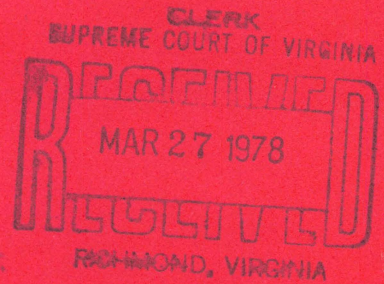


220VA291



IN THE
SUPREME COURT OF VIRGINIA
AT RICHMOND

Record No. 771516

SOUTHERN RAILWAY COMPANY,

Appellant,

v.

ARLEN REALTY AND DEVELOPMENT CORP.,

Appellee.

JOINT APPENDIX

H. Merrill Pasco
Hunton & Williams
P. O. Box 1535
Richmond, Virginia 23212

William F. Stone, Jr.
Stone, Joyce, Worthy & Stone
46 West Main Street
Martinsville, Virginia 24112

Counsel for Appellant

Charles E. Carter
Carter, Craig & Bass
126 South Union Street
Danville, Virginia 24541

Counsel for Appellee

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MOTION FOR JUDGMENT
Filed 8/26/75

1. On May 23, 1972, in Danville, Virginia, Arlen Realty & Development Corp., a New York corporation doing business under the name E. J. Korvette (hereinafter referred to as Korvette), which is a division of the said Arlen Realty & Development Corp., was in possession of trailer number SOUZ 205047 pursuant to a contract entitled "Trailer Use Agreement" between Southern Railway Company, as "Railroad," and Korvette, as "User," a copy of said agreement being attached as "Exhibit A."

2. On the date and in the city aforesaid, Willie Blaine, an employee of Korvette, was instructed by his plant manager in Danville to pick up a trailer owned by plaintiff and to place it at a box car on plaintiff's siding.

3. Acting under direction of his superior, Willie Blaine picked up trailer number SOUZ 205047 and backed it to the door of the box car on plaintiff's siding, leaving approximately 18 inches to 2 feet of space between the box car doors and the end of the trailer so that said trailer could be used as a work area to inspect furniture that was to be unloaded from the box car. Blaine unhooked the trailer from the tractor after letting down the landing gear and removed the tractor from the area.

4. Subsequently on the same date and at the place aforesaid, Troy Martin, an employee of Korvette, was standing between the trailer and the box car when Willie Blaine returned to the area to recouple his tractor to the trailer and in the process thereof caused the trailer to strike Troy Martin, causing allegedly serious injuries.

/

5. On May 22, 1974, Troy Martin filed suit in the Circuit Court of Danville, Virginia, seeking a recovery against Southern Railway Company in the sum of \$100,000.00.

6. Southern Railway Company undertook to defend against the claim of the said Troy Martin and in successfully defending itself against said claim, which was settled by E. J. Korvette, Southern incurred investigation expenses, court costs, attorneys' fees and related expenses in the total amount of \$7,763.86.

7. Under the terms and conditions of the "Trailer Use Agreement," (Exhibit A), "User" (Korvette) undertook to inspect the trailer upon delivery and further agreed:

"(5) Except for normal wear and tear to the equipment covered by this agreement, the User hereby agrees to, and does release, indemnify, protect and save harmless the railroad from and against all claims, damages, expenses and liability (whether or not such liability has been judicially determined) for death, personal injury, or property damage (including, but not limited to, any damage that may occur to the said equipment, or to the lading therein) which occurs while said equipment is in the possession of the User, whether or not negligence on the part of the railroad may have caused or contributed to said death, personal injury, or property damage."

WHEREFORE, Southern Railway Company moves the Court for judgment against Arlen Realty & Development Corp. in the amount of \$7,763.86.

FOR EXHIBIT A

TO MOTION FOR JUDGMENT

See EXHIBIT PLAINTIFF NO. 1

Page 152 of this Appendix

DEMURRER
Filed 9/18/75

Now comes the defendant, Arlen Realty & Development Corp., and files its demurrer to a certain motion for judgment filed against it in the above captioned matter, based upon the following:

1. That assuming all of the allegations of the plaintiff to be true for the purpose of this demurrer the instrument relied upon by the plaintiff shows on its face that defendant's liability thereunder was limited to claims for damages, expenses and liabilities relating to death, personal injury or property damages and any expenses incurred by plaintiff for court costs, attorneys fees and related expenses, are not within the scope of such agreement.

GROUND OF DEFENSE
Filed 9/18/75

The defendant, for answer to a certain motion for judgment exhibited against it in the above captioned matter, says:

1. The allegations of numbered paragraph 1. are denied.

2. The allegations of numbered paragraph 2. are neither admitted nor denied, but strict proof is required thereof.

3. The defendant is not advised as to the accuracy of the allegations in paragraph number 3. of the motion for judgment and accordingly requests strict proof thereof.

4. The allegations of paragraph number 4. are neither admitted nor denied, but strict proof is required thereof.

5. The allegations of paragraph 5. are believed to be true.

6. The allegations of paragraph 6., insofar as the plaintiff's actions alleged thereunder, are neither admitted nor denied. It is admitted that the claim in question was settled by the defendant herein, but it is specifically alleged that it was with the knowledge, consent and agreement of the plaintiff herein that settlement of that claim would act to settle any contingent liability the defendant herein might have had to the plaintiff herein as a result of its alleged use of said trailer or the alleged "Trailer Use Agreement".

7. It is denied that the alleged "Trailer Use Agreement" was in effect at the time and place of the accident alleged by the said Troy Martin.

8. It is specifically alleged that "Exhibit A" of the plaintiff's motion for judgment was back dated by the plaintiff, that it was not executed prior to the alleged accident of Troy Martin which was set forth as the basis for his suit of May 22, 1975, as alleged in numbered paragraph 5. of plaintiff's motion for judgment herein.


DENIAL OF AGENCY

9. It is specifically denied that the time the alleged "Trailer Use Agreement" appended to the motion for judgment as "Exhibit A" was executed that any person had any authority on behalf of the plaintiff to execute said agreement or to authorize the back dating of such agreement or to assume any liability on behalf of the defendant to the plaintiff other than that which might have then existed under the general law of Virginia.

Respectfully submitted,

ARLEN REALTY & DEVELOPMENT CORP.

by Counsel


Charles E. Carter, Counsel for
the defendant
804 Masonic Building
Danville, Virginia 24541

AFFIDAVIT AND DENIAL OF AGENCY

Charles E. Carter, Attorney for Arlen Realty & Development Corp., being first duly sworn, makes oath that to the

best of his knowledge and belief that at the time and place of the alleged execution of "Exhibit A" to plaintiff's motion for judgment, that the alleged signator thereto had not been duly authorized to execute or to back date said agreement by or on behalf of the defendant.

SPECIAL PLEA -- ARLEN
Filed 9/18/75

Now comes the defendant, Arlen Realty & Development Corp., and files its special plea to a motion for judgment filed against it in the above captioned matter. The defendant alleges that if the plaintiff at any time had any cause of action against it that any liability therefor was released by its attorney and agent, Frank O. Meade, acting within the scope of his employment as such.

Commonwealth of Virginia

TWENTY-SECOND JUDICIAL CIRCUIT
CIRCUIT COURT OF DANVILLE
CIRCUIT COURT OF FRANKLIN COUNTY
CIRCUIT COURT OF PITTSYLVANIA COUNTY



STUART L. CRAIG, JUDGE
DANVILLE, VIRGINIA 24541

B. A. DAVIS, III, JUDGE
ROCKY MOUNT, VIRGINIA 24151

W. CARRINGTON THOMPSON, JUDGE
CHATHAM, VIRGINIA 24631

June 1, 1976

Mr. William F. Stone, Jr.
Stone, Joyce, Worthy & Stone
Attorneys at Law
Martinsville, Virginia 24112

Mr. Charles E. Carter
Attorney at Law
804 Masonic Building
Danville, Virginia 24541

Re: Southern Railway Company
v.
Arlen Realty and Development Corp.

Gentlemen:

In reference to the above matter in which Southern Railway is asking that it be reimbursed for attorneys fees and expenses incurred in the defense of the suit of Troy Martin v. Southern Railway Company, I have reviewed your authorities and others.

As you gentlemen know, I presided at the trial of the original suit of Troy Martin v. Southern Railway and I am familiar with the events leading up to the present litigation.

As background, in the original suit of Martin v. Southern Railway, Southern Railway did not want Arlen Realty (Korvette) to participate in the trial of the case and was insistent that Southern Railway handle the litigation without any interference from Arlen's attorney.

Arlen had its attorney in the courtroom but he did not participate in the trial, however, I was advised that their attorney did participate in and did negotiate the settlement of Martin's claim, which was done prior to the conclusion of the trial.

Mr. William F. Stone, Jr.
Mr. Charles E. Carter
Page 2
June 1, 1976

Now Southern Railway is suing Arlen Realty (Korvette) under paragraph (5) of the indemnity agreement asking for reimbursement of the attorney fees and expenses incurred.

It is admitted that the indemnity agreement was prepared by Southern and therefore will be construed accordingly; the agreement is silent as to reimbursement for attorney fees and expenses.

Since it was obvious at the original trial and confirmed by the present suit that Southern Railway intended to rely on the indemnity agreement and to hold Arlen liable for any judgment that may have been awarded against Southern Railway and the expenses incurred in the defense of the litigation, Southern should have called upon Arlen to defend that litigation.

Arlen certainly recognized its responsibility under the agreement in question when it negotiated a settlement of Martin's claim against Southern, and paid same. I am of the opinion that at the time the suit of Martin v. Southern Railway was initiated, Southern, by virtue of the indemnity agreement, was under an obligation to call on Arlen to defend that litigation, and having failed to do so, Arlen is not liable for the attorney fees and expenses incurred by Southern.

If I am correct in my recollection as to what transpired at the Martin v. Southern Railway trial, and the facts leading up to that litigation, and Southern Railway did not call on Arlen to defend that suit, then an Order may be prepared dismissing the pending Motion for Judgment because of Southern's failure to request Arlen to defend and the fact that the indemnity agreement, which was prepared by Southern, did not provide or call for reimbursement of expenses incurred in litigation.

Very truly yours,



B. A. Davis, III

BADIII:ja

February 3, 1977

Mr. Charles E. Carter
Attorney at Law
804 Masonic Building
Danville, Virginia 24541

Mr. William F. Stone, Jr.
Stone, Joyce, Worthy & Stone
Attorneys at Law
46 West Main Street
Martinsville, Virginia 24112

Re: Southern Railway Company vs. Arlen Realty and
Development Corp.

Gentlemen:

Mr. Carter's Demurrer will be overruled and an order may be drawn showing his objections and exceptions. I have the court file with me in Rocky Mount. I suggest that you forward any further papers that are to be filed to this office.

Very truly yours,



B. A. Davis, III

BADIII:ja

ORDER OVERRULING DEMURRER OF DEFENDANT
Dated 2/10/77

This cause came on for an evidentiary hearing on the 25th day of January, 1977 upon the various pleadings of the parties and the evidence and arguments presented by counsel. After mature consideration the Court is of the opinion that the demurrer of the defendant is not well founded and that the same should be and hereby is OVERRULED and DENIED.

To this action of the Court the objection and exception of the defendant is noted.

The Clerk is directed to send certified copies of this Order to counsel for the parties.

ENTER: This 10 day of February, 1977.

B. N. Davis
JUDGE

PLEA OF STATUTE OF LIMITATIONS -- ARLEN
Filed 2/15/77

This day came the defendant in the above captioned matter, the Court having overruled its demurrer previously filed herein, and in addition to the grounds of defense which it has filed specifically alleges that the statute of limitations has run as to the alleged claim, more than three years having passed between the time this cause of action arose and the time suit was filed.

WHEREFORE, the defendant respectfully moves the Court to sustain said plea and dismiss plaintiff's motion for judgment.

February 17, 1977

Mr. Charles E. Carter
Attorney at Law
804 Masonic Building
Danville, Virginia 24541

Mr. William F. Stone
Stone, Joyce, Worthy and Stone
Attorneys at Law
P. O. Box 1432
Martinsville, Virginia 24112

Re: Southern Railway Company vs.
Arlen Realty & Development Corp.

Gentlemen:

The defendants plea of the statute of limitations will
be overruled and an order drawn accordingly.

We are now at the point of making a determination as to
what damages, if any, the plaintiff is entitled and I will be
glad to hear from both of you as to when and how you would de-
sire this determination made, by the court or jury.

Very truly yours,



B. A. Davis, III

BADIII:ja

ORDER OVERRULING PLEA OF
STATUTE OF LIMITATIONS
Dated 2/24/77

Upon consideration the Court is of the opinion that the Plea of Statute of Limitations filed by the defendant should be, and the same hereby is, OVERRULED. To this action of the Court the objection and exception of the defendant is noted.

The Clerk is directed to send forthwith an attested copy of this Order to counsel for the parties.

Enter this 24th day of February, 1977.

B. N. Kain

Judge

May 31, 1977

Mr. William F. Stone, Jr.
Stone, Joyce, Worthy & Stone
Attorneys at Law
46 West Main Street
Martinsville, Virginia 24112

Mr. Charles E. Carter
Carter, Craig & Bass
Attorneys at Law
126 South Union Street
Denville, Virginia 24541

Re: Southern Railway Company
v.
Arlen Realty and Development Corp.

Gentlemen:

It being agreed that the record in this suit is now complete,
I have again reviewed the pleadings, exhibits, trial notes and stipulation.

Without reviewing the factual situation, the Court finds that,
under the facts of this case, that paragraph (5) of the Southern Railway
Company's Trailer Use Agreement is enforceable, this being the portion of
the Agreement that provides for indemnification. The Virginia case of
Johnson's Adm. v. Richmond & D.R.R Co., 86 Va. 975, (1890) is not now appli-
cable to the factual situation before the Court. Also, the Court finds that
even though the Trailer Use Agreement was actually signed after the accident
that gave birth to this litigation, that this fact was not unusual, that

Mr. William F. Stone, Jr.
Mr. Charles E. Carter
Page 2
May 31, 1977

that on many occasions for the convenience of all parties, that the Trailer Use Agreements were signed after the trailers had been picked up and returned. It was the habit and practice of both Southern and Korvette (Arlen) to conduct their business in this manner and was a course of conduct and business practice that both parties, by their past dealings, had approved.

The Court also finds that the terms of paragraph (5) of the lease agreement would include a reasonable attorneys fee and reasonable cost incurred in a proper defense by Southern of any litigation arising by virtue of the leasing of the trailers.

The Court, however, as both counsel know, has considerable difficulty with the fact that Arlen, the indemnitor, was not called upon to defend the original litigation. There is no question that Southern intended to rely on the indemnification agreement and to hold Arlen liable for any judgment that may have been awarded against Southern.

Mr. Frank O. Meade, the attorney for Southern in the suit of Troy Martin v. Southern Railway Company, made this absolutely clear, both in his testimony before the Court and in his depositions. In the depositions taken on January 14, 1976, Mr. Meade testified (p.12)

"...because we weren't liable in the first place and, if we were, we were entitled to indemnification. We had it both ways,..."

"...that Southern Railway is in no way interested in settlement because if there is any judgment against us we would be entitled to full indemnity from Arlen..."

Mr. William F. Stone, Jr.
Mr. Charles E. Carter
Page 3
May 31, 1977

At page 16,

"I have repeatedly and consistently told this counsel that we had no interest in participating in a settlement of this case; that we felt that either there was no liability, or if there were, we would be entitled to full indemnity."

Also, and more importantly, Mr. Meade testified that Arlen was not called upon to furnish a defense to the suit filed against Southern by Troy Martin. Mr. Meade's statement was that Arlen was not requested to defend this suit, that upon receiving the Motion for Judgment he filed an Answer on behalf of Southern and a third party Motion for Judgment.

There is no evidence that at any time did Southern request Korvette (Arlen) to defend the Troy Martin suit; and it did not advise Arlen that if it did not do so Southern would expect reimbursement for damages and the expense of litigation.

In Cemetery Consultants, Inc. v. Ware, 211 Va. 784 (1971), a case involving attorney fees, Ware (indemnitor) was notified of a claim and requested to negotiate a settlement, which he refused to do. Quoting from Corbin on contracts, the court said that

"If the plaintiff can show that the defendant's breach of contract has caused litigation involving the plaintiff in the payment of counsel fees, court costs, and the amount of a judgment, and shows further that such expenditure is reasonable in amount and could not have been avoided by him by reasonable and prudent effort, he can recover..."
(Emphasis added)

In Hiss v. Friedberg, 201 Va. 572, at page 277, the Court says

"It is generally held that where a breach of contract has forced the plaintiff to maintain or defend a suit with a third person, he may recover the counsel fees incurred..."

In *First National Bank of West Hamlin v. Maryland Casualty Company*, 354 F. Supp 189, (S.D. W. Va. 1973), the Court at page 195, quoting from *Jennings v. U.S.*, 374 F.2d. 983 (4th Cir. 1967) in reference to liability under an indemnification agreement, said

"The concept that notice plus an opportunity to defend render binding on an indemnitor the judgment in a case in which he did not participate springs from the notion of res judicata. The reasoning is that where an indemnitor is notified and can take part in - indeed may control - the litigation, he is precluded from contesting the indemnitee's liability in the subsequent indemnity action. The indemnitor's knowing failure to participate is deemed a consent to representation by the indemnitee, thus forming the predicate for application of the rule that a litigant is entitled only once to his day in court. Lack of notice, however, destroys the consensual element, vitiates the binding effect of the judgment and entitles the indemnitor to be heard on the issue of the indemnitee's liability. The indemnitee's unilateral acts, albeit reasonable and under^o taken in good faith, cannot bind the indemnitor; notice and an opportunity to defend are the indispensable due process satisfying elements." (Emphasis added)

There is no question that Arlen had notice of the Martin litigation, in fact Arlen's attorney participated in almost every phase of the litigation prior to trial and eventually negotiated the settlement, but Arlen's attorney was not called upon to defend the Martin suit, and in fact was asked by Southern not to participate in the trial.

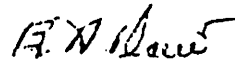
For Southern, to hold Arlen responsible for the cost of litigation in the Martin suit, it was required under the provision providing for indemnification to give Arlen an opportunity to defend the Martin suit. Where there is a contract of indemnification, an indemnitee cannot ignore the indemnitor. The indemnitor is the one that will be called upon to pay the judgment and expenses of litigation and at the very least should be notified and given an opportunity to take charge of and do what it thinks is necessary to settle and/or defend the litigation.

Mr. William F. Stone, Jr.
Mr. Charles E. Carter
Page 5
May 31, 1977

Judgment will be denied Southern Railway Company, and an
Order may be prepared setting forth counsels objections and exceptions.

The original of this letter is being filed with the Court
papers.

Very truly yours,



B. A. Davis, III

BADLII:ja

cc: Mr. T. F. Tucker, Clerk
Circuit Court City of Danville
Danville, Va. 24541

JUDGMENT ORDER
Dated 6/15/77

This day came again the parties to the above captioned matter, by counsel; and,

It appearing to the Court from evidence previously taken ore tenus and depositions filed in this matter that the plaintiff is not entitled to recover anything of the defendant for the reasons set forth more fully in the Court's letter opinion dated May 31, 1977; and,

It is accordingly ORDERED that the Court doth find for the defendant and the plaintiff shall pay the costs of this action.

The plaintiff notes the following objections to this action of the Court:

(1) The defense of failure to tender the defense of the Troy Martin claim was not pleaded by the defendant, but was raised by the trial Court on its own motion.

(2) The indemnification agreement did not require the plaintiff to tender defense of any claim to the plaintiff as a precondition to its effectiveness.

(3) Even if a tender of defense had been required, the defendant waived any right to complain due to the fact that it received notice of the pendency of the Troy Martin claim and the intention of the plaintiff to rely on the indemnification agreement but denied in its responsive pleadings the validity of the

indemnification agreement and failed to volunteer to take over the defense of such claim.

(4) Under the language of the indemnification agreement the defendant had no duty or even right to assume the defense of any claim, but merely the obligation to indemnify the plaintiff with respect to any reasonable expenses incurred by the plaintiff in defending any such claims.

It is ORDERED pursuant to Rule 5:9 of the Rules of Court that the deposition of Frank O. Meade taken on May 9, 1977, and heretofore filed in this cause shall be a part of the record in this cause, as well as any transcript filed within sixty (60) days of the date of this judgment order of any oral hearing in this cause.

The Clerk is directed to send certified copies of this order forthwith to counsel of record.

Enter this 15th day of June, 1977.

B. A. Davis, III

Judge

MOTION TO SUSPEND
JUDGMENT ORDER
Filed 6/24/77

Now comes the plaintiff, by counsel, and moves the Court to suspend the judgment order dated June 15, 1977 to allow the Court appropriate time to consider whether the Court will rule on additional issues presented in this litigation and to allow possible argument thereon.

ORDER SUSPENDING
JUDGMENT ORDER
Dated 6/24/77

For good cause shown, it is hereby ORDERED that the judgment order in this cause entered on the 15th day of June, 1977 is hereby suspended until further order of this Court or August 1, 1977 whichever shall first occur.

ENTER this 24th day of June, 1977.

15/ J. L. DAVIS JR.
JUDGE

Commonwealth of Virginia

TWENTY-SECOND JUDICIAL CIRCUIT
CIRCUIT COURT OF DANVILLE
CIRCUIT COURT OF FRANKLIN COUNTY
CIRCUIT COURT OF PITTSYLVANIA COUNTY



W. CARRINGTON THOMPSON, JUDGE
CHATHAM, VIRGINIA 24831

B. A. DAVIS, III, JUDGE
ROCKY MOUNT, VIRGINIA 24181

JAMES F. INGRAM, JUDGE
DANVILLE, VIRGINIA 24541

July 21, 1977

Mr. William F. Stone, Jr.
Stone, Joyce, Worthy and Stone
Attorneys at Law
P. O. Box 1432
Martinsville, Virginia 24112

Mr. Charles E. Carter
Attorney at Law
126 South Union Street
Danville, Virginia 24541

Re: Southern Railway Company vs.
Arlen Realty & Development Corp.

Gentlemen:

In reply to Bill's letters of July 15th and July 18th, the Court denies the Motion for Reconsideration of Judgment Order and in view of my letter opinion and the judgment order, I see no need to make a finding of fact on the "Plea of Release" filed by Mr. Carter, which was based on the conversations, dealings and negotiations between Mr. Frank O. Meade, the then attorney for Southern and Mr. Allan Garrett, the then attorney for Arlen.

An Order may be prepared and forwarded to me for entry.

My wife and I appreciate very much your letters and expressions of sympathy received from both of you during the past month.

With kind regards, I am

Sincerely,

B. A. Davis, III

BADIII:ja

JUDGMENT ORDER
Dated 8/2/77

Upon consideration of the plaintiff's Motion For Reconsideration of Judgment Order dated July 13, 1977, the Court doth deny the same for the reasons set forth in the Court's opinion letters dated May 31, 1977 and July 21, 1977. To this action of the Court the objection and exception of the plaintiff is noted for the reasons heretofore noted in the record.

The Clerk is directed to send forthwith attested copies of this Order to counsel of record.

2nd August
ENTER this 20th day of ~~JULY~~ 1977.

B. A. Davis, III
JUDGE

Southern's Assignment of Error in its Petition For Appeal is as follows:

ASSIGNMENT OF ERROR

Southern assigns as error the ruling of the trial court that Southern lost its right under the Agreement to indemnification for attorneys' fees and expenses incurred in the defense of the Martin case by not calling upon Arlen to defend the case when it was first instituted despite the fact that Arlen was promptly joined as a third-party defendant pursuant to Rule 3:10 and Arlen in its grounds of defense denied the validity of the Agreement.

(P. 3)

Arlen's Assignment of Cross-Errors in its Brief
In Opposition to the Petition For Appeal is as follows:

ASSIGNMENT OF CROSS-ERRORS

In the event that the Petition for Appeal of Southern is not denied, the appellee assigns the following as cross-error:

1. The trial court erred in overruling the appellee's Demurrer. The indemnity clause of the trailer use agreement did not provide for attorney's fees or call for reimbursement to the indemnitee of such fees or expenses.

2. The trial court erred in upholding the validity of the indemnity clause of the trailer use agreement. The agreement was executed and signed after the injury to Martin; and there was no authority, express or implied, for Arlen's truck driver to create a legal obligation and legal liability after the injury had occurred.

3. The trial court erred in overruling appellee's Plea of the Statute of Limitations. At best, appellee entered into an oral agreement to abide by the terms of the indemnity clause of the trailer use agreement. The statute of limitations banned any claim based upon an oral contract.

4. The trial court erred in failing to rule that the action and conduct of the appellant and its attorneys constituted and effected a release of all matters in controversy, including the appellant's rights and claims under the indemnity clause of the trailer use agreement. (P. 9)

JAMES KENNAN
~~JAMES KENNAN~~,

the witness, being first duly sworn, was examined and testified as follows:

EXAMINATION BY MR. STONE:

Q. Would you please state to the Court your name.

A. James ~~KENNAN~~ ^{KENNAN}.

Q. Where do you live now?

A. 585 Mount Pleasant Road, Chesapeake, Virginia.

Q. Where are you employed?

A. I work for K & S Trailer Service, Incorporated.

Q. Does this have any connection with Southern Railroad Company?

A. We have a contract with Southern.

Q. Now, in the past, have you represented or had a capacity with Southern Railroad in Danville, Virginia?

A. Yes, sir.

Q. What was that capacity?

A. I acted handling the trailer use agreement and loading and unloading the trailers in Danville.

Q. Could you describe to the Court just exactly the nature of that trailer business?

A. I don't follow that.

Q. How did these trailers -- what connection did Southern Railroad Company have with truck trailers?

A. Well, they used them as piggybacks leased to the

1 customers. Usually the customer, you know, would come down
2 or either call me and say they were going to pick up so many
3 trailers.

