2 object to leading the witness and treating him as  
3 adverse.

4 THE COURT: If he's no longer employed, you  
5 can't treat him as adverse.

6 MR. BENN: I will rephrase the question.

7  
8 BY MR. BENN:

9 Q How would mechanics know what trucks to work  
10 on for Moore's Trucking Company?

11 A How would they know?

12 Q Yeah.

13 A Someone would have to tell them. Sometimes  
14 maybe the driver would even probably if it was a little  
15 something minor.

16 Q Who else would tell him what to do?

17 A Like I say, other than the driver, it would  
18 either be William Moore or myself. Mainly William Moore.

19 Q There were times when you did tell him what to  
20 do?

21 A On minor things. Occasionally. Occasionally.

22 Q All right. Now, calling your attention to  
23 May 21, 1982, that was a Friday, I believe, before the  
24 Saturday of May 22nd. Did you have an occasion to see  
25 Mr. Finney and Mr. Harold Satchell?

1 A Did I have an occasion to?

2 Q Yeah, on that Friday.

3 A I'm quite sure I saw them. I'm quite sure I  
4 saw all the drivers.

5 Q Do you recall having talked with Mr. Finney in  
6 the presence of Harold Satchell -- a person by the name of  
7 Harold Satchell?

8 A The only answer I can give you on that, if I  
9 did on any certain thing, I don't remember it.

10 Q You don't remember?

11 A No, sir, sure don't. I sure don't.

12 Q Were you there on the next morning -- on that  
13 Saturday morning, May 22nd?

14 A Right.

15 Q Where were you? Where were you on the  
16 premises?

17 A You mean when this incident happened?

18 Q Yes.

19 A In the office.

20 Q And where is the office in relationship to --  
21 first of all, do you recognize this picture here?

22 A Sure do. That's their old shop.

23 Q And where is the office in relationship to  
24 that building? About how far, I will put it that way?

25 A I'm not much on distance. I would say probably



1 length and a half maybe of this -- I'm just guessing at this.  
2 Maybe the length and a half of this courtroom from the office  
3 to the shop at that time.

4 Q That's right. Now, where were you -- I didn't  
5 think I got the answer to that. Where were you on that  
6 morning when the accident occurred?

7 A In the office.

8 Q All right, and did you learn about the accident  
9 and, if so, how did you learn about it?

10 A I heard a scream.

11 Q What? Did you come out?

12 A Right away. Uh-huh.

13 Q And what did you see?

14 A Well, Mr. Moore's dump truck was up several  
15 feet. I'm not going to say just how many. I would say maybe  
16 ten or fifteen feet from the other truck and Charles was --  
17 you could tell he was in pain. He was holding himself. I  
18 still didn't know really what had happened, not at that  
19 moment, and Mr. Moore was going towards him and I also went  
20 right on over there and he managed to get out that he had  
21 been hit.

22 Q Did you hear Mr. Finney say anything? Was he  
23 saying anything?

24 A No, he just said he was hurting and he said  
25 that he had been mashed is what he told me.

1 Q All right. Now, would you give us the  
2 description of the two trucks involved. Let's talk -- who  
3 owned the two trucks; do you recall?

4 A Yes, one was owned -- I guess -- I mean I never  
5 saw any titles to them -- I presume the dump truck was owned  
6 by Gerald M. Moore and Son and the other truck was owned by  
7 Moore's Trucking, Incorporated.

8 Q Any names on the side of the truck?

9 A Yes.

10 Q All right. The one that Mr. Moore was  
11 operating, what was the name on the side of that truck?

12 A Gerald M. Moore and Son, Incorporated.

13 Q What about the other truck involved? What was  
14 that?

15 A Moore's Trucking, Incorporated.

16 Q All right. Now, could you describe the two  
17 trucks?

18 A The one that Mr. Moore was driving, Mr. Gerald  
19 Moore, that was just a regular two-axle dump truck and the  
20 other is a three-axle cab-over diesel which pulls your  
21 semitrailers.

22 Q Do you have any idea what tonnage these two  
23 trucks were?

24 A You mean what they weigh?

25 Q No, I mean what they carry, you know, what tons

1 they carry.

2 A Mr. Moore's, really, I'd probably say maybe  
3 seven tons, maybe seven and a half.

4 Q What about the other, Moore's Trucking?

5 A Diesel truck. Well, it would vary. About  
6 forty-four, forty-five payload. Legal.

7 Q The truck that Mr. Moore was driving, was that  
8 loaded with anything?

9 A No.

10 Q It wasn't?

11 A Not to the best of my ability, it wasn't.

12 Q And you say you came out and you saw Mr. Finney  
13 and he said he was in pain. What happened after that?

14 A Well, like I say, he was in a lot of pain and  
15 he was shook up, of course. We all were. So I went in the  
16 office and he started kind of toward the office. I helped  
17 him part of the way. If I remember correctly, Mr. Moore  
18 might have helped him part of the way. Then he laid down.  
19 Kind of laid down on the ground before he got to the office  
20 door and I went inside and we have a sofa in the back room  
21 and got a pillow and blanket and came out and put the pillow  
22 under his head and blanket and I believe it was Mrs. Esposito  
23 that called the ambulance and we stayed right there with him  
24 until the ambulance arrived.

25 Q Do you know where they took him?

1           A           They took him to Nassawadox Hospital. I guess  
2 maybe forty-five minutes after this had happened, the  
3 ambulance carried him. I went down there myself to see if  
4 there was anything I could do. I also went to look for his  
5 wife, you know, to tell her. She was living at Painter at  
6 that time.

7           Q           Are you somewhat familiar with the operation --  
8 are you familiar with the operation of both companies, Gerald  
9 M. Moore and Moore's Trucking Company?

10          A           Well, in what respect?

11          Q           Well, I will ask you this question: Did Gerald  
12 M. Moore and Sons employees usually come to work on  
13 Saturdays? At that time, I mean.

14          A           From time to time they would on occasions.  
15 Normally you wouldn't. Normally you wouldn't.

16          Q           Now, on that particular Saturday, do you know  
17 what Mr. Finney -- he was -- do you know what time he came in?

18          A           I'm not for sure, but I believe it was 7:00. I  
19 believe. I may be wrong in that. 7:00 or 8:00. I'm not  
20 positive, to be honest with you.

21          Q           When did you first see him? Did you see him  
22 before you saw him after he was injured? Did you see him  
23 before that?

24          A           Yeah, I believe I did.

25          Q           Where did you see him when you first saw him?

1           A       Out in the yard. Out in the shop area.  
2           Parking lot.

3           Q       Did he ask you any questions about what he was  
4           supposed to do?

5           A       I don't remember truthfully, no. I really and  
6           truthfully don't. I do know he was doing something minor on  
7           whatever it was.

8           Q       Which truck?

9           A       On Moore's Trucking Company.

10          Q       Moore's Trucking Company truck?

11          A       Like I say, those boys when there was just a  
12          little something minor for to keep us out, they would quit  
13          what they were doing for Gerald Moore and Son and do little  
14          minor things like that. Wasn't no big deal about it.

15          Q       Do you know what he was doing there that  
16          morning if he was not working for Gerald M. Moore and Son?

17          A       I understand somebody said that I told him to  
18          come in. If I did, I sure don't remember it. I'm not  
19          trying to contradict anybody. I'm just giving you an honest  
20          answer.

21          Q       All right. Do you recall whether or not you  
22          gave Charles any instruction that morning as to anything to  
23          do?

24          A       No, I don't.

25          Q       You don't recall?

1 A No, sir, I don't.

2 Q Is it possible that you could have?

3 A It would be a possibility. It would be a  
4 possibility. I don't remember.

5 MR. BENN: All right. Answer Mr. Hartnett.

7 CROSS-EXAMINATION

8  
9 BY MR. HARTNETT:

10 Q Kenny, you say you were working for Moore's  
11 Trucking?

12 A Yes, sir.

13 Q And you were the dispatcher for Moore's  
14 Trucking?

15 A Yes, sir.

16 Q And, of course, you got paid by Moore's  
17 Trucking?

18 A Yes, sir.

19 Q And you say that Charles -- Charles Finney, he  
20 was employed by Gerald M. Moore and Son?

21 A Yes, sir, to the best of my ability. That's  
22 right.

23 Q And he was a mechanic for Gerald M. Moore and  
24 Son?

25 A That's right.

1 Q In fact, he did this mechanical work for anybody  
2 that came in the shop, didn't he?

3 A Yes, sir.

4 Q That would be for vehicles belonging to Gerald  
5 M. Moore and Son, for vehicles belonging to Trucking?

6 A Right.

7 Q And any vehicle that was around there?

8 A Well, it could be one of their pickups; one of  
9 their families' cars, you know.

10 Q Anything that needed to be done whether it was  
11 a Trucking vehicle or family car or Gerald M. Moore and Son  
12 vehicle, all went in to Charles as a mechanic there for Gerald  
13 M. Moore and Son?

14 A That's right.

15 Q There was nothing unusual for him to be working  
16 on a Trucking Company vehicle?

17 A No, sir.

18 MR. BENN: May I make an objection? I think he  
19 has the opportunity to lead him. I don't think he has  
20 the opportunity to testify. He's in effect  
21 testifying.

22 MR. HARTNETT: I thought I was on  
23 cross-examination.

24 THE COURT: He's on cross-examination. He has  
25 a right to lead him under the rules of

1 cross-examination. Go ahead.

2  
3 BY MR. HARTNETT:

4 Q This was nothing unusual for Charles Finney to  
5 be doing maintenance work on a vehicle belonging to Trucking?

6 A No, sir.

7 Q None at all?

8 A No, sir.

9 Q That would be just his normal job?

10 A That's right. It would be all in a day's work.

11 MR. HARTNETT: That's all.

12 THE COURT: Perhaps you'd better have your seat  
13 back in the witness room, Mr. Northam. There would be  
14 a possibility you would be recalled.

15 MR. BENN: Harold Satchell.

16 Your Honor, could we take a break just a minute?

17 THE COURT: Suppose we take a short recess then.

18 (The court recessed at 11:08 a.m. The court  
19 reconvened at 11:15 a.m.)

20 THE COURT: All right, Mr. Satchell, you were  
21 sworn?

22 THE WITNESS: Yes, sir.

23  
24 -----oOo-----  
25



1           HAROLD VERNON SATCHELL, called as a witness on behalf  
2 of the plaintiff, having been first duly sworn, was examined  
3 and testified as follows:

4  
5                               DIRECT EXAMINATION

6  
7 BY MR. BENN:

8           Q       Would you state your name.

9           A       Harold Vernon Satchell.

10          Q       And where do you live, Mr. Satchell?

11          A       Pungoteague.

12          Q       Are you now employed?

13          A       Yes.

14          Q       Where are you employed?

15          A       Moore's Trucking.

16          Q       What do you do at Moore's Trucking?

17          A       I drive tractor-trailer.

18          Q       How long have you been so employed?

19       Approximately how long?

20          A       A year and a few weeks.

21          Q       How long?

22          A       A year and a few weeks.

23          Q       Were you so employed in May of 1982?

24          A       Yes.

25          Q       Do you know Charles Finney here?

1 A Yes.

2 Q Did you know a person by the name of Kenneth  
3 Northam?

4 A Yes.

5 Q Did you know them back in May of 1982?

6 A Yes.

7 Q I call your attention to May 21, 1982. I  
8 believe that's a Friday. Did you have an occasion to see  
9 Mr. Northam and Mr. Finney and, if so, where did you see them?

10 A Saw them on the yard.

11 Q On what?

12 A On the yard.

13 Q On what yard?

14 A Where I work at.

15 Q And that was where so the jury will know where?  
16 What yard are you talking about?

17 A I came up to the truck out on the yard.

18 Q When you say up there, I'm trying to get you to  
19 say what you mean by up there.

20 A By Moore's Trucking.

21 Q About what time did you see him -- approximately  
22 what time? I know you don't know exactly.

23 A It was in the afternoon.

24 Q In the afternoon?

25 A Yeah.

1 Q Did you hear any conversation between Mr. Finney  
2 and Mr. Kenneth Northam?

3 A Not really that much. I was talking to Kenny.  
4 There was something wrong with my truck.

5 THE COURT: You were talking to Kenny about  
6 what?

7 THE WITNESS: My yoke in the truck had gone out.  
8

9 BY MR. BENN:

10 Q You said yoke. Some of these people may not be  
11 mechanics.

12 A It's a small something that goes inside the  
13 drive shaft that makes it turn around.

14 Q And what was wrong with that?

15 A It was ready to fall out.

16 Q What did you tell Mr. Northam?

17 A I told him it was going to fall out. He said  
18 he would get it fixed if he could find a yoke.

19 Q Did you hear him saying any --

20 MR. HARTNETT: I would object to what  
21 Mr. Northam may have said as hearsay. Mr. Northam has  
22 testified.

23 THE COURT: Mr. Northam is an agent and employee  
24 of the defendant.

25 MR. HARTNETT: He was at that time.

1 THE COURT: Yes, sir, and he was talking to the  
2 plaintiff so --

3 MR. HARTNETT: That is correct, but Mr. Northam  
4 himself has testified and is available for testimony.

5 THE COURT: I understand that, but Mr. Northam  
6 has testified that he doesn't remember the  
7 conversation so I think he would have a right to ask  
8 this witness what an agent of the defendant said to  
9 the plaintiff if he heard him.

10 MR. HARTNETT: I would object, sir.

11  
12 BY MR. BENN:

13 Q All right. What, if anything, did you hear  
14 Mr. Northam say to Mr. Finney?

15 A He asked him could he fix the truck. Charles  
16 said he had something to do.

17 Q When did he want him to fix it?

18 A On a Saturday morning.

19 Q And what was the final outcome? You say he  
20 first said he had something else to do?

21 A Yeah.

22 Q What did he finally say, if anything?

23 A I don't know because when we were out in the  
24 yard talking, I got out of my truck and I was getting ready  
25 to drink me some beer.

1 Q How far were you from Mr. Northam and Mr. Finney  
2 when you heard him ask him to come to work on that Saturday  
3 morning?

4 A They were standing in front of the truck. I was  
5 getting my stuff out of the truck, getting ready to leave.

6 Q Could you point out in the courtroom about how  
7 far you were from them?

8 A Maybe from here over there to the wall.

9 MR. BENN: For the record, I think that would  
10 be about twelve feet.

11 THE COURT: I would say that would be about  
12 right. Let the record show that the witness indicated  
13 he was standing about twelve feet from the parties  
14 making the conversation.

15 MR. BENN: All right. Answer counsel.

16  
17 CROSS-EXAMINATION

18  
19 BY MR. HARTNETT:

20 Q Harold, you say you had been working for a year  
21 and a few weeks for Moore's Trucking?

22 A Yes.

23 Q When you had something wrong with your truck  
24 during this last year, something minor, did you take it over  
25 to the shop -- Gerald M. Moore and Sons where the shop was

1 and get it fixed?

2 A No, just come in the yard. If Kenny was there,  
3 Billy was there, anybody, you know, that was around or  
4 Marguerite, just tell them.

5 Q Do you know Charles?

6 A Yes.

7 Q And he was a mechanic, wasn't he?

8 A Yes.

9 Q And would he fix it?

10 A Sometimes, but most of the time, Shore White  
11 would fix it.

12 Q That was for something major, wasn't it?

13 A Yes.

14 Q Most times you would go to Shore White and other  
15 times you would go to the yard and somebody would fix it?

16 A Yes.

17 MR. BENN: If he's not going to call him, I  
18 would ask that he be excused, Your Honor.

19 THE COURT: Mr. Satchell, you're excused.

20 MR. BENN: Mrs. Esposito.

21 THE COURT: Mrs. Esposito, please.

22  
23  
24 -----OO-----  
25

MARGUERITE ESPOSITO, called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

## DIRECT EXAMINATION

BY MRS. FERGUSON:

Q State your name, please.

A Marguerite Esposito.

Q Mrs. Esposito, what are those papers you have with you?

**A Payroll records. Pay slips or work sheets.**

**Q For who?**

A Charles Finney.

Q Okay. I'm not going to ask you any questions about those. Are you employed by Moore's Trucking Company?

A Yes, ma'am.

Q And Gerald M. Moore and Son, Incorporated?

A Yes, ma'am.

Q All right. You receive two paychecks a week;  
is that correct?

A Yes, ma'am.

Q In what capacity are you employed by these corporations?

**A Bookkeeper.**

1 Q And how long have you been employed as a  
2 bookkeeper?

3 A Since November, 1981.

4 Q And were you employed as a bookkeeper for both  
5 of those companies in May of 1982?

6 A Yes, ma'am.

7 Q How do you separate the bookkeeping for these  
8 two corporations?

9 A They are two separate entities. We have two  
10 sets of books.

11 Q All right. Are you responsible for the payroll  
12 for the employees of both companies?

13 A Yes, ma'am.

14 Q All right, and how do you determine what an  
15 individual employee is paid? Just explain your procedures  
16 working from the two sets of books.

17 A How do I determine they are paid? You mean  
18 moneywise or workwise?

19 Q Yes, ma'am. Uh-huh.

20 A Well, I'm told how much they receive.

21 Q Do you write up the checks?

22 A Yes, ma'am.

23 Q How do you know how much to put on the checks?

24 A Because each person is stipulated to have a  
25 certain hourly rate or in some cases a salary.



1 Q All right. Well, how do you know what those  
2 stipulations are?

3 A I am told how much each person is making.

4 Q Who tells you?

5 A Mr. Moore and Mr. Moore.

6 Q Are you talking about Mr. Gerald Moore and  
7 Mr. William Moore?

8 A Yes.

9 Q What do you work from when you're writing out  
10 the paychecks? Just their verbal instructions to you?

11 A No, ma'am. I have payroll records and I have --  
12 you mean for what each person does every day?

13 Q Uh-huh.

14 A We have time sheets.

15 Q All right. Can you describe those to us?

16 A Yes, they are little sheets that are in the  
17 office and when the people come in at the close of the day,  
18 they mark in their name, their time and what they have done.

19 Q Do you know Charles Finney?

20 A Yes, I do.

21 Q How do you know him?

22 A From working with him.

23 Q Was he an employee of the same plant that you  
24 were employed at?

25 A Yes, ma'am.

1 Q What type of work did he do?

2 A He did mechanical work, mainly.

3 Q The two companies that you worked for share the  
4 same physical plant and yard; is that correct?

5 A Yes, ma'am.

6 Q Would some of the employees besides yourself  
7 earn two paychecks, one from each company in the same week?

8 A Yes, ma'am.

9 Q And sometimes an employee would get two W-2  
10 Forms, one from each company; is that correct?

11 A Yes, ma'am.

12 Q Were you present at work on May 22, 1982?

13 A Yes, ma'am.

14 Q Did you see Charles Finney on that day?

15 A Yes, ma'am.

16 Q What did you observe him doing that day?

17 A I saw Charles after the accident.

18 Q All right. What was he doing?

19 A Running around the yard.

20 Q Excuse me, ma'am. I'm sorry.

21 A Running around the yard.

22 Q Was there any particular reason why he was  
23 doing that?

24 A Because he had been injured.

25 Q Did you see the accident?

1           A       No, ma'am.

2                   MRS. FERGUSON: Your Honor, I would like to have  
3           these marked as Plaintiff's Exhibit 2A and 2B.

4                   THE COURT: All right.

5  
6 BY MRS. FERGUSON:

7           Q       Mrs. Esposito, I'm going to show you these two  
8           documents, first Plaintiff's Exhibit 2A. Could you identify  
9           that, please?

10          A       Yes, ma'am. It's a tax statement for Charles  
11       Finney from Gerald M. Moore and Son.

12          Q       All right. For what year?

13          A       Year ending 1982.

14          Q       All right. Does it state what wages he earned  
15       for Gerald M. Moore and Son?

16          A       Yes, ma'am.

17          Q       I'm going to show you Plaintiff's Exhibit 2B.  
18       Could you identify that document also?

19          A       Yes. It's a tax statement for Charles Finney  
20       under Moore's Trucking, 1982.

21          Q       And it shows here wages from Moore's Trucking  
22       Company in 1982?

23          A       Yes, ma'am.

24                   MRS. FERGUSON: Your Honor, I would like to  
25       offer these into exhibit at this time.

1 THE COURT: All right, the tax statement of  
2 Gerald M. Moore and Son for Charles Finney will be  
3 marked Exhibit 2A. The statement of Moore's Trucking  
4 will be marked Plaintiff's Exhibit 2B, introduced.

5 (Marked in evidence by the Court as Plaintiff's  
6 Exhibit Numbers 2A and 2B.)

7  
8 BY MRS. FERGUSON:

9 Q Mrs. Esposito, in the tickets that you were  
10 describing earlier, was there any breakdown on those about  
11 which company someone worked for?

12 A Sometimes there is and sometimes there is not.

13 Q All right. Could you explain how that could be?

14 A Well, if a person were working for Gerald Moore  
15 and he had to take a tractor and move a piece of equipment  
16 using a tractor, that was charged to Mr. William Moore and  
17 they would put the time that they used to move the equipment  
18 on the sheet.

19 Q All right. William Moore, you mean Moore's  
20 Trucking Company?

21 A Moore's Trucking.

22 Q Is there any other way that the pay period  
23 would be split that you know of?

24 A Yes, ma'am. If a person worked for Gerald  
25 Moore also drove a truck for Moore's Trucking then there

1 would be two paychecks, which is common.

2 Q Assuming that Mr. Finney came in to work on one  
3 of Moore's Trucking Company's tractors, he would be paid by  
4 Moore's Trucking Company, would he not?

5 A Only if he were driving a tractor.

6 Q Mrs. Esposito, do you remember having your  
7 deposition taken and sworn evidence taken about a month ago  
8 here?

9 A Yes, ma'am.

10 Q When that same question was asked you on that  
11 date, you said --

12 MR. HARTNETT: Would you please refer to the  
13 page.

14 MRS. FERGUSON: Page 10. Mrs. Esposito.

15  
16 BY MRS. FERGUSON:

17 Q You indicated that the -- if the work had been  
18 designated that way that, yes, he would be paid by Moore's  
19 Trucking Company. Now, why is your answer different today?

20 MR. HARTNETT: Wait a minute. I don't think  
21 that is the same question. What way are we talking  
22 about?

23 MRS. FERGUSON: The question is exactly the way  
24 I just asked Mrs. Esposito. Assuming Mr. Finney came  
25 in to work on one of Mr. William Moore's tractor-

1 trailers, would that not have come off William Moore's  
2 payroll to compensate him for his time? Her answer  
3 was, "If the work had been designated that way, yes."  
4 Her answer was different today and I would like to know  
5 why.

6 A As I have stated before, it's a cooperative  
7 section and if a person writes on their ticket that the work  
8 they have done was for hauling tractors or something like  
9 that, then it would be under the trucking company. Otherwise,  
10 it would be under Gerald Moore and Son.

11  
12 BY MRS. FERGUSON:

13 Q Mrs. Esposito, how are the truck drivers paid?

14 A They are paid by the run.

15 Q All right. What does that mean?

16 A Well, on long haul, they are paid by  
17 commission, percentage and on a short run, there is a  
18 designated amount.

19 Q Is that a flat fee?

20 A Yes, ma'am.

21 Q Drivers are not paid hourly, are they?

22 A No, ma'am.

23 Q Are the mechanics paid hourly?

24 A Yes, ma'am.

25 Q When Mr. Finney was employed, he was employed

as a mechanic; is that correct?

A Yes, ma'am.

Q You knew that fact?

A Yes, ma'am.

Q Who would supervise his work in the yard?

A Whoever was on duty.

Q Would you do it?

A Would I do it?

Q Yes, ma'am.

A No, ma'am.

Q Who were the possible people that would supervise him?

A Mr. William Moore. Mr. Gerald Moore.

Q What about the dispatcher, Ken Northam?

A Possibly he did.

MRS. FERGUSON: All right. Answer any questions Mr. Hartnett has.

CROSS-EXAMINATION

BY MR. HARTNETT:

Q Mrs. Esposito, you say you do have some records there. I believe they were subpoenaed by Mr. Finney's attorneys; is that correct?

A Right; yes, sir.

1 Q And you say that Charles Finney was employed as  
2 a mechanic?

3 A Yes, sir.

4 Q And he worked for Gerald M. Moore?

5 A Yes, sir.

6 Q And was he paid by Gerald M. Moore?

7 A Yes, sir.

8 Q You mentioned --

9 MRS. FERGUSON: I object, Your Honor. We have  
10 already introduced evidence that he wasn't paid on  
11 every occasion by Gerald M. Moore. Is he trying to  
12 rebut that evidence?

13 MR. HARTNETT: I'm trying to find out more  
14 about it, actually.

15 THE COURT: She's on cross-examination. She  
16 later said -- I think it needs to be clarified --  
17 Moore's Trucking paid him when he was driving and so  
18 I think he can clarify this on cross-examination. You  
19 may proceed, sir.

20  
21 BY MR. HARTNETT:

22 Q That's what I'm getting at, just what the judge  
23 has said, Mrs. Esposito. If he drove, if there was an  
24 occasion that Charles Finney drove for Trucking, would he  
25 be paid by Trucking?



1 A Yes, sir.

2 Q All right. Now, on the other occasions that  
3 he was doing work for Gerald M. Moore and Sons as a mechanic,  
4 would he be paid by Gerald M. Moore?

5 A Yes, sir.

6 Q All right. Now, did you -- there has been  
7 introduced into evidence two statements as to the W-2's of  
8 Charles Finney and one statement says that he was paid  
9 \$2,014.14 by Gerald M. Moore and Sons and withheld \$134.97.  
10 State income \$46.05. That I presume is the record reflecting  
11 the monies paid to Charles Finney for work done for Gerald M.  
12 Moore and Son; is that correct?

13 A Yes, sir.

14 Q And that would be work in his capacity as a  
15 mechanic; is that right?

16 A Yes, sir.

17 Q Now, do you know anything about that capacity?  
18 I mean, the reason that he was hired as a mechanic. What  
19 were his duties; do you know?

20 A His duties were to repair the machinery that  
21 came in for repairs.

22 Q Does that mean any machinery that came in the  
23 shop there?

24 A Yes, sir.

25 Q Would it matter whether it was Moore's Trucking

1 or dump truck of Gerald M. Moore's or what it was?

2 A Made no difference.

3 Q That was his job to repair it?

4 A Yes, sir.

5 Q Now, and did these employees sometimes come in  
6 on a Saturday?

7 MRS. FERGUSON: Which employees, Your Honor?

8 I would object to that question.

9 MR. HARTNETT: Any employee.

10 THE COURT: Let's clarify which employees.

11  
12 BY MR. HARTNETT:

13 Q Just generally do the employees come in when  
14 required?

15 A When required, yes.

16 Q And did Charles Finney come in on a Saturday  
17 morning?

18 A Yes.

19 Q Do you know the reason why he was there?

20 A No, I do not.

21 Q Did he fill out any slip that morning himself?

22 A No, sir.

23 Q Was a slip filled out for him?

24 A Yes, sir.

25 Q Did you fill out that slip?

1 A Yes, I did.

2 Q What slip did you fill out?

3 A Daily report work sheet.

4 Q What was that on, Gerald M. Moore or --

5 A Gerald M. Moore.

6 Q Do you have that there?

7 A Yes, I do. I only have them from April. The  
8 others must be in the attache case.

9 Q I hand you some slips. Now, let's start with  
10 these, Mrs. Esposito. I hand you a sheet which I believe  
11 counsel has seen and is that from your workbook and kept in  
12 your ordinary course of business?

13 A Yes, sir.

14 Q What does that depict?

15 A Payroll.

16 Q And for what period does it depict?

17 A For the full year.

18 Q Now, who is the payroll for?

19 A This one is for Gerald M. Moore and Son.

20 Q Now, when does it start? What date does it  
21 start?

22 A For Charles Finney?

23 Q Uh-huh.

24 A Week ending March 25th.

25 Q So I assume that would be somewhere around the

1 date that he was employed?

2 A Yes, sir.

3 Q Now, as the weeks go on it shows payment made  
4 to Charles M. Finney, right?

5 A Yes, sir.

6 Q And do you have an entry there on or about the  
7 21st day of May for Charles M. Finney for the tune of \$88.25?

8 A Yes, sir.

9 Q Now, I hand you a check for \$88.25 drawn on  
10 Gerald M. Moore and Son, Inc., and two slips. Now, is that  
11 the check that represents payment and are they the slips  
12 that represent his work slips -- dated slips?

13 A Yes, sir.

14 Q All right, and look at those slips, if you will,  
15 and tell us what days they are.

16 A That's from May 19th to May 20th.

17 Q May 19th and 20th?

18 A Yes, sir.

19 Q Now, what is the date of the check?

20 A May 21st.

21 Q And that is because -- that's just the way it's  
22 paid the day afterwards?

23 A That's the day it's paid. The week ends the  
24 day before May 20th. The week ending May 20th.

25 Q Okay. Now, on the date of the accident, which

1 was May 22nd, I think that was a Saturday, that would be a  
2 new workweek; is that correct?