4 Q. Southern Railroad would bring these trailers in
5 on the train to Danville?

6 A. Yes, sir.

7 Q. Either brought to Danville or shipped from Danville?

8 A. Right.

9 Q. And your responsibility was in connection with this
10 particular operation?

11 A. Right.

12 Q. When did you begin this job or this capacity in
13 the Danville area?

14 A. January 19, 1971.

15 Q. All right, now, and how long did you continue in
16 this capacity?

17 A. Until January of '75.

18 Q. Now, who was the biggest customer of Southern
19 Railroad during this time that you were working in Danville?

20 A. E. G. Korvette.

21 Q. Now, can you tell the Court an average of how
22 many trailers would be involved on either a daily basis or
23 weekly basis or monthly, however you can average it out, of
24 trailers that either were picked up by Corvette at Danville
25 from Southern or shipped out?

1 A. I'd say for the year it would average around eight
2 to ten trailers per day, because some months shipped a lot more
3 than other months.

4 Q. Now, what time did you come in to work in the
5 morning?

6 A. 8:00 o'clock in the morning.

7 Q. Were there any other employees or agents of Southern
8 already there at that particular facility?

9 A. No, no one was there before 8:00 A.M.

10 Q. Do you know what time the drivers from Corvette
11 came to work?

12 A. About eight months out of the year they come to
13 work at 7:00 o'clock A.M., but about four months, September
14 through December, I think, they'd come at 6:00 A.M.

15 Q. Now, for customers other than Arlen Realty, what
16 was the course of dealing with them with respect to any written
17 documents that were prepared in connection with them, other
18 than Arlen or Corvette?

19 A. Well, Corvette was the only customers that came
20 down and picked up and I would call them and they would tell
21 me which ones they had.

22 Q. What was the practice with customers other than
23 Corvette?

24 A. They came between 3:00 and 5:00 and picked the
25 trailer up and signed T. U. A. and signed again on return.

1 Q. Now, what was the practice between Southern and
2 Corvette in Danville?

3 A. Well, because I didn't come to work before 8:00,
4 I made an arrangement with Mr. Burk at ~~K~~orvette.

5 Q. Who was he?

6 A. A manager there.

7 Q. Of the Danville operation?

8 A. Right.

9 Q. What exactly did you arrange with Mr. Burk?

10 A. Of course, this was just oral, not written, that
11 it would be all right for him to pick the trailers up between
12 7:00 and 8:00, and return them too, before I came in.

13 Q. Were trailers in fact picked up by ~~K~~orvette
14 drivers before you would get to work? .

15 A. Yes, sir.

16 Q. What would happen after that?

17 A. I would call ~~K~~orvette after Mr. Burk^E came in and
18 he would give me the numbers and initials of the trailer he
19 picked up.

20 Q. Were any written documents ever prepared in con-
21 nection with these trailers?

22 A. No, the T.U.A.'s were also signed somewhere
23 between 2:00 P.M. and 3:00 P.M.

24 Q. What is T.U.A.?

25 A. Trailer use agreement.

1 Q. What was the practice about how these documents
2 were signed?

3 A. You mean how they're supposed to be done?

4 A. Between Korvette and Southern.

5 A. Mr. Burk⁶ would have the T.U.A. signed some time
6 during the day.

7 Q. Was that in fact done?

8 A. Yes, sir.

9 Q. Do you know of any occasions when the trailer use
10 agreements were not signed by the Korvette personnel?

11 A. No, most of them were signed during the same day
12 or the day following, because sometimes the trailers were
13 picked up one day and returned the following day.

14 Q. What happened then?

15 A. Well, a lot of times they returned them and didn't
16 sign them. Usually they signed the lease agreement for the
17 trailers when we billed the trailers out in the evening. The
18 driver would come see me and I would get it.

19 Q. Could you tell the Court what percentage of the
20 trailer use agreements were signed after the time the trailers
21 were actually picked up?

22 A. I'd say 90% of them. Some of them, the only time
23 they did sign them is if they had a problem with them. They
24 would come by the office and I would repair what ever was
25 wrong with the trailer, like a bulb or things like that.

1 Q. This practice which grew up with the Korvette
2 people, did you make this practice known to your superiors
3 at Southern?

4 A. Yes, sir, they knew about it.

5 Q. Was there ever any point when Southern and Korvette
6 ceased this particular method of operation? In other words,
7 did this method of operation stop at any time?

8 A. It was the same way from the time I started until
9 the time I left.

10 Q. And during this time you were here, do you know
11 whether Mr. Burke was the manager of the Korvette operation
12 here in Danville?

13 A. He was here when I came and still here when I
14 left.

15 THE COURT: Who would sign the trailer use agree-
16 ment?

17 THE WITNESS: Sometimes Mr. Burke or his assistant,
18 whoever came down, not necessarily the one who picked them up.
19 I could sign them, as far as that goes, if it wasn't any de-
20 tention on them.

21 THE COURT: So anybody from Korvette could sign
22 it?

23 THE WITNESS: Yes, sir.

24 THE COURT: Excuse me.

25 BY MR. STONE:

1 Q. You testified about occasions that these trailers
2 were picked up before you got to the job at 3:00 o'clock.

3 Were there occasions when the trailers would be picked up by
4 the ~~K~~orvette drivers while you were there?

5 A. That happened a while later. About the only time
6 they would sign them is if they had a problem with the trailer
7 and brought the trailer up for me to fix the lights or turn
8 signal or whatever.

9 Q. What was the reason for this practice?

10 A. Well, a lot of times I'd be loading or unloading
11 the trailers. I could be two blocks away when they picked the
12 trailer up. Then if I had a problem it could take fifteen or
13 twenty minutes and they were under sort of production ^{schedule} there
14 and they didn't want to wait. Not unless the trailer had a
15 problem, then they would wait.

16 Q. All right, now, are you familiar with a particular
17 trailer that was picked up by a ~~K~~orvette driver that was
18 subsequently involved in an accident in which Troy Martin was
19 injured?

20 A. Yes, I am familiar with it.

21 Q. Do you remember actually when that trailer was
22 picked up?

23 A. Yes, I saw Calvin Elaine when he picked it up.

24 Q. Who was Calvin Elaine?

25 A. A driver with ~~K~~orvette. They just had two

1 drivers, I believe, during that period of time.

2 Q. Two?

3 A. Yes, sir.

4 Q. How many ~~K~~orvette people did you have some type
5 of dealings with? You mentioned the two drivers and Mr.
6 Burke and an assistant manager. Any other personnel?

7 A. Did I say Raymond McDaniel a while ago, Mr.
8 Burke's assistant?

9 Q. Any other than those four?

10 A. No, just those four.

11 Q. Now, when this particular trailer was picked up
12 that was later involved in the accident, do you remember
13 approximately what time it was picked up?

14 A. 9:30 A.M.

15 Q. And do you recall approximately what time it was
16 returned to the Southern facility?

17 A. No, I don't.

18 Q. Were you there when it was signed for or not?
19 Were you there when it was returned?

20 A. I was there when it was returned and loaded it out
21 the same day, but I don't recall the date. I had around
22 3,000 trailers there a year, so it's hard to remember that par-
23 ticular time.

24 Q. Do you know whether or not the trailer use agree-
25 ment was prepared in connection with this particular trailer

1 involved in this accident?

2 A. Well, I prepared the T.U.A., I'd say, within an
3 hour after he picked it up. I was down there picking up
4 trailers and saw him drive off the lot and wrote the number
5 down on a Southern Railway pamphlet, C.E. or Calvin Blaine
6 and the time, which was 9:30.

7 Q. I'd like to show you this document and ask you if
8 you can identify it?

9 A. Yes, I filled that out.

10 Q. All right, now there's a name down here on the line
11 for a signature. Do you know whose signature that is?

12 A. Mine.

13 Q. What about the signature on the line above that
14 for "user". Whose signature is that?

15 A. Calvin Blaine.

16 Q. Did you in fact see him sign this agreement?

17 A. Yes.

18 MR. STONE: Your Honor, I would like to introduce
19 this as Plaintiff's Exhibit One.

20 MR. CARTER: We object on the grounds that the
21 Plaintiff's own evidence shows it was not discussed prior to
22 the accident and that the agreement was oral, according to
23 the Plaintiff's own witness. We think it's immaterial based
24 on the Plaintiff's allegations and the written contract.

25 THE COURT: Objection overruled.

1 BY MR. STONE:

2 Q. Now, Mr. ^{KENNAN}~~Stanton~~, there's an agreement which has
3 been introduced in a printed form which is filled out with
4 particular information with respect to dates and particular
5 trailers involved with respect to the printed form itself.
6 Can you state to the Court whether or not this form was either
7 the same as or different from the forms that were always used
8 in connection with these trailers?

9 A. Same form, just a different unit number is involved
10 in it, in other words, the destination. It could be ~~Korvette~~
11 or Alexandria or. . .

12 MR. CARRIER: I take it my preceding objection
13 would extend to my objection about the alleged trailer use?

14 THE COURT: Yes.

15 BY MR. STONE:

16 Q. Now, Mr. ^{KENNAN}~~Stanton~~, do you recall when this trailer
17 use agreement was actually signed by you and Mr. Blaine?

18 A. No, I don't.

19 Q. Can you state within a day or so when it was
20 signed with respect to when it was taken out?

21 A. I believe -- I'm not sure. I think it was the
22 same day that the accident happened. He came by after work
23 and signed it, but I'm not positive. I couldn't swear to
24 that.

25 Q. Can you say to the Court ...

1 MR. CARTER: Let's be careful about leading.

2 THE COURT: I'm sorry. We don't have a jury and
3 I'm trying to get on with this.

4 BY MR. STONE:

5 Q. Can you give the Court your best judgment or best
6 recollection within what time it was signed?

7 A. I'd say it was between 3:00 and 4:00, either on
8 the 23rd or the 24th.

9 Q. The 23rd was ...?

10 A. The day the trailer was picked up at 9:30, but
11 I'm not positive because they leave at different times.

12 Q. Now, after this accident occurred, can you state
13 to the Court whether or not there was any change in the
14 method of how these leases were signed and when they were
15 signed?

16 A. No, I just waited for Calvin to come down and sign
17 the particular lease, because he was the one that picked it
18 up. Any other time, either driver would sign all the leases,
19 whether they picked them up or not.

20 Q. The question I'm asking was with respect to
21 this particular trailer, but after this accident happened.
22 Was there any change in the method of how these leases were
23 signed after the accident when they were signed?

24 A. No, it was the same. They still picked up trailers
25 before I came in.

1 Q. Do you know whether or not Mr. Burke knew about
2 this?

3 A. Yes, he did.

4 Q. How about your supervisor from Southern?

5 A. I'm pretty sure he did. I don't know if he directly
6 asked me if it was still signed the same way, but all the
7 leases were being signed most of the time the same day.

8 MR. STONE: Thank you. Please answer Mr. Carter.

9 Mr. ^{KENNAN}~~CANNON~~, you've told us what you did with
10 Korvette, but what was the operating procedure as you under-
11 stood it when you first went there, the procedure as proscribed
12 by Southern Railroad?

13 A. To open at 8:00 o'clock A.M. and close at 5:00
14 P.M. and when the user of the trailer would send someone to
15 pick the trailer up, that it would be a joint trailer inspection.
16 That is, the driver and myself inspect the container, him
17 sign it, and we sign it. When he signs it, he accepts the
18 conditions on the T.M.A.

19 Q. Did you follow that practice for a while?

20 A. No, I couldn't.

21 Q. Why?

22 A. Because Korvette came to work an hour before I
23 came to work and they had something like fifteen men up there
24 and they asked me if it would be all right for Mr. Burke to
25 pick the trailers up and he'd let me know which trailers were

1 picked up.

2 Q. So your instructions from Southern Railroad were
3 before anybody picked it up that you would have a joint
4 inspection and the agreement would be signed?

5 A. Right.

6 Q. And shortly after you started you found this to
7 be unworkable as far as ~~H~~Corvette was concerned? Did you follow
8 the unorthodoxed procedure with anyone other than Corvette?

9 A. No, because they were the only customer that came
10 to work before I did.

11 Q. So you told us that you had an oral agreement with
12 Mr. Burke to deviate from the standard operating procedures?

13 A. Right.

14 Q. Did you ever have any written agreement with Mr.
15 Burke to deviate from the standard operating procedures?

16 A. No.

17 Q. And in fact each time — under this oral agreement —
18 each time you signed one of these things you knew when you
19 signed it it wasn't accurately reflecting what really took
20 place, that it was back dated?

21 A. It was back dated.

22 Q. And you knew there hadn't been an inspection also?

23 A. No, there wasn't an inspection.

24 Q. Was there a joint inspection by you and Corvette?

25 A. No, sir.

1 Q. Wasn't the purpose of the joint inspection to
2 protect Southern Railroad through you and ~~Korvette~~ through
3 them?

4 A. Well, the agreement we had, if they had a problem
5 with the trailer they wouldn't pick it up. They told me if
6 they picked the trailer up, they would accept the conditions.

7 Q. Well, what's shown on this form, Plaintiff's Exhibit
8 One, that really didn't happen, did it?

9 A. Yes, I inspected the trailer the same day it was
10 picked up.

11 Q. But you told us you saw this trailer go out and
12 you made a notation on a form as to the trailer number?

13 A. Yes, sir.

14 Q. Where did you make the notation?

15 A. In a Southern Railroad pamphlet book.

16 Q. Not on this form? You had the notation C.B. ...

17 A. And also, right here, picked up without signing
18 it.

19 Q. But when did you first learn there had been an
20 accident involving this trailer?

21 A. I don't recall.

22 Q. It was on this same day that the accident actually
23 took place on Southern Railroad property, did it not?

24 A. Yes, it did.

25 Q. Fairly close to the pickup point for the trailer?

- 1 A. Yes, sir.
- 2 Q. And the accident occurred about what time of day?
- 3 A. I don't have any idea.
- 4 Q. Did you go to the scene of the accident during
- 5 the day?
- 6 A. No.
- 7 Q. It was in the morning, was it not?
- 8 A. Anything I say would just be hearsay on it.
- 9 Q. Well, you told us plenty of hearsay about what
- 10 Mr. Burke told you.
- 11 A. Okay, Ronald Burke called me in the evening after
- 12 quitting time and told me there was an accident and Troy was
- 13 injured.
- 14 Q. And at that time this agreement had not been signed,
- 15 had it?
- 16 A. No, sir.
- 17 Q. So you do know that the agreement was not signed
- 18 until after you had knowledge of the accident and until after
- 19 Horvette had knowledge of the accident?
- 20 A. That's right.
- 21 Q. Okay, and, of course, then I believe you said
- 22 after work Mr. Blains came by and signed it. Was this so you
- 23 could get the record straight?
- 24 A. On that particular trailer, yes.
- 25 Q. You were concerned because there had been an

1 accident?

2 A. Right.

3 Q. And you wanted to be sure you had all the i's dotted
4 and the t's crossed?

5 A. The trailer was inspected, but not by both of us.

6 Q. And the agreement was not signed before it was
7 picked up?

8 A. Just by me.

9 Q. There was an accident and you wanted to make sure
10 there was a signed agreement in the file on this trailer
11 involved in the accident?

12 A. Yes, sir.

13 Q. And that's why you were concerned about getting
14 somebody from ~~K~~ Corvette to sign it?

15 A. Right.

16 Q. And as a result of this concern Mr. Blaine came
17 down there and signed it?

18 A. Right.

19 Q. Now, down here in ink, picked up and not released,
20 when was that signed?

21 A. That's what I put down there, about an hour after
22 he picked it up at 9:30.

23 Q. That's the reason for the delay? Isn't that the
24 return delay?

25 A. No, that's the pick up.

1 Q. It shows the time of return May 24th at thirteen
2 hundred hours.

3 A. Right.

4 Q. Which was more than twenty-four hours?

5 A. Right.

6 Q. You normally made a charge if it was more than
7 twenty-four hours, an extra charge, didn't you?

8 A. No, they could pick that trailer up at 7:00 A.M.
9 and return it at 4:55 the following day and it wouldn't be
10 any charge on it.

11 Q. Why are you talking about reason for delay?

12 A. Just something for me to look at if anyone called
13 me for me to remember.

14 Q. What?

15 A. That the trailer was picked up at 9:30 by Calvin
16 Blaine, which he did not sign the T.U.A. for.

17 Q. Well, you marked that on there yourself before he
18 had signed it?

19 A. Right.

20 Q. That morning?

21 A. Right. And when he signed it, that was on there.

22 Q. Frequently y'all would let anybody from Corvette
23 sign, just as long as you had a signed agreement in the file?

24 A. Yes, unless, like in this case, there was an
25 accident or detention, then I usually got the person that

1 picked it up to sign it.

2 Q. And with this accident you felt like you'd better
3 have a signed contract by Mr. Blaine?

4 A. Yes.

5 Q. But when Mr. Blaine signed this contract, of course,
6 you knew that it had been back dated to the time you had seen
7 him pick it up?

8 A. Yes, sir.

9 Q. And you do recall that for some reason it was
10 after work on either the 23rd or 24th that Mr. Blaine came
11 down there and signed it?

12 A. Yes, sir.

13 MR. CARTER: That's all I have.

14 THE COURT: Any questions, Mr. Stone?

15 REEXAMINATION BY MR. STONE:

16 Q. When you talked with Mr. Burke and he advised you
17 there had been an accident, did you at that time discuss any-
18 thing about the signing of this agreement, do you recall?

19 A. Yes, I did.

20 Q. What?

21 A. I told him that Calvin Blaine would have to come
22 down and sign the T.U.A.

23 Q. What did Mr. Burke say to that?

24 A. Nothing, he said he'd have him come down.

25 Q. After the agreement was signed, did you personally

1 ever receive from Mr. Burke any complaint about the signing of
2 this particular lease afterwards?

3 A. No, sir.

4 Q. Or did you personally receive from any other
5 ~~Korvette~~ employee any complaint?

6 A. No, because it was just normal for them to sign
7 leases later.

8 MR. STONE: Thank you.

9 REEXAMINATION BY MR. CARTER:

10 Q. Was it normal to have a serious accident?

11 A. No, sir.

12 THE COURT: Did I understand you to say that on
13 occasions, say, eight or ten trailers would go out and one
14 man would come in and sign for all of them?

15 THE WITNESS: Yes, sir.

16 THE COURT: And anybody could sign but on occasions
17 you could sign? Did you ever sign for ~~Korvette~~?

18 THE WITNESS: I have, yes. I've pulled trailers
19 for them a lot of times when one of their drivers was out, so
20 naturally I had to sign ~~Korvette~~ and my name on it.

21 THE COURT: So you then represented Southern and
22 Corvette?

23 THE WITNESS: Yes, I was just doing them a favor.
24 Sometimes a driver would be out.

25 THE COURT: You released it for Southern and you

1 were picking it up for ~~K~~orvette, is that right?

2 THE WITNESS: Right.

3 THE COURT: Any further questions of this witness?

4 MR. STONE: I was going to ask that Mr. Cannon be
5 excused.

6 MR. CARTER: At times anybody from ~~K~~orvette would
7 come down and sign a whole bunch of them and at times you
8 signed them, you just wanted to be sure that when the inven-
9 tory was returned later on you just had a signed contract
10 for every transaction?

11 THE WITNESS: Yes, sir, that's right.

12 THE COURT: Do you want him to remain here?

13 MR. STONE: I think for just a little while
14 longer. Call Calvin Blaine.

15 Thereupon,

16
17 CALVIN BLAINE,

18 the witness, being first duly sworn, was examined and testified
19 as follows:

20 EXAMINATION BY MR. STONE:

21 Q. I believe you are Calvin Blaine?

22 A. That's correct.

23 Q. Where do you live?

24 A. 335 Shelton Street.

25 Q. In the City of Danville?

1 A. That's right.

2 Q. Now, Mr. Blaine, were you formerly an employee of
3 Corvette Company here in the City of Danville?

4 A. That's right.

5 Q. What job did you have for them?

6 A. A truck driver.

7 Q. Do you recall approximately how long you were a
8 truck driver for Corvette?

9 A. Approximately four or five years.

10 Q. Now, in the course of your job as a truck driver
11 for Corvette, did you have any dealings with trailers involving
12 Southern Railway Company?

13 A. Well, just about every trailer that Corvette used
14 was leased from Southern Railroad.

15 Q. What did your job entail with connection with
16 these trailers? Where did you pick them up and so forth?

17 A. My job was to pick them up from the Railroad Company
18 and take them to one of the two warehouses.

19 Q. All right, sir, and what time of the day would you
20 generally pick up these trailers?

21 A. Anywhere from 6:30 in the morning to 7:00 or 8:00
22 at night, depending on the work schedule.

23 Q. How many employees were at the Southern Railroad
24 facility where you would pick up the trailers, do you remember?

25 A. At the place where I would pick up trailers it

1 was two employees. I mean, I'm not talking about office per-
2 sonnel. I'm just talking about at the place where I picked them
3 up at.

4 Q. Who was that?

5 A. This is where James Cannon was over there, the
6 trailer yard. He was in charge of all the trailers. So it was
7 him and another fellow there in charge of the trailers, another
8 fellow he had helping him.

9 Q. Did you know what time Mr. Cannon came into work?

10 A. He would usually get there about 7:30 or 8:00,
11 something like that.

12 Q. What was the practice involving the picking up
13 of these trailers so far as -- when were you authorized to
14 pick them up?

15 A. Well, sometimes, like I say, before like I had to
16 go to work early, sometimes 6:30, and, well, we had sort of
17 a verbal agreement, you know, with James Cannon, where we could
18 like if he wasn't there, we could pick the trailers up and take
19 it to the warehouse, whichever one we had to take it to, and
20 then when we brought it back sign for it.

21 Q. Do you know why this was done?

22 A. More or less as a convenience to us, to Korvette,
23 because, like, Korvette was using a great number of trailers
24 each time, sometimes sixteen or seventeen trailers a day,
25 depending on the work load.

1 When you brought the trailers back to the Southern Railroad
2 yard, what would you do then?

3 A. Drop the trailer on the yard, check it back in,
4 and sign for it.

5 Q. All right. Now, do you recall what the form
6 looked like that you would sign in connection with these
7 trailers?

8 A. Yes.

9 Q. I'll ask you to look at this document and see if
10 you can identify it, please.

11 A. Yes.

12 Q. Can you identify what that is?

13 A. It's a lease, a copy of a lease, rather.

14 Q. There's a signature on it on the line "user".
15 Can you tell us whose signature that is?

16 A. Over here to my left, that's my signature.

17 THE COURT: Please have the record state that the
18 witness is referring to Plaintiff's Exhibit Number One.

19 BY MR. STONE:

20 Q. Now, when you brought these trailers back in and
21 if you had not signed for them when you picked them up, what
22 was the usual practice or procedure when you did bring the
23 trailer back to the Southern Railway yard? What did you
24 usually do?

25 A. Like I said, we usually gave him the approximate

1 time that we picked them up and he put that down and then
2 he would also put down the time that we brought them back,
3 you know.

4 Q. Now, what signatures, if any, were placed on these
5 documents when you did bring the trailers back in?

6 A. Well, my signature was placed on there.

7 Q. Did you receive any copy of the trailer use agree-
8 ment you signed?

9 A. No, I don't believe so. See, all that was turned
10 into the office. We would fill out so many of these over a
11 period of a week or a month and then they would in turn send
12 them up to the headquarters up there on Wilson Street at the
13 main office.

14 Q. That's the main office of what company?

15 A. Of ~~the~~ Corvette here in Danville.

16 Q. Now, do you recall a particular trailer you picked
17 up which was involved in an accident in which Troy Martin was
18 injured?

19 A. I don't recall any numbers.

20 Q. Whether or not you recall the numbers, I can
21 understand that you do recall the trailer itself?

22 A. Yes, I do.

23 Q. Do you recall bringing it back into the Southern
24 yard?

25 A. I believe I do. I'm not quite sure, but I think

1 I returned it.

2 Q. Do you recall whether or not you signed any agree-
3 ment with respect to that trailer?

4 A. I did sign an agreement, yes, but I'm not saying I
5 signed it before, you understand.

6 Q. Yes, do you recall when you did sign it?

7 A. I signed it later, but I don't know when. I
8 couldn't pinpoint the time.

9 Q. MR. STONE: All right, sir. Thank you, Mr. Blaine,
10 and now you may answer for Mr. Carter or for the Court, please.

11 EXAMINATION BY MR. CARTER:

12 Q. Mr. Blaine, I think you indicated you signed the
13 particular agreement regarding the Martin trailer some time after
14 you had picked it up. Was that after Mr. Martin was injured
15 that you signed it?

16 A. Yes, it was.

17 Q. And you knew when you signed it he had been injured?

18 A. Well, yes, evidently so, because I signed it after
19 the accident.

20 Q. Was Mr. ^{KENNAN}~~Stone~~ present when you signed it?

21 A. Yes, sir, he was.

22 Q. Did Mr. ^{KENNAN}~~Stone~~ know there had been an accident at
23 that time?

24 A. Yes, sir.

25 Q. You indicated, of course, earlier, that the late

1 signing was a convenience to you?