3 A Yes, sir.

4 Q Was he actually paid -- do your records show he  
5 was paid anything for the week including the 22nd of May?

6 A Yes, sir.

7 Q What does that show?

8 A Shows the week ending May 27th he was paid for  
9 twelve and a half hours, which would be the Friday and a  
10 half day Saturday.

11 Q Friday and a half day Saturday?

12 A Yes, sir.

13 Q And whom was he paid by?

14 A Gerald M. Moore and Son.

15 Q Let's do one thing at a time. What we have just  
16 discussed here is the pay records of Gerald M. Moore and Son  
17 in respect to Charles Finney and the check ending the 21st  
18 day of May, which is the Friday?

19 A Yes, sir.

20 Q And two slips -- incidentally, these slips, who  
21 are they made out by?

22 A Those are made out by Charles Finney.

23 Q By Charles himself?

24 A Yes, sir.

25 MR. HARTNETT: Your Honor please, I would like

1 to introduce these. I would like to keep them  
2 together, actually. There will be new slips coming in  
3 which might be a bit confusing. Defendant's Exhibit 1.

4 THE COURT: This is a check and reporting slips  
5 will be marked Defendant's Exhibit 1.

6 (Marked in evidence by the Court as Defendant's  
7 Exhibit Number 1.)  
8

9 BY MR. HARTNETT:

10 Q Now, you also identified from that sheet  
11 payments made after the accident to Charles Finney?

12 A Yes, sir.

13 Q And I hand you the checks and slips and see if  
14 you can't identify those as being the payments made to  
15 Charles Finney for the day of the accident itself and  
16 subsequent to it.

17 A Yes, sir.

18 Q All right. And those were again drawn and paid  
19 by Gerald M. Moore and Son?

20 A Yes, sir.

21 Q And those slips were -- who are they for? Who  
22 are they on?

23 A Charles Finney.

24 Q Who made them out?

25 A Charles Finney made one. I made the other.

1 Q Which one did you make up?

2 A The one for May 22nd.

3 Q That was the date of the accident?

4 A Yes, sir.

5 Q Was that because Charles couldn't make it out?

6 A Yes, sir.

7 Q So you kept paying him during that following  
8 week?

9 A Yes, sir.

10 MR. HARTNETT: We would like to offer these.

11 THE COURT: Defendant's Exhibit 2.

12 (Marked in evidence by the Court as Defendant's  
13 Exhibit Number 2.)

14

15 BY MR. HARTNETT:

16 Q All right. Now, let us get to this question of  
17 the W-2 Form that the plaintiff's counsel has introduced.  
18 You're familiar with it, aren't you? I will just show it to  
19 you. It's one hundred eighty-eight dollars and some cents,  
20 isn't it?

21 A Yes, sir.

22 Q That shows payment by Trucking?

23 A Yes, sir.

24 Q So that would suggest that somewhere along the  
25 line Charles Finney was employed by Trucking?

1 A Yes, sir.

2 Q Now, I hand you a pay record and ask you if you  
3 can identify it?

4 A Yes, sir.

5 Q And what is that pay record?

6 A Payroll sheet for Charles Finney under Moore's  
7 Trucking.

8 Q Under Moore's Trucking?

9 A Yes, sir.

10 Q All right. Now, what period of time or what  
11 date does it have on it?

12 A May 20th. Week ending May 20th.

13 Q All right. Now, did you make a payment then to  
14 Charles Finney on behalf of Moore's Trucking during that week?

15 A Yes, sir.

16 Q And do you know what it was for?

17 A It was for driving a truck.

18 Q And do you know how many times he drove the  
19 truck?

20 A I believe it was three.

21 Q Now, I hand you a check and three slips. I  
22 would like you to examine them if you will and tell us what  
23 they are.

24 A Check is a payroll check made on Moore's  
25 Trucking and three slips are for work for commodities



1 delivered.

2 Q Now, who delivered those commodities? What are  
3 they?

4 A Charles Finney.

5 Q Those three slips represent three trips that  
6 Charles did that week?

7 A Yes, sir.

8 Q What dates does it show?

9 A May 18th, May 19th, May 19th.

10 Q Two of them May 19th and one on May 18th.  
11 Do your records show any other payments to Charles Finney for  
12 Trucking, for any work that he may have done for Trucking?

13 A No, sir.

14 Q Just those three -- those three trips?

15 A Yes, sir.

16 Q Now, does that check -- will you please read  
17 the amount out again.

18 A \$154.01.

19 Q Now, that is the net check, isn't it?

20 A Yes, sir.

21 Q Does that account you have in your hand show  
22 the gross check?

23 A Gross check? No.

24 Q What does it show?

25 A No, it's just the slip.

1 Q I hadn't handed you the account. Does that  
2 show the gross checks?

3 A Yes.

4 Q What is that?

5 A The gross amount was \$188.63.

6 Q Now, and that, of course, is the \$188.63 that  
7 is on the W-2 Form?

8 A Yes, sir.

9 Q So this W-2 Form in effect represents those  
10 three trips?

11 A Yes, sir.

12 MR. HARTNETT: Your Honor please, I would like  
13 to introduce the pay record into evidence and the  
14 supporting check and date of the three trips that's  
15 just been referred to in evidence.

16 THE COURT: All right, sir, this will be marked  
17 Defendant's Exhibit 3.

18 (Marked in evidence by the Court as Defendant's  
19 Exhibit Number 3.)

20 THE COURT: And here's the W-2 Forms I think  
21 were introduced by opposing counsel.

22  
23 BY MR. HARTNETT:

24 Q Now, you have mentioned and identified that  
25 those trips occurred on the 19th and 20th, 18th and 19th.

1 Now, on the 20th, of course, your slip showed he was being  
2 paid by Gerald M. Moore and Son?

3 A Uh-huh.

4 MR. HARTNETT: That's all. Thank you. That's  
5 all. The witness may be recalled, Your Honor.

6 MRS. FERGUSON: No further questions.

7 THE COURT: Mrs. Esposito, perhaps you had  
8 better have your seat back in the witness room in case  
9 you're recalled.

10 All right, sir, your next witness.

11 MRS. FERGUSON: Charles A. Finney, please.

12 THE COURT: Were you sworn earlier?

13 THE WITNESS: (Shaking head negatively.)

14 THE COURT: Come up to the clerk's desk and be  
15 sworn, please.

16 (The witness was called up and sworn.)

17 THE COURT: Have a seat right here, please.

18  
19  
20 -----oOo-----  
21  
22  
23  
24  
25

1           CHARLES ANDREW FINNEY, plaintiff, called as a witness  
2 on his own behalf, having been first duly sworn, was examined  
3 and testified as follows:  
4

5                               DIRECT EXAMINATION  
6

7 BY MRS. FERGUSON:

8           Q       Please state your full name.

9           A       Charles Andrew Finney.

10          Q       And your present address?

11          A       214 Cypress Chapel Road.

12          Q       Are you married, Mr. Finney?

13          A       Yes, I am.

14          Q       What city do you live in now?

15          A       Suffolk, Virginia.

16          Q       Do you live with your wife?

17          A       Yes, I do.

18          Q       Do you have any children?

19          A       I have four kids -- children.

20          Q       Are you presently employed?

21          A       No, I'm not.

22          Q       How old are you?

23          A       Thirty-two years old.

24          Q       What type of work have you done in the past?

25          A       Tractor and trailer mechanic work, construction.

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ELIZABETH CITY, NORTH CAROLINA

1 Q All right. Have you ever done any driving --  
2 truck driving?

3 A Yes, I have.

4 Q For approximately how long have you been a  
5 mechanic?

6 A Well, approximately maybe three or four years.

7 Q What type of work did you do before truck  
8 mechanic work?

9 A Drive tractor and trailer.

10 Q Were you at one time employed by Gerald M.  
11 Moore and Son, Incorporated, in Exmore, Virginia?

12 A Yes, I was.

13 Q When was that?

14 A I was first employed in March and I was there  
15 until May the 22nd.

16 Q What were your duties at Gerald M. Moore and  
17 Son?

18 A Mechanic.

19 Q You first -- go ahead. I'm sorry.

20 A And sometime drive truck.

21 Q When did you first start working there?

22 A In March.

23 Q What year?

24 A 1982.

25 Q What was your salary?

1 A Four dollars fifty cents per hour.

2 Q And you last worked there in May?

3 A May 22, 1982.

4 Q While working for Gerald M. Moore and Son,  
5 Incorporated, did you also do work for Moore's Trucking  
6 Company?

7 A Yes, I did.

8 Q What type of work did you do for them?

9 A Mechanical work and some work driving.

10 Q When you were doing work for Moore's Trucking  
11 Company, who supervised your work, if anybody?

12 A Mr. William Moore and Mr. Kenny Northam.

13 Q Calling your attention to May 21, 1982, that  
14 was a Friday, were you at work?

15 A Yes, I was.

16 Q What happened that day, if anything?

17 A That particular afternoon of May 21st, Harold  
18 Satchell came in with a truck with a universal about to fall  
19 out, which he had showed it to Mr. Kenny Northam. Mr. Kenny  
20 Northam came out to me and asked me would I come in that  
21 Saturday morning and fix it.

22 I replied to him that I had something to do,  
23 that I needed to get my car ready for inspection. He  
24 continued to ask me. He told me he needed the truck for  
25 that Monday. I told him that I would come in. He asked me

1 to come in eight o'clock and I came in.

2 Q The next day was a Saturday?

3 A Yes, it was.

4 Q Did you generally work on Saturdays for  
5 Gerald Moore and Son, Incorporated?

6 A Not normally.

7 Q So you went to work the next day; is that  
8 correct?

9 A Yes, I did.

10 Q What happened the next day when you reported to  
11 work?

12 A Well, I reported to work at eight o'clock and I  
13 went into the office and I checked with Mr. Kenny Northam  
14 and he told me to go ahead and drop the trailer on the truck  
15 that I was about to work on and back it on in the garage and  
16 drop the universal out and I proceeded over to drop the  
17 trailer and there was no landing gear on the trailer so I  
18 went back and told him the trailer had no landing gear on it  
19 and he told me to walk over to the abandoned trailers that  
20 had been taken off the road and get it off that.

21 I did and I dropped the trailer and I proceeded  
22 to go to the shop right in the door where Mr. Gerald Moore  
23 was -- had been operating a truck. He was washing the  
24 window at that particular time so I couldn't get in the shop  
25 so I had to pull my truck by the shop. While the truck was

1 by the shop, I walked over and greeted Mr. Moore and I talked  
2 to him and spoke to him. He asked me was I going to work on  
3 his car or did I come to work on his car.

4 I told him, no, I come to work on the truck,  
5 which he got highly excited and I walked away. I walked over  
6 to my tractor and I was standing in the back maybe a minute  
7 and I was backed into and crushed between the two trucks.

8 MRS. FERGUSON: Your Honor, we would like to  
9 mark this as Plaintiff's Exhibit 3.

10  
11 BY MRS. FERGUSON:

12 Q Charles, I'm going to show you this diagram.  
13 Can you tell what it is?

14 A Yes, I can.

15 Q What is it, please?

16 A That's a diagram of the shop -- of the parking  
17 lot of the office, of the Moore's Trucking Company and the  
18 Gerald Moore and Son Corporation.

19 Q Okay.

20 MRS. FERGUSON: Your Honor, I would like to  
21 offer this into evidence at this time taking into  
22 account that it is not drawn to scale, but that it is  
23 an accurate reflection of the surrounding areas that  
24 we're going to be talking about.

25 THE COURT: All right, it will be introduced



1 as Plaintiff's Exhibit 3.

2 (Marked in evidence by the Court as Plaintiff's  
3 Exhibit Number 3.)

4  
5 BY MRS. FERGUSON:

6 Q Now, Charles, you have testified about what  
7 happened that day. Is this the shop that you were waiting  
8 to get into?

9 A Yes, it is.

10 Q Is this approximately where your tractor-trailer  
11 was in relation to the shop?

12 A Yes, it is.

13 Q Now, what is this?

14 A That is an old truck in which the engine was  
15 pulled out.

16 Q And what is this other vehicle?

17 A That's my car sitting behind the old truck.

18 MR. BENN: I don't believe the members of the  
19 jury can see it.

20 THE COURT: Mr. Finney, do you want to walk  
21 down there in front of the jury?

22 THE WITNESS: Yes, sir.

23 THE COURT: Walk right over there with  
24 Mrs. Ferguson.

25 MRS. FERGUSON: Can everyone see?

1 BY MRS. FERGUSON:

2 Q All right. What are these other two designated  
3 vehicles that are in front of the shop area?

4 A This is Mr. Gerald Moore's dump truck and this  
5 is a station wagon that was up to the shop that was jacked up  
6 the day before that was about to be worked on.

7 Q And this is the office that you have referred to.  
8 It was approximately -- well, I think we have determined it  
9 was approximately twelve feet.

10 A No, right at twenty-five or thirty feet.

11 Q Okay. Were there any other employees in the  
12 area -- in the yard of these two companies when you got there  
13 that day?

14 A Well, Mr. Kenny Northam was in the office and  
15 Mr. Gerald Moore over here to his dump truck.

16 Q All right. Now, let me ask you again exactly  
17 what happened. You left your tractor here?

18 A Yes.

19 Q And how did you get over to the shop?

20 A I walked from my tractor over to here.

21 Q And right here is where you started talking to  
22 Gerald Moore right near his dump truck parked in front of  
23 the shop?

24 A That's right.

25 Q Then how did you get back towards your tractor?

1 A I walked back over to my tractor.

2 Q Now, is this the front end or the back end of  
3 the tractor?

4 A That's the rear end of my tractor.

5 Q Is that where you were positioned?

6 A Yes, I was standing across the back of the  
7 chassis of the universal that I was about to pull out.

8 Q And this is the front end here facing away from  
9 you?

10 A Yes, it is.

11 Q And you had your back pointing --

12 A My back was to the public.

13 Q And how did the dump truck come at you?

14 A Well, my back being -- I was bent over to the  
15 truck. The dump truck would have had to cut at least  
16 eighty-five to ninety-degree angle to get around here.

17 Q You never moved your tractor from that position,  
18 did you?

19 A No, I didn't.

20 THE COURT: All right, sir, you may be seated.

21  
22 BY MRS. FERGUSON:

23 Q What type of tractor was it that you were  
24 trying to get into the shop that day?

25 A It was a Freight Liner. I couldn't exactly tell

1 you what year it was. Approximately around 1975 or something.

2 Q Who owned it?

3 A Mr. William Moore or better still, Moore's  
4 Trucking Corporation.

5 Q Was the name Moore's Trucking Company designated  
6 on the truck that you were operating?

7 A Yes, it was.

8 Q And that is the tractor that you were asked to  
9 repair; is that correct?

10 A Yes, sir.

11 Q What type of truck was Mr. Gerald Moore  
12 operating?

13 A He was operating a dump truck.

14 Q And who owned that dump truck?

15 A Gerald Moore and Son.

16 Q What did you do after you were crushed between  
17 the two trucks?

18 A Well, at first I come out with a sharp scream.  
19 It was such sharp pain and somewhere the dump truck gave me  
20 enough space to get out. I started to run probably because  
21 I was in so much shock and I ran over to the trailer and  
22 fell on the ground. Rolled from one side to the other. They  
23 told me to lay on my back, which I could not lay in no one  
24 particular position because I was in so much pain.

25 Q Did you lose consciousness?

1 A No, I didn't.

2 Q How did you get to the hospital?

3 A They called the ambulance.

4 Q When you arrived at the hospital, did you lose  
5 consciousness or were you awake?

6 A Well, I was awake when I first arrived at the  
7 hospital.

8 Q Describe what happened to you after you arrived  
9 at the hospital.

10 A Well, after I arrived at the hospital, they  
11 cleaned me up and took my clothes off and washed me up and  
12 carried me up to a room and hooked I.V. up on me.

13 Q Were you in pain at that time?

14 A Very much so.

15 Q Were you able to eat anything?

16 A No, I wasn't.

17 Q What hospital was this that you were in?

18 A Northampton-Accomack County Hospital.

19 Q And how long were you there?

20 A I was there approximately seven days.

21 Q When you were discharged, were you able to  
22 walk?

23 A No, I wasn't.

24 Q Where did you go after you were discharged from  
25 Northampton-Accomack Memorial Hospital?

1 A I went to Salisbury, Peninsula General.

2 Q Where is that located?

3 A Salisbury, Maryland.

4 Q How long did you remain in Peninsula General  
5 Hospital?

6 A From that Friday to that Tuesday.

7 Q All right. Do you remember the date you were  
8 discharged?

9 A June 1st.

10 Q Nineteen eighty --

11 A Nineteen hundred eighty-two.

12 Q How were you feeling at the time you were  
13 discharged from the second hospital?

14 A Still in very much pain.

15 Q Were you able to walk?

16 A No, I wasn't.

17 Q Where did you go after you were discharged from  
18 Peninsula General?

19 A I went to my wife's grandmother's.

20 Q Do you recall what happened at each of these  
21 two hospitals that you were in?

22 A Yes, I do.

23 MRS. FERGUSON: I would like to have this  
24 marked, Your Honor, as Plaintiff's Exhibit 4.

25 THE COURT: All right. This is your total?

1 MRS. FERGUSON: Right.

2

3 BY MRS. FERGUSON:

4 Q Mr. Finney, I'm going to show you these sheets  
5 that have been stapled together and marked Plaintiff's  
6 Exhibit 4. Can you tell us what those sheets are?

7 A Yes. These are hospital bills.

8 Q Okay. What does the top sheet represent?

9 A This represents Northampton-Accomack Memorial  
10 Hospital. A bill of \$1,079.10.

11 Q Is there a copy of the bill in there? The top  
12 sheet shows the total, right?

13 A Right.

14 Q Open up the top sheet and what's the first sheet  
15 of paper you see in there?

16 A Yes, it is.

17 Q What's the first sheet of paper --

18 A Northampton-Accomack Memorial Hospital.

19 Q What's the first sheet that you see in there?

20 A Oh, okay. Nassawadox --

21 Q Can you identify it?

22 A Yes, I can.

23 Q What is it?

24 A Says three days, 5/24 through 5/26, \$320.

25 Q Is it a medical bill?

1 A Yes, Northampton-Accomack Memorial Hospital.

2 Q For who?

3 A It's for Charles Andrew Finney.

4 Q Okay. What's the next sheet show?

5 A Northampton-Accomack Memorial Hospital.

6 Q Is that a bill?

7 A Yes, it is.

8 Q For who?

9 A Charles Andrew Finney.

10 Q And what's the total of that bill?

11 A \$1,079.10.

12 Q What does the third sheet show?

13 A Peninsula General Hospital, a total of \$659.52.

14 Q Is that also a bill for you?

15 A Yes. Charles Andrew Finney.

16 Q And the last sheet?

17 A DePaul Hospital, \$1,679.35. Charles Andrew

18 Finney, and Mr. Alvin Harris, total of \$35.

19 Q Is Doctor Alvin Harris a physician?

20 A Yes, he is.

21 Q And he treated you also?

22 A Yes.

23 MRS. FERGUSON: Your Honor, at this time I  
24 would like to offer these medical bills into evidence.

25 THE COURT: They will be offered as Plaintiff's



1 Exhibit 4.

2 (Marked in evidence by the Court as Plaintiff's  
3 Exhibit Number 4.)  
4

5 BY MRS. FERGUSON:

6 Q Do you know, Mr. Finney, what the total of  
7 those medical expenses were?

8 A It was approximately \$12,000 altogether.

9 MR. HARTNETT: Have you got the total?

10 A (Continuing) . Beg your pardon? Are you just  
11 talking about the medical bills?  
12

13 BY MRS. FERGUSON:

14 Q That's right. Did you have an opportunity to  
15 total them up?

16 MR. HARTNETT: I don't object to her leading --

17 THE COURT: Aren't they totalled on the outside  
18 of that?

19 MRS. FERGUSON: I believe they are, Your Honor.

20 THE COURT: Mr. Belote, would you hand that  
21 book to her just for one minute, please.

22 MR. BENN: That includes wages also on there.  
23 I have a total here, though.

24 THE COURT: Approach the bench then, please.

25 (A side-bar conference was held by the Court

1 with counsel for both sides out of the hearing of the  
2 jury and the court reporter.)

3 THE COURT: Ladies and gentlemen of the jury,  
4 then, the total medical bills are \$4,915.97.

5  
6 BY MRS. FERGUSON:

7 Q Okay, Mr. Finney, when you left Peninsula  
8 General, what happened then?

9 A I went to my wife's grandmother. I stayed there  
10 approximately close to a week and then I went back home to  
11 Keller.

12 Q Were you able to walk?

13 A No, I had crutches.

14 Q Were you using the crutches?

15 A Yes, I was.

16 Q Had you been instructed by your doctor to use  
17 them?

18 A Yes.

19 Q Were you experiencing any difficulty at all  
20 with your injuries; if so, describe it.

21 A Well, I had a lot of problem when it come time  
22 for me to go to bed as far as getting in and out of the bed  
23 and getting up. A lot of times my wife would have to help  
24 me up, and getting to sleep at night I would just toss and  
25 turn. Sometimes I would be in pain and sometimes instead of

1 being painful, it would be more or less discomfort because  
2 the bone was prying through the skin.

3 Q Was there any change in your recreational  
4 activities or anything that you previously enjoyed doing?

5 A Yes, quite a bit.

6 Q What changes?

7 A Well, I used to be a long-distance runner when  
8 I was -- when I was at Worcester High School. I used to run  
9 three miles and a half and at the same time when I was in  
10 service, I used to run the mile run and I ran it in six  
11 minutes and something which now I couldn't run that long a  
12 distance at a time, in which I proceeded quite a bit in  
13 martial arts and boxing and wrestling. I wouldn't have  
14 anything to do with that now either because it would be too  
15 painful to me.

16 Q Did you seek further medical treatment?

17 A Yes, I did. In August I was referred to  
18 Doctor Pole from Doctor -- by Doctor Hedger and I went to see  
19 him -- I went to see him from time to time, then he come to  
20 the conclusion that I would have to have the bone cut, you  
21 know, have it cut -- the end of it cut off so that it would  
22 be -- so it would be more evenly like the other leg.

23 Q How many times did you see Doctor Pole?

24 A I don't exactly know how many times. Several  
25 times, I would say that.

1 Q Did you have the surgery he recommended?

2 A Yes, I did.

3 Q When did you have that?

4 A I was admitted in DePaul Hospital October 10th  
5 and October 11th they went through with the surgery.

6 Q Is that 1982?

7 A Nineteen hundred eighty-two.

8 Q Since the operation, what effects -- well, what  
9 effect has the operation had on your physical problem?

10 A Right now I still have swelling in the abdomen  
11 area and from time to time the pelvis bone now gets sore and  
12 this side over here as far as lifting and doing heavy activity  
13 is weaker than it was before.

14 Q Have you had any changes in your urinary --

15 A Yes, from time to time I have to go to the  
16 bathroom quite a bit.

17 Q Well, how does that differ from before the  
18 injury?

19 A Because I go to the bathroom quite a bit more  
20 now than I did then because the accident somewhat jarred the  
21 kidney.

22 Q Do you ever have any pain now from the injuries  
23 you received last May?

24 A At times I have swelling in the abdomen area  
25 and severe itching between the outside and the second tissue.

1 It's very uncomfortable.

2 Q Have you worked at all since the accident?

3 A Mostly around the house.

4 Q And what was your salary when you were working  
5 last May?

6 A Four-fifty per hour.

7 Q And how many hours a week would you work?

8 A Forty and over.

9 Q Assuming you worked forty, what would be your  
10 gross pay; do you know?

11 A \$180.

12 Q Excuse me?

13 A \$180.

14 Q All right. Have you had an opportunity to  
15 calculate how many weeks you were unable to work since the  
16 accident?

17 A Yes.

18 Q All right. Let me ask you this: The accident  
19 occurred May 22nd?

20 A Right.

21 Q When did your doctor advise you that you were  
22 able to return to work?

23 A December 24th, which was thirty-one weeks.

24 Q Was there any limitation on the type of work  
25 you could return to?

1           A           He told me to return back to work as a truck  
2 driver. Light work.

3           Q           Were you able to return to work as a mechanic?

4           A           No.

5           Q           Why weren't you able to go back to work as a  
6 mechanic?

7           A           Well, that type of work would have been a little  
8 bit too heavy for me at that particular time.

9           Q           Are you still unable to do mechanical work?

10          A           I can do light mechanical work.

11          Q           All right. How frequently?

12          A           Well --

13          Q           Are you doing it on a full-time basis?

14          A           No, like working around the shop at home, I  
15 work as I feel like it and then, you know, if I get  
16 uncomfortable, then I go sit down.

17          Q           How are your abilities to do mechanical work  
18 different now than before the accident?

19          A           Because before I was somewhat fast. I could  
20 repair things a lot faster than I could now because I could  
21 maneuver and get up and down and turn much quicker than I  
22 could now. Now a lot of positions that I need to be in maybe  
23 to install a transmission or whatever I need to do, I have  
24 to think what safe way, you know, that I could position  
25 myself to get to it that I don't hurt myself, you know, or

1 I won't be in any pain when I would be --

2 Q Can you lift as much weight now as you did  
3 before the accident?

4 A No, I can't.

5 Q What is the difference?

6 A Probably over a hundred pounds. Probably a  
7 hundred pounds difference.

8 Q Assuming you missed thirty-one weeks at \$180  
9 a week, have you calculated your total lost wages?

10 A Yes, I have.

11 Q All right, and what do those come out to?

12 A \$5,580.

13 MRS. FERGUSON: Your Honor, I would like this  
14 marked as Plaintiff's Exhibit 5, please.

15 MR. HARTNETT: I assume I know what the purport  
16 of it is, but I don't think enough foundation has been  
17 laid.

18 MR. BENN: We're not going to introduce it now.

19 MRS. FERGUSON: We're going to reserve  
20 introducing it until after the doctor testifies this  
21 afternoon.

22 THE COURT: What can he testify to? He can  
23 state his age. He doesn't need this to state his age.

24 MR. BENN: Well, Your Honor, we wanted to ask  
25 him what his life expectancy would be according to

1           that table.

2           MR. HARTNETT: I would object to that.

3           THE COURT: You can't do that. You can ask him  
4           his age and we will see if there is a foundation for it.

5           MR. BENN: Okay.

6  
7 BY MRS. FERGUSON:

8           Q       Mr. Finney, one more question. What is your  
9           age?

10          A       Thirty-two.

11          MRS. FERGUSON: Answer Mr. Hartnett.

12  
13                   CROSS-EXAMINATION

14  
15 BY MR. HARTNETT:

16          Q       Mr. Finney, you say you don't work now?

17          A       No, I do not work.

18          Q       When we took depositions, you were telling us  
19           something about a spot mechanic job you had. That didn't  
20           materialize?

21          A       Well, I have a road repair mechanic's license.

22          Q       You have a what?

23          A       A road repair mechanic's license.

24          Q       Road repair mechanic's license?

25          A       Right.



1 Q Do you use that license now?

2 A Well, you know, if something came up and I had  
3 to use it, I would use it.

4 Q That's what I'm getting at. You hold yourself  
5 out as a road repair mechanic; is that correct?

6 A Right.

7 Q And do you get jobs doing that?

8 A I haven't had any jobs.

9 Q You haven't had any job at all?

10 A Not since I have had the license.

11 Q When did you get the license?

12 A Well, I don't know. Over a month ago.

13 Q Over a month ago?

14 A Maybe close to two months. I don't really  
15 exactly recall the time.

16 Q But it's been a couple months anyway?

17 A Yes.

18 Q Did you have any jobs before you got the license?

19 A Any maintenance jobs?

20 Q Yes. Any mechanic's jobs?

21 A No.

22 Q Did you do any jobs at all as a mechanic?

23 A I hit and miss, you know.

24 Q Tell us about that.

25 A Maybe if a friend have something wrong with his

1 car, maybe needs some plugs put in or something like that.

2 Q Do you get paid for that sort of thing?

3 A Whatever, you know -- I would get paid, you know,  
4 but -- what I'm saying is they are just pitty-pan (sic) jobs.

5 Q Since December 24th I believe when you testified  
6 that the date that the doctor said you could go back to work,  
7 have you tried to get a job?

8 A Yes, I have.

9 Q Where did you try?

10 A I tried at Webb Transfer for one place and I  
11 have been to a gas station down on Washington Street. I have  
12 been to --

13 Q This is since you moved back across the Bay?

14 A Yes. I have been to a construction -- small  
15 construction company over in Chesapeake.

16 Q And before you went back across the Bay, did  
17 you ask about going back to Gerald M. Moore and Son?

18 A Well, they told me I could come back.

19 Q They did tell you?

20 A Yes.

21 Q Let's go back then to March of last year.  
22 That's when you applied for a job with Gerald M. Moore and  
23 Son, right?