2 A. It was a convenience to the company, period.

3 Q. Also a convenience to Southern Railroad, they
4 were charging for these trailers?

5 A. How do you mean?

6 Q. Charging ~~for~~ Corvette for the use of these trailers?

7 A. Yes.

8 Q. So a convenience for them also?

9 A. I imagine so.

10 Q. So the particular trailer that was involved in
11 the Martin accident, your best recollection is that you not
12 only picked it up but returned it also?

13 A. Yes. That return, now, I'm unsure about it. But,
14 I mean, I couldn't swear that I returned it, but I believe
15 that I did, because it's been such a long time.

16 Q. Sometimes different people signed on the return
17 other than those who actually returned it?

18 A. I see now where Thomas's name is over on the other
19 side, so evidently I didn't sign.

20 Q. You're not even sure this is the piece of paper
21 involved in the Martin transaction, are you?

22 A. No, I don't remember any numbers.

23 Q. But for seeing Mr. Thomas's signature , your best
24 recollection is that you did return it?

25 A. Well, let me say this. After the accident the

1 trailer was checked out. Sec, the trailer was there in the
2 warehouse and it was checked out by two or three men that
3 work on trailers, mechanics, you might say.

4 Q. Who arranged for this?

5 A. I don't know whether the company did or the insurance
6 company or what. They wanted to check the trailer out to find
7 out was there anything defective with the trailer. So the
8 trailer was there in the warehouse for a little while because
9 this was a roller shuttle trailer used this particular day.
10 In other words, the trailer was used to unload the box car
11 to transport from the box car up to the warehouse. We were
12 going to unload it and take it back to the railroad, you
13 understand.

14 Q. And the accident happened as you were backing up
15 the box car before anything had really been unloaded?

16 A. That's right.

17 Q. So after that several mechanics checked it out?

18 A. Yes, to see if anything was wrong with the trailer.

19 Q. And all of that was done before you signed the
20 agreement with Mr. ^{KENNAN} ~~Sanchez~~?

21 A. I couldn't say that, now.

22 Q. You just don't know?

23 A. Right.

24 Q. Did you inspect the trailer on this particular day
25 when you picked it up?

1 A. I don't recall inspecting the trailer because
2 they were in a bit of a hurry that day, so I don't recall
3 inspecting it.

4 MR. CARTER: Thank you. That's all.

5 REEXAMINATION BY MR. STONE:

6 Q. Mr. Blaine, after this accident occurred are you
7 able to state to the Court whether or not any change occurred
8 in the way in which these trailers were picked up and when
9 the agreements were signed?

10 A. I believe so. As I recall, I think that after that
11 particular time, you know, we had to sign a lease agreement
12 before we could pick one up. In other words, we had to sign
13 for one before we could take it off the lot there.

14 Q. When did you last work for Arlen?

15 A. November of '74.

16 MR. STONE: No further questions.

17 THE COURT: Anything further, Mr. Carter.

18 MR. CARTER: No, sir.

19 THE COURT: Step down.

20 THE WITNESS STANDS ASIDE.

21 Thereupon,

22
23 RONALD BURKE,

24 the witness, being first duly sworn, was examined and testified
25 as follows:

EXAMINATION BY MR. STONE:

Q. Would you please state your name for the Court?

A. Ronald Burke.

Q. Where do you live?

A. I live at 3123 Westover Drive.

Q. And did you formerly have a position with the
Corvette Company here in Danville?

A. Yes, sir, I was warehouse manager.

Q. Now, in your capacity as warehouse manager, did
you have any dealings with any representatives of Southern
Railroad Company in the city of Danville?

A. Yes, a great deal.

Q. Any dealings specifically related to the use of
truck trailers?

A. Yes, sir.

Q. Who did you have these dealings with?

A. James ^{KENNAN}~~Cannon~~.

Q. Now, during the time you had these dealings with
Mr. Cannon, can you tell the Court approximately what was the
volume with respect to these trailers, talking about the number
of trailers which were being used?

A. In one given year we used something like 1,300
piggybacks, trailers, a year. During off season, spring and
summer, we average maybe four a day. During the fall of the
year, speaking of September, October, and November, anywhere

1 from ten to as many as eighteen a day.

2 Q. Now, you mentioned the figure 1,300 a year. Would
3 these all be with Southern?

4 A. Right many trailers, what we loaded and shipped
5 out and inbound loads coming to us.

6 Q. Now, in your capacity as manager for the Corvette
7 Company, were you aware of any documents which were prepared
8 or signed in connection with the use of these trailers?

9 A. Yes, sir, trailer use agreements.

10 Q. How did you happen to become familiar with these
11 agreements?

12 A. Well, it was just a fact of life from the time we
13 began shipping by Southern Railroad in 1966, I believe it was.

14 Q. Now, what practice grew up between Corvette and
15 Southern with respect to how these trailers were used, when
16 they were picked up, when they were returned, and whatever
17 documents were in fact signed?

18 A. Well, during our off season, the drivers were
19 responsible for signing out the trailers, time permitting, as
20 they picked them up. During the fall of the year when they got
21 in really high volume, it was with agreement with Mr. Cannon
22 we could pick these trailers up on the day to day basis and sign
23 for them later on in the day. Generally the drivers would
24 sign in around 3:00 o'clock. That is when we had to present
25 the freight bills to the freight agency.

1 Q. Now, why did this practice or agreement with Mr.
2 ~~Cannon~~ ^{KENNAN} arise? What was the background around handling it this
3 way?

4 A. Volume, when the volume increased Mr. ~~Cannon~~ ^{KENNAN}
5 was generally the only one working down there. My drivers
6 were having to stand around and wait for James Cannon to
7 give us the use of his time. We started working at 7:00
8 o'clock in the morning. James ~~Cannon's~~ ^{KENNAN'S} hours started at 8:00
9 or 8:30 in the morning. Sometimes it was 9:00 before we could
10 see him. Under those conditions we were in agreement to
11 pick up the trailers when he wasn't available and use them
12 and sign for them at a later time.

13 Q. You say you were using maybe 1,300 trailers a year,
14 what percentage of these trailers would you say had the
15 trailer use agreement signed?

16 A. I would say that probably 75% of the trailers
17 that we picked up were signed for properly at the time of
18 the pick up.

19 Q. What about -- are you aware of any that were picked
20 up that agreements were not signed, at some point, between the
21 two of you?

22 A. All the trailers were eventually signed for.
23 Generally, whatever we picked up within one day's time was
24 signed for at the end of the day.

25 Q. Who would sign these documents or agreements on

1 behalf of Corvette?

2 A. It was the truck drivers' responsibility.

3 Q. Were you familiar with the form itself?

4 A. Yes, sir, very familiar with them.

5 Q. I'd like to show you Plaintiff's Exhibit Number
6 One and ask you if you are familiar with this particular type
7 of form?

8 A. Yes, I am.

9 Q. Can you describe to the Court what it is?

10 A. From my understanding, this is part of a like a
11 four part document, and my understanding is that when the
12 trailer arrives in Danville at the piggyback ramp, the ramp
13 operator was supposed to check for defects in the trailer,
14 or broken doors, broken lights, holes in the roof and floor
15 and what have you. In other words, an inspection of the trailer
16 as it came in and then place it on the yard for pick up or
17 release to the customer. And when the customer would come and
18 pick it up, he would sign on the bottom. Then after the
19 trailer is loaded and brought back to the railroad, my under-
20 standing is it's supposed to be signed on the right side.

21 And Mr. ^{KENNAN} ~~Cannon~~ would sign it back in.

22 Q. Now, would you keep the trailer use agreement?
23 Would they come back to the Corvette office?

24 A. No, Cannon would hold our copy, which I think was
25 a pink copy, until the end of the month and then bring it up

1 to our office or send it up by a driver, a group of them, or
2 the forms used during that period. And on some occasions we
3 had been billed by Southern Railroad for damages to the trailers
4 that we did possibly do or possibly didn't do. So whenever
5 we received a bill, I could go pull a copy and see if the
6 two signed it and if it did possibly get damaged while in our
7 possession. Then after we would hold them for a certain
8 length of time we would discard them.

9 Q. Do you recall a particular incident in which a
10 trailer from Southern was involved in an accident in which
11 Troy Martin was injured?

12 A. Yes, I do.

13 Q. Do you remember any conversations with Mr. Cannon
14 with respect to that particular accident?

15 A. Well, we talked a great deal about it. Immediately
16 after the accident I went to the emergency room in the hospital
17 to check on the employee who was injured. At some time during
18 the day afterwards I talked to James Cannon. I asked him if
19 the trailer use agreement was signed and he told me he had
20 Blaine sign it around 2:00.

21 Q. Did you make any response to that?

22 A. Well, I said, "I'm just glad that it's been signed."
23 I was primarily looking out for his benefit.

24 Q. Did you make any objection known to him either then
25 or later about the signing of the lease agreement after the

1 accident had occurred?

2 A. Any objections?

3 Q. Yes, did you complain about it?

4 A. No, I didn't complain about it.

5 Q. He told you that that's what had happened and you
6 said, well I'm glad it got signed?

7 A. Right.

8 Q. And you knew at that time it had been signed after
9 the accident had actually occurred?

10 A. Yes, sir, I did.

11 Q. Was there any change in the procedures about the
12 handling of these trailers and signing of these lease agreements
13 after the accident occurred?

14 A. No, sir, the only change that I made was I issued
15 strict instructions verbally and written to both my drivers
16 that they were to make a complete inspection of these trailers
17 themselves rather than relying on the trailer being thought
18 to be okay. As far as the signing of the lease agreements,
19 this practice continued up until, I'd say about December 17th
20 of 1976.

21 Q. I believe Korvette has now closed out their
22 operations in Danville, is that correct?

23 A. Yes, sir.

24 MR. STONE: Thank you, sir.
25

EXAMINATION BY MR. CARTER:

Q. Mr. Burke, the agreement, of course, which you had with Mr. Cannon regarding the late signing of these agreements was in fact oral, was it not?

A. Yes, sir.

Q. Didn't some question come up as to whether there might have been a defect to this particular trailer, to the brakes?

A. There was an inspection made to the trailer the next day by Crawford Insurance Company adjusters or inspectors. They had two mechanics with them from Lakewood Truck Center. The truck was at the warehouse. Air pressure was applied to the trailer. The tractor was then disconnected from the trailer and the mechanics crawled up under it and air was leaking off the brakes.

Q. There was some air leaking off the brakes, is that correct?

A. Yes, sir.

Q. Had you received that same report from Mr. Blaine?

A. No, sir. Prior to the accident or after the accident?

Q. After the accident.

A. I don't recall after the accident. I really don't recall. Now, he stated when I talked to him that the air had leaked down on the trailer brakes. Now, this was —

1 I really don't recall whether the next day after the accident
2 or late the afternoon of the accident.

3 Q. That was Mr. Blaine's version to you, that the
4 trailer brakes had leaked?

5 A. Yes, sir.

6 Q. Did you ever authorize, after you had knowledge
7 of the accident, did you authorize Mr. Baine to sign the
8 alleged trailer use agreement?

9 A. I told him after — I don't remember whether it was
10 late that afternoon of the accident or the next day — to get
11 the trailer use agreement signed.

12 Q. But at that time Mr. Cannon said it was already
13 signed?

14 A. Right.

15 Q. Did you authorize him to sign it indicating there
16 was nothing wrong with the brakes?

17 A. No.

18 Q. The whole purpose of the form was to insure, for
19 the protection of Southern Railroad and for the protection
20 of Kervette, that the trailer was operating in good condition?

21 A. Right.

22 Q. So the fact that it wasn't done early by Southern
23 Railroad or by Mr. Blaine was in violation of the very
24 purpose of the inspection, is that correct?

25 A. Yes, sir.

1 Q. An inspection which was for the protection of
2 your employees, as well as for the protection of Southern
3 Railroad?

4 A. Right.

5 Q. Did you ever discuss with your employer or your
6 supervisor or say anything about the fact you had some oral
7 agreement with Mr. ^{KENNAN} ~~Cannon~~ that these forms would not be signed
8 at the time a trailer was picked up?

9 A. Well, to my understanding, it wasn't a question of
10 them not being inspected. It was my understanding that these
11 trailers were to be inspected.

12 Q. By Mr. ^{KENNAN} ~~Cannon~~?

13 A. Right.

14 Q. And were supposed to be in good mechanical condi-
15 tion?

16 A. Right.

17 Q. But there was no joint inspection as the form in-
18 dicated there was?

19 A. No, sir, there wasn't or never has been a joint
20 inspection.

21 Q. That was the purpose of the form, wasn't it.

22 MR. STONE: I'd be glad for Mr. ^{KENNAN} ~~Cannon~~ to testify
23 to what he knows. I don't know if he's in a position to
24 testify as to what the forms were for.

25 BY MR. CARTER:

1 Q. Wasn't the purpose of the form to insure a joint
2 inspection both by Southern Railroad and by ~~Korvette~~?

3 A. Possibly it was designed to be a joint inspection
4 but to my knowledge I was not aware it was supposedly to be
5 a joint inspection and to my knowledge neither of the two
6 drivers had ever participated in a joint inspection. We
7 relied on Mr. ~~Cannon~~ ^{KENNAN} or whoever the ramp operator was to make
8 the inspection.

9 Q. Did you know until after this accident occurred
10 that under these conditions on the back of the form that there
11 was some sort of alleged indemnity agreement? Were you actually
12 aware of that on the day of this accident that that language
13 contained in paragraph three was there? Had you studied it?

14 A. I had never read it until some days after the
15 accident.

16 Q. So, I ask you again, when you're talking about
17 signing the trailer use agreement, did you realize at the
18 time you found out Mr. Blaine had gone down there and signed
19 it after the accident, did you realize then that he was
20 taking some possible legal liability on behalf of ~~Korvette~~
21 for the injuries claimed by Mr. Martin?

22 A. I was amazed after I read the back side of this
23 document at the terms it put forth. I was not aware until
24 several days after the accident of all the terms and conditions
25 on the back side of this paper.

1 Q. And did you talk to anyone at the home office
2 after the accident and before you learned Mr. Blaine had
3 signed it? Or anyone in the legal department?

4 A. I did not talk to anyone in the legal department
5 within a matter of five days after the accident. I spoke to
6 several officers within our company explaining to them the
7 accident and our situation, that we were picking up the
8 trailers without signing the trailer use agreements.

9 Q. Would you have authorized Mr. Blaine following
10 the accident, knowing Mr. Martin had been severely hurt,
11 would you have authorized him to sign this agreement if you
12 had realized that you possibly might be assuming some legal
13 liability on behalf of ~~Korvette~~ for Mr. Martin's injury?

14 MR. STONE: If Mr. Burke can answer that question
15 I don't have any objection, but whether or not he can answer
16 it is what bothers me. It's a very hypothetical-type question.

17 THE COURT: He has testified he was not aware what
18 was on the back of the trailer use agreement, so I will permit
19 Mr. Burke to answer the question if he can.

20 THE WITNESS: If I had known the terms of the
21 conditions on these documents about the use of these trailers,
22 I would have never allowed it to happen.

23 THE COURT: What?

24 THE WITNESS: I never would have allowed my drivers
25 to pick up these trailers without signing for them properly

1 and also making an inspection of their own.

2 MR. CARTER: That's all I have.

3 REEXAMINATION BY MR. STONE:

4 Q. Mr. Burke, you said that you did become aware
5 within four or five days after the accident, you read the
6 provisions on the reverse side of the agreement and found out
7 what they were?

8 A. Yes, sir.

9 Q. And as I understood your earlier testimony on
10 direct examination, you changed the procedure that your
11 drivers were to personally inspect the trailers before they
12 picked them up, but as far as the signing of the agreements
13 after they were brought back, that practice continued.

14 A. Yes, sir, immediately after the accident I set up
15 a meeting with my drivers. There were a number of things they
16 were doing that I became aware of, so I set up a meeting with
17 my drivers. We discussed things and I put it in letter form
18 to the drivers that they were to make a physical inspection
19 as far as the brakes, lights, turn signal and what have you.
20 This they did up until we closed. As far as the trailer use
21 agreements, I would say that 75% of them were signed at the
22 time of the pick up. The remainder of them, we could not
23 locate the ramp operator and so we did not sign them.

24 Q. Do you know whether or not your supervisors at
25 ~~the~~ Corvette were aware that this procedure was continuing?

1 A. Yes.

2 Q. Did you ever receive any instructions to change
3 that procedure?

4 A. No.

5 MR. STONE: Thank you, sir.

6 THE COURT: Any further questions, Mr. Carter?

7 MR. CARTER: No.

8 THE COURT: After you were notified or heard about
9 the accident, you say you got in touch with Mr. ^{KENNAN}~~Cannon~~ to be
10 sure the T.U.A. was signed?

11 THE WITNESS: Yes, sir.

12 THE COURT: Why were you so anxious to see that it
13 was signed?

14 THE WITNESS: For his protection.

15 THE COURT: You were doing it to protect Mr.
16 Cannon?

17 THE WITNESS: Yes, sir, I was.

18 THE COURT: That was your only interest?

19 THE WITNESS: Yes, sir.

20 THE COURT: Were you aware of the fact that some-
21 times one driver was signing, say, ten or twelve or them at
22 one time?

23 THE WITNESS: Yes, sir, I was.

24 THE COURT: Were you aware Mr. ^{KENNAN}~~Cannon~~ himself was
25 signing some of them?

1 THE WITNESS: I became aware of it, but I don't
2 recall exactly the date or time, whether it was before or
3 after the accident. But I am aware he did sign some.

4 THE COURT: Getting back to my first question,
5 you were concerned about the trailer use agreement on behalf
6 of Mr. Cannon rather than on behalf of Korvette, is that
7 correct?

8 THE WITNESS: Yes, sir.

9 MR. STONE: Why was that?

10 THE WITNESS: I have a very good friendship with
11 Mr. Cannon. Over the years we worked together quite closely
12 and he had done some work for us when we were in a bind. It
13 was just friendship, basically.

14 MR. STONE: All right, no further questions.

15 THE COURT: Any further questions, Mr. Carter?

16 MR. CARTER: No, sir.

17 THE WITNESS STANDS ASIDE.

18 (TEN MINUTE RECESS.)

19 Thereupon,

20
21 W. B. STALNAKER, JR.,

22 the witness, being first duly sworn, was examined and stated
23 as follows:

24 EXAMINATION BY MR. STONE:

25 Q. Would you please state your name and address for

1 the Court.

2 A. W. B. Stalnaker, Jr., 1138 Timber Lake Drive,
3 Lynchburg, Virginia.

4 Q. What is your job?

5 A. I'm claim agent for Southern Railway Company.

6 Q. How long have you had that employment?

7 A. Since 1958.

8 Q. Now, I believe you're familiar with the circum-
9 stances surrounding Troy Martin's claim against Southern
10 and Southern's claim against Arlen Realty and Development
11 Corporation?

12 A. Yes, sir.

13 Q. Now, in connection with your involvement with
14 the claim of Troy Martin and Arlen Realty, was any contact
15 made with you by any representative of Arlen Realty with
16 respect to this claim?

17 A. Any representative of Arlen?

18 Q. Any representative or agent of Arlen.

19 A. I received some correspondence from Crawford and
20 Company Adjusters.

1
2
3
4
5
6
7
8
9 BY MR. STONE:

10 Q. Now, Mr. Stalmaker, in your capacity as claim
11 agent with Southern and your familiarity with the claim of
12 Troy Martin, did you become aware of what action Southern
13 Railway attorneys took with respect to Arlen Realty at the
14 time of or shortly after the time that this case was first
15 brought against Southern?

16 A. Mr. Stone, I don't get that exactly.

17 Q. Let me rephrase it. You were aware that the
18 Defendant of this litigation had been referred to the Southern
19 Railway attorney here in Danville?

20 A. Yes, sir.

21 Q. Who was that?

22 A. Frank Hoade.

23 Q. Did you in fact have anything to do with referring
24 the suit papers to them?

25 A. Yes, I would have provided Frank with a copy of

1 my file.

2 Q. Did you receive copies of pleadings that he filed
3 in that litigation?

4 A. Yes.

5 Q. Did you become aware of the action which he com-
6 menced in that case against Arlen Realty and Development
7 Corporation?

8 A. Yes, sir.

9 Q. Now, subsequent to the time that this action
10 against Arlen Realty, the Troy Martin litigation, can you tell
11 the Court whether or not you ever received any inquiry or
12 any other communication from any representative of Arlen
13 Realty and Development Corporation offering to take over the
14 Defendant the principle claim?

15 MR. CARTER: I object. Once the suit was filed
16 against Arlen, it was only proper to communicate through
17 Arlen counsel. He also testified that Frank Meade was the
18 counsel in charge and I think Mr. Meade's depositions will
19 show he was supervisor to Mr. Pasco with Hunton and Williams
20 in Richmond. So I think it's immaterial and objectionable
21 because of the reply it was some duty upon Arlen to communicate
22 with Southern when it would have been unethical.

23 THE COURT: Go ahead. I overrule.

24 BY MR. STONE:

25 Q. I'm not implying whether they had any duty or
not.

1 A. I've lost you again on that.

2 Q. You are aware at the time that Mr. Meade filed a
3 pleading against Arlen Realty and Development Corporation
4 seeking indemnity?

5 A. That's right.

6 Q. My question is, after the time that it was filed,
7 were you ever contacted personally by any representative of
8 Arlen Realty?

9 A. I was not.

10 Q. By any representative about the Troy Martin claim?

11 A. No, sir.

12 MR. STONE: All right, sir, No further questions.

13 MR. CARTER: We have no questions at this time.

14 Again, we would ask that Mr. Stalnaker not be excused prior
15 to the termination of the evidence.

16 THE COURT: All right.

17 THE WITNESS STANDS ASIDE.

18 MR. STONE: Call Mr. Meade, please.

19 Thereupon,

20 FRANK O. MEADE,

21 the witness, being first duly sworn, was examined and testified
22 as follows:

23 EXAMINATION BY MR. STONE:

24 MR. STONE: Your Honor, at this time before Mr.
25 Meade begins testifying we would like to introduce certified

1 copies of various pleadings, Troy Martin Versus Southern
2 Railway Company Versus Arlen Realty and Development Corporation.

3 THE COURT: Any objection, Mr. Carter?

4 MR. CARTER: I don't think so. I'll go on through
5 here.

6 THE COURT: *DUPPLICATION*
~~Anything~~ won't bother these.

7 MR. CARTER: Not among lawyers. No objection by
8 the Defendant.

9 MR. STONE: Your Honor, whatever the number should
10 be on these. The clerk will know.

11 THE CLERK: Number Two. I'm just going to make it
12 all one exhibit.

13 MR. STONE: If that will be agreeable to the Court.

14 THE COURT: Fine.

15 EXAMINATION BY MR. STONE:

16 Q. I believe you are Frank Meade?

17 A. That's right.

18 Q. You are an attorney that practices here in the
19 city of Danville?

20 A. Yes.

21 Q. I believe you live here in Danville?

22 A. I live in the county.

23 Q. Now, Mr. Meade, are you familiar with certain
24 litigations which were pending in the Circuit Court of the
25 City of Danville, Troy Martin Versus Southern Railway Company

1 Versus Arlen Realty and Development Corporation?

2 A. Yes, sir.

3 Q. What capacity, if any, did you have in the liti-
4 gation?

5 A. I represented Southern Railway as an assistant
6 Counsel.

7 Q. Now, in your connection or your capacity as
8 counsel for Southern Railway Company, did you have occasion to
9 file any pleadings with respect to Arlen Realty and Develop-
10 ment Corporation?

11 A. Yes, sir.

12 Q. I'd like to show you this document, part of Plain-
13 tiff's Exhibit Two, and ask you if you can identify that.

14 A. This is a copy of the third party motion for
15 judgment which I filed on behalf of Southern Railway Company
16 on July 10, 1974 against Arlen Realty and Development Corpora-
17 tion as the third party Defendant.

18 Q. What was the basis for that claim?

19 A. Hold harmless agreement.

20 Q. And pleadings in that third party motion for ...

21 A. Hold harmless agreement was the part of the trailer
22 use agreement, if I'm not mistaken, and I think the agreement
23 in the pleadings Exhibit A.

24 Q. I'd like to show you Plaintiff's Exhibit Number
25 One and ask you if you can identify that.

1 A. Well, that is a duplicate of an original, I would
2 think, of the lease, of the trailer use agreement and, if
3 I'm not mistaken, I photostated that and filed it with the
4 third party motion for judgment.

5 Q. All right, sir. Now, I believe contained in that
6 exhibit is the return of services and the registered agent of
7 Arlen Realty and Development Corporation?

8 A. Yes, sir.

9 Q. What date does that show?

10 A. July 15, 1974, services of Mr. Hunton, agent of
11 Arlen Realty Corporation.

12 Q. At some subsequent time, did Arlen Realty , to
13 your knowledge, retain counsel and file responsive pleadings?

14 A. They engaged counsel.

15 Q. Do you know who?

16 A. Mr. Allan Garrett.

17 Q. I believe he's also an attorney in the city of
18 Danville?

19 A. Yes, sir. I assume they engaged him. They en-
20 gaged the firm of Garrett, Garrett, Smith and Garrett. He's
21 a member of that firm.

22 Q. When were responsive pleadings filed on behalf of
23 Arlen Realty?

24 A. January 28, 1975.

25 Q. Now, can you state whether the responsive pleading

1 filed on behalf of Arlen made any written contentions as to
2 the validity or the nonvalidity of the hold harmless agreement
3 conditions therein?