24 A Yes, sir.

25 Q And who did you see there?

1 A I seen Mr. William Moore.

2 Q Mr. William Moore. That's Billy Moore sitting  
3 right there with the beard, right?

4 A Yes, he is.

5 Q And Mr. Moore, did he hire you?

6 A No, he didn't.

7 Q When you saw him, what did you do? Did you  
8 speak to him?

9 A Yeah, I spoke to him.

10 Q He was vice-president of that company, wasn't  
11 he?

12 A No, he was president of the company.

13 Q Gerald M. Moore and Son, I'm talking about now.

14 A Right, of his own company.

15 Q Well, Mr. William Moore was the president of  
16 Gerald M. Moore and Son?

17 A Mr. William Moore was president of the Gerald  
18 Moore and Son.

19 Q What did you understand it to be?

20 A I understood Mr. Gerald Moore said he was the  
21 president of his own company.

22 Q Okay, but you said you saw Mr. William Moore?

23 A Right.

24 Q And Mr. William Moore was the vice-president of  
25 that company. Okay.

1 A Right.

2 Q Mr. William Moore was the man who interviewed  
3 you for the job?

4 A That's right.

5 Q And he's the man that decided that you had the  
6 qualifications as a mechanic and that's what you would be  
7 hired for, right?

8 A I wasn't hired exactly as a mechanic. When I  
9 first came there I was a construction worker.

10 Q But you were to do mechanic work, weren't you?

11 A No.

12 Q Did you do any construction work?

13 A Yes, I did.

14 Q How long did you do construction work?

15 A Maybe a month or so.

16 Q A month or so?

17 A (Witness nodding head affirmatively.)

18 Q Then you did shop work?

19 A Then Mr. William Moore seen that I was capable  
20 of doing mechanical work so he asked me would I work in the  
21 shop.

22 Q But before that part of your qualifications was  
23 that you were a mechanic, right?

24 A Well, I didn't exactly come there as a mechanic.  
25 See, whole while I have been driving tractor and trailer, I

1 have repaired my own trucks. That's where my mechanic  
2 knowledge came from.

3 Q And when you did shop work and that was in the  
4 shop that you have noted right here on this diagram, that was  
5 the shop you were doing the work in, right?

6 A Yes, sir.

7 Q And you did work on these vehicles that came  
8 into the shop that needed attention?

9 A Yes, sir.

10 Q And you worked on Trucking vehicles as well as  
11 Gerald M. Moore vehicles, didn't you?

12 A Yes, sir.

13 Q And, in fact, anything in that yard that needed  
14 attention for mechanical work, you were the man to do it in  
15 the shop?

16 A That's right.

17 Q And, as I say, it didn't matter whether it was  
18 a station wagon or Gerald M. Moore dump truck or a tractor-  
19 trailer from Trucking; is that right?

20 A That's right.

21 Q You just did it all?

22 A (Witness nodding head affirmatively.)

23 Q And the way that you got to do this work was  
24 that the vehicle came in that needed fixing and they would  
25 send it over to the shop for you to do?

1           A           (Witness nodding head affirmatively.)

2           Q           Who would send it over to the shop?

3           A           Well, it could possibly be a driver, and it  
4 could possibly be Mr. Kenny Northam or it could be  
5 Mr. Gerald Moore or Mr. William Moore.

6           Q           So it didn't really matter who sent it over  
7 there. When it came over there you did the job?

8           A           (Witness nodding head affirmatively.)

9           Q           And you did universal joints just the same way  
10 as you do any other job?

11          A           Yes, I did.

12          Q           Yes, you did. Did them all the time, didn't  
13 you?

14          A           Not all the time. Universal wasn't something  
15 that came in the shop quite frequently.

16          Q           Quite frequently. On this particular occasion,  
17 when you had to do this universal joint for this truck,  
18 wasn't anything unusual to you about that, was it? You had  
19 done it before?

20          A           No, it wasn't nothing unusual, but it was just  
21 the particular fact that I came to work that Saturday and I  
22 understood I was working for Moore's Trucking Company. I  
23 wouldn't have gone in the office and filled out the slip for  
24 Gerald M. Moore.

25          Q           You were going to do shop work that morning?

1           A       That's right.

2           Q       It's the same sort of shop work that you do  
3 every day?

4           A       That's right.

5           Q       There was nothing different about that morning.  
6 It was just shop work, isn't that right?

7           A       (Witness nodding head affirmatively.)

8           Q       Your answer is yes?

9           A       Yes.

10          Q       All right. So other than it being a Saturday,  
11 which would have been inconvenient for you and I assume you  
12 got overtime, it was just shop work like any other day?

13          A       Yeah, but I didn't get no overtime.

14          Q       No overtime?

15          A       That was the starting of the week.

16          Q       That was the middle of the week?

17          A       It was the second day of the week. That was  
18 the second payday.

19          Q       You didn't get overtime, but you went in to do  
20 shop work just like any other day?

21          A       Yes, sir.

22          Q       All right. Now, the only time actually that  
23 you ever worked for Trucking and got paid by Trucking was  
24 when you did three trips in delivering a truck, wasn't it?

25          A       Yeah.

1 Q You actually did three trips that week, didn't  
2 you?

3 A That's right.

4 Q You did one trip on the 18th?

5 A Right.

6 Q And two trips on the 19th?

7 A Right.

8 Q I think one was to Ocean City; one was to  
9 Westover; and one was to Georgetown, Maryland?

10 A No.

11 Q Georgetown, Delaware?

12 A It was in Delaware. It wasn't Georgetown,  
13 though.

14 Q These slips have your signature. Remember  
15 these slips that you filled out?

16 A That's right.

17 Q And that's what you got paid for?

18 A That's right.

19 Q \$188 gross and I think the figure shows \$146.

20 THE COURT: One hundred fifty-four, I believe.

21  
22 BY MR. HARTNETT:

23 Q And that's what you got paid for?

24 A That's right.

25 Q And every other day even in the morning of



1 those days you had a run, when you drove your truck, you  
2 filled in a slip for Gerald M. Moore and Sons, too, didn't  
3 you, because you did some work there?

4 A If I drove a truck, I didn't fill out a slip.

5 Q You filled out slips as well, didn't you?

6 A If I came in -- if I came in at 7:30 and  
7 started to work at the shop and opened the shop up, I filled  
8 out a slip. If I came to work and worked on a truck, I didn't  
9 have to fill out a slip.

10 Q One of those days you filled out a slip?

11 A When I came in and opened the shop up and  
12 closed it up.

13 Q That's exactly right. On that same day you  
14 filled out a slip for Gerald M. Moore and Son because you did  
15 some work for him and quite properly and you got paid by  
16 Trucking because you drove a truck on that particular day?

17 A Yeah.

18 Q So there was a distinction between who you were  
19 working for wasn't there?

20 A That's right.

21 Q Now, you had your last run -- the last of those  
22 three runs, that was on a Thursday, and on the Friday you  
23 went back to shop work again?

24 A Yes, sir.

25 Q Filled out the slip?

1           A       That's right.

2           Q       And just did a normal day's work?

3           A       That's right.

4           Q       And on Friday you were asked to come in  
5 Saturday morning and do some more shop work?

6           A       That's right.

7           Q       Now, how would you know what to do when the  
8 shop work came in? Someone tell you that this needed a  
9 carburetor adjusted or this needed an exhaust pipe fixed or --  
10 who would tell you?

11          A       Well, like as I say, Mr. William Moore,  
12 Mr. Gerald Moore, Mr. Kenny Northam, the driver of the truck.  
13 A lot of times ain't nobody tell me. I just walked around  
14 and started the trucks up and then just brought them in the  
15 shop and done a major checkover and whatever I found wrong I  
16 fixed it.

17          Q       So that's about right, isn't it?

18          A       Truck needed washing, I washed it.

19          Q       You pretty well knew what to do yourself, you  
20 didn't need telling and you saw a truck needed fixing, you  
21 would drive it in the shop and fix it and just do your job.  
22 As a matter of fact, you were rather good at it, weren't you?

23          A       Got to be.

24          Q       Whether Kenny Northam told you or whether Billy  
25 Moore told you, that was sort of incidental. You knew what

1 was going on and went ahead and did it.

2 A That's right.

3 Q Tell us a bit about this accident again. You  
4 went there and you say Mr. Gerald Moore was in his dump truck  
5 the way it's on this diagram and he backed out just along the  
6 pathway or the track that you have shown here.

7 A Right.

8 Q Did you actually see him back out?

9 A No, I couldn't see him. My back was to him.

10 Q So really you don't know whether his truck took  
11 that path that you marked here or not, do you?

12 A I know it was his truck. He got out of it.

13 Q You don't know whether he took that pathway or  
14 track that you marked there if you didn't see him?

15 A I know he -- I know he had to turn his truck at  
16 a sharp turn.

17 Q And you were standing at the back of that  
18 tractor facing the other way?

19 A That's right.

20 Q Then the first thing you knew then was bang,  
21 you were injured?

22 A Right.

23 Q You didn't see how he got there and all. First  
24 thing you knew that you were struck?

25 A That's right.

1 Q Now, let me get one thing straight. Those  
2 three trips -- may I have those? Those three trips that you  
3 took for Moore's Trucking --

4 THE COURT: Plaintiff's Exhibit 3.

5  
6 BY MR. HARTNETT:

7 Q -- for Moore's Trucking, this one was -- shows  
8 your signature Charles A. Finney. I believe that was your  
9 Ocean City run. You remember that?

10 A Yeah.

11 Q This one says Westover.

12 A Yes.

13 Q And that's signed by you, too.

14 A Yes, sir.

15 Q And I think this one was the Delaware trip  
16 signed by you.

17 A Right.

18 Q Those three trips were the only instances you  
19 were paid by Moore's Trucking while you were there from  
20 March till May 22nd?

21 A On the pay stub.

22 Q Pardon? Yeah.

23 A Right.

24 MR. HARTNETT: That's all.

25 THE COURT: Do you have any redirect?

1 MRS. FERGUSON: Couple questions, Your Honor.

2  
3 REDIRECT EXAMINATION

4  
5 BY MRS. FERGUSON:

6 Q Mr. Finney, when you were working on a Moore's  
7 Trucking Company truck, who supervised your work?

8 A Mr. Kenny Northam or Mr. William Moore.

9 Q What if you were working on Gerald M. Moore  
10 and Son, Incorporated, truck?

11 A Mr. Gerald Moore or still Mr. William Moore.

12 Q Would Gerald Moore ever tell you what to do on  
13 one of his son's trucks?

14 A No.

15 MRS. FERGUSON: No other questions.

16 THE COURT: All right, Mr. Finney. You may  
17 stand down. Thank you.

18 MR. BENN: Your Honor, with the exception of  
19 the doctor, we rest.

20 THE COURT: All right, sir, then suppose we  
21 break for lunch. What time is the doctor coming?

22 MR. BENN: He said he would be here at one  
23 o'clock. Little after 1:00.

24 THE COURT: All right, sir. It's twenty-five  
25 minutes of one. Suppose we break for lunch until

1 quarter of two, and I caution the jury again, please  
2 do not discuss the case with anyone or allow anyone  
3 to discuss it with you. See you at quarter of two.

4 (The court recessed for lunch at 12:40 p.m.  
5 The court reconvened at 1:55 p.m.)

6 THE COURT: We have seven jurors. Will you  
7 waive polling the jury?

8 MR. BENN: Yes.

9 MR. HARTNETT: Yes, Your Honor.

10 THE COURT: Is the doctor here?

11 MR. BENN: Yes, sir, we call Doctor Pole.

12 (Doctor W. Clark Pole testified.)

13 MR. HARTNETT: If the Court please, as the  
14 Court is aware, there is a Special Plea before the --

15 THE COURT: Suppose we go back there.

16 (The Court, counsel for both sides and the  
17 court reporter went in chambers where the following  
18 occurred:)

19 MR. HARTNETT: All right, sir, my motion is --  
20 the Court is aware that a Special Plea to the  
21 jurisdiction has been filed in this case, essentially  
22 stating that an exclusive remedy of the plaintiff in  
23 this instance is that given to him under the Workmen's  
24 Compensation Act; that he was, in fact, an employee of  
25 Gerald M. Moore and Son at the time of the accident

1 and that he was performing duties in the course of his  
2 employment and that he was injured by Gerald M. Moore  
3 who is president of that company, who was also in the  
4 performance of his work or on duty and that the  
5 evidence shows that -- the plaintiff's evidence shows  
6 that this, in fact, is so as a matter of law, and  
7 that the Court should rule as a matter of law that he  
8 was an employee of the company and that Workmen's  
9 Comp is the exclusive remedy and he should be  
10 precluded from doing this, from maintaining this  
11 action.

12 Now, that's my motion, and in support of that,  
13 by way of argument, I don't know whether you want to  
14 take this down, Judge, the evidence shows from himself  
15 and their witnesses -- at this time, it's not  
16 contradicted at all that the man was employed in March.  
17 He was employed as he says by Gerald M. Moore.

18 To begin with, I believe he testified he did  
19 some general work and then after a couple weeks he  
20 was doing mechanical work; that he did what he termed  
21 as shop work and on his own evidence he states that he  
22 came over to the shop. Any vehicle that came over to  
23 the shop he repaired. It didn't matter whether this  
24 vehicle was a Gerald M. Moore vehicle. It didn't  
25 matter whether it was a Trucking Company vehicle.

1 Even a station wagon he knew that belonged to an  
2 individual that he did this as shop work.

3 Now, on the time or the week in question, he  
4 had been asked to drive on three instances for Moore's  
5 Trucking. On those particular days or at least one  
6 of those particular days, he checked in or plugged in,  
7 whatever you call it, to Gerald M. Moore's in the  
8 morning with his slip. He then completed later on --  
9 did his trucking run, came back and did three of these  
10 runs and then the following day resumed his normal  
11 shop work, which is Friday.

12 He was paid separately for the times he was in  
13 the truck doing his runs. He was paid like any other  
14 truck driver was paid and wasn't paid by the hour. He  
15 was paid by the run that he did, and the only evidence  
16 is that any time he ever worked for the Trucking  
17 Company were those three instances which were isolated  
18 and quite apart from his job of Gerald M. Moore.

19 On Friday, his evidence was that he was asked  
20 to come in Saturday morning to fix a truck.  
21 Admittedly it was a Trucking Company truck.

22 THE COURT: And who asked him?

23 MR. HARTNETT: He was asked according to him by  
24 Kenny Northam who is the dispatcher and the chap  
25 called Satchell who testified, who was a truck driver.



1 The truck had universal joint wrong with it. He had  
2 some personal objection about coming in. He wanted to  
3 do something and they wanted him to do something else.  
4 He did, in fact, come in.

5 He started to perform this work on the truck.  
6 He stated that it was shop work. The plaintiff  
7 himself stated that this was shop work. That he had  
8 done similar work in the past. This was his job.  
9 There was nothing unusual about it. The mere fact he  
10 was asked to come in that Saturday morning and the  
11 mere fact it was a Trucking vehicle certainly doesn't  
12 make him an employee of Trucking.

13 The case I think is -- is the very recent case  
14 of Stout, 221 Va., where they discuss the very point  
15 of having two employers and the test is was he, in  
16 fact, performing a part of Gerald Moore's business  
17 when he was injured.

18 THE COURT: Well, Mr. Hartnett, of course, this  
19 is all one big happy family. It's a father and son  
20 deal and they started two different corporations --  
21 formed two different corporations, but legally we  
22 have to look at them as separate entities so what does  
23 Gerald M. Moore and Son, Incorporated, have to do  
24 with repairing a Moore's Trucking Corporation truck?  
25 Why could they care?

1 MR. HARTNETT: That's what they did. Gerald M.  
2 Moore.

3 THE COURT: Why?

4 MR. HARTNETT: Because they had a mechanic  
5 there for the job. They didn't have a shop in  
6 Trucking. The shop was Gerald M. Moore and Son and  
7 that's where all the repairs were done. Doesn't  
8 matter whether it was Trucking repairs or any other  
9 repairs. It was part and parcel of his job for which  
10 he was employed. He didn't specifically do Trucking  
11 on that Saturday morning and he didn't specifically --  
12 wasn't specifically detailed and doing Trucking on  
13 certain occasions. That was part of his job. He  
14 did anything that came in the shop by way of repair.

15 THE COURT: This to me is a very, very close  
16 question, but certainly at this juncture, I would  
17 overrule your motion.

18 MR. HARTNETT: I except to the Court's ruling.

19 THE COURT: All right, sir. Do you have  
20 evidence you wish to put on?

21 MR. HARTNETT: Yes, sir. I will carry on with  
22 it as it pertains to this as well.

23 THE COURT: That's what I meant.

24 MR. HARTNETT: Not just as to liability.

25 THE COURT: That's what I was getting at. How

1 do you want to proceed with your evidence?

2 MR. HARTNETT: There is going to be very little  
3 of it.

4 THE COURT: The reason I asked the question,  
5 you said this morning that you might have some  
6 evidence that you would want taken out of the presence  
7 of the jury.

8 MR. HARTNETT: I do want to get into the record  
9 that the man -- it was treated as a Workmen's  
10 Compensation case. You may not want that before the  
11 jury, of course. That's another point, actually.

12 THE COURT: I didn't understand whether you  
13 wanted to discuss this question now or whether it  
14 could come up on instructions.

15 MR. HARTNETT: Let's do it now. Let's assume  
16 that in the calamitous circumstance that you overrule  
17 the motion again at the end of all the evidence and  
18 it goes to the jury and, of course, the position I'm  
19 in there is unless I get evidence to the contrary,  
20 is the jury going to say this poor chap has been hurt?  
21 There is no recovery for him unless we give him  
22 recovery now. His medical bills have been paid for.  
23 His wages have been given to him. He has received  
24 treatment.

25 THE COURT: What? Under Workmen's Comp?

1 MR. HARTNETT: Yeah. This is what I want to get  
2 in the record and all of this has to come out. He's  
3 not making an election now to do this thing. He's  
4 received all these benefits and, of course, one of the  
5 arguments, you know, can be made having received them  
6 should he be permitted to go on a third-party action.

7 THE COURT: If he received them and goes on a  
8 third-party action --

9 MR. HARTNETT: They are subrogated.

10 THE COURT: -- they are subrogated, but as far  
11 as the question you-all raised about it being a jury  
12 question whether or not he's an employee, I didn't  
13 have much time to do it, but from the lunch break I  
14 read the cases that you gave me and looked up the law.  
15 Can you show me one Virginia case where a jury has  
16 decided that case?

17 MR. HARTNETT: Yes, sir.

18 THE COURT: You can show me a question the jury  
19 decided?

20 MR. HARTNETT: Yeah.

21 THE COURT: The case you cited, as I say, is  
22 not to me on point at all. The Wilbur Smith case,  
23 that's not on point at all.

24 MR. HARTNETT: The case I'm talking about -- this  
25 case here, this 221, came up on a Special Plea. The

1 Court decided it.

2 THE COURT: Have you seen any case where a jury  
3 decided it?

4 MR. HARTNETT: Not where it's come up on that  
5 objection. I think there is a case where a jury may --  
6 it was a jury verdict. Now, whether or not it was  
7 submitted on that issue, I don't know.

8 THE COURT: I have never seen one. Did you find  
9 one? That Supreme Court case held that under the --  
10 the Federal District Court should submit that  
11 question to a jury. Everything in Federal Court is  
12 statutory, isn't it? I have common-law jurisdiction.  
13 Federal Court doesn't. What you're doing here is suing  
14 on a common-law right and you're asking the jury to  
15 decide can this plaintiff come in court and sue on a  
16 common-law right and that's not a jury question.

17 The question is for me to decide whether this  
18 court has jurisdiction.

19 MR. BENN: I'm not too concerned about that.  
20 The point I'm concerned about --

21 THE COURT: I think we ought to research that  
22 question because it's -- what instructions will go to  
23 the jury?

24 MRS. FERGUSON: Basically one of the elements  
25 we have to prove is jurisdiction. We have done that

1 based on the evidence in the case. Based on the facts  
2 that determined what sort of a relationship Charles  
3 Finney had with Gerald M. Moore. We're talking about  
4 what activity he was engaged in. Of what benefit it  
5 was to Gerald M. Moore and Son, Incorporated, who  
6 supervised him; who told him to be there.

7 THE COURT: My point is, is that a question  
8 for this jury?

9 MRS. FERGUSON: I don't see any problem with  
10 the jury deciding that like any other question of fact  
11 with the judge's instructions about what constitutes  
12 employer-employee relationship.

13 THE COURT: I don't think it's a jury question.

14 MR. HARTNETT: It's that Walter Gypsum case  
15 you're talking about, the Federal case. The only  
16 thing they said in there under Etta against Magnum  
17 was -- United States Supreme Court -- this is a  
18 statutory jury issue.

19 Regardless of how the states treat it, you have  
20 got to submit it to the jury. Unfortunately, in that  
21 case the only case they cited was a Carolina case.  
22 They didn't cite any Virginia cases.

23 THE COURT: That's true, but I just cannot find  
24 a case where -- and I haven't had that long to look --  
25 but I cannot find a case in Virginia where a Virginia

1 jury has decided -- it's really a question of  
2 jurisdiction. That's what it boils down to. That's  
3 the whole thing. Does this Court have jurisdiction  
4 to hear this case?

5 MR. BENN: Hear this case?

6 THE COURT: Yes. Well, see, now, this is not a  
7 case -- that's the question here. Do I have  
8 jurisdiction? Does this Court have jurisdiction here?  
9 If Mr. Finney is an employee of Gerald M. Moore and  
10 Son, Inc., at the time of this injury then he can't  
11 sue in Virginia. He can't sue a Federal employee so  
12 this Court does not have jurisdiction. If Mr. Finney  
13 is an employee of Moore Trucking at the time of the  
14 injury, Gerald M. Moore is an outside party, he can  
15 sue him and this Court does have jurisdiction.

16 MR. HARTNETT: Squarely you have got to  
17 decide that issue.

18 THE COURT: Mr. Hartnett has done all the  
19 talking.

20 MRS. FERGUSON: We certainly haven't had a  
21 chance. This Laundry case, I don't see how it can  
22 be any more in point.

23 THE COURT: I hate to interrupt you, but --

24 MR. BENN: Would you let me get this in the  
25 record, Your Honor please?

1 THE COURT: I'm going to let you get anything  
2 in the record, but let me say this: You are getting a  
3 ahead of the point. You want to argue now and I will  
4 certainly listen to you until the wee hours of the  
5 night, if necessary, but you want to argue now that  
6 Finney was an employee of Moore's Trucking at the time  
7 of this injury.

8 MR. BENN: Right.

9 THE COURT: That's what you want to argue, but  
10 what I'm saying before we get to that, what I'm trying  
11 to decide is the question -- the question first should  
12 be decided in my opinion is that question that you  
13 want to argue a jury issue or is it for me to decide?

14 MR. BENN: Let me go in on this. Let's look  
15 at this case decided by the Supreme Court -- the facts.  
16 This is the Laundry case.

17 THE COURT: What does the Laundry case have to  
18 do with whether or not it's a jury issue or court  
19 issue?

20 MR. BENN: What I'm trying to say is that on  
21 the facts it then -- the only way you can reach to  
22 whether or not it is the court that has jurisdiction  
23 is to look at the facts in each case. That's the only  
24 way we can get to it, and if we show the facts by the  
25 facts like in this case that he was an employee of



1 Moore's Trucking Company, then -- now, if he was -- if  
2 the facts show that he was an employee of Gerald M.  
3 Moore and Son, then the question comes up -- naturally,  
4 you have -- it's a matter of law that he can't be here.  
5 In other words, you have no jurisdiction, but in order  
6 to get to that, you have got to look at the facts. If  
7 the facts fall in here like this case then we don't  
8 have a question of whether or not --

9 THE COURT: Well, what you're saying I should  
10 look at the facts.

11 MR. BENN: What I'm saying is if you can conclude  
12 from the facts that it's a possibility or that he is  
13 an employee of Moore's Trucking Company then naturally  
14 he's not covered by Workmen's Compensation from  
15 Moore's -- I mean from Gerald M. Moore and Sons, so  
16 that's the way we have to do it. We just can't say  
17 that and the only way we can get to the issue is  
18 decide the facts in the case.

19 Based on the facts, if he is an employee at the  
20 time of the accident of the Trucking Company --  
21 Moore's Trucking Company, then that resolves the  
22 question of whether or not this court has jurisdiction.

23 THE COURT: All right, sir. I'm going to rule --  
24 Do you want to say something?

25 MRS. FERGUSON: That's all right.

1 THE COURT: I'm going to rule that this is a  
2 question for the court and not a jury issue, and at  
3 this juncture I'm going to overrule your motion to  
4 strike and we will go on with your evidence. Since  
5 it's not a jury issue, do you have evidence on the  
6 Special Plea that you want to take up first out of  
7 the presence of the jury or do you want the jury back  
8 in first? How do you want to start your case?

9 MR. HARTNETT: I think we should do it out of  
10 the presence of the jury. Ninety-nine percent of my  
11 evidence is going to the --

12 THE COURT: Special Plea?

13 MR. HARTNETT: All right. We will leave the  
14 jury out and take evidence as to the Special Plea.

15 (The Court, counsel for both sides and the  
16 court reporter returned to the courtroom where the  
17 following occurred out of the presence of the jury:)

18 MR. HARTNETT: I call Mr. Moore, sir,  
19 Mr. William Moore.

20 -----oOo-----  
21  
22  
23  
24  
25

1        WILLIAM M. MOORE, called as a witness on behalf of the  
2 defendant, having been first duly sworn, was examined and  
3 testified as follows:  
4

5                                DIRECT EXAMINATION  
6

7 BY MR. HARTNETT:

8            Q        Mr. Moore, state your name, please, sir.

9            A        William M. Moore.

10          Q        And what is your position, Mr. Moore, first of  
11 all, in relation to William M. Moore and Son, the corporation,  
12 the defendant?

13          A        You mean Gerald M. Moore and Son?

14          Q        Excuse me.

15          A        Vice-president.

16          Q        And what are your duties with that company?

17          A        I operate the company.

18          Q        And now your father I understand is president?

19          A        Yes, sir.

20          Q        What is your father's position in the company?

21          A        He's president and I consider -- take him into  
22 consideration with my decisions or whatever. We talk about  
23 purchasing equipment and he does -- hauls sand and operates  
24 his backhoe, whatever he wants to do, really.

25          Q        Who actually is in charge of the company?

1           A       Well, I guess I call the shots on the work and  
2 buying and selling or whatever.

3           Q       Now, do you also hold the position with  
4 William M. Moore Trucking Company?

5           A       Moore Trucking, Incorporated?

6           Q       Yes, sir.

7           A       Yes, sir, I'm president of that.

8           Q       Does your father hold a position in that?

9           A       Yes, sir.

10          Q       What is his position?

11          A       Vice-president.

12          Q       Does your father perform any duties in the  
13 Trucking Company?

14          A       Daddy's answered the phone quite a few times  
15 and accepted a lot of responsibility in my business. He does;  
16 yes, sir.

17          Q       Is it generally again true to say that you run  
18 that Trucking Company?

19          A       Yes, sir.

20          Q       Now, what employees does Trucking have -- the  
21 Trucking Company have?

22          A       Drivers, a bookkeeper, a dispatcher.

23          Q       All right. Now, the dispatcher at the time of  
24 this accident I understand was Kenny Northam, the man who  
25 testified here today?

1           A       Yes, sir.

2           Q       What are his duties?

3           A       To dispatch the trucks. Keep the driver folder  
4 records and all intact, and procure loads.

5           Q       How about seeing that the trucks are in working  
6 order? Is that part of his duties or --

7           A       In my absence it would be, possibly.

8           Q       Is it your duty then --

9           A       Well, if something was wrong with a truck and  
10 it needed to be repaired right now before this truck could go  
11 back on the highway, it would be his or the mechanic's  
12 responsibility or the dispatcher's either one if notice was  
13 brought to them.

14          Q       This mechanic that you just mentioned, who does  
15 the work on the trucks of Moore's Trucking Company?

16          A       You mean now?

17          Q       No, at the time of this accident.

18          A       The major work was being done at an agency  
19 away from here in Maryland.

20          Q       Now, when work had to be done at home, who would  
21 do it?

22          A       Charles would do somewhat of it. Some of the  
23 drivers would do somewhat of it. He would do the majority  
24 of it.

25          Q       All right. Now, do you remember employing

1 Charles Finney?

2 A Yes, I do.

3 Q And by whom was he employed?

4 A He was employed by Gerald M. Moore and Son,  
5 Incorporated.

6 Q Now, what was his duty to start with?

7 A He was hired as a laborer at the time and the  
8 boy showed good potential. He worked out real good. He was  
9 much more suited for mechanical than he was spreading stone  
10 or whatever in the construction part so we had an opening in  
11 the shop and he was moved into the shop. He wanted it that  
12 way.