4 A. Well, the responsive pleading in the second numbered
5 paragraph on the grounds, the Defendant states, "Further this
6 Defendant avers the set of agreements void of being against
7 policy."

8 Q. Now, to your written responsive pleadings, were
9 there any contentions it was void or noneffective on any
10 other grounds?

11 MR. CARTER: I think that's calling for a legal
12 conclusion on Mr. Meade's part. The pleadings are before
13 the Court.

14 THE COURT: Mr. Meade can testify what the pleading
15 itself said.

16 MR. STONE: We will just tender the pleadings to
17 the Court.

18 THE COURT: All right.

19 BY MR. STONE:

20 Q. Mr. Meade, are you familiar with all the written
21 pleadings which were filed on behalf of Arlen Realty in
22 connection with that litigation?

23 A. Yes, sir.

24 Q. Do you know of any written pleading filed by
25 them in that litigation denying the effectiveness of the

1 hold harmless agreement or on the one you have just read?

2 MR. CARTER: Your Honor, we're running back into
3 the same thing, the matter of Mr. Meade's interpretation.

4 THE COURT: Do you have copies of all the pleadings
5 filed in that suit so far as you know?

6 MR. CARTER: Yes, sir.

7 THE COURT: All right.

8 BY MR. STONE:

9 Q. All right, in the course of that litigation,
10 Troy Martin's original claim against Southern and Southern's
11 against Arlen Realty, can you tell the Court whether Mr.
12 Garrett, at any time, either in writing or orally, made any
13 offer or ask of you that Arlen be allowed to assume the
14 Defendant's litigation?

15 A. No, he made no such offer.

16 Q. Are you familiar with an order which was entered
17 by Judge Davis on the 24th of April in the litigation?

18 A. Yes, sir.

19 Q. And I would ask you just simply to read that order.

20 A. That's the order from the Circuit Court of the
21 City of Danville entered Thursday, the 24th day of April,
22 Troy Martin against Southern Railway Company as Defendant and
23 third party plaintiff against Arlen Realty and Development
24 Corporation. (Mr. Meade reads the order.)

25 Q. Are you familiar with a dismissal order which was

1 entered in the final or entered in the original case of Troy
2 Martin Versus Southern Railway Company?

3 A. Yes, sir, I drew the order.

4 Q. Do you endorse the order as counsel or representa-
5 tive.

6 A. The order was signed by Ronald Williams, someone
7 at Arlen Realty and Allan Garrett and endorsed by me as shown.

8 Q. Would you please read one paragraph.

9 A. "It appears to the Court that the settlement
10 agreed upon between the third party Defendant and the Plaintiff,
11 Troy Martin, with no contributions of Southern Railway Company
12 has been effected. This action is dismissed with prejudice."

13 MR. STONE: All the orders are in there and we would
14 also draw the attention of the Court to the order in connection
15 with the third party claim, which we believe will speak for
16 itself.

17 THE COURT: All right, sir.

18 MR. STONE: Thank you, Mr. Meade, that's all I
19 have at this time.

20 THE COURT: Any questions, Mr. Carter?

21 EXAMINATION BY MR. CARTER:

22 Q. Mr. Meade, did you ever formally request of Arlen
23 Realty and Development Corporation or Corvette, as counsel
24 of Southern Railway Company, that ^{it defend the} ~~they defend the~~ Troy Martin Case
25 ~~for the~~ Southern Railway, ~~retina~~?

1 A. Nothing other than ~~the~~ ^{FILING} the third party
2 motion for judgment.
3 Q. Well, you sued them?
4 A. Yes.
5 Q. Didn't you in fact actually on the day of the
6 trial refuse the assistance of Mr. Garrett and ask that he
7 not sit at the counsel table with you?
8 A. Let's put that in perspective. Mr. Garrett moved
9 that the third party claim be separated from the original claim
10 and Judge Davis permitted ~~references~~ ^{the MOTION} and I think Mr. Garrett
11 ask^{ed} if I wanted him to sit at counsel table and he may have
12 said "assist you" and I said "no, thank you".
13 Q. You actually told him you you did not want him
14 to sit at counsel table and in effect you did not want his
15 assistance?
16 A. On behalf of Southern Railway, you mean?
17 Q. No, his assistance on behalf of Korvette.
18 A. Well, he was representing Korvette and Korvette
19 was not a party to this suit.
20 Q. But in effect you said you did not want his assist-
21 ance on behalf of Southern Railways?
22 A. No, I did not.
23 MR. CARTER: That's all.
24 THE COURT: Any further questions?
25 MR. STONE: He may be excused subject to recall."

1 (LUNCH RECESS FROM 12:20 TO 1:30.)

2 MR. CARTER: Call Mr. Allan Garrett, please.

3 Thereupon,

4
5 ALLAN GARRETT,

6 the witness, being first duly sworn, was examined and testified
7 as follows:

8 EXAMINATION BY MR. CARTER:

9 Q. Would you state your full name, please, sir.

10 A. My full name is William Allan Garrett. I practice
11 law as Allan Garrett.

12 Q. Your occupation is that of an active attorney at
13 law?

14 A. Yes, sir.

15 Q. How long have you been so engaged?

16 A. Since June of 1950. I've been practicing in
17 Danville for roughly twenty-six and a half years.

18 Q. How old are you?

19 A. Fifty-one years old.

20 Q. Directing your attention to 1974 and 1975 when
21 did it first come to your attention that Mr. Troy Martin had
22 filed a suit against Southern Railway Company?

23 A. I received a telephone call on January 2, 1975
24 from a woman, Mary Lee McCain with Market Facilities and she
25 told me of the law suit and asked for me personally to handle

1 the file and I agreed to do so by telephone.

2 Q. I asked you, of course, about Southern Railway
3 Versus Troy Martin. Did you learn about that at the same
4 time or a different time than you learned about the suit of
5 Southern Railway Versus Arlen Realty, the first Southern
6 Railway Versus Arlen Realty? Was that about the same time or
7 a different time?

8 A. I believe she covered both in the same phone call,
9 the first phone call.

10 Q. Following that telephone call, what, if anything,
11 did you do with reference to that suit?

12 A. Well, when she called she told me that there had
13 been a real mix-up in the matter and that Arlen Realty was
14 five or six months in default at that time and she asked me to
15 do the best I could and I told her that I would but I pointed
16 out the difficulties, of which she was well aware. And that
17 same day I called Frank Meade on the telephone.

18 Q. I believe Mr. Meade was counsel for Southern
19 Railway?

20 A. Right. And he told me the status of the file and
21 I asked for permission from Frank to file a late answer and
22 he hedged and said he couldn't agree to it, that he might, but
23 he had to clear it with Southern Railway and he did not agree
24 to it and I later had to have a hearing on that and received
25 the Court's authority, Judge Craig ruled on that. He allowed

1 filing of late answers. Ronald Williams agreed for the late
2 answer, but Mr. Meade wouldn't.

3 Q. Do you recall when the late answer was filed or when
4 the hearing was held before Judge Craig?

5 A. My notes indicate the hearing before Judge Craig
6 was on January 28, 1975.

7 Q. All right, did you in fact file an answer subsequent
8 to the hearing before Judge Craig?

9 A. Yes, he allowed the filing of a late answer but
10 refused the right for Arlen to implead anyone else. He said
11 the suit was complicated enough already, but he did allow the
12 answer, because no one had ever had the order entered on de-
13 fault and that was the main thing I thought in my favor and
14 Judge Craig went along with it.

15 Q. Following that, what, if anything, did you do in
16 consent with or in opposition to counsel for Southern Railway
17 Company with reference to the primary suit or the third party
18 suit?

19 A. Well, I talked with Frank Meade again on January
20 9th and he again stalled me about the late answer.

21 Q. I'm talking about after the answer was filed,
22 sometime after January 29th?

23 A. Well, before that his secretary, Anne Borden,
24 called me and notified me of the depositions, discovery
25 depositions, to be taken on January 31st and let me know that

1 wanted me to attend and I did attend. I think that was the
2 only deposition not arranged around my calendar that had already
3 been set, but thereafter Frank and Ronald Williams and Ted
4 Huggins cleared every deposition date and I participated in all
5 of the discovery depositions.

6 Q. Now, you made reference to discovery depositions
7 taken on January 31st. Where were they taken?

8 A. In the library of Frank Meade's office.

9 Q. Were they the principals or the medical deposi-
10 tions?

11 A. They were the principals.

12 Q. Following that, did you later take depositions
13 again?

14 A. Yes, the next deposition was a medical deposition on
15 February 21, 1975, the deposition of Dr. Evan Alexander at the
16 Bowman Gray School of Medicine in Winston Salem, North Caro-
17 lina.

18 Q. Did you attend the taking of that deposition?

19 A. I did.

20 Q. How did you get there?

21 A. Rode over with Frank Meade.

22 Q. How did you happen to ride with Mr. Meade?

23 A. He arranged the date around my calendar and I
24 offered the use of my car but he said he had had some work done
25 on his car and also wanted me to see his car. I was looking

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1 for a car at the time.

2 Q. Did anyone go with the two of you?

3 A. No.

4 Q. I believe there were other local lawyers involved
5 in the case, but I take it they used separate forms of trans-
6 portation?

7 A. Yes, sir.

8 Q. Did you and Mr. Meade have occasion to discuss
9 the various positions with reference to Mr. Martin on that
10 trip to Winston Salem?

11 A. We did.

12 Q. What was said, as best you can recall, on that trip
13 about the primary claim, as well as the third party claim?

14 MR. STONE: We would like to object for the record.
15 I know from the deposition what he's beginning to get into.
16 We would object to any oral testimony at this point concerning
17 any alleged release made by Mr. Meade and his capacity as
18 counsel for Southern Railway Company. We believe that the
19 written record is before the Court, an order joined in by Mr.
20 Garrett as counsel for Arlen Realty, that Arlen Realty at this
21 point cannot come back and offer testimony of any alleged
22 release. I would have no objection to him testifying to
23 anything that happened after that, but as far as the release
24 question is concerned, we would object to any oral testimony
25 that would attempt to vary the records in this court.

1 THE COURT: I'm not familiar with the information
2 at this time. I'm going to permit Mr. Garrett to answer the
3 question, not in great detail, and I will note your exception.

4 MR. CARTER: Thank you, sir.

5 BY MR. CARTER:

6 Q. Go ahead.

7 A. The first part of the trip we just talked about
8 different automobiles, colleges, our children and where they
9 were going to school and wanted to go and so on. Maybe the
10 last thirty minutes of the trip we got down to the case and
11 started talking about it and, of course, both positions at
12 first. Frank first said, "Well, we're not in the case. You're
13 going to pay it all." I said, "That remains to be seen."
14 I said, "Our position is already in the pleadings indemnity
15 agreement as void as a matter of public policy."

16 Then we got to talking about it more seriously and he asked
17 me if I would handle all settlement negotiations. I told him
18 I had no reason to and I asked him what settlement negotiation
19 had transpired. He said some, not much. He said he couldn't
20 talk to Ted Huggins. He said, "We're at \$90,000, which I
21 consider ridiculous" and he said he could not talk to Ted
22 and he thought Mr. Huggins and I got along better. He said,
23 "I simply cannot communicate with him." I said, "There's
24 no reason for us to pick up the ball unless it's going to be
25 a joint thing." I said, "I'll only go forward with that if

1 you'll agree to a fifty-fifty contribution. He said he
2 couldn't state for Southern that they would pay fifty-fifty,
3 but he would ask them to. I said, "Well, that's what, about
4 the two suits?" He said, "That's no problem." Those were
5 his exact words. He said, "That's no problem." I pushed
6 Frank on that. Of course, I listen, I believe, rather well,
7 and I wanted a firm commitment and I pushed him and he said,
8 Well, that's no problem." He said, "If we settle one, they're
9 both settled." I said, "all right" and I agreed to go ahead
10 with the settlement negotiations.

11 Q. What date did that conversation occur?

12 A. February 21, 1975.

13 MR. STONE: Excuse me. I just wanted to make sure
14 that is specifically what we're objecting to. I realize Mr.
15 Carter is going to be in this for a little while. I wanted
16 to make sure our objection is continuing to all this testimony.

17 THE COURT: All right.

18 BY MR. CARTER:

19 Q. Following this conversation, did y'all in fact
20 take depositions on this date?

21 A. We did.

22 Q. Did you further discuss your position with reference
23 to what you say was your understanding of it, that you would
24 try for a fifty-fifty contribution settlement of it and if one
25 would be settled they both would be settled?

1 A. We had lunch together, but I don't think we talked
2 about it any further. When we got there we took the deposition
3 and Mr. Huggins left to go to a football game or something and
4 there was no opportunity to pursue settlement negotiations,
5 so Frank and I had a very nice lunch together and drove home
6 together.

7 Q. Did you, in accordance with your understanding,
8 actually enter into settlement negotiations with either
9 Mr. Williams or Mr. Huggins, the counsel for Troy Martin?

10 A. I did.

11 Q. When did you and Mr. Meade again discuss the settle-
12 ment matter, if at all?

13 A. Well, this was a sizable law suit and we talked
14 often, very briefly, but the next conference of any subsequence
15 was on March 5, 1975.

16 Q. Where did that conference take place?

17 A. In my law office.

18 Q. What, if anything, transpired there?

19 A. He again asked me to go forward with settlement
20 negotiations, again reiterating that he could not get along
21 with Ted Huggins. He said, for that matter, not much better
22 with Ronald Williams. He thought the \$90,000 demand was re-
23 dicious. He again assured me that if we settled one case,
24 the other case was settled. He again offered the phrase "that
25 would be no problem whatsoever." The morning of February 21st

1 I walked down to his office before we went to Winston Salem
2 and he was dictating. I had to wait a few minutes. He gave
3 me a copy of a very detailed summary of the medical records
4 of Troy Martin and at that time said, "make any use you want
5 of it, but don't give it to Ted Huggins."

6 Q. Is that the medical summary that lists the medical
7 history?

8 A. Yes, sir, and it proved to be more detailed than
9 the Plaintiff had himself and then in March he again asked
10 me to not give Mr. Huggins the benefit of this.

11 Q. Was anything said at that time what Souther^{ly} would
12 be willing to attribute?

13 A. He said at that time they would not let him contri-
14 bute on a fifty-fifty basis but they would make a contribution.

15 Q. What, if anything, did you do with reference to
16 settlement negotiations with Mr. Huggins and Mr. Williams?

17 A. There were many settlement conferences, some with
18 Mr. Huggins and some with Ronald Williams and some with the
19 three of us present, but none of them were attended by Frank
20 Meade until the two days of trial.

21 Q. All right, sir, now, during the course of these
22 negotiations, did Mr. Meade ever come up with any firm offer
23 to contribute by Southern Railway to contribute to the settle-
24 ment of the Troy Martin case?

25 A. Yes, he came up with an offer of \$2,500.

1 Q. When was that, to the best of your recollection?

2 A. The first time that Frank mentioned the \$2,500
3 was during a telephone conversation on April 7, 1975.

4 Q. At that time, what contribution, if any had Arlen
5 agreed to make, or ~~K~~orvette?

6 A. None. Frank and I had been talking relatively
7 substantial sums on this case, but each time he wanted
8 me to get my authority first and then he said he would try to
9 match it and we finally got specific in that phone call. He
10 mentioned \$10,000 at first and I of course grabbed at it and
11 then he backed off and said he meant a total of that. But
12 his first statement was he could get them to pay \$10,000. I
13 said, "Well, I think twenty would settle it." He said, "I
14 didn't really mean that" and he backed down.

15 Q. Did you get any official authority at that time or
16 any reasonable period of time thereafter and make any official
17 offer for settlement?

18 A. Frank and I talked again on April 11, during all
19 of which time I was insisting on his pursuing the fifty-fifty
20 contribution and he said he was doing so. Mr. Meade had an
21 idea on April 11th they would take \$22,500 and he suggested
22 that I try to get \$12,500 authority and he would put up his
23 \$2,500 and we could see if \$15,000 would buy it. I think I
24 told him I didn't think it would at that time. I think Mr.
25 Williams was the controlling counsel. Ted Huggins got the

1 case, but he really tendered the prosecution of the case, if
2 that's the right word, to his associate counsel, Ronald
3 Williams, and I think he was at \$40,000 officially. They
4 called my claims examiner, Jack Brown, with Market Facilities,
5 on April 15 and he thought that the case could be settled at
6 fifteen. He kind of hedged about the money. He still thought
7 that Southern should pay half of it and he gave me fifteen to
8 use, but on a fifty-fifty basis with Southern Railway on
9 April 16th.

10 Q. What, if anything, did you and Mr. Meade do after
11 that?

12 A. I talked with Mr. Meade on April 16th and that
13 part is confirmed by a letter. The \$15,000 I wanted a
14 fifty-fifty contribution, but he left it more or less
15 discretionary with me and said for me to do what I could with
16 it. And on April 16th — there had been some conferences in
17 between there — me and Ronald Williams were not certain
18 Frank was leveling with us on his authority and his client,
19 Southern Railway. So I talked to Frank and he was supposed to
20 go down and offer Mr. Huggins and Mr. Williams \$17,500,
21 putting up our \$15,000 and Southern Railway's \$2,500 and he
22 said that is what he was going to do, but he went down there
23 and only offered five and they refused it. We had some
24 words about that. I didn't think this was correct behavior
25 on Mr. Meade's part and we got him to go back again and I

1 think on the next day Frank did have the \$2,500 authority
2 and an offer of seventeen five was made because they had
3 dropped the demand from forty to \$25,000.

4 Q. Was there any change in the offer made between
5 that date and the commencement of the trial. I take it there
6 were other negotiations, but was there any change in the com-
7 bined offer of Southern and Arlen up until the first day of
8 the trial?

9 A. Well, Mr. Meade at one time stated that his
10 \$2,500 would be withdrawn if they didn't accept it prior to the
11 depositions, which finally Judge Craig called off, and then
12 he said the \$2,500 would be withdrawn when the trial started.
13 And after a lot of negotiations, they finally stuck with that
14 position. He first said it would be withdrawn if we had to
15 take Dr. Silverman's deposition with those expenses and later
16 expanded it to the day of the trial, but they stuck to that and
17 never again offered the \$2,500.

18 Q. When the trial started on April 23, 1975, did you
19 participate in the trial?

20 A. Only to the extent of renewing the motion for
21 severance of the two cases of action and Judge Davis sustained
22 that motion and at that time I turned to Mr. Meade and asked
23 him if he wanted me to assist and sit with him at the counsel
24 table and he said, "I do not. Sit at the back of the court-
25 room", and that's what I did.

1 Q. Were you readily willing and able to assist
2 Southern Railway as you had been so requested?

3 A. I certainly was, and I fully expected to, because
4 he had asked me to attend every deposition. I had examined
5 witnesses and cross-examined witnesses in every deposition
6 except the first one and they were set around my calendar
7 and that's verified by letters.

8 Q. Were any settlement negotiations made during the
9 first day of trial or at the conclusion of the first day of
10 trial?

11 A. I don't think so.

12 Q. All right, how about the night of the first day
13 of trial or the following morning?

14 A. Well, the night of April 23rd Ted Huggins called
15 me at my home.

16 Q. Without telling us what he said, as a result of
17 that conversation, did you again talk with Mr. Meade?

18 A. The next morning, yes.

19 Q. What, if anything, did you and Mr. Meade talk about?

20 A. The value of the case and at one time we requested
21 Frank to obtain \$5,000 contribution towards a settlement and
22 he told me he was going to talk to Mr. Stalnaker.

23 Q. Who was present at that meeting?

24 A. Well, there were three or four settlement conferences
25 the morning of the second day of trial.

1 Q. Who attended these conferences? Specifically,
2 did Mr. Meade attend any of the settlement conferences?

3 A. Yes, he talked with me and I think Frank was in on
4 one of the settlement conferences with the other lawyer.

5 Q. When he talked with you, what did he tell you?

6 A. That he would try to get the money, but they were
7 coming down. He was confident at that time she would take
8 about anything we offered. He said he would ask Mr. Stalnaker.
9 First he asked for \$5,000, then he asked for \$2,500, and then
10 when we decided to settle it for \$5,000 there was an argument
11 about costs. But the total settlement, they cut the court
12 costs way down to settle it. I paid them an additional \$75
13 before I was authorized to pay it to get rid of it. That was
14 to cover all court costs and so on.

15 Q. I take it you reported the fact about settlement
16 to the Court of the primary cause of Martin Versus Southern
17 Railway? I take it that was actually reported to the Court?

18 A. Yes, it was.

19 Q. What, if anything, was said by you or Mr. Meade
20 with reference to the settlement of the third party claim of
21 Southern Railway Versus Arlen?

22 A. Frank told me, he said, "I guess that settles them
23 both." I said, "As far as I'm concerned it does." I was a
24 little surprised he made such a remark. We were leaving by
25 that time. He said, "Someone has to draw up an order." I

1 said, "I'll do it." He said, "okay".

2 Q. So in addition to the conversation, he instructed
3 you to draw the order in both cases?

4 A. That's right.

5 Q. In between your first conference back on the trip
6 to Winston Salem, did Mr. Meade ever advise or did anyone else
7 on behalf of Southern Railway advise you that if Arlen parti-
8 cipated in the settlement, that would not settle both cases?

9 A. No, he never mentioned that. The understanding
10 was that both would be settled.

11 Q. When was the first time you learned there was any
12 question at all about both cases not having been settled with
13 the agreement of Arlen to pay it?

14 A. Well, we prepared the order to tender it to Frank
15 for endorsement May 8, 1975.

16 Q. Two weeks later?

17 A. And he refused to endorse it and I supposed that
18 day or the next day I talked with Frank, I think it was by
19 telephone, and he said, "Well, I'm not so sure now." He said
20 Pascal was giving him trouble and there might be further
21 litigation. He kind of put it off on somebody else and said
22 they may make a claim for attorneys fees. That was the first
23 time at any time he ever said that. That was when he refused
24 to endorse the order. I think following that I tendered the
25 order to Judge Davis for entry without his endorsement. Judge

1 Davis said, "Y'all get together now". So I went back on the
2 14th and he again refused to endorse the order and it set
3 until the second orders were entered. Frank asked me how we
4 were going to get rid of it. I said, "You're the one that
5 won't sign them", so Frank prepared the second orders, which
6 I endorsed to complete the litigation in some way. He would
7 not endorse any order I fixed and Judge Davis wouldn't enter
8 them without it.

9 Q. As of May 8, 1975 were you advised directly or
10 indirectly by Mr. Meade or anyone else on behalf of Southern
11 Railway in the Troy Martin claim by Arlen that it did not
12 settle both claims?

13 A. No, the deal was that was my only modification for
14 moving to get rid of the second suit and the understanding was
15 very clear that if we settled one they were both settled,
16 and I pushed Frank on that, because he was a little evasive
17 on it. His first reply was, "That's no problem" and that
18 could have several interpretations and so I pressed him on
19 that and he said, "If you settle one, we settle both."

20 Q. And he agreed to that?

21 A. Yes.

22 Q. And backed out on May 8th?

23 A. And then he apologized, saying something about
24 Pascal, the Richmond counsel.

25 MR. CARTER: Answer for Mr. Stone, please.

1 MR. STONE: At this time, now that the Court has had
2 a chance to hear this testimony, I would like to ask the Court
3 to strike all the testimony alleged to the entry of these
4 orders.

5 THE COURT: I'll overrule your motion, Mr. Stone.

6 MR. STONE: All right, please note my exception
7 in the record.

8 EXAMINATION BY MR. STONE:

9 Q. Mr. Garrett, as I understand it, the first time
10 you talked about settlement with Mr. Meade was going down for
11 the depositions in North Carolina in his automobile?

12 A. Yes, sir.

13 Q. Did I understand you correctly to say you indicated
14 you were not willing to begin settlement discussions or talk
15 over settlement negotiations unless Southern was agreeable
16 to contribute 50%?

17 A. That was my original position with Mr. Meade,
18 yes, sir.

19 Q. But, as I understand it, Mr. Meade would at no
20 time contribute fifty percent?

21 A. That's correct, but he said he would ask for it
22 and try to get it.

23 Q. But he never told you they would?

24 A. That's correct.

25 Q. But he attempted to start negotiating the settle-
ment?

1 A. That's right. And he also said if we got rid of
2 one case we would get rid of both of them.

3 Q. Now, you mentioned a telephone conference which you
4 had with your company, I believe, on April 16 regarding possible
5 settlement of this case?

6 A. Yes, sir.

7 Q. Who was that conversation with?

8 A. Jack Brown.

9 Q. And he's, what, with the insurance company that
10 insured Arlen Realty, is that correct?

11 A. Well, he's the claims examiner with Market Faci-
12 lities, Incorporated.

13 Q. Do you know what Market Facilities was?

14 A. It was the first time I ever represented them.

15 Q. Whatever they are, they employed you in the
16 litigation?

17 A. That's correct.

18 Q. What authority, if any, did Mr. Brown give you
19 during that telephone conversation on April 16th?

20 A. He gave me \$15,000 authority, asking that I try
21 to get a fifty-fifty contribution with Southern Railway but
22 to use my best judgment in how I used the \$15,000. But he
23 said Southern ought to contribute and to get everything I could
24 out of them. But he really kind of left it up to me about the
25 way I used the \$15,000. But he urged me to get everything I

1 could out of Southern Railway.