13 Q Now, when you say the shop, is that Gerald M.  
14 Moore and Son?

15 A Yes, Gerald M. Moore and Son.

16 Q And what were his duties in the shop?

17 A To perform maintenance on whatever came up there  
18 regardless of what company it was.

19 Q Well, explain that. Whatever came up there, say,  
20 for instance -- let's take Gerald M. Moore and Sons vehicles  
21 first.

22 A All right.

23 Q Would they go into that shop to be repaired?

24 A Yes, sir.

25 Q How about vehicles from the Trucking Company?

1 Would they go into that shop?

2 A On occasion.

3 Q Was he paid any differently when he did work  
4 for Trucking or --

5 A No, sir.

6 Q Did he do any other work on any other  
7 machinery?

8 A We have rollers, tar distributors, trailers.  
9 We have a lot of machinery there to be worked on.

10 Q And is that machinery either owned by Gerald M.  
11 Moore and Son or Moore's Trucking?

12 A Yes, sir, one or the other.

13 Q Now, on this particular instance on the 22nd,  
14 he apparently came back, came into work on Saturday morning  
15 to perform work on a truck which belonged to Moore's  
16 Trucking. Was that unusual for him to do that?

17 A Not really.

18 Q Had he performed work on Moore's Trucking trucks  
19 before?

20 A Yes, sir, during the week anytime or anytime as  
21 far as that goes. Whatever came up there, really.

22 Q Did you make any distinction? Was any  
23 distinction made as to where that vehicle came from?

24 A No.

25 Q Was it part and parcel of his job?

1           A           He was a mechanic there to do maintenance work  
2 at that shop to whatever came in, be it Gerald M. Moore and  
3 Son or Moore Trucking or my wreckers or whatever.

4           THE COURT: Or your what?

5           THE WITNESS: Wreckers. That's something else.  
6 Another company there, too. No need bringing that up.  
7 It's not another company, it's just some wreckers that  
8 I have that we do.

9  
10 BY MR. HARTNETT:

11          Q           He would work on them, too?

12          A           He would work on them, too.

13          THE COURT: Wreckers. You mean that haul  
14 automobiles?

15          THE WITNESS: Yes.

16  
17 BY MR. HARTNETT:

18          Q           He did anything that came into that shop?

19          A           Right.

20          Q           Now, what he had to do on your wreckers,  
21 Gerald M. Moore and Son or Gerald M. Moore Trucking, how did  
22 he know he had to do this work?

23          A           Either I would tell him or Kenny would tell him  
24 or Dad would tell him or the drivers. If they had a problem  
25 and I for some reason wasn't there or Kenny may be out for



1 some reason, they are going to go to whoever is in the shop.  
2 Say I got a flat on the rear. I got a light out. My truck  
3 needs greasing, whatever.

4 Q And was this the situation on the morning of  
5 the 22nd of May?

6 A Yes, sir.

7 Q Now, he did apparently make three runs for the  
8 Trucking Company. Do you recall that?

9 A Yes.

10 Q And I introduced some records that you're  
11 familiar with.

12 THE COURT: I think they are right down here.

13  
14 BY MR. HARTNETT:

15 Q Before I get to these records, when he was doing  
16 this work for Moore's Trucking or Gerald M. Moore and Son or  
17 your wreckers, whatever it was, I mean, who had control over  
18 him during this period of time? I mean, who told him what to  
19 do?

20 A I did, I guess.

21 Q Would that be for anything that went to the  
22 shop?

23 A Anything, regardless.

24 Q Now, these records here that have been  
25 introduced, they show three trips that he made from Moore's

1 Trucking. Do you remember those three trips? Do you  
2 remember him doing that?

3 A Yes, sir.

4 Q Did he ever do any other work for Moore's  
5 Trucking other than those?

6 A No, sir.

7 Q Those records show that he was paid --

8 A He was paid by Moore's Trucking.

9 Q He was paid by Moore's Trucking?

10 A Yes, sir.

11 Q I think this sheet from your books is Moore's  
12 Trucking and that's the only entry in Moore's Trucking sheet?

13 A That's right. That's the same as his W-2 Form  
14 that came up here awhile ago.

15 Q And I hand you another sheet which is Gerald M.  
16 Moore and Son. Is that the general sheet that he had while --

17 A This is the beginning and the end of his  
18 employment for Gerald M. Moore and Son.

19 Q All right. Now, these daily sheets that are  
20 attached. This is -- states on here Gerald M. Moore and Son.  
21 Are they the slips that he would fill out after a day's  
22 work?

23 A Yes, sir.

24 Q Do you, in fact, have any slips for a driver to  
25 fill out similar to that for Moore's Trucking?

1 A No, sir.

2 Q How is the truck driver paid?

3 A Driver is paid on a run. We have standard runs  
4 that have a standard price or we have other runs that are  
5 paid on a percentage basis and gross that the truck earns.

6 Q So it's a different basis, in other words?

7 A Yes, sir.

8 Q Is that what is reflected by these slips on  
9 Moore's Trucking run here?

10 A All local runs have a standard rate and they  
11 have a standard amount of pay that's paid each time a truck  
12 makes a run. Long-haul trucks, you don't ever get the same  
13 freight or the same thing every time, so the driver is paid  
14 a percentage on that.

15 Q Why did you make these trips?

16 A The best I can remember, there was somebody  
17 either sick or somebody had a week off or vacation. I think  
18 it was a week of vacation. It had to be one or the other.  
19 I can't even remember whose truck it was that he was filling  
20 in for, which one it was, but that's the only reason.

21 Q Is that the only time that you know of that he  
22 worked for Trucking?

23 A That's the only time; yes, sir.

24 Q Now, when he had this accident, did you report  
25 this matter to the Industrial Commission as an industrial

1 accident?

2 A My insurance agent took care of all this.

3 Q It was, in fact, reported as an accident?

4 A As soon as it happened that day.

5 Q Did Charles Finney thereafter receive the  
6 Workmen's Compensation payments?

7 A Yes, sir.

8 Q For his weekly pay?

9 A Yes, sir.

10 Q Sixty-six and two-thirds of his weekly pay?

11 A Yes, sir.

12 Q Did your company first pick up that first seven  
13 days as you have to do under the statute?

14 A We picked up two weeks right in the beginning.

15 Q Paid him two weeks?

16 A We paid him two weeks while he was -- I mean it  
17 just came automatically, I mean.

18 Q Then he had his Workmen's Comp after that?

19 A Yes, sir.

20 Q Did you know anything about that he did receive  
21 medical treatment under Workmen's Comp?

22 A Yes, sir.

23 Q What did you know about that?

24 A I knew it was all taken care of.

25 Q Was there anything different that you know at

1 least about the work to be performed by Finney that Saturday  
2 morning for Gerald M. Moore and Sons than any other work he  
3 had performed for Gerald M. Moore and Son?

4 A None that I know of. The only thing I could  
5 think of that would probably be confusing to him was that to  
6 be working on a truck maybe on a Saturday morning instead of  
7 a piece of construction equipment, but that's in the  
8 maintenance so it doesn't make any difference whether it was  
9 a piece of construction equipment or truck or whatever. When  
10 there is maintenance to be performed, it has to be done  
11 regardless whether it's Saturday or Sunday. I think you will  
12 see a time slip in there for Sunday. He went and started my  
13 boat one Sunday. I think there is one in the file there.

14 Q You say he did that on a Sunday?

15 A Yes, sir. His time is in there on that.

16 Q Was that Gerald M. Moore and Son?

17 A No, sir, that was William Moore's.

18 Q Right. You paid him that?

19 A No, he was paid through Gerald Moore and Son.

20 Q Now, did employees come in on a Saturday morning  
21 if need be? I know they didn't usually, but they did come in  
22 if need be?

23 A Sure.

24 Q There isn't anything unusual about asking  
25 Charles Finney --

1 MRS. FERGUSON: Your Honor, could he clarify  
2 which employees he's referring to, which company's  
3 employees?  
4

5 BY MR. HARTNETT:

6 Q Any employees.

7 A Gerald M. Moore and Son or Moore Trucking.

8 Q Saturday morning, as I understand it, other than  
9 obviously being Saturday, it was --

10 A Let me clear this up. We do not roll dump  
11 trucks, Gaters; we do not have a full crew to come in for  
12 construction to go to work in somebody's yard or clearing  
13 land like that. Our maintenance staff comes in so we may be  
14 able to work again on Monday. Our maintenance crew does come  
15 in on Saturday, if needed. If they are not needed, they  
16 don't come in.

17 Q Any other mechanics working for Gerald M.  
18 Moore and Son at the time of this accident last year?

19 A No, sir, not what you would actually call  
20 mechanics; no, sir.

21 Q No one in the class of Charles Finney?

22 A We had some there that could be classed above  
23 that, but they were operating equipment during the day and  
24 they would work in the shop if something broke down or  
25 whatever. Same thing as what Charles was doing, but they

1 weren't full time in the shop. Charles was more or less  
2 towards the end there full time.

3 MR. HARTNETT: All right. Answer this  
4 gentleman.

5  
6 CROSS-EXAMINATION

7  
8 BY MR. BENN:

9 Q Mr. Moore, Gerald M. Moore and Sons,  
10 Incorporated, and Moore's Trucking Company, Incorporated, are  
11 two separate entities, are they not?

12 A What do you mean by that?

13 Q I mean are they separate? They are not the  
14 same -- one and the same, they are separate, aren't they?

15 A Yes, sir.

16 Q And you are an official in both of them; is  
17 that right?

18 A Right.

19 Q Now, when you told, for instance, the plaintiff,  
20 Mr. Finney, to work on something for Gerald M. Moore and Sons,  
21 Incorporated, for its benefit, you were acting as an official  
22 of that corporation, were you not?

23 A I'm general overseer of the whole place; yes,  
24 sir.

25 Q I mean specifically if he was supposed to do

1 some work on a truck belonging to Gerald M. Moore and Sons,  
2 Incorporated, you would tell him -- you would get your  
3 authority because you were an official of that company,  
4 weren't you?

5 A I'm an official of both companies.

6 Q You were an official of Gerald M. Moore and  
7 Sons?

8 A Son. Just one son.

9 Q You were an official and that's where you got  
10 your authority from, didn't you?

11 A Right.

12 Q When you told him to repair work on Moore's  
13 Trucking Company, you told him based on the fact that you were  
14 the president or official of that company, didn't you? That's  
15 where you got your authority from, didn't you?

16 A Say that again.

17 Q When you asked Mr. Finney here to repair a  
18 truck for Moore's Trucking Company and for its benefit, you  
19 did that under the authority of the fact that you were an  
20 official or president of that company, didn't you?

21 A No, sir. I did it because he was there as a  
22 mechanic and the work needed to be done.

23 Q How did you get your authority?

24 A Because I own it. I'm in charge of it.

25 Q That's why you told him because you're an



1 official of the company, right?

2 A It didn't necessarily have to come from me.

3 Q I didn't ask you that. Your authority -- you  
4 got your authority to tell him what to do because you own  
5 the company; is that right?

6 A You have got to ask me that again.

7 MR. HARTNETT: Give him a chance to answer the  
8 question.

9 THE COURT: Ask the question again.

10  
11 BY MR. BENN:

12 Q When you requested Mr. Finney to work on a  
13 truck or repair a truck --

14 A Are you talking about the truck that was in the  
15 shop that morning?

16 Q Any truck that needed to be repaired that  
17 belonged to Moore's Trucking Company, your authority to tell  
18 him to do something because you were an official of that  
19 company; isn't that right?

20 A Not necessarily.

21 Q You mean to say that somebody on the street  
22 could go in and tell him to do something?

23 A Like I told you before, if a driver came in  
24 there and said I have a problem here --

25 MR. BENN: He's not answering my question.

1 THE COURT: Let him finish his answer.

2 A (Continuing) If a driver comes in with a  
3 problem and I'm not there or Kenny is not there and Dad is  
4 not there or anybody is not there with any responsibility and  
5 a driver says I need this done right away, it would be  
6 Charles' deal to pull it in and get it done, regardless  
7 whether it be Moore Trucking or Gerald M. Moore and Son.

8

9 BY MR. BENN:

10 Q Let me see if I can get you to answer my  
11 question. My question was where do you derive your authority  
12 to tell him what to do for Moore's Trucking Company? Isn't  
13 it because you are an official of that company?

14 A Yes.

15 Q And it's for the benefit of that company,  
16 isn't it, when he repairs a truck?

17 A I would think so.

18 MR. BENN: I don't have any further questions.

19 THE COURT: Mr. Moore, does Moore's Trucking  
20 Company, Incorporated, ever pay Gerald M. Moore and  
21 Son, Incorporated, for the work that was done on their  
22 trucks?

23 THE WITNESS: No, sir.

24 THE COURT: All right, sir, you may stand down.

25 MRS. FERGUSON: I have a couple questions.

1 THE COURT: Wait a minute. We can only have  
2 one questioning. I think only one attorney should  
3 examine a witness at a time. Mr. Benn was asking the  
4 questions. Is that all then?

5 MR. BENN: Yes.

6 THE COURT: All right, Mr. Moore, you may stand  
7 down. Thank you.

8 MR. HARTNETT: Another second, if I may, please.

9 THE COURT: Take your time.

10 MR. HARTNETT: We have no further evidence,  
11 Your Honor.

12 THE COURT: Then you're ready to take up  
13 instructions then?

14 MR. BENN: Yes, sir.

15 (The Court, counsel for both sides and the  
16 court reporter went in chambers where the following  
17 occurred:)

18 MR. HARTNETT: Your Honor please, the defendants,  
19 by counsel, renew the motion previously made on the  
20 grounds that the evidence shows conclusively that the  
21 plaintiff was an employee of Gerald M. Moore and Son,  
22 the defendant, and has exclusive remedy with his  
23 Workmen's Compensation, which again the record shows  
24 he's been the beneficiary recipient of. I can't see  
25 the argument contrary. I understand that opposing

1 counsel is saying, well, it's a matter of control, but  
2 I don't think there has been anything of control shown  
3 here other than the fact that a piece of equipment was  
4 shunted to the shop for repair or to be fixed.

5 There is no control shown by Kenny Northam or  
6 by the driver. It's just that this piece of  
7 equipment needed repairing and he went ahead and did it.  
8 He said himself that he has done this as shop work as  
9 he calls it in the normal course of his employment.  
10 I think that's the key to this thing. He was  
11 performing this in the normal course of his employment  
12 for which he was employed. It was the normal  
13 employment of employers.