2 Q. But he did in fact authorize you to use the \$15,000
3 at your discretion?

4 A. I think so. This has been a long time ago. This
5 question bothered me on the depositions and I went through
6 all of my files again and found this memo and what I wrote
7 down was, "April 16, '75 -- conference, Jack Brown, \$15,000
8 authority" and circled it. That the entire memo of my phone
9 call. At that time we were talking expenses. It looks like
10 the phone call was fifteen minutes long and cost \$6.35 plus
11 tax and that's on the same sheet of paper of a date with
12 Frank Meade with nothing else about what Frank and I said
13 that my written record shows of a ten minute phone call, and
14 after all of this time it's a little bit hazy.. I'm giving
15 you the best recollection I can of it.

16 Q. I don't have any doubt about that. So either that
17 day or the next day you authorized Mr. Meade to go forward
18 and make settlement, offering \$15,000 from your company and
19 \$2,500 from Southern Railway to settle the litigation?

20 A. That's correct. He was instructed to do so;
21 however, he did not do what he said he was going to do.

22 Q. But you authorized him \$15,000?

23 A. Plus the \$2,500 from Southern.

24 Q. So if he had done what you asked him to do, the
25 total offer would have been \$17,500?

1 A. That's correct.

2 Q. And that offer was not accepted?

3 A. It was refused, but it did break the demand from
4 \$40,000 to \$25,000.

5 Q. So the offer was refused and you've stated you're
6 not sure how long the offer stayed open, but at least no
7 later than the beginning of the trial when everyone knew the
8 \$2,500 from Southern was withdrawn?

9 A. We didn't know that, but that's what they said.
10 They have a long reputation of not doing what they said they
11 would do, though.

12 Q. Whatever their reputation, you know that's what
13 he told you?

14 A. Yes, sir.

15 Q. Whether they were going to stick by it or not?

16 A. That's right.

17 Q. And they did stick by it and never did offer the
18 \$2,500 again?

19 A. The gentleman sitting to your left ...

20 Q. Mr. Garrett, if you would just answer my question.

21 A. That's what I'm going to do.

22 Q. The question I asked was, Southern did not offer
23 the \$2,500 again?

24 A. That's correct. They were asked to put up five
25 and they considered it.

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1 Q. Whether they considered it or not, they never offered
2 it?

3 A. That's correct, but they considered it very seriously
4 at length during the two-day trial.

5 Q. After the beginning of the trial, did you ever --
6 before your settlement of the case -- did you ever discuss
7 with Mr. Meade whether your offering the \$15,000 and settling
8 the Plaintiff's claim, which he accepted, would in fact settle
9 Southern's claim against Arlen for indemnity?

10 A. Not on that day, because I thought it was clearly
11 understood both were settled. He made the comment, he said,
12 "I guess that settles them both."

13 Q. I realize this is what you understood, but you
14 never specifically asked him whether your settlement of the
15 case would specifically settle Southern's claim against Arlen
16 for the third party motion for judgment?

17 A. I don't think I did.

18 Q. Now, after Mr. Meade declined to endorse the order
19 which you prepared, did he in fact send two orders to you
20 by a letter to you dated May 14, 1975?

21 A. I'm not sure about the date, but I got the two
22 orders sometime later, yes.

23 Q. Do you have your file there with you?

24 A. Yes, sir.

25 Q. Would you mind looking through your file and seeing

1 if you see a letter in there from him dated May 14, 1975.

2 You testified about it in the deposition.

3 A. What's the date again?

4 Q. May 14, 1975.

5 A. Yes, sir, I do.

6 Q. All right, I believe that letter does purport to
7 be a cover letter for two orders he was sending you?

8 A. Yes, sir.

9 Q. Does the letter mention anything about the claim
10 of Southern Railway for endemnity?

11 A. Yes, sir, the second paragraph.

12 Q. Would you please read that paragraph to the Court?

13 A. The above will enable us to conclude the pending
14 litigation due to Southern Railway's right to proceed against
15 Arlen for expenses and so on under the hold harmless agreement.

16 Q. And the last paragraph?

17 A. As soon as obtaining the figures I will submit
18 to you Southern Railways demand for imbursement. It is
19 possible we can resolve the matter without the filing of a
20 suit.

21 Q. Did this letter enclose the orders which you in
22 fact endorsed and were entered by the Court?

23 A. I think he hand delivered it by his secretary,
24 the copies.

25 Q. Did you read this letter before endorsing the

1 two orders?

2 A. I did.

3 Q. And the orders which have been previously marked
4 Plaintiff's Exhibit Number Two, those are the two orders you
5 did in fact endorse and were entered May 29th?

6 A. Yes, sir.

7 Q. Now, Mr. Garrett, I believe that during the whole
8 cause of this litigation, Troy Martin Versus Southern Versus
9 Arlen Realty, your position was that the trailer use agreement
10 was void as being against or contrary to public policy?

11 A. I don't think you or anybody else ever knew my
12 legal position on that. It was not in issue.

13 Q. Not in issue?

14 A. No, sir, the causes were severed, other than what
15 was in the pleading. But I never showed you my file of the
16 research I did or the help I got. I got some very professional
17 research done on the issue which you have never been
18 familiar with.

19 Q. I agree with you on that, but as far as the position
20 you took in the pleadings, you also contended that Arlen had
21 no liability on the hold harmless agreement or whatever legal
22 agreement?

23 A. In the pleadings, yes. The old Virginia law, which
24 is a part of the record, was that all four were void as a
25 matter of public policy and was just the opposite of indemnity.

1 But the point has not been passed on in Virginia since about
2 1908 and that was our incentive for participating. We didn't
3 know which way the Supreme Court was going to rule on it.
4 They would either follow the existing law or go a new way on
5 it.

6 Q. I realize it was a legal issue in the case and
7 the lawyers might not agree about what the outcome would be,
8 but as far as the position you took for Arlen, you took the
9 position that the agreement was void?

10 A. It depends on what contest your speaking of.

11 Q. Did you ever take the position it was not void?

12 A. As far as I took it in the pleadings, but that
13 didn't in any way bind me in what I would have done in the
14 suit. I was wide open for what I was going to do.

15 Q. I'm going to ask you again. Did you ever take
16 the position in this suit that the hold harmless agreement
17 was valid?

18 A. Not in the suit, no.

19 Q. Did you at any time offer to Frank Meade, as
20 attorney for Southern, that Arlen would take over the defense
21 litigation or was willing to consider it?

22 A. Only on the first day of the morning of the trial
23 I offered to assist in any way that he wanted me to and he
24 refused that offer. At no other time did I offer to take over
25 the defense. If you know Mr. Meade, he doesn't want anybody

1 else doing his work. He said he didn't even want me to sit
2 at the counsel table with him.

3 Q. So the morning of the trial you offered to assist
4 him after you had been successful in severing the two ^{Cases} ~~cases~~
5 and he declined?

6 A. That's correct. Of course, Judge Craig severed
7 the ^{Cases} ~~cases~~ but Judge Davis followed up the ruling in writing.
8 Judge Craig never did enter the order on the severance and it
9 never did get done, just like your people never did prepare
10 the default order.

11 Q. Well, they never did move for an order to default
12 either, did they?

13 A. Yes they did. Frank Meade did, at least twice.

14 Q. I have no further questions, Mr. Garrett.

15 THE COURT: Anything further?

16 REEXAMINATION BY MR. CARTER:

17 Q. Mr. Garrett, you've testified with reference to
18 the letter Mr. Meade wrote to you about in early May of 1975.
19 Did you have any other letters from him subsequent to the
20 settlement that was made by Arlen, the \$15,075 settlement?
21 Did you receive any other letter from Mr. Meade?

22 A. Yes. If I understand you correctly, he wrote and
23 itemized the sums they were claiming.

24 Q. No, I'm talking about before that, April the 24th,
25 following the trial of April 24th.

1 A. Yes, I did.

2 Q. The same date of the trial?

3 A. April 24, 1975, that's correct.

4 Q. Now, this was dated April 24th or 1975. Did you
5 receive this before or after the conclusion of the settlement?
6 It's dated the day of the settlement.

7 A. After the settlement.

8 Q. After the settlement? And what contribution did
9 Mr. Meade talk about Arlen Realty making at that time, if you
10 will read us that whole letter.

11 A. It's dated April 24, 1974 to me, to Allen Garrett
12 from Frank Meade. "Re: Troy Martin Versus Southern Railway
13 Company Versus Arlen Realty and Development Corporation. In
14 accordance with our telephone conversation today I am enclosing
15 a copy of the bill received from a Greensboro neurosurgeon.
16 This bill totals \$84.80, your half of which is \$42.40.

17 Q. So after the case had been settled Mr. Meade wrote
18 you a letter and said Arlen owed one-half of the expenses of
19 the doctors examination in the amount of \$42.40?

20 A. That's correct.

21 Q. And between this time and some two weeks later,
22 did he ever call anything to your attention that there wasn't
23 a total settlement and the only thing Arlen owed was the
24 \$42.40?

25 A. He never did, unless it was May 8, 1975, which

1 is when he refused to endorse the order.

2 MR. CARTER: I'd like to introduce Defendant's
3 Exhibit Number One.

4 MR. STONE: I have no objection, other than my
5 continuing objection.

6 THE COURT: All right.

7 BY MR. CARTER:

8 Q. Mr. Garrett, who was going to pay the other half
9 of these expenses?

10 A. Southern Railway.

11 Q. Mr. Williams or Mr. Meade?

12 A. Mr. Meade. He started out along that line.

13 Q. I believe that was the examination of Dr. Aims?

14 A. That's correct, and Frank arranged it and asked
15 if I'd pay half of it. I told him of course I would.

16 Q. This came after the total settlement of the case
17 and he wrote you this bill for one-half?

18 A. That's correct.

19 MR. CARTER: That's all. Thank you.

20 REEXAMINATION BY MR. STONE:

21 Q. Mr. Garrett, before this report had been prepared,
22 you and Mr. Meade had discussed obtaining it, is that correct?

23 A. It was his idea. He came up with the idea and
24 wanted it done and I went along with it.

25 Q. The two of you agreed prior to the time of the

1 trial that the expenses of this thing going to be done would
2 be split between you, didn't you?

3 A. He called me up and asked, he said he was going
4 to have it done whether I contributed or not. It was his
5 idea. I didn't really see the need of it. I said, "Frank,
6 it can't hurt. I'll be happy to pay half of it."

7 Q. And that was in and this agreement was made at
8 the same time you were taking the position in the pleadings
9 the hold harmless agreement was void, isn't that correct?

10 A. It's hard to keep all the time limits straight,
11 Mr. Stone. I think the record would speak for itself on that,
12 but it's a matter of record. I can probably tell you what he
13 talked about during that examination.

14 Q. All right, when was that?

15 A. Frank Meade called April 7, 1975.

16 Q. You filed your pleading either late January or
17 early February of '75.

18 A. Whatever it says.

19 Q. And you hadn't changed your position in the pleadings
20 at that time you agreed to bare half of these expenses?

21 A. I don't think I had.

22 MR. STONE: No further questions.

23 THE COURT: Anything further, Mr. Stone?

24 MR. STONE: No, sir.

25 THE WITNESS STANDS ASIDE.

1 RONALD WILLIAMS,
2 the witness, being first duly sworn, was examined and stated
3 as follows:

4 EXAMINATION BY MR. CARTER:

5 Q. Would you state your name for the record, please.

6 A. Ronald W. Williams.

7 Q. What is your profession?

8 A. I practice law here in Danville.

9 Q. Mr. Williams, directing your attention back to
10 1975, did you have occasion to represent Mr. Troy Martin at
11 about that time?

12 A. To be honest, I don't know particularly the year,
13 but I did, yes.

14 Q. Did you represent Troy Martin in a claim against
15 Southern Railway?

16 A. I did, sir.

17 Q. Did you have co-counsel?

18 A. Ted Huggins of the Danville bar.

19 Q. I believe you are in different firms?

20 A. That is correct, sir.

21 Q. Directing your attention to the procedures that
22 occurred prior to the trial, at any time prior to the first
23 trial date of this case, did you engage in settlement nego-
24 tiations for settlement of this case with Mr. Frank Meade,
25 counsel for Southern Railways?

A. Yes, sir, extensive settlement negotiations.

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1 MR. STONE: We would again, as our objection to
2 Mr. Garrett's testimony, we would like the objection to con-
3 tinue to Mr. Williams' testimony, as we're getting into the
4 alleged lease area again.

5 THE COURT: All right, objection noted.

6 BY MR. CARTER:

7 Q. At these meetings would Mr. Frank Meade be present
8 at some of them?

9 A. Yes, sir, he would.

10 Q. And how about Mr. Allan Garrett?

11 A. Yes, he was present also.

12 Q. How about Mr. Huggins?

13 A. Mr. Carter, as I said, there were extensive settle-
14 ment negotiations for settlement of the case and on occasions
15 I would meet with Mr. Meade and sometimes Mr. Ted Huggins
16 would talk to Mr. Garrett and we'd talk together and what
17 have you.

18 Q. Were you aware of the fact that there was a pending
19 third party claim of the same action of Southern Railway
20 against Arlen Realty?

21 A. Yes.

22 Q. When these cases were discussed at these meetings,
23 specifically at one you attended and Mr. Garrett and Mr. Meade
24 were both present, was any distinction made between the
25 settlement of the claim of Troy Martin and the settlement of

1 the claim of Southern Railway against Arlen?

2 A. No, sir, just one claim, one case.

3 Q. Was there ever any reference made to the fact that
4 if a settlement was made between Martin and Southern Railway
5 there would still need to be a ...

6 MR. STONE: Did Mr. Carter say reference made by
7 whom?

8 MR. CARTER: By any of the three parties.

9 THE WITNESS: No, sir, it was just one case. The
10 settlement was always directed as getting rid of the case and
11 the whole thing was settled.

12 BY MR. CARTER:

13 Q. If y'all accepted the offer the whole thing would
14 be settled?

15 A. Yes, sir.

16 Q. Did settlement negotiations continue even after
17 the trial commenced?

18 A. Yes, sir. Mr. Carter, it was a case of extensive
19 personal injury and questionable liability. But we went through
20 a full day's trial on it. We had had an offer made to us by
21 Mr. Meade and Mr. Garrett and I think Mr. Garret was going to
22 pay \$15,000 of behalf of his client and — my figures may
23 be off — Mr. Meade offered \$2,500. And, frankly, we recommended
24 our client to accept that but he refused and we went through
25 the full day's trial and even during the course of the day we

1 were trying to get him to take the offer and during the lunch
2 break or recess, what have you, we knew we had a weak position
3 and we were concerned about losing as a matter of law and
4 after a full day of trial we talked with Mr. Martin, both Mr.
5 Huggins and I, and again advised him that in our judgment
6 he was in a bad position. We were concerned that the Court
7 would have to strike the evidence, based upon the evidence
8 of the driver of the tractor backing up to the trailer which
9 ultimately caused the injury to Mr. Martin. I called Mr. Meade
10 at home that night after Mr. Martin had agreed to accept the
11 offer and Mr. Meade advised me that he did not know whether
12 he still had his part of the offer or not. He had to check
13 with counsel for the railroad, I believe some gentleman in
14 Richmond, Pasco or something like that. I talked to him the
15 next morning and he said the railroad was not willing to
16 continue their offer or pay their part of it. Mr. Meade
17 knew pretty well he had a chance of winning and so told me.

18 Q. Going back to Mr. Meade, did he on the next
19 morning make any recommendations or suggestions or references
20 to whether or not you accepted the \$15,000 in full settlement?

21 A. He said, "You better get it if you can." I had
22 to agree with him. He said what ever we could get we'd better
23 get at that point.

24 Q. All right, sir, I believe in time you did succeed
25

1 in settling the case for \$15,075 with Arlen paying the total
2 bill?

3 A. Yes, sir. As I say, the injuries were quite ex-
4 tensive and if you go to the jury with this type of thing you
5 never know what to expect and we thought it best to get out.

6 Q. Was Mr. Meade present for any of the conferences
7 you had with Mr. Garrett on the morning of the settlement,
8 with reference to the settlement?

9 A. He was in and out on and off during all of our efforts
10 that morning to settle the case.

11 Q. Did he ever indicate at any time that his position
12 was anything other than he thought Mr. Garrett should settle
13 for \$15,000?

14 A. No, sir, not to me. He left the room one time
15 when they were trying to get some costs, because considerable
16 costs had been run up with the depositions and going out of
17 state for medical depositions and investigation and what have
18 you. But that's the only point I know of when he left the
19 room, for what, I don't recall.

20 Q. Did you have any understanding following your
21 acceptance of the offer — well, I'll ask you, what, if any-
22 thing, was your understanding with whether either one or the
23 other cases were settled?

24 A. The whole thing was settled. No question in my
25 mind.

MR. CARTER: No further questions.

EXAMINATION BY MR. STONE:

Q. Mr. Williams, you represented Troy Martin?

A. Yes, the Plaintiff.

Q. You were concerned with how much money he was going to get out of this and it really didn't make any difference to you who paid it?

A. No, I didn't care who paid it. There was some discussion at the end there that Mr. Meade didn't want any publicity in, the fact that it had been settled and the railroad had participated in it or something of that nature. It made no difference to me.

Q. You testified your understanding was that it settled all of it. You weren't really concerned about Southern's claim against Arlen, were you? You weren't really involved in that at all, were you?

A. I was not involved in it, no, sir.

Q. You had no real interest in that?

A. No, I had no real interest in who paid the money. Obviously you couldn't bring in Arlen Realty by virtue of the Workman's Compensation Law of Virginia. We were aware of the document that existed between the two of them as far as leasing these trailers and, if I recall, that document had on it that that particular unit had been checked and it was free from defects.

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1 Q. So as long as you settled your claim for your client
2 on the basis you considered proper at the time, you didn't
3 have a legal interest or weren't particularly concerned about
4 whether that settled Southern's claim against Arlen?

5 A. Of course, we dealt with Mr. Garrett and Mr. Meade
6 in combination and singly. All of us were directed towards
7 trying to settle the case as a whole in my judgment. There
8 wasn't anything that led me to the contrary, just no indication
9 whatsoever.

10 Q. You knew after you went into Court on that first
11 day of the trial, you knew that the offer of \$17,400 was not
12 necessarily on the table for you to take, didn't you?

13 A. During the first day of trial?

14 Q. After the first day of trial.

15 A. Oh, after the first day of trial. I wasn't really
16 sure about that. That's the reason I called Mr. Meade. He
17 handled the trial. Mr. Garrett didn't even sit at the counsel
18 table.

19 Q. So you called him to find out whether or not the offer
20 was still open?

21 A. I said our client decided to take it and we would
22 settle. He said, "I'll have to check and see if my people
23 will still put in their money." That was my understanding Mr.
24 Garrett's would still be there.

25 Q. Mr. Meade did not tell you that?

1 A. He said I could not get any contribution at that
2 point.

3 Q. So the earlier offer which he had made before the
4 trial for a total of \$17,500, your client refused to take
5 it before the trial?

6 A. That's correct.

7 Q. And that offer was never again made by Mr. Meade,
8 was it?

9 A. No, the next day he said he couldn't get his
10 company, he thought we ought to take what we could get and
11 wind it up.

12 MR. STONE: No further questions.

13 THE COURT: Anything further, Mr. Carter?

14 MR. CARTER: No, Your Honor.

15 THE WITNESS STANDS ASIDE.

16 Thereupon,
17

18 THEODORE P. HUGGINS,

19 the witness, being first duly sworn, was examined and testified
20 as follows:

21 MR. STONE: We would just like for our continuing
22 objection to stay in the record.

23 THE COURT: I'll overrule. Objection noted.

24 EXAMINATION BY MR. CARTER:

25 Q. State your name for the record.

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- 1 A. Theodore P. Huggins.
- 2 Q. What is your profession?
- 3 A. Attorney at Law.
- 4 Q. I believe you are a resident of the city of
- 5 Danville and also practice law here?
- 6 A. I do.
- 7 Q. Directing your attention back to sometime in the
- 8 year of 1975, did you have occasion to represent Mr. Troy
- 9 Martin in connection with a suit which he filed against
- 10 Southern Railway Company?
- 11 A. I did, with Mr. Williams.
- 12 Q. With Mr. Williams, the co-counsel? Was that the
- 13 same suit in which the cross claim was filed by Southern
- 14 Railway against Arlen?
- 15 A. It was a ~~three~~ party suit, I believe.
- 16 Q. Yes, you were aware of the third party claim,
- 17 that it had been filed?
- 18 A. Very much so.
- 19 Q. Did y'all have occasion from time to time to meet
- 20 with Mr. Frank Meade as well as others to reference a
- 21 possible settlement?
- 22 A. As the case came close to trial we did.
- 23 Q. With Mr. Frank Meade and Mr. Allan Garrett?
- 24 A. Yes.
- 25 Q. What, if any, negotiations do you recall any

1 specific offer was made when Mr. Meade and Mr. Garret were
2 both present?

3 A. Right before the actual trial began, Mr. Williams
4 and I both were in negotiations, me mostly with Mr. Garrett
5 and he mostly with Mr. Meade, although there were occasions
6 when I had conversations with Mr. Meade and the other way
7 around. We had an offer right prior to trial of a sum of money
8 through both Mr. Garrett and Mr. Meade.

9 Q. Do you recall that sum?

10 A. \$17,500 or \$18,000, somewhere in that neighborhood.
11 The bulk of the offer was Mr. Garrett's.

12 Q. Was there any contribution from Mr. Meade?

13 A. \$2,500 to \$3,000, I'm not positive.

14 Q. In connection with any of these meetings which
15 you've testified about in which Mr. Frank Meade was present
16 and which Mr. Garrett was present, did you hear any discussion
17 of whether or not the settlement of the primary claim meant
18 the settlement of both or the settlement of the primary claim
19 would not mean both?

20 A. I never heard any statement to indicate the
21 settlement of the primary claim wouldn't settle everything.

22 Q. And on the second day of trial did you have any
23 meeting with Mr. Meade attending?

24 A. We had an offer the first day of trial from Mr.
25 Meade and Mr. Garrett. My recollection was we all met, all

1 four of us. The evening of the first day of trial there were
2 conversations. I talked with Mr. Garrett and Mr. Williams
3 talked with Mr. Meade.

4 Q. The following day were you in Mr. Meade's presense
5 when the settlement was discussed?

6 A. Yes, sir.

7 Q. What, if anything, did Mr. Meade say about settle-
8 ment about whether or not Southern Railway would make the
9 contribution or whether or not you should or should not accept
10 the offer.

11 A. Mr. Meade's client had withdrawn their offer to
12 contribute but they were in effect encouraging us to settle
13 with Arlen.

14 Q. And accept the offer that Arlen had made?

15 A. My recollection was he was a little cocky about
16 it and said we'd better take it or we may not get anything.

17 Q. Did you hear him make the statement that Southern's
18 claim would not be settled with Arlen?

19 A. No, sir.

20 Q. What, if anything, was your understanding about the
21 settlement of the primary claim of Troy Martin when the \$15,000
22 was finally agreed upon?

23 MR. STONE: I again object on what his understanding
24 was.

25 THE COURT: I agree with you 100%, Mr. Stone, but

1 I'll let him answer it.

2 THE WITNESS: My understanding was the settlement
3 of our claim meant the settlement of everything. We tried to
4 get the court costs off Mr. Meade and his client wouldn't let
5 me throw in anything about court costs. Mr. Garrett did
6 contribute some small portion of the court costs towards it.
7 Another reason why I felt this settled the whole thing, Mr.
8 Meade took some exception in Court. And there was some conver-
9 sation after the trial, too, but we were back in the lawyer's
10 lounge. Mr. Garrett was there in Judge Davis' office. I went
11 in there and all four attorneys weren't necessarily together
12 all the time, but we had had rather lengthy recesses trying to
13 settle. The gentleman sitting at counsel table was also present,
14 I think.

15 Q. You say there were conversations. Do you remember
16 specifically anything said in the conversations that led you
17 to this conclusion?

18 A. Mr. Meade's happiness that the case was over and
19 Southern Railroad was not having to pay any money.

20 MR. CARTER: Thank you, Mr. Huggins. Answer for
21 Mr. Stone.

22 EXAMINATION BY MR. STONE:

23 Q. Mr. Huggins, as I understand your testimony, you
24 never heard any statement to the effect that settlement of
25 the Troy Martin claim would not necessarily settle the Southern

1 claim? Is that what you testified to on the record?

2 A. I answered Mr. Carter's question along those
3 lines. I can't say for sure whether I heard that it would
4 settle it or wouldn't settle it.

5 Q. That's the point I want to make clear. You're not
6 telling this Court you heard Mr. Meade make any statement
7 that settlement of the Troy Martin claim would necessarily
8 settle the Southern claim, that's just what you gathered?

9 A. I heard a great many things. But I can't swear
10 that I heard him say specifically it was going to settle it.
11 It's been a couple of years, but my recollection is in the
12 Judge's office there was a comment about the fact that this
13 wipes out all claims. I can't swear that was Mr. Meade's
14 comment. I think it was, but I can't swear it was. It may
15 have been Mr. Garrett's. I just can't quite pinpoint it
16 down.

17 Q. Now, the real serious settlement discussions
18 occurred on the morning of the second day, didn't it?

19 A. The serious ones occurred before the trial.
20 We were trying to get our client to take it. Unfortunately,
21 our client didn't realize fully until after the first day of
22 the testimony.

23 Q. But the earlier offer before trial, whether
24 eighteen or seventeen five, had been declined by your
25 client?

1 A. That offer continued all during the day. It had
2 been made plain to us that the offer we had would be withdrawn
3 at the end of that day.

4 Q. The first day?

5 A. Yes.

6 Q. And it wasn't accepted on the first day?

7 A. No. He tried to accept it before the night was
8 over.

9 Q. Now, during this discussion on the second morning
10 of the trial, did Mr. Garrett in your presense make any
11 inquiry whether a settlement of the Troy Martin claim would
12 settle the Southern claim?