14 THE COURT: Well, Mr. Hartnett, I agree with you  
15 that it can be argued that this man was an employee of  
16 Gerald M. Moore and Son, Inc., because they paid him  
17 and in the ordinary course of their business, they had  
18 him do work on Moore Trucking Company, Inc.'s, trucks,  
19 but it can to me also be argued he is what these cases  
20 that Mr. Benn and Mrs. Ferguson cite as a loaned  
21 employee and that though he was an employee of Gerald  
22 M. Moore, he went over the work as an employee of  
23 Moore's Trucking at certain times and they can  
24 certainly argue control and it was Moore's Trucking  
25 employees, the dispatcher and the truck driver that

1 got him to come back in on Saturday morning and it  
2 certainly can be argued why would an employee of  
3 Gerald M. Moore and Son have any control over him when  
4 he's working on one of Moore's Trucking Company,  
5 Inc.'s, trucks.

6 I think it is a very, very close question and  
7 in the event I were to agree with you -- with the  
8 defendants, I think I would be totally wrong to strike  
9 the evidence and dismiss this case at this time because  
10 if it came back from the Supreme Court, we're going to  
11 have to try it again. If it goes on to the jury,  
12 certainly there has been no evidence here shown there  
13 was any contributory negligence on Mr. Finney's  
14 part or any lack of negligence on the part of Gerald  
15 M. Moore and that he was an officer and agent of  
16 Gerald M. Moore and Son, Inc., so certainly we're going  
17 to have a verdict.

18 When that verdict comes, I'm sure there is going  
19 to be a motion to set it aside and we will have both  
20 parties brief this question thoroughly at that time.  
21 I think it's a very close question, but at this  
22 juncture, I'm going to let it go to the jury just on  
23 the question of liability. I don't think they have  
24 anything to do with Workmen's Compensation.

25 All right, sir.

1 MR. HARTNETT: I, of course, object to the  
2 granting of plaintiff's instructions inasmuch as it's  
3 consistent with the motion formerly filed.

4 Judge, just so we understand, you have, in  
5 fact, ruled that the plaintiff was an employee of  
6 Trucking under this evidence?

7 THE COURT: Yes, if I didn't rule --

8 MR. HARTNETT: I understand that. I realize  
9 that. I just want to make sure that that is the  
10 ruling.

11 THE COURT: Oh, yes, that is the ruling. If I  
12 would strike it, away we would be gone, but, as I say,  
13 I just do not think that -- it's such a close question,  
14 I think it would be wrong on my part to strike it and  
15 after the verdict, assume Mr. Hartnett makes a motion  
16 to set aside, I'm going to have both of you brief it.  
17 I think it's very close.

18 (The Court, counsel for both sides and the  
19 court reporter returned to the courtroom at 3:20 p.m.)

20 THE COURT: Mr. Sheriff, get the jury back here,  
21 please.

22 (The jury returned to the courtroom where the  
23 following occurred:)

24 THE COURT: Ladies and gentlemen of the jury,  
25 we have concluded the evidence and I will now read you

1 the Court's instructions.

2 (The Court's instructions were read to the  
3 jury.)

4 (The closing argument was made to the jury by  
5 Mr. Benn.)

6 (A closing argument was made to the jury by  
7 Mr. Hartnett.)

8 (The jury retired to consider their verdict at  
9 3:37 p.m.)

10 (The jury returned to the courtroom at 4:30 p.m.)

11 THE CLERK: Mr. Foreman, have you agreed upon  
12 a verdict?

13 THE JURY FOREMAN: Yes, sir.

14 THE CLERK: We, the jury, on the issue joined,  
15 find in favor of the plaintiff and assess his damages  
16 at \$25,000. Signed, Lewis W. Belote, Foreman.

17 So say you all?

18 THE JURY: Yes.

19 THE COURT: Ladies and gentlemen, that concludes  
20 your services. We thank you very much for your  
21 service.

22 (The jury was dismissed.)

23 MR. HARTNETT: If it please the Court, we will  
24 be filing a motion along the lines of what I have  
25 dictated before.

1 THE COURT: All right, sir. I would like a  
2 memorandum from you both as to that question on  
3 Workmen's Compensation. I'm in no hurry unless some  
4 of you are as long as it's reasonable.

5 (A discussion was had among the Court and  
6 counsel regarding time for filing memorandum and  
7 reply.)

8 (The court adjourned at 4:40 p.m.)  
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Virginia:

In the Circuit Court for the County of Northampton

Charles A. Finney,

Plaintiff

v.

Gerald M. Moore

and

Gerald M. Moore & Son, Inc.

Defendants

MOTION

Now come the defendants and move the Court to set aside the jury verdict rendered herein in favor of the plaintiff and dismiss the motion for judgment herein filed pursuant to the special plea formerly filed and the motions to strike made at the conclusion of the plaintiff's evidence and again at the end of all the evidence on the grounds that workmen's compensation recovery afforded the plaintiff herein is the exclusive remedy of the plaintiff in respect to the injuries sustained as alleged in his motion for judgment.

GERALD M. MOORE and  
GERALD M. MOORE & SON, INC.

By Counsel

AYRES, HARTNETT & CUSTIS

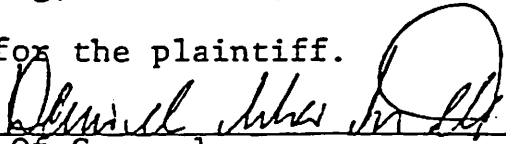
By 

Court Green  
Accomac, VA 23301

COUNSEL

CERTIFICATE

This is to certify that on the 16th day of May, 1983,  
I mailed a true copy of the foregoing Motion to Herman T.  
Benn, Esquire, National Bank Building, Suite 502, Suffolk,  
Virginia 23434, counsel of record for the plaintiff.

  
Of Counsel

HARTNETT  
CUSTIS  
EYS AT LAW  
MAC, VA.

FILED May 17 1983  
TESTED BY [Signature]

Commonwealth of Virginia



N. WESCOTT JACOB  
RESIDENT JUDGE  
CIRCUIT COURTS  
ACCOMACK COUNTY  
NORTHAMPTON COUNTY  
ONANCOCK, VIRGINIA 23417

SECOND JUDICIAL CIRCUIT

June 14, 1983

Daniel Hartnett, Esq.  
Ayres, Hartnett & Custis  
Accomac, Virginia 23301

Herman T. Benn, Esq.  
Benn & Ferguson  
502 National Bank Building  
Suffolk, Virginia 23434

Re: Charles A. Finney v. Gerald M. Moore  
& Son, Inc., et al

Gentlemen:

The plaintiff received a jury verdict in the amount of \$25,000.00 which the defendant moves to set aside on the ground that the action is barred by the Workmen's Compensation Act, contending that both the plaintiff and Gerald M. Moore were employees of Gerald M. Moore & Son, Inc. at the time of the accident.

After reviewing the memorandums submitted by the parties and the cases cited therein, I have decided that Finney was an employee of Moore's Trucking, Inc. at the time of the accident and was not barred from bringing suit against Moore & Son, Inc.

The question presented is not an easy one, since we have two family owned corporations, Moore & Son, Inc. and Moore's Trucking, Inc. doing business at the same location. Finney had done work for both companies so we must determine which company he was working for at the time of the accident. The law is clear that in determining whether the relationship of master and servant exists the power of control is the most essential element. It is immaterial whether one exercises the power of control of the servant in the performance of his work. The test is, does he have the right. Right of control may be inferred from various evidentiary facts. Finney, a mechanic, was directed by Moore's Trucking dispatcher and a driver to come in on Saturday morning to repair a truck owned by Trucking, Inc. There is no evidence that anyone exercised any control over Finney during this period but since Northam, dispatcher for Moore's Trucking, had directed Finney to come in on Saturday and he was working on a Moore's Trucking vehicle at the time, it seems a fair inference that Northam had the right to exercise control over Finney.

Commonwealth of Virginia



N. WESCOTT JACOB  
RESIDENT JUDGE  
CIRCUIT COURTS  
ACCOMACK COUNTY  
NORTHAMPTON COUNTY  
ONANCOCK, VIRGINIA 23411

SECOND JUDICIAL CIRCUIT

June 14, 1983

PHILIP L. RUSSO  
AUSTIN E. OWEN  
HENRY L. LAM  
GEORGE W. VAKOS  
ETHAN WHITEHURST, JR.  
BERNARD G. BARROW  
RESIDENT JUDGES  
CIRCUIT COURT  
CITY OF VIRGINIA BEACH  
PRINCELES ANNE  
VIRGINIA BEACH VIRGINIA 23456

Page 2

June 14, 1983

Defendant argues that Finney was performing work that was part of Moore & Son's trade or business at the time of the accident. This argument is not persuasive since the work Finney was doing was of no benefit to Moore & Son. There is no evidence that Moore & Son was paid or benefited in any manner for doing mechanical work on vehicles owned by Trucking.

I would also overrule the plaintiff's motion to set aside the verdict of the jury on the grounds of inadequacy of damages.

I will ask Mr. Benn to prepare an order entering judgment for the plaintiff in the amount of \$25,000.00, have Mr. Hartnett endorse same and present to me for entry.

Yours very truly,

N. Wescott Jacob

NWJ:chm

FILED June 16, A.D. 1983  
TESTE: W. S. F. C. C.

in the Circuit Court of the County of Northampton, on Monday, the 27th day of June, in the year of our Lord, One Thousand Nine Hundred and Eighty-three (1983).

Present: The Honorable N. Wescott Jacob, Judge.

CHARLES A. FINNEY,

Plaintiff

v.

AT LAW NO. \_\_\_\_\_

GERALD M. MOORE

and

GERALD M. MOORE & SON, INC.

Defendants

O R D E R

THIS DAY again came the parties by counsel and both moved to set aside the jury's verdict. And the Court having considered said motions and having reviewed the memorandums submitted by the parties is now of opinion that both motions should be overruled and the jury's verdict be allowed to stand;

WHEREFORE, it is ordered by the Court that the plaintiff, Charles A. Finney, recover of and from the defendants, Gerald M. Moore and Gerald M. Moore & Son, Inc., a corporation, the sum of TWENTY FIVE THOUSAND (\$25,000.00) DOLLARS, with interest thereon at the rate of 10% per annum from the 21st day of April, 1983, the date of the rendition of said verdict, until paid, as well as the plaintiff's costs in this behalf expended.

ENTER:

*N. Wescott Jacob Judge*

DATE:

*June 27, 1983*

I ASK FOR THIS:

Herman J. Benn p.q.

SEEN: and directed to  
Oliver M. L. L. L. p.d.

Benn & Ferguson  
502 National Bank Building  
Suffolk, Virginia 23434

ERGUSON  
S AT LAW  
VIRGINIA  
134

*CIVIL*  
Recorded in/ Common Law  
Order Book No. 3 p 263  
Northampton County Circuit Court

Virginia:

In the Circuit Court for the County of Northampton

Charles A. Finney,

Plaintiff

v.

Gerald M. Moore

and

Gerald M. Moore & Son, Inc.,

Defendants

NOTICE OF APPEAL

To Clyde E. Gibb, Clerk of the Circuit Court for the  
County of Northampton: .

Counsel for Gerald M. Moore and Gerald M. Moore & Son, Inc.,  
the defendants in the above styled cause in the Circuit Court for  
the County of Northampton, hereby files notice of appeal from  
the order entered herein on the 27th day of June, 1983, said  
order having been entered in the Circuit Court for the County  
of Northampton, Virginia.

GERALD M. MOORE AND GERALD M. MOORE  
& SON, INC.

By Counsel

AYRES, HARTNETT & CUSTIS

By *Charles A. Finney*

Court Green  
Accomac, Virginia 23301

COUNSEL

CERTIFICATE

This is to certify that on the 1st day of July, 1983, I mailed a true copy of the foregoing Notice of Appeal to Herman T. Benn, Esquire, 502 National Bank Building, Suffolk, Virginia 23434, counsel of record for the plaintiff.

Donald W. Smith  
Of Counsel

ES & HARTNETT  
& CUSTIS  
ATTORNEYS AT LAW  
ACCOMAC, VA.

FILED July 5 A. D. 1983  
TESTE: Donald W. Smith Esq. C.



Virginia:

In the Circuit Court for the County of Northampton

Charles A. Finney,

Plaintiff

v.

Gerald M. Moore, et al,

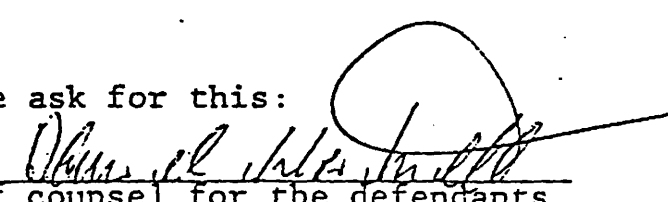
Defendants

ORDER

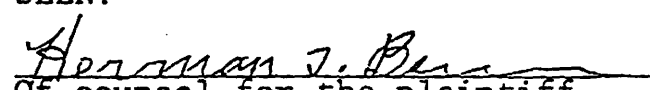
This day came the defendants by counsel, Ayres, Hartnett, & Custis, and move the Court to order the transcript of evidence taken at trial herein to be made part of the record, although as yet unfiled.

In consideration whereof, it is adjudged, ordered and decreed that said unfiled transcript be and hereby is made part of the record herein.

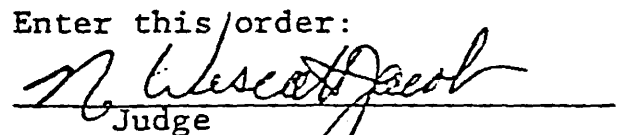
We ask for this:

  
Of counsel for the defendants

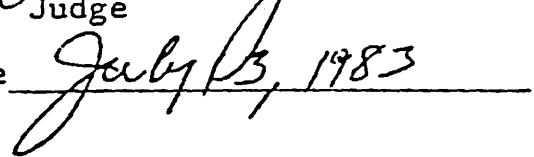
SEEN:

  
Of counsel for the plaintiff

Enter this order:

  
Judge

Date

  
July 13, 1983

ES & HARTNETT  
& CUSTIS  
ORNEYS AT LAW  
ACCOMAC, VA.

*CIVIL*  
Recorded in/Common Law  
Order Book No. 3 p. 269  
Northampton County Circuit Court

#### ASSIGNMENT OF ERROR

The court erred in failing to sustain the special plea filed by the defendants asserting the exclusive remedy of the Virginia Workmen's Compensation Act and dismiss the common law action of the plaintiff.