13 A. Not in my presense to my recollection.

14 MR. STONE: No further questions.

15 THE COURT: Any further questions, Mr. Carter?

16 MR. CARTER: No, sir. We rest, Your Honor.

17 THE COURT: Let's take a five minute recess.

18 (FIVE MINUTE RECESS.)

19 MR. STONE: Your Honor, again, before I get into
20 Mr. Meade's testimony, I would like for the record to renew
21 my earlier motion and make sure I am not waiving any motions.

22 THE COURT: You are not waiving a single motion
23 and if there is anything else you want to object to we will
24 certainly insert it.

25 Thereupon,

FRANK MEADE,

still under oath, was further examined and testified as follows:

EXAMINATION BY MR. STONE:

Q. Mr. Meade, there has been testimony here related to conversations which allegedly occurred between you and Mr. Garrett during the trial of the case, Troy Martin Versus Southern Railway Versus Arlen Realty, and I will ask you whether or not you recall making a trip down to Mr. Garrett's to take the medical depositions. I haven't got the date down. I believe it was February or early March -- February 21, 1975, in your car in which Mr. Garrett rode with you. Do you recall that trip?

A. Yes.

Q. Do you recall whether or not Mr. Garrett questioned you concerning, or had anything to say concerning what ~~affect~~^{would have} the settlement of the Troy Martin claim, with respect to Southern's claim against Arlen?

A. No.

Q. Can you tell the Court whether or not you told Mr. Garrett during that conversation that if the Troy Martin claim was settled that would settle both cases?

A. No, I didn't tell him that.

Q. Between that date on this trip down to North Carolina and the first day of trial, can you tell the Court whether or not Mr. Garrett approached you or asked you at that

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1 time or any time during that period whether or not a settlement
2 of the Troy Martin claim would also settle the claim against
3 Arlen in the third party claim?

4 A. Mr. Stone, the only thing that was discussed
5 about settlement was the possibility of settlement of the
6 Martin case. Mr. Garrett was interested in settling the
7 Martin case or claim and talked to me on numerous occasions
8 about whether or not we would contribute and on what basis
9 would we contribute. But there was no discussion with reference
10 to the effect of his settlement of his case, if any, on the
11 third party claim.

12 Q. Now, do you recall at some point prior to the trial
13 of a settlement offer being made, a joint settlement offer
14 being made?

15 A. Yes, sir, I can't give you the dates. I've got
16 a file that would help me a little bit. There were several
17 efforts to settle the case by Mr. Garrett and Mr. Williams
18 and towards the end Mr. Huggins. Mr. Garrett had mentioned
19 the possibility of settlement earlier in the game, which was
20 reported to the Company, as I recall, and somewhere -- I can't
21 give the exact dates -- but somewhere Mr. Garrett told me
22 there was a demand initially of \$90,000, I think, initially
23 for the Martin case. And then, subsequently, I was given the
24 figure \$50,000 by Mr. Garrett and he said they would settle
25 for fifty but he thought really it would settle for forty

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1 and we could go on a fifty-fifty basis, which would be
2 \$20,000.

3 Q. What response did you make to that report by him?

4 A. Here again I can't give you an exact date, but I
5 took the position from the onset, as did my client, that assuming
6 that Southern was liable to Martin, we were entitled to full
7 indemnity by his client by virtue of the hold harmless agree-
8 ment and if any settlement was to be made it was to be made
9 by him. Somewhere along the approaching trial date there was
10 something about the economic figure or that sort of thing that
11 came into play and at one point I did get some authority
12 from my client.

13 Q. Do you recall what the amount of that authority was?

14 A. I think \$2,500.

15 Q. Do you recall whether or not during the week or
16 ten days before the trial date any settlement offer utilizing
17 that sum and some of the money from Arlen was in fact made
18 to the Plaintiff's attorneys?

19 A. At one time and, here again, I'm not sure of the
20 figures, but if I'm not mistaken seventeen five was offered
21 to the Plaintiff. That would be \$15,000 by Mr. Garret's client
22 and \$2,500 by mine.

23 Q. What was the plaintiff's response to that offer?

24 A. It was rejected. I think the demand at that point
25 was \$25,000.

1 Q. Now, after this offer was rejected by the Plaintiff,
2 can you tell the Court whether or not you ever renewed this
3 offer on behalf of Southern Railway Company?

4 A. I don't know when the offer was made, Mr. Stone.
5 It was real close to the trial date. The \$40,000 figure from
6 Mr. Garrett is set forth in his letter to me of March 24th,
7 if you want a reference to that.

8 Q. What was the status of the \$17,500 offer at the
9 beginning of the first day of trial?

10 A. It had been rejected.

11 Q. After it was rejected, did you ever renew that
12 offer on behalf of Southern?

13 A. I don't think so.

14 Q. Now, on the second morning of the trial, do
15 you recall any settlement negotiations which occurred between
16 the various counsel involved in this case, the attorneys?

17 A. Yes, the morning of the second day of trial there
18 were additional efforts for settlement of the case by the
19 Plaintiff's attorneys, Mr. Williams and Mr. Huggins, and
20 Mr. Garrett was there.

21 Q. On this, the second morning of trial, did you
22 state what the position was of Southern with respect to
23 whether they were going to make any contribution to the
24 settlement?

25 A. When I came to the courthouse that morning, the

1 second morning, I believe, we started at 10:00 o'clock that
2 day, I had already talked to division counsel in Richmond,
3 Mr. Pascal², and in that conversation it was determined we
4 no longer would contribute \$2,500 towards settlement and
5 would make no contribution to a settlement. And I so informed
6 Mr. Williams and Mr. Huggins and Mr. Garrett that morning.

7 Q. Were you aware what happened after that with
8 regard to settlement?

9 A. I left the -- I guess you call it the lawyer's
10 lounge, it used to be Judge Aiken's second office, or his
11 office area -- and I left the room there telling them I had
12 nothing to offer, no sense asking me to contribute anything
13 because I had nothing and there would be nothing. And then
14 I was informed a short while after that that the case had
15 been settled.

16 Q. Now, whether the first or the second day of trial
17 ~~will~~ did you tell the Court whether or not Mr. Garrett on behalf
18 of Arlen ever had any conversation with you concerning what
19 effect the settlement of the Troy Martin claim would have on
20 Southern's claim?

21 A. There was no discussion.

22 Q. No discussion?

23 A. No.

24 Q. Mr. Meade, there's been a letter introduced in
25 evidence as Defendant's Exhibit Number One, a letter dated

1 April 24th from you to Allan Garrett concerning payment of
2 one-half of a bill. I don't know if it's a court reporter's
3 bill or what.

4 A. No, that's ...

5 Q. No, a doctor's bill.

6 A. That's part of the bill for the independant medical
7 examination I had Dr. Aims to do in Greensboro.

8 Q. Before this independant medical examination had
9 been done, had you had any conversations or reached any
10 agreement with Mr. Garrett as to how the expenses would be
11 paid?

12 A. On the independant medical examination we agreed
13 on it, yes.

14 Q. What was that agreement?

15 A. I think it was fifty-fifty on the independant
16 medical examination. It was to our mutual advantage to hold
17 the verdict down if we could.

18 Q. What had been done with the other discovery expenses
19 incurred?

20 A. I don't recall. I know they deposed several doc-
21 tors. And I'm not sure if we deposed anybody or not. I
22 frankly cannot recall.

23 MR. STONE: Thank you, that's all.

24 EXAMINATION BY MR. CARTER:

25 Q. Mr. Meade, when this case was first referred to

1 you for defense, did you at any time contact Arlen
2 Realty and Development Corporation or any representative of
3 Arlen prior to filing the third party claim in your responsive
4 pleadings?

5 A. I certainly have no record of that. I don't think
6 I did.

7 Q. It's fair to say you did not?

8 A. I don't think I did, no.

9 Q. And you at no time thereafter at any time demanded
10 that Arlen Realty on behalf of Southern Railroad, that they
11 furnish the defense of this case? You simply filed the third
12 party claim for what you might spend defending it?

13 A. But they denied they were responsible for it.

14 Q. You didn't answer my question.

15 A. I said no. I just explained why.

16 Q. You were chief counsel in the case?

17 A. That's a good question. I suppose you'd have to
18 say that, but I didn't have complete absolute authority as
19 you would expect the usual chief counsel to have.

20 Q. How long have you represented Southern Railroad?

21 A. I'd say six to eight years in primary litigation.

22 Q. And you actually filed your third party claim
23 seven days after the initial complaint was filed? The
24 initial suit was filed May 22, 1974 and the third party motion
25 for judgment was served on July 15th.

1 Q. Wasn't it filed July 8th after the amendment
2 had been filed on July 2nd?

3 A. Well, let's see, I filed a grounds for defense
4 on June 18th ^{to the} for a motion for judgment, I believe.

5 Q. Then a motion to amend the motion for judgment
6 was served?

7 THE COURT: I think the records will show all that.

8 MR. STONE: All the pleadings are with the Court.

9 THE WITNESS: There was a motion to amend filed on
10 the 29th of June apparently, to increase the amount sued for.

11 THE COURT: The motion was filed the 10th day of
12 July, 1974.

13 BY MR. CARTER:

14 Q. Now, in between the time the third party motion
15 was filed, did you ever contact Arlen Realty again until you
16 heard from Mr. Garrett in early January, 1975 informing you
17 in effect that he was representing them?

18 A. Did I communicate?

19 Q. Yes, sir.

20 A. No, I didn't, that I can recall.

21 Q. In early January of 1975 Mr. Garrett came forward
22 and said he was representing Arlen Realty and would like
23 to file an answer, right?

24 A. That's right. That's the first contact I had with
25 Mr. Garrett, I think.

1 Q. But after being overruled by the Court you and
2 Mr. Garrett commenced to cooperate in the defense of the
3 primary claim for preparation of it?

4 A. I wouldn't say we cooperated. I think Allen
5 asked me to keep him abreast on things and he was present and
6 participated in some of the pretrial matters. He was a party
7 to the suit then, but I couldn't say we cooperated. In some
8 respects, yes.

9 Q. You cooperated to the extent of turning over to
10 him a rather comprehensive, thorough analysis of the medical
11 summary?

12 A. Yes, I told him I had this and he seemed very pleased
13 to know I would let him have a copy of it.

14 Q. And you asked him to assist you, specifically
15 in settlement negotiations with Mr. Huggins and Mr. Williams?

16 A. No, I think I told him if a settlement was to
17 be made, he would have to do the negotiating.

18 Q. Why?

19 A. Because of the attitude of my client. They
20 weren't responsible.

21 Q. Was anything said about you weren't able to
22 discuss it with Mr. Williams and Mr. Huggins?

23 A. I don't recall saying I had too much trouble
24 dealing with Ronald Williams and Ted Huggins. If I have
25 trouble with anybody it's probably you, as you well know, so

1 far as reaching figures is concerned.

2 Q. Now, of course, Mr. Garrett did attend the taking
3 of the initial discovery depositions of some of the principals
4 involved in late January of 1975?

5 A. Yes.

6 Q. Thereafter, I believe y'all journeyed to Winston
7 Salem together?

8 A. I offered to take him. He was going. This is
9 when Dr. Alexander's deposition was taken.

10 Q. He had been one of Mr. Martin's attending physi-
11 cians?

12 A. That's correct.

13 Q. And you offered to take Mr. Garrett with you?

14 A. Yes.

15 Q. And you did in fact take him?

16 A. Yes, we had lunch down there.

17 Q. Did you discuss the case going down?

18 A. Yes, I think we did.

19 Q. Did you discuss settlement?

20 A. I think so.

21 Q. Did you discuss the possibility of Southern,
22 that they might want to make some contribution?

23 A. I had no authority from Southern at all at that
24 time and if I said anything, which I'm inclined to doubt,
25 so far as a contribution, it would have been just my opinion.

1 Q. Well, now, first you're telling us that you really
2 don't remember and then you start speculating. Are you specu-
3 lating about what you normally did?

4 A. Let's put it his way. I never told him I had any
5 authority, because I did not.

6 Q. My question, Mr. Meade, was did y'all discuss the
7 possibility of negotiations for settlement and that Southern
8 Railroad might want to make some contribution?

9 A. That's possible.

10 Q. Did you discuss it? If you did, say you did,
11 and if you didn't, say you didn't, and if you don't remember,
12 tell us you don't remember.

13 A. I think Mr. Garrett talked in terms of settlement
14 first.

15 Q. Did you?

16 A. Did I what?

17 Q. Discuss the possibility that Southern Railroad might
18 want to make some contribution to get a settlement if one
19 could be worked out?

20 A. I honestly don't think so.

21 Q. That is what you think?

22 A. That's the best I can do for you.

23 Q. Are you saying you do not recall, or are you
24 saying you didn't say it?

25 A. Unfortunately, I don't have total recall, or even

1 partial recall.

2 Q. You still haven't answered my question.

3 A. I have a right to explain it. I think so far as
4 settlement, it is possible on his part of the conversation.
5 I may have told him that if Southern contributed anything it
6 would be on a nuisance basis. But I don't recall my initiating
7 anything in the way of contribution by Southern, because we
8 were taking the position all along that if Southern was
9 liable to Martin ...

10 Q. Now, we're not arguing this case, Mr. Meade.

11 A. Do I have a right to qualify my answer, because
12 I don't know how else to explain it.

13 THE COURT: Mr. Meade, you do not recall such a
14 discussion, is that correct?

15 THE WITNESS: No.

16 MR. CARTER: All right, don't go into the theory
17 of the case.

18 BY MR. CARTER:

19 Q. All right, now, later, some several days later, on
20 March 5 of 1975, do you recall a conference in Mr. Garrett's
21 office regarding settlement negotiations or settlement of
22 the case?

23 A. On March 15th?

24 Q. 1975.

25 A. No, sir, I do not.

1 Q. You would not deny that such a conference took
2 place? You simply do not recall it?

3 A. In my opinion, there was no such conference. I
4 know we conferred in my office, but I don't recall any conference
5 in his office.

6 Q. Your records do in fact show you worked on this
7 file on March 15 of 1975, don't they? Don't your billing
8 records show you spent some time on it that day?

9 A. Yes, but nothing in his office.

10 Q. Now, later on, by a letter dated March 21, 1975,
11 Mr. Garrett wrote to you his observations in the case, did
12 he not?

13 A. What date?

14 Q. On March 21, with Mr. Huggins.

15 A. He wrote me on March 24th.

16 Q. He did?

17 A. Uh huh.

18 Q. Now, after you received his letter of March 21st,
19 which did indeed discuss possible settlement, did you report
20 this fact to your client?

21 THE COURT: He hasn't located the letter of
22 March 21st, has he?

23 THE WITNESS: There isn't one. There's one on
24 March 24th from Mr. Garrett to me.

25 MR. CARTER: All right, sir.

1 THE WITNESS: That's the one — I think we're on
2 the same letter — he made some formal demand of \$90,000.

3 BY MR. CARTER:

4 Q. Without reading this letter, following the receipt
5 of this letter, you did write Southern Railroad, did you not?

6 A. On March 25, 1975, the same day I received that
7 letter.

8 Q. To Mr. Pasco ?

9 A. Yes.

10 Q. You stated to him that counsel for Arlen Realty
11 had made several references towards settlement of the case?

12 A. Yes, sir.

13 Q. You discussed your evaluation and his evaluation
14 and in fact that was quite a long letter. Had Mr. Garret
15 given you some research with reference to the enforceability
16 and it had been back dated and so on? But I think you concluded
17 that you wanted Mr. Pasco to make the more thorough legal
18 analysis on it. And what's this about a fifty-fifty contribution
19 on a substantial economic basis? What do you mean "substantial
20 economic basis"?

21 A. Was the whole thing a question? I disagree on
22 one aspect of it. I didn't evaluate this case.

23 Q. Did you end up by saying, "I don't see how we could
24 make a contribution other than on a substantially economic
25 basis?"

1 A. Yes.

2 Q. What do you mean, or what did you mean, by
3 "substantial economic basis"?

4 A. Well, it was a negligible phrase sort of case,
5 the economic approach. We had to have somebody up here from
6 Atlanta ...

7 Q. So you mean the cost of defending the case and
8 related expenses?

9 A. Not exactly, but that's the general idea of it.

10 Q. Basically, don't you really mean when you say
11 "economic basis", you're talking about the cost of defending
12 the case and related expenses?

13 A. Not exactly, but in that general direction.

14 Q. Directing your attention back to the depositions
15 taken January 14, 1976, specifically, do you remember driving
16 to that deposition on that day?

17 A. I think I probably did.

18 Q. You've read over the depositions in preparation
19 for the hearing today?

20 A. I read them while sitting in the bathtub last
21 night.

22 Q. So that's the description you used that time
23 talking about the cost of defending the case and related
24 expenses?

25 A. Was that my language or yours?

1 Q. You language.

2 A. Yes, whatever that means.

3 Q. Well, at that time you were thinking in terms that
4 Southern would be bearing their own legal expenses, their
5 own expenses for preparation and related expenses and it might
6 be economically wise to make that contribution and lose one
7 thought the trial, right?

8 A. No, I don't agree with that, Mr. Carter.

9 Q. Why would you contribute anything on that economic
10 basis if you didn't mean that?

11 A. You have to go back to the letter of March 25,
12 after the deposition of Dr. Alexander. I told counsel for
13 Arlen we felt no liability. If there was, we would be entitled
14 to full indemnity. I simply said in view of the position we
15 have taken in this case, I do not see how we could contribute
16 to settlement on a fifty-fifty basis and the thing about a
17 specific economic basis, this is a matter of justification.

18 Q. You mean rather than spending the money on
19 defending the case and other related expenses, it might be
20 more feasible to pay it out in settlement? You weren't saying
21 let's do it, but that it may be wise?

22 A. I don't see how we can justify other than on
23 that basis but I don't have that authority to make a settle-
24 ment.

25 Q. But you were talking about in terms of a contribution

1 to the settlement, potential expenses incurred?

2 A. You'll have to repeat that.

3 Q. By that phrase you mean in terms of contributing
4 to the settlement in terms of the expenses that you would
5 potentially incur in the defense of this action?

6 A. Well, yes, but this term can mean many different
7 things, so I have to sort of hedge the answer.

8 Q. Yes, we think you have hedged. I concur with you
9 on that. Now, didn't you later say that you didn't think
10 you were interested in discussing settlement on any basis
11 unless it was on a basis roughly equivalent to what it would
12 cost to try the case?

13 A. To whom?

14 Q. Page 20.

15 A. Well, I don't have the deposition.

16 Q. Would you like to see it to refresh your memory?

17 A. Yes.

18 Q. What did you say there or what did you do if
19 you recall saying that?

20 A. That's Mr. Pascoe's letter to me, if I'm not
21 mistaken. Yes, this is Mr. Pascoe's letter to me of April 4,
22 1975.

23 Q. All right, then, Mr. Pascoe then is saying that
24 he's not interested in a settlement of the case unless it
25 was roughly equivalent to the cost of trying the case?

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- 1 A. Yes.
- 2 Q. Mr. Pasco is general manager?
- 3 A. No, ~~Division~~ ^{Counsel} ~~manager~~.
- 4 Q. So he was thinking of the same thing?
- 5 A. Well, we used about the same terms, yes.
- 6 Q. You were aware at that time that an old Virginia
- 7 case had held an endeminity agreement void as against public
- 8 policy back in 1890?
- 9 A. Yes, that was Johnson's administrator, I believe.
- 10 Q. But there had been a trend nationally in the
- 11 opposite direction and y'all hoped with the present opinion
- 12 that the Court might not so hold today?
- 13 A. That was my opinion on the Johnson case.
- 14 Q. Of course, you were also aware of the fact such
- 15 contracts were not favored by the Court as strictly construed
- 16 against the party seeking to endorse them?
- 17 A. I think that's what the study said.
- 18 Q. So you had some incantive to say the case settled
- 19 would eliminate totally any exposure not only to judgment,
- 20 but to additional legal fees and expenses incurred in trial
- 21 by way of serving your client, didn't you, Mr. Meade?
- 22 A. I wouldn't put it that way. I'm trial counsel
- 23 locally for Southern and I take directions from Mr. Pasco
- 24 and he takes them from Washington and I'm not so sure to settle
- 25 this case would have been in the interest of the company and,

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1 frankly, as it turned out, it would not have.

2 Q. But you did in fact get \$2,500 and then offered
3 it?

4 A. That's right.

5 Q. Yourself? You went out and made the offer yourself?

6 A. What do you mean?

7 Q. To Mr. Huggins or Mr. Williams or both?

8 A. I may have told Mr. Williams when he got there.
9 I expect I told Allan, too.

10 Q. That you had \$2,500 in authority and that you
11 would contribute that?

12 A. Yes.

13 Q. So somewhere along the line you got \$2,500 in
14 authority?

15 A. No, I can't say I got it. I was given it.

16 Q. You were given it and you did offer it?

17 A. Yes, I was instructed to.

18 Q. And did you make that offer in ^{connection} ~~contention~~ with the
19 offer that Mr. Garrett's authority he had from his company
20 to offer \$15,000?

21 A. Yes, they were offered seventeen five. Who actually
22 made the offer, I don't recall.

23 Q. But your \$2,500 was offered along with whatever
24 his authority might be?

25 A. That's right.

1 Q. So it was done with your authority?
2 A. Yes, I had the authority to do it.
3 Q. And the \$2,500 offer remained open up until the first
4 day of trial, did it not?
5 A. I think that's a legal question. I don't know
6 when the offer was made. It was rejected. My own personal
7 opinion is when it's rejected it's no longer outstanding.
8 Q. Didn't you indicate the first day of trial you
9 could?
10 A. It's conceivable I might be able to get it, but
11 I don't think I told anybody flat out that I still had it.
12 Q. Now, after the trial commenced, were you aware of
13 the fact that Arlen's \$15,00 offer was still open?
14 A. Yes, I think I was, yes.
15 Q. Yes. Did you urge Mr. Garrett to try to go on
16 and settle the case for the \$15,000?
17 A. I don't know whether I urged him or not.
18 Q. Think about it. Did you urge him?
19 A. I don't think so.
20 Q. Did you urge him by saying you should settle
21 it and so forth, that type of thing?
22 A. I don't know whether I did or not.
23 Q. Well, directing your attention back to the deposition
24 you gave on February 4, 1976, line ten, did you urge Mr. Garrett
25 to settle, did you urge him by saying you should settle it and

1 so forth?

2 A. I may have.

3 Q. You were still trying for the best interest of
4 your client and to see the matter disposed of without the
5 risk of an adverse verdict against Southern?

6 A. It got to the point I didn't think this was any
7 risk.

8 Q. I realize you're an able trial lawyer and it may
9 have gotten to that point, but not until later during the
10 first day of trial?

11 A. Well, I admit I think the case deteriorated.

12 Q. But after it deteriorated did you urge Mr. Garrett
13 to go on and pay the \$15,000?

14 A. I don't think so.

15 Q. Did you urge Mr. Huggins and Mr. Williams to
16 accept it?

17 A. Well, you're using the word "urge", but I do know
18 that even before the trial started I told Ron Williams and
19 probably Ted that I thought the \$15,000 was a steal at that
20 point and I told Mr. Williams the night after the first day
21 of trial.

22 Q. So during the trial, that night, you told Mr.
23 Williams that you would take the \$15,000?

24 A. Well, I told him the case had deteriorated, which
25 he knew. I don't think I urged him, but I told him I thought

1 he would be a fool if he didn't.

2 Q. Didn't this eliminate all risk for Southern Rail-
3 road?

4 A. Well, a settlement would have taken care of that
5 part of the case.

6 Q. Eliminate all risk for Southern Railroad as far
7 as Troy Martin's claim was concerned?

8 A. That's true.

9 Q. And this was in the best interest of your client
10 that the offer be accepted?

11 A. I don't necessarily agree with that. I think the
12 position of the case on the second day of trial was quite a
13 bit different than the first day.

14 Q. Before the start, you would have been willing to
15 contribute \$2,500?

16 A. My company made the offer, Mr. Carter.

17 Q. When your company made the offer you were chief
18 counsel. Wasn't it your understanding this would wash out
19 the whole thing? Arlen would pay \$15,000 and you would pay
20 \$2,500 and that would be the end of the total law suit?

21 MR. STONE: I object on the grounds it's immaterial.
22 That offer was rejected. It never came into play.

23 THE COURT: We're going over and over and over
24 the same thing but the last question I would like for Mr. Meade
25 to answer, whether the \$15,000 and the \$2,500 would have

1 eliminated the entire law suit.

2 THE WITNESS: Well, you had two law suits, Judge,
3 at that point because of the third party claim, which had been
4 severed. And the only thing I can say is what I told Mr. Carter
5 in the depositions. My thinking as to what the company might
6 do, but, here again, I did not have any authority from the
7 company and this matter really had never come up, this business
8 about the effect of settling Martin's case on the third party
9 claim was never a matter that was gotten into. But to answer
10 your question, which I did on depositions, it was my thinking
11 at that time that — this is hindsight again — but what I
12 told them then is it would have washed the whole thing out.

13 BY MR. CARTER:

14 Q. You were of the opinion if the \$17,500 , Arlen
15 putting in \$15,000 and you putting in \$2,500 for Southern,
16 would be the end of both suits?

17 A. No, I'm not of that legal opinion.

18 THE COURT: Was it your opinion that \$2,500 plus
19 the \$15,000 would have washed out the entire litigation,
20 you personal opinion?

21 THE WITNESS: Well, I had no authority. It was
22 not a matter within my discretion. But I would think if the
23 issue had been raised it would have ended up that way.

24 THE COURT: In other words, if you paid \$2,500
25 along with the other \$15,075 accepted, you would have been

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1 surprised if it had not washed out the entire matter?

2 A. I think it's fair to say that.

3 THE COURT: Let's go on to something else then.

4 BY MR. CARTER:

5 Q. If I could ask him this. What do you mean when
6 you say "wash out"? Meaning Arlen would resolve their legal
7 expenses and Southern would resolve theirs?

8 A. Yes. Again, that's speculation on my part.

9 Q. You were chief counsel and had been representing
10 Southern for a number of years?

11 A. Yes, sir.

12 Q. With a great deal of success, I might add?

13 A. You're very kind to say so. We feel so.

14 Q. Now, Mr. Meade, you've already testified, I believe—
15 I would like to see those, please, if I could. I think you've
16 already testified that you didn't have any recollection of
17 saying that you know the settlement of one would settle both
18 was agreeable with Mr. Garrett. You have no specific recol-
19 lection of that?

20 A. I'm saying we didn't discuss that.

21 Q. You didn't discuss it?

22 A. No.

23 Q. Directing your attention to the day of the settle-
24 ment, after it was decided that Arlen would pay \$15,075, did
25 you make any statement to Mr. Garrett at that time that this

1 was just a settlement of the Martin case, cautioning him that
2 the other case was still open?

3 A. No.

4 Q. You made no such caution?

5 A. No.

6 Q. And did you later on the same day write him a
7 letter after you got back to your office? What was that,
8 the 24th of April?

9 A. Yes, sir.

10 THE COURT: It's in evidence he did. Let's go on.

11 BY MR. CARTER:

12 Q. I think you already testified and the letter itself
13 is Exhibit Number One. Would you tell us why, if it was your
14 intention following this settlement on April 24th that Arlen
15 Realty opened the total cost of expenses. Why did you write
16 Mr. Garrett this letter the self-same day and ask for one-half
17 of the \$84 bill from the doctor?

18 A. Because Mr. Garrett and I agreed before we took --
19 before the case came up for trial -- we agreed the independent
20 medical examination was appropriate and he agreed he'd split
21 the expenses.

22 Q. But you didn't say anything about anything else
23 in that letter. Wasn't it a kind of final bill?

24 A. Not hardly. That was the agreement by Mr. Garrett
25 and ~~he~~, to have the independent medical and share the cost of

1 it.

2 Q. Well, later, how did Mr. Garrett happen to draw
3 the dismissal order to begin with? Did you tell him to go on
4 and draw the order?

5 A. I don't know.

6 Q. You don't know whether he happened to draw it on
7 his on or whether you told him to?

8 A. No.

9 Q. You didn't draw one yourself until after you saw
10 his? After you saw his, did you talk to Mr. Pascoe about that?

11 A. About his final order?

12 Q. As to whether or not to go on and agree with the
13 final dismissal of both suits.

14 A. I don't think so.

15 Q. Well, look at the file.

16 A. Mr. Garrett drew the order. I received Mr. Garrett's
17 order on May 15, according to my billing sheet.

18 Q. Did you work on the file between April 24th and
19 May 5th?

20 A. Did I do what?

21 Q. Work on the file at all or call anybody?

22 A. Yes, I wrote thank you notes to people that
23 assisted me in the case and I wrote a report to Mr. Pascoe.

24 Q. When did you write that?

25 A. April 24th.

1 Q. Tell us what you said in that letter about the
2 possibility of another suit.

3 A. All right, this is April 24th, the day the settle-
4 ment was actually made.

5 Q. Yes, sir.

6 A. (Mr. Meade reads letter of April 24, 1976 to
7 Mr. Pasco)

8 Q. That's all I wanted to get at. So on the 24th
9 at the back of your mind this might have been an open issue
10 but you didn't raise it because you feared it might upset
11 the settlement. That's what you wrote Mr. Pasco, is it not?

12 A. That's what I told him. And it was never brought
13 up.

14 Q. It sure wasn't. Mr. Meade, tell me one more
15 thing. Why did you ever sign a dismissal order for this
16 second suit of the third party claim? Why dismiss it? You
17 were still afraid it was going to foul up the settlement
18 and you needed to get both orders signed?

19 A. No, the reason I took the dismissal of the third
20 party claim since that was a separate suit was because the
21 original suit had been concluded and in the original third
22 party claim you are talking about unliquidated figures, un-
23 certain figures, and this is sort of a housekeeping thing
24 in filing a separate suit rather than going on a cross claim.

25 Q. You could have said you were not going to dismiss
it.

- 1 A. It would have cost additional court costs.
- 2 Q. You had to pay court costs in this suit?
- 3 A. If we're successfull we'll get them back.
- 4 Q. You yourself have said all along that it's an
- 5 interesting question about the endemnity fees. You knew
- 6 all along that it was a close issue.
- 7 A. It's a question whether it's valid or not.
- 8 Q. I say, you knew it was a close question? The
- 9 knowledge you had all along was it was an interesting close
- 10 question?
- 11 A. I said there remains an interesting question.
- 12 Q. But you did agree to the dismissal of the suit,
- 13 the third party suit?
- 14 A. I drew the order and Mr. Garrett requested entry
- 15 of it.
- 16 Q. And you wrote him on the 24th asking him for \$42?
- 17 A. Yes, pursuant to agreement about the independent
- 18 medical, yes. But I didn't ask him for any other costs.
- 19 MR. CARTER: No further question.
- 20 THE COURT: Any further questions, Mr. Stone?
- 21 MR. STONE: No, Your Honor.
- 22 THE COURT: Mr. Meade, you may step down.
- 23 THE WITNESS STANDS ASIDE.
- 24 THE COURT: Next witness, Mr. Carter.
- 25 MR. CARTER: We have nothing further.

CLOCK STAMPS HERE

DATE & TIME PICKED UP AT ORIGIN
5-23-22 0930

DATE & TIME RETURNED AT ORIGIN
5-24-22 1300

DATE & TIME TENDERED FOR SHIPMENT
5-24-22 1000

DATE & TIME GROUNDED-DESTINATION

DATE & TIME NOTIFIED-DESTINATION

NAME OF PERSON NOTIFIED

DATE & TIME PICKED UP AT DEST.

DATE & TIME RETURNED AT DEST.

SOUTHERN RAILWAY COMPANY

TRAILER USE AGREEMENT

CUST. NO.

PRO NO.

USER
B. J. K...

BILLING ADDRESS:
P. O. BOX 2007

CITY AND STATE

ORIGIN TERMINAL
Denville

DESTINATION TERMINAL
Denville

VIA ROUTE

LOADED AT:
Denville

DATE:
5-24-22

INVOICE DATE

ORIGIN DETENTION

DESTINATION DETENTION

RENTAL

OTHER DETENTION

TOTAL AMOUNT DUE

TRAILER/CONTAINER INITIAL & NO.
S. R. 2007

CHASSIS NO.

PLAN NO.
2

TYPE OF EQUIPMENT
D-1

It is understood and agreed by and between the user designated above and the Southern Railway Company (hereinafter referred to as "railroad") that the use of the equipment described herein is made in accordance with, and is subject to, the terms and conditions printed on the reverse side of this sheet, and to the provisions of any applicable tariff on file either with the Interstate Commerce Commission or with any other regulatory agency having jurisdiction.

REFRIGERATION OR HEATING SERVICE REQUIRED YES _____ NO _____ TEMPERATURE SETTING _____
MARK CLEARLY ALL DAMAGE OR DEFICIENCY FOUND BY INSPECTION SYMBOL 'B' BURST - 'C' CUT - 'H' HOLE

PICK UP INSPECTION

LEFT SIDE

TOP

RIGHT SIDE

FLOOR

FRONT

REAR

Seal No.

Seal No.

RETURN INSPECTION

LEFT SIDE

TOP

RIGHT SIDE

FLOOR

FRONT

REAR

Seal No.

Seal No.

REMARKS

ICC BAR _____ LDG. GEAR _____ LEASE BOX _____

BRAKES _____ WHEEL LUGS _____ FLAPS _____

YARPS _____ DOORS _____ BOWS _____ UNDER CARRIAGE _____

AIR HOSE CONN. _____ REFLECTORS _____ LIGHTS _____ LIGHT SOCKETS _____

VENTS OPEN ☐ VENTS CLOSED ☐ NUMBER OF CHAIN BINDERS _____

REMARKS

ICC BAR _____ LDG. GEAR _____ LEASE BOX _____

BRAKES _____ WHEEL LUGS _____ FLAPS _____

YARPS _____ DOORS _____ BOWS _____ UNDER CARRIAGE _____

AIR HOSE CONN. _____ REFLECTORS _____ LIGHTS _____ LIGHT SOCKETS _____

VENTS OPEN ☐ VENTS CLOSED ☐ NUMBER OF CHAIN BINDERS _____

POSITION	BRAND NO.	CONDITION	POSITION	BRAND NO.	CONDITION
T R. O. FRONT			L. O. FRONT		
R. I. FRONT		OK	L. I. FRONT		OK
R. O. REAR			L. O. REAR		
R. I. REAR			L. I. REAR		

POSITION	BRAND NO.	CONDITION	POSITION	BRAND NO.	CONDITION
T R. O. FRONT			L. O. FRONT		
R. I. FRONT			L. I. FRONT		
R. O. REAR			L. O. REAR		
R. I. REAR			L. I. REAR		

TIMES AND TRAILER CONDITION AS SHOWN ABOVE
ACKNOWLEDGED BY USER AND RAILROAD.

USER Kenneth C. Blaine

RAILROAD S. R. Co.

REASON FOR DELAY picked up and did not sign case

TERMS AND CONDITIONS OF USE

- (1) In executing the inspection form appearing on the reverse side hereof, the User acknowledges delivery by the railroad of the equipment described on the reverse side in good condition, subject only to the defects noted on said inspection form. In the event of any disagreement between the parties concerning the condition of said equipment, either at the time of its delivery to the User or at the time of its return to the railroad, the parties shall be bound by the information appearing on the applicable inspection form on the reverse side of this sheet. Nothing else appearing, an unexecuted inspection form shall be conclusive evidence that the said equipment was delivered or received, as the case may be, in good order.
- (2) The User shall pay rental for the use of the equipment described on the reverse side in accordance with the provisions of the applicable tariff or tariffs on file with the Interstate Commerce Commission, or other regulatory agency having jurisdiction in the premises, if any.
- (3) The equipment described on the reverse side shall be used only for such highway movements as may be necessarily incident to its primary movement by rail.
- (4) The equipment described on the reverse side has been properly licensed for the limited highway movements contemplated by this agreement. The User agrees that its officers, agents, employees, and representatives will comply with all laws, rules, and regulations of any federal, state, or municipal authority which may be applicable to the movement or use of said equipment, and that it will indemnify and save the railroad wholly harmless from any penalty, tax, fine, fee, seizure, forfeiture or expense whatsoever resulting from, arising out of, or connected with the use, custody, or operation of said equipment by the User.
- (5) Except for normal wear and tear to the equipment covered by this agreement, the User hereby agrees to, and does release, indemnify, protect and save harmless the railroad from and against all claims, damages, expenses and liability (whether or not such liability has been judicially determined) for death, personal injury, or property damage (including, but not limited to, any damage that may occur to the said equipment, or to the lading therein) which occurs while said equipment is in the possession of the User, whether or not negligence on the part of the railroad may have caused or contributed to said death, personal injury, or property damage. In the event of loss, theft or irreparable damage to said equipment while in the possession of the User, the User agrees to reimburse the railroad an amount equal to the market value of said equipment on the date of such loss, theft, or irreparable damage, but in no event shall the amount of such reimbursement be less than the depreciated book value of said equipment.
- (6) The User agrees to carry adequate liability and property damage insurance, without expense to the railroad, covering the liability to which User is or may be subjected by virtue of the terms of this agreement.
- (7) The term "User" as used herein shall include not only the person, firm, or corporation described on the reverse side, but also his or its agents, employees, and licensees.
- (8) The term "railroad" as used herein shall include not only the Southern Railway Company, but also any other corporation controlled by or affiliated with the Southern Railway Company, and shall also include any corporation acting by, for, or on behalf of either the Southern Railway or any such affiliated or controlled corporation.
- (9) Before returning an empty trailer or container to the railroad, it shall be the responsibility of the User to remove from such trailer or container any lading, blocking, bracing, strapping, paper, or debris of any kind which is not a part of the trailer or container.

EXHIBIT PLAINTIFF NO. 2

Copies of portion of file of
case of Troy Martin v. Southern Railway Co.

MOTION FOR JUDGMENT

The plaintiff, Troy Martin, moves the Court for judgment against the defendant, Southern Railway Company, on the grounds and in the amount as hereinafter set forth:

1. On May 23, 1972, at approximately 9:00 a.m., Ronald Burke, plant manager for E. J. Korvette Company, a Danville business concern located at the intersection of Court and Wilson Streets in Danville, Virginia, instructed Willie Blaine, one of his truck drivers for E. J. Korvette to pick up a trailer owned by Southern Railway Company and move the trailer to a box car owned by Southern Railway Company and located on the property of Southern Railroad Company in Danville, Virginia.

2. Blaine picked up trailer number SOUZ 205047 from the Southern Railway Lot and backed it to the door of the Southern Railway box car leaving approximately 18 inches to 2 feet of space between the box car doors and the end of the trailer so that said trailer could be used as a work area to inspect furniture that was to be unloaded from the box car.

3. Blaine unhooked said trailer from the tractor, let down the landing gear of the trailer, pumped air into the

air brakes of the trailer, and removed the tractor from the area.

4. At approximately 11:00 a.m. Burke instructed the plaintiff, Troy Martin, a supervisor for E. J. Korvette, to take a crew of men to the area where said trailer was backed to the Southern Railway box car on the property of Southern Railway Company for the purpose of sealing up the box car.

At the same time, Burke instructed Blaine to pick up said trailer and return it to the Southern Railway unloading area.

5. Plaintiff, Troy Martin, was standing between said trailer and box car when the driver, Blaine, began the process of hooking the tractor to the parked trailer.

6. When Blaine backed the tractor into the trailer the brakes on the trailer were defective and allowed the trailer to roll backwards thereby crushing plaintiff, Martin, between said trailer and box car. The defective condition of the trailer brakes being unknown to plaintiff.

7. E. J. Korvette Company, at the time of the accident, had a lease agreement with the Southern Railway

Company in reference to using the Southern Railway trailers.

8. Southern Railway Company, as lessors of the trailers, were responsible for the maintenance, inspection and care of the trailers.

9. The defendant, Southern Railway Company, negligently failed to examine, inspect and test said trailer before making it available for use by plaintiff's employer; and negligently represented to the plaintiff (through his employer) that the said trailer was safe and suitable for the ordinary use and purpose for which it was designed and manufactured.

10. That the defendant, Southern Railway Company, by and through its agents and employees, were negligent in allowing the plaintiff, through prior course of dealings, to pick up trailers pursuant to the aforementioned lease agreement without having an employee of the defendant on duty to warn the plaintiff of defects known to the defendants or those that should have been known and for allowing the trailers, not in a good state of repair, to be picked up by the employer of the plaintiff.

11. That the said defendant contracted with plaintiff's employer to lease and furnish trailers that were in good condition and did thereby breach the terms of said agreement by not maintaining proper inspection of said unit involved herein and did breach the express terms of said agreement; did breach the implied terms of usage, custom and accepted practice existing between defendant and plaintiff's employer all causing injury to the plaintiff.

12. As a direct and proximate result of the aforesaid negligent acts of the defendant, Southern Railway Company, plaintiff, Troy Martin, suffered severe and permanent injuries and will continue to suffer severe pain, mental anguish and emotional disturbance as a result of the accident; and he has incurred, and will continue to incur, medical expenses, loss of wages and other expenses.

WHEREFORE, plaintiff demands judgment against the defendant in the sum of ONE HUNDRED THOUSAND (\$100,000.00) DOLLARS, and his costs in this behalf expended.

GROUNDS OF DEFENSE

For its grounds of defense to the motion for judgment filed in the above styled action defendant replies, denying it is liable to plaintiff, and for answer says:

1. Defendant is without sufficient information to either admit or deny the allegations of Paragraph 1 of the motion for judgment and, therefore, requires strict proof thereof.

2. Defendant is without sufficient information to either admit or deny the allegations of Paragraph 2 of the motion for judgment and, therefore, requires strict proof thereof.

3. Defendant is without sufficient information to either admit or deny the allegations of Paragraph 3 of the motion for judgment and, therefore, requires strict proof thereof.

4. Defendant is without sufficient information to either admit or deny the allegations of Paragraph 4 of the motion for judgment and, therefore, requires strict proof thereof.

5. The allegations of Paragraph 5 of the motion for judgment are not denied.

6. The allegations of Paragraph 6 of the motion for judgment are denied.

7. The allegations of Paragraph 7 of the motion for judgment are not denied.

8. The allegations of Paragraph 8 of the motion for judgment are denied.

9. The allegations of Paragraph 9 of the motion for judgment are denied.

10. The allegations of Paragraph 10 of the motion for judgment are denied.

11. The allegations of Paragraph 11 of the motion for judgment are denied.

12. The allegations of Paragraph 12 of the motion for judgment are denied.

13. Defendant alleges that at the time and place complained of in the motion for judgment plaintiff was guilty of negligence which was the sole proximate cause or a contributing proximate cause of the accident and/or that plaintiff assumed the risk of the injuries incurred by him and is, therefore, barred from any recovery herein.

WHEREFORE, defendant denies it is liable to plaintiff in any amount and requests this action be dismissed with its costs expended.

MOTION TO AMEND
MOTION FOR JUDGMENT

The above-named plaintiff respectfully moves the Court for leave to file an amendment to his Motion for Judgment and shows:

1. That the proposed amendment to said pleading, amending the final paragraph of the Motion for Judgment, is as follows: "WHEREFORE, plaintiff demands judgment against the defendant in the sum of Five Hundred Thousand (\$500,000.00) Dollars, and his costs in this behalf expended."

2. That the amendment is necessary and proper and should be allowed for the reason that due to further investigation, the original amount prayed for appears to be inadequate.

WHEREFORE, plaintiff prays that leave be granted to serve and file the proposed amendment of the Motion for Judgment.

FILED IN CLERK'S OFFICE CIRCUIT COURT,
DANVILLE, VIRGINIA

DEPUTY
CLERK
ATTEST: *[Signature]*

THIRD-PARTY
MOTION FOR JUDGMENT

Southern Railway Company (Southern), defendant and third-party plaintiff, comes now, by counsel, within twenty-one days of having served its responsive pleading to the motion for judgment upon Troy Martin, plaintiff, and pursuant to Rule 3:10 of the Rules of the Supreme Court of Virginia for its third-party motion for judgment against Arlen Realty & Development Corp. (Arlen) states as follows:

1. At the time and place of the accident complained of in the motion for judgment, which is incorporated by reference, the third-party defendant, Arlen, a New York corporation doing business under the name E. J. Korvette (Korvette), which is a division of Arlen, was in possession of trailer number SOUZ 205047 pursuant to a contract entitled "Trailer Use Agreement" between Southern, as "Railroad", and Korvette as "User", a copy of said agreement being attached as "Exhibit A".

2. Under the terms and conditions of the said "Trailer Use Agreement", "User" undertook to inspect the trailer upon delivery and further agreed:

"(5) Except for normal wear and tear to the equipment covered by this agreement, the User hereby agrees to, and does release, indemnify, protect and save harmless the railroad from and against all claims, damages, expenses and liability (whether or not such liability has been judicially determined) for death, personal injury, or property damage (including, but not limited to, any damage that may occur to the said equipment, or to the lading therein) which occurs while said equipment is in the possession of the User, whether or not negligence on the part of the railroad may have caused or contributed to said death, personal injury, or property damage."

3. By reason of the foregoing, if Troy Martin recovers against Southern based upon the allegations in the aforementioned motion for judgment, Arlen is liable to Southern in the amount of such recovery and the costs incurred by it in defending this action, including reasonable attorneys' fees.

WHEREFORE, Southern Railway Company moves the Court for judgment against the third-party defendant, Arlen Realty & Development Corp., for such amount, if any, as may be awarded plaintiff against Southern Railway Company, as well as its related costs, attorneys' fees and expenses.

ORDER
Dated 7/12/74

This matter having come before me pursuant to the motion of the plaintiff for leave to file an amended Motion for Judgment; and the matter having been duly considered by the court; and good cause appearing, it is ORDERED

1. That the plaintiff be and hereby is granted leave to amend the Motion for Judgment on file herein by striking the final paragraph from the original and substituting in place thereof, "WHEREFORE, plaintiff demands judgment against the defendant in the amount of Five Hundred Thousand (\$500,000.00) Dollars, and his costs in this behalf expended," as proposed and requested by the plaintiff in his motion.

ENTER: 7 / 2 / 74

W.C. Thompson
Judge

AMENDED MOTION FOR JUDGMENT

Troy Martin, plaintiff in the above styled cause, with leave of court, amends the final paragraph of his motion for judgment by striking said final paragraph and substituting in lieu thereof the following: "WHEREFORE, plaintiff demands judgment against the defendant in the sum of FIVE HUNDRED THOUSAND (\$500,000.00) DOLLARS, and his costs in this behalf expended."

All other words, figures, and averments in each of the counts of the Motion for Judgment remain as originally filed except as amended by this instrument.

RESPONSE TO THIRD-PARTY
MOTION FOR JUDGMENT

GROUND OF DEFENSE

Third-party defendant, Arlen Realty & Development Corp., by Allan Garrett, its counsel, answers the Third-Party Motion for Judgment, as follows:

1. The allegations contained in Paragraph 1 are denied. This defendant objects to the filing of "Exhibit A" and calls for strict proof thereof before the alleged Agreement be allowed as evidence in this proceeding.

2. This defendant denies the allegations contained in Paragraph 2 and avers that the wording is improperly before the Court until the alleged Agreement is properly introduced as evidence.

Further, this defendant avers that said Agreement is void as being against public policy: it attempts to contract away legal liability for civil negligence.

3. The allegations contained in Paragraph 3 are denied.

4. This defendant adopts the defensive pleadings previously filed by the Southern Railway Company in response to the pending tort action, including all affirmative defenses, such as contributory negligence, but not being limited thereto.

ORDER
Dated 4/23/75

This day came the plaintiff, Troy Martin, in his proper person and by his attorneys, as well as the defendant and third party plaintiff, Southern Railway Company, and the third party defendant, Arlen Realty & Development Corp., by their attorneys, and the said defendant having filed its grounds of defense to the plaintiff's amended motion for judgment, and the third party defendant having filed its grounds of defense to the third party motion for judgment filed by Southern Railway Company, the plaintiff now replied generally thereto, and issue was joined.

Thereupon, came the following jury of seven, to-wit: Mary K. Cowan, Ernest L. Dickens, Edith D. East, Joseph C. Lumpkin, Mary C. McMillan, William B. Smith, Jr., and Carl T. Yeatts, who, upon examination having been found duly qualified, were selected, tried and sworn according to law.

Thereupon, the third party defendant, Arlen Realty & Development Corp., by counsel, moved the Court to sever said third party defendant and grant a separate trial to Arlen Realty & Development Corp., which said motion, upon consideration by the Court, is sustained, and said plaintiff and third party plaintiff, by counsel, except.

Thereupon, the jurors aforesaid heard a part of the evidence adduced on behalf of the plaintiff, Troy Martin, and by consent of the parties and with the assent of the Court adjourned until tomorrow morning at 10:00 a. m.

Enter 4/23/75

B. D. [Signature]

ORDER
Dated 4/24/75

This day came again the parties, by their attorneys, and the jury sworn in this cause appeared in Court according to their adjournment on yesterday.

Thereupon, the Court informed the jury that the plaintiff and the third party defendant had reached an agreement in this case.

Whereupon, Mary K. Cowan, one of the jurors aforesaid, was withdrawn, and the rest of the jury from rendering their verdict discharged.

ENTER: 4/24/75

B. N. Davis

Judge

FINAL ORDER
Dated 5/29/75

It appearing to the Court that the settlement agreed upon between the third-party defendant, Arlen Realty & Development Corp., and the plaintiff, Troy Martin, with no contribution from Southern Railway Company, has been effected, this action is dismissed with prejudice.

ENTER: 5/29/75



Judge

ORDER
Dated 5/29/75

This third-party action, having been severed from the original action upon which it was dependent, is dismissed, upon agreement of the parties, without prejudice.

ENTER: 5/29/75

B. A. H. Law

Judge

April 24, 1975

Mr. Allan Garrett
Garrett, Garrett & Smith
824 Masonic Building
Danville, Virginia 24541

Dear Allan:

Re: Troy Martin v. Southern Railway Company
v. Arlen Realty & Development Corporation

In accordance with our telephone conversation today, I am enclosing Copies of receipts from Greensboro Radiology Associates and Greensboro Neurosurgical Center, along with my letter to Ron Williams of today. These bills total \$84.89, your one half of which would be \$42.44.

Yours very truly,

MEADE, TATE, MEADE & DANIEL

By

Frank O. Meade

FOM: fmp

Enclosures

Mr. Ronald W. Williams
Warren, Parker and Williams
326 Masonic Building
Danville, Virginia 24541

Dear Ron:

Re: Troy Martin v. Southern Railway Company
v. Arlen Realty & Development Corporation

I enclose the following to cover Troy's expenses for
the independent:

100 miles at 12 cents per mile	\$ 12.00
Meal (Troy and Daughter)	<u>7.89</u>
	\$ 19.89

Yours very truly,

MEADE, TATE, MEADE & DANIEL

By

Frank O. Meade

FOM:fmp

Enclosures

1 THE WITNESS, FRANK O. MEADE, being first duly sworn, deposed
2 and stated as follows:

3 EXAMINATION BY MR. CARTER:

4 Q. Would you state your name please?

5 A. Frank O. Meade.

6 Q. And you are an attorney practicing law in the City of
7 Danville?

8 A. That is correct.

9 Q. And how old are you, Mr. Meade?

10 A. Forty-six.

11 Q. And you, I believe, were counsel for Southern Railway
12 in a certain suit under the style of Troy Martin vs. Southern
13 Railway Company, filed in the Circuit Court of the City of
14 Danville on or about May 22, 1974?

15 A. That is correct.

16 Q. And what was your relationship with Southern Railway as
17 pertains to that particular case?

18 A. I was assistant division counsel, which means at that time
19 and we still do and have in the past represented them generally
20 within this geographic area.

21 Q. How long period of time have you been representing Southern
22 Railway in this area?

23 A. Our firm and predecessor firms have been representing
24 Southern Railway since Judge Aiken went on the bench.

Q. Since 1950?

173

1 A. I think so.

2 Q. And how long have you been personally participating in
3 the representation of Southern Railway?

4 A. Well, it is hard to say. I took it over from my father.
5 I would say six to eight years.

6 Q. I take it in this particular case, as assistant division
7 counsel, you would have been considered chief counsel in this
8 case subject to such supervision as Southern Railway would
9 have sent down from the higher echelons?

10 A. Yes, although most is done through channels. I have no
11 authority on my own. I have to get it through channels,
12 through legal channels.

13 Q. But you would have been chief counsel?

14 A. Oh, yes.

15 Q. And as such the pleadings and incidents of trial were
16 within your discretion, subject to supervision?

17 A. Yes, subject to supervision.

18 Q. I take it you have an annual retainer from Southern
19 Railway?

20 A. I think so.

21 Q. Does this retainer cover any of your fees for services
22 rendered in litigation?

23 A. It covers ~~no~~ fees. I think the retainer is about the
24 ~~minimal~~ 3-10-76
~~minimum.~~

Q. I believe at one time Southern Railway paid a substantial

1 retainer?

2 A. They did.

3 Q. But at the present time they pay a nominal retainer?

4 A. Yes.

5 Q. And what is their practice as far as billing is concerned?

6 A. Time and results.

7 Q. Time and results?

8 A. Yes.

9 Q. Do you have any specific hourly charges you are suppose
10 to adhere to in reference to your contract with them?

11 A. I think on occasion we have used an hourly basis and I think
12 in this case part of the time we used hourly and part of the
13 time we didn't.

14 Q. Then you are saying that in this particular case the
15 billing which you submitted to Southern Railway was not based
16 on time?

17 A. I can't say that without reviewing it.

18 Q. Do you have your records here that you could do that?

19 A. Yes, but I think I should point this out. We bill
20 quarterly. A lot of this is for other things.

21 Mr. Carter: For the record, Mr. Stone, I believe we
22 filed interrogatories in this matter requesting a breakdown
23 not only on Mr. Meade's charges but the expenses Southern
24 Railway has also alleged to have incurred in this matter.

1 A. I can give you some billings if you want it. I will have
2 to go through the file. (Witness goes through his file.)

3 Q. I take it now you have in your hand the records of your
4 billings to Southern Railway?

5 A. Yes.

6 Q. If there is no objection then, let the record show we
7 will make photostatic copies of these bills for our records.
8 In connection with your representation in the Martin v.
9 Southern Railway case, who would have been your immediate
10 reporting supervisor with Southern Railway?

11 A. Merrill Pasco.

12 Q. Who is Merrill Pasco?

13 A. He is division counsel for Southern Railway and a partner
14 in the Hunt^{on} & Williams firm in Richmond.

15 Q. When was the third party complaint filed, that is Southern
16 Railway v. Arlen Realty?

17 A. August 26, 1975, I believe.

18 Q. When was the original suit file, that is Troy Martin v.
19 Southern Railway?

20 A. May 22, 1974. Wait a minute, that first answer as to when
21 the third party complaint was filed is not correct. I was
22 looking at Bill's file. The grounds of defense were filed
23 on June 18, 1974. A motion to amend the motion for judgment
24 was served on me by mailing on June 28. After an order was
entered on July 2, 1974, the third party motion for judgment

1 was filed on or about July 9, 1974, because on that date I
2 mailed a copy to Ron Williams who represented the plaintiff.

3 Q. When was an answer filed to the third party complaint?

4 A. An answer was filed, after leave was granted by the Court,
5 I believe in January or February, 1975.

6 Q. I take it between the filing of the third part complaint
7 in July 1974, for some reason there was no answer filed until
8 early 1975?

9 A. That is correct.

10 Q. Do you recall when you first heard from Allan Garrett as
11 to his representation?

12 A. Mr. Carter, I think that he called me to advise me of
13 the representation, and advised me that Ron Williams did not
14 object to a late answer and he asked if I did. I conferred
15 with division counsel and ^{he} they asked that I oppose it.

16 Q. And you opposed the filing of the late answer and I take it
17 thereafter there was a hearing on that before the judge and the
18 Court did allow the late answer to be filed?

19 A. Yes, an order was entered.

20 Q. Apparently there were depositions taken in this matter.
21 These were depositions of the plaintiff and others on or about
22 January 31, 1975. Do you recall that?

23 A. Yes.

24 Q. And who was present at the taking of those depositions?

A. I was present. Allan was present.

Q. Mr. Allan Garrett was representing Arlen Realty, the defendant.

1 in the action at hand?

2 A. Yes.

3 Q. And I take it counsel for Troy Martin was present?

4 A. I think Ron Williams was present. Ted Huggins may have
5 been too, I think he was.

6 Q. Following that, I believe you prepared a medical summary
7 of Mr. Martin's alleged injuries. Do you recall doing that?

8 A. It was prepared in my office.

9 Q. Did you later furnish a copy of that medical summary to
10 Mr. Allan Garrett, counsel for Arlen Realty?

11 A. I think he requested from me a copy of it, when I made
12 reference to the fact that I had a summary of it. I had
13 subpoenaed all the records.

14 Q. I take it you did then, at his request or otherwise,
15 furnish him with a copy?

16 A. Yes.

17 Q. Did you have occasion to take depositions in Winston-
18 Salem?

19 A. Yes.

20 Q. Whose deposition did you take at that time?

21 A. Dr. Eben Alexander.

22 Q. Who was he?

23 A. He is a neurosurgeon with Baptist Hospital down there.

24 Q. Was he treating Troy Martin?

A. He had seen Troy Martin either as a treating physician or

1 by referral from one of Troy's local treating physicians.

2 Q. Who arranged for Dr. Alexander's deposition?

3 A. I think Ted Huggins did. It was taken by the plaintiff.

4 Q. It was taken by the plaintiff for use as a trial
5 deposition?

6 A. That is my recollection of it.

7 Q. You did in fact attend the taking of the deposition?

8 A. Yes.

9 Q. How did you get there?

10 A. Took my car and took Allan with me.

11 Q. You took Allan Garrett with you?

12 A. Yes.

13 Q. At this stage the posture of the suit was Martin had
14 filed suit against Southern Railway and Southern Railway had
15 filed a third party complaint against Arlen?

16 A. That is right.

17 Q. But I take it Martin did not join in the third party
18 complaint?

19 A. He didn't amend his motion for judgment, no.

20 Q. He never amended his motion for judgment to make Arlen
21 a defendant in his suit, correct?

22 A. He couldn't, for this reason. The statute had run for
23 one thing. If I am not mistaken the accident happened on
24 May 23, 1972.

Q. Regardless of your opinion, the posture of the suit was

1 such it was really two suits, Martin v. Southern Railway and
2 the third party action of Southern Railway v. Arlen, and
3 Martin was not a party to the complaint against Arlen Realty?

4 A. It is a matter of opinion. It was the original suit with
5 a third party complaint. It was one law action, one law suit,
6 with a third party complaint in it.

7 Q. You are debating the matter and you haven't answered my
8 question. You are an attorney and I think you should know the
9 answer. I take it there was no claim by Martin against
10 Southern Railway?

11 A. Southern Railway?

12 Q. I mean against Arlen?

13 A. No.

14 Q. For whatever reason, statute of limitations or otherwise,
15 it was never amended to make Arlen a party to the action?

16 A. No, I said that.

17 Q. So at the time you and Mr. Garrett journeyed to Winston-
18 Salem together the posture of the suit was as we have just
19 indicated. How did Mr. Garrett happen to go with you?

20 A. I probably invited him to go with me. He said he wanted
21 to go.

22 Q. You all had a mutual interest in that at that time, in
23 defending the Martin claim.

24 A. I don't know what you mean. In defending the Martin
claim, we had the mutual interest of defeating his recovery.

1 If it was defeated, we were both successful.

2 Q. Your journeyed in your automobile?

3 A. Yes.

4 Q. As you drove down there, what did you talk about?

5 A. I have no idea.

6 Q. How about with reference to this particular case, you
7 recall what you discussed going down there?

8 A. I have no specific recollection but we might have discussed
9 Troy Martin and his claim. It may be that Mr. Garrett
10 asked me on that occasion.. I am not sure it was going down
11 or coming back...about the desirability of settling the
12 case. He was interested in settling the case, if he could.

13 Q. Did you express any interest in settling the case on
14 behalf of Southern Railway?

15 A. I can't say that I did. If I did, it would only have been
16 to the extent of nuisance value. We took the position there
17 was no liability on us in the case, and if liability was
18 on us we were entitled to indemnification.

19 Q. Do you know if you discussed contribution with the
20 possibility of Southern Railway contributing to the settlement
21 of the case at that time?

22 A. I had no authority at that time.

23 Q. Did you say anything about recommending contribution?

24 A. I doubt if I said anything about contributing at that
point.

Q. Are you saying you didn't, or you don't recall?

1 A. Recall what?

2 Q. Discussing the possibility of Southern Railway making a
3 contribution if the Martin claim could be settled?

4 A. It might have been discussed as a possibility.

5 Q. You mentioned a moment ago that you thought Southern
6 Railway was entitled to indemnification. Why would you have
7 been thinking of Southern Railway making any contribution;
8 if you were taking the position of regardless of what happened
9 as to Southern they were entitled to indemnification?

10 A. Nuisance value, economics.

11 Q. In other words, Southern Railway would be willing to pay
12 some contribution in order to dispose of the litigation?

13 A. I am not saying that was said. There was a possibility.
14 I know somewhere along the line we discussed the possibility
15 of contribution, and I obtained some authority from Southern
16 I can't say we discussed contribution that day. I know that
17 day Mr. Garrett was interested in settling the case.

18 Q. Did you discuss that day what effect the settlement of
19 the Troy Martin claim would have on the third party claim?

20 A. No.

21 Q. Specifically, did you say that a settlement of one would
22 settle both?

23 A. Absolutely not.

24 Q. Did you advise Mr. Garrett that if you all effected

~~settlement with his contribution and possibly some contri-~~

1 bution from Southern, that you would expect or rather your
2 client would expect indemnification from Arlen?

3 A. It wasn't discussed.

4 Q. Did you discuss who should take over the settlement
5 negotiations with Mr. Huggins and Mr. Williams?

6 A. Mr. Carter, as I recall, I told Mr. Garrett that we had
7 no interest in settlement of this case or making a contribution
8 towards settling it, because we weren't liable in the first
9 place and, if we were, we were entitled to indemnification.
10 We had it going both ways, and if I am not mistaken my file
11 will reflect that, that it was the position of Southern Railway
12 through me up until some time after the journey down to
13 Winston-Salem that we weren't interested in participating in
14 settlement at all. I know who initiated the negotiations.

15 Q. Following the trip to Winston-Salem, does your file show
16 when you next met with Mr. Garrett?

17 A. I have no idea when I met with him or talked with him.
18 Sometimes we see each other daily, sometimes we don't, Mr.
19 Carter. By letter dated January 28, 1975, this is my letter
20 to Mr. Pasco, I wrote this: "The Court has permitted Arlen to
21 file a response to our third party motion for judgment,
22 following a hearing this morning. Allan Garrett has already
23 made some reference to settlement. I am taking the position,
24 certainly insofar as Mr. Garrett is concerned, that Southern
Railway is in no way interested in settlement because if there

1 is any judgment against us we would be entitled to full
2 indemnity from Arlen and, therefore, that if there is a
3 settlement it will have to be effected by Mr. Garrett and
4 his client." That is the position we took in this matter
5 until shortly before trial date.

6 Q. That was your letter of January 28, 1975?

7 A. Yes.

8 Q. Do you recall meeting with Mr. Garrett on March 5, 1975,
9 in his offices?

10 A. In his offices?

11 Q. Yes.

12 A. Specifically, I can't recall anything about meeting him
13 on that specific date.

14 Q. Would your time records or time sheets show whether or
15 not you met with him?

16 A. The only thing I see on March 5, 1975 is preparation and
17 filing answers to interrogatories after verification with
18 Stalnaker by telephone, copy of answers to company", and I
19 notified them of the trial date of April 23, 1975. That is
20 the only thing I have for that date.

21 Q. But you do have an entry showing that you in fact worked
22 on the file that date?

23 A. Yes.

24 Q. Do you recall anything about that date as to being in
Mr. Allan Garrett's office and discussing again the question

1 of settlement negotiations?

2 A. No, I do not.

3 Q. Do you recall making any comment to Mr. Garrett at about
4 that time, or as far back as February 21 on the trip to
5 Winston-Salem, as to your alleged difficulty in negotiating
6 with Ron Williams and Ted Huggins?

7 A. My difficulties in negotiations with them in this case?

8 Q. Generally, in this case and in other cases.

9 A. No, I don't recall that. I don't think I have had too
10 much difficulty negotiating with them.

11 Q. Did you indicate in this particular case that you thought
12 the demand was ridiculous?

13 A. I did. I remember a conversation in my office.

14 Q. On what date?

15 A. I don't have any idea of the date.

16 Q. Your records don't show?

17 A. I don't know.

18 Q. Who was present at this conference?

19 A. I don't know if it was a conference.

20 Q. Was Mr. Allan Garrett present?

21 A. Yes.

22 Q. Was anybody else present?

23 A. Not that I can recall. I recall talking about the
24 demand figures and evaluation, but I can't give you the date.

I assume it followed his letter of March 24.

1 Q. What happened on March 24?

2 A. I have a letter from Mr. Garrett advising me that he had
3 conferenced the case with plaintiff's counsel, Mr. Huggins,
4 at length on March 21, 1975.

5 Q. You have a copy of that letter?

6 A. Yes. In this letter Mr. Garrett told me he had conferenced
7 the case with Mr. Huggins on March 21, and the letter is dated
8 March 24.

9 Q. As a result of receiving his letter, did you attempt to
10 get any authority towards settlement?

11 A. At that time?

12 Q. Yes?

13 A. No, I don't think so in view of the figures he gave me.

14 Q. Did you report it to your company, Mr. Meade?

15 A. I will have to look. (Witness checking his file.) Yes,
16 I did.

17 Q. Did you report to your company, after receipt of this
18 letter, that you thought some contribution might be in order?

19 A. I don't think so. Wait a minute, yes, we did discuss it.

20 Q. You did discuss it as early as March 24?

21 A. Well, we didn't discuss it. It was mentioned in a letter.

22 Q. Tell us what exactly was said in the letter?

23 A. It was a letter of March 25, to Mr. Pasco, and in the
24 second paragraph I wrote: "In the last several days, counsel
for Arlen Realty has made several passes to me relative to

1 a possible settlement of this case. Unfortunately, counsel
2 for Arlen has, in my opinion, overpriced the case for
3 settlement. Following an initial \$90,000 demand from
4 plaintiff's counsel, counsel for Arlen apparently indicated
5 that he thought the case had a value of \$30,000 to \$50,000.
6 Following the pretrial this morning, Arlen's counsel and
7 counsel for the plaintiff had another meeting, and there has been
8 submitted to me a demand figure of \$50,000, but counsel for
9 Arlen tells me that they are committed to a \$40,000 offer.
10 Apparently the \$50,000 figure was intended as a trading
11 figure with me. Counsel for Arlen has informed me that he
12 feels we should split the settlement figure, and he says that
13 he is pretty sure he can get the \$20,000. I have repeatedly
14 and consistently told this counsel that we had no interest
15 in participating in a settlement of this case; that we felt
16 that either there was no liability, or if there were, we would
17 be entitled to full indemnity. Arlen's counsel has cited to
18 me, in support of his contention that we would not be
19 entitled to indemnification, the cases of Johnson, Administra-
20 trix v. Richmond & Danville Railroad, 86 Va. 975, and Otis
21 Elevator Co. v. Maryland Casualty Company, 95 Col. 99, 33 P.
22 2d 974, and he has also cited as authority in support of his
23 contention that the lease being executed after the accident
24 was not binding, the case of Cessa Finance Corp., 81 N. M
10, 462 P. 2d 144, as well as general authority contained

1 in 17 C.J.S., Contracts, §§ 359-361, and 17 Am. Jur. 2d,
2 Contracts, § 28 at page 363. I have not reviewed this
3 authority, but will do so in the next several days. As of
4 this date we do not have the exact figures on the medical
5 expenses and loss of earnings claim, but these figures
6 should be forthcoming within the next ten days. Also, as of
7 this date, we do not have a transcribed deposition of Dr. Alex-
8 ander, but this should be forthcoming", and I made reference
9 to Dr. Alexander testifying and to Dr. Rodgers, who is chief
10 physician for Southern Railway. I also mentioned some of
11 the facts brought out in the deposition of the driver, and
12 mentioned the possibility of implied warranty, and went on
13 to say, "From previous telephone conversations I have had
14 with you, it is my understanding that you will let me have the
15 benefit of detailed legal research on the validity of the
16 indemnification or hold harmless agreement. If this applied,
17 then we really have little, if any, exposure. On the other
18 hand, if there is some doubt we may wish to make a contri-
19 bution. In view of the position that we have continually
20 taken in this case, I do not see how we can contribute to a
21 settlement on a 50-50 basis with Arlen Realty, nor do I see
22 how we can make a contribution other than on a substantially
23 economic basis". Then I went on to say in the last
24 paragraph, "As you know, this case is set for trial on
April 23, 1975, etc"

1 Q. So when you talked about contribution on an economic
2 basis, you were talking about making some contribution to
3 eliminate the risk you might not be successful on your
4 warranty or might not be covered under the indemnification
5 agreement? '

6 A. Basically, when I say economic basis I am talking about
7 the costs of defending and related expenses.

8 Q. That is what you are suing for now, or originally sued
9 for before you withdrew as counsel?

10 A. You have continuing expenses, that is incurred expenses
11 and potential expenses.

12 Q. The potential is that what you sued for following a
13 settlement by Arlen of the Marth claim?

14 A. We sued for our expenses under the indemnification agree-
15 ment.

16 Q. When you wrote that letter to Mr. Pasco, you were talking
17 in terms of contributing to a settlement to the extent of
18 expenses, potential and incurred?

19 A. This didn't refer to the third party claim. It was
20 referring to the claim of Martin v. Southern Railway, expenses
21 and defense of that. What I am talking about is the
22 expenses of Southern Railway in defending against the Troy
23 Martin case, the primary case. Let me mention here for
24 clarification, maybe I shouldn't, but when I mentioned the
valuation of \$30,000 to \$50,000 that Allan gave me, if I am

1 not mistaken, this goes back to the meeting he and I had in
2 my offices one day. I think that is where the information
3 came from. I am not sure. It could have been by telephone.

4 Q. Are you denying a conference in Mr. Garrett's office on
5 or about March 5, 1975, or are you saying you don't have
6 any recollection of such a conference?

7 A. What do you mean, conference?

8 Q. A meeting about this case?

9 A. I don't have any specific recollection of meeting him in
10 his offices to discuss this case. I don't have any specific
11 recollection.

12 Q. But you are not denying such a meeting could have taken
13 place on March 5, 1975?

14 A. We could have conferred about the case, but I would think
15 I would have billed for it.

16 Q. You did bill them on March 5?

17 A. But not for that.

18 Q. Going back to your time sheets, do you have a notation
19 to what you might have done on this case on April 7, 1975?

20 A. I have got down here.. it is hard to read, kind of
21 jumbled up.. that I had a telephone conference with, no that
22 is on the 11th. The only entry I have on 4-7-75 is a review
23 of Mr. Pasco's letter of April 4, including his exhibits.

24 Q. Did Mr. Pasco's letter of April 4 give you some authority
or indicate to you some possibility of authority to settle

1 this case?

2 A. Yes, I got a letter from him on April 4.

3 Q. Well, tell us what the letter says?

4 A. The whole thing?

5 Q. What it says about authority to settle, anything about the
6 possibility of settlement by Arlen or Arlen and Southern,
7 or any contribution between them?

8 A. "This letter refers to your letters to me of March 25
9 and April 1 and our telephone conversation yesterday. We have
10 agreed that you would advise the third-party defendant Arlen
11 Realty & Development Corp. that we were not interested in
12 discussing settlement on any basis that would involve a 50%
13 contribution by the Railway unless the case can be disposed
14 of on a basis roughly equivalent to what it would cost us
15 to try the case.

16 Q. Is that all of the letter?

17 A. No, the second paragraph relates to Dr. Alexander and
18 that we would confer with Dr. Rogers. The third paragraph
19 refers to Mike Howe in Atlanta, about his availability to
20 testify, where and how I could reach him. He advised me
21 in the next paragraph that he would send me a summary of
22 their research on the question of implied warranty and the
23 next paragraph discussing the enforceability of the hold
24 harmless agreement.

Q. Did he express any thoughts as to the enforceability of

1 the hold harmless agreement?

2 A. He made some reference to some old Virginia cases that
3 held "that such contracts are void as against public policy
4 such as the one cited by Korvette's attorney, Johnson's Adm.
5 v. Richmond & D. R. R. Co., 86 Va. 975, 11 S. E. 829 (1890).
6 Later cases, however, have held that under Virginia law it is
7 not against public policy for one to contract against its own
8 negligence in most situations. The general rule is that a
9 clause exculpating one from the consequences of his own
10 negligence is valid if the expression of this intention in
11 the agreement is clear and unequivocal, if the contracting
12 parties were on an equal footing with regard to the bargaining
13 position and the party seeking to enforce it is not attempting
14 to excuse himself from negligence in the performance of a duty
15 which he owes the public. Nevertheless, we should bear in
16 mind that such contracts are not favored by the courts and
17 are strictly construed against the party seeking to enforce
18 them. In the present case, the terms of the hold harmless
19 agreement are clear and unambiguous and the provision would
20 be enforceable under Virginia law, I believe."

21 Q. Is there any specifics as far as money is concerned?

22 A. No.

23 Q. I believe you indicated you had a telephone conversation
24 preceding his letter dated April 4?

A. The telephone conversation, according to him would have

1 been April 3.

2 Q. Having read that letter and going back over your notes,
3 do you still not recall a conference with Mr. Allan Garrett
4 on April 7, 1975 regarding Southern's position as far as
5 contribution towards settlement is concerned?

6 A. This letter from ^{Mr. Pasco} Mel Pasco is dated April 4. You are
7 referring to a conference with Allan on April 7?

8 A. I asked you to refer to your notes. You indicated you
9 received this letter of April 4 from Mr. Pasco. I am asking
10 you now in going back through your notes and in reading
11 this letter, do you recall anything about meeting with Mr.
12 Allan Garrett on or about April 7, 1975, for the purpose of
13 communicating to him the position of Southern Railway with
14 reference to settlement of the case as transmitted to you by
15 Mr. Pasco's letter of April 4?

16 A. On April 7?

17 Q. Yes.

18 A. I wrote him a letter on April 8 confirming a telephone
19 conversation the day before, advising him that Southern was
20 not interested in settlement in any way as to a 50-50 basis
21 but that they might be interested in contribution on the basis
22 of what it would cost to try the case.

23 Q. You had a telephone conversation with Allan Garrett on
24 April 7?

A. Yes, telephone conversation but not an office conference.

1 Q. And by this letter you advised Mr. Garrett Southern
2 was not interested in a 50-50 contribution but might be inter-
3 ested in a contributing an amount equal to the cost of
4 trying the case?

5 A. Yes.

6 Q. Did you estimate the cost of trying the case either in
7 this letter or in the telephone conference or conversation?

8 A. I have no recollection of it. Frankly, I didn't know what
9 Mr. Pasco meant when he used that phrase.

10 Q. You have been a defense lawyer for years and you know
11 what it would cost to work up a file and defend it?

12 A. They vary and it varied from the usual case.

13 Q. Was this varying higher or lower?

14 A. This was higher.

15 Q. Do you recall, from your office notes or from your
16 memory, a conference via telephone or otherwise on April 11,
17 1975 regarding the possibility of settlement?

18 A. I had a telephone conference with Ron Williams and
19 Allan Garrett.

20 Q. Ron Williams?

21 A. Yes.

22 Q. And also Mr. Garrett?

23 A. Yes.

24 Q. Do you recall that in that telephone call an offer was
made by you on behalf of Southern Railway ?

1 A. I have a memo on April 10 Ron Williams in the presence
2 of Allan Garrett agreed not to release any witnesses without
3 my consent and that they wouldn't require me to subpoena
4 certain witnesses, and on April 14 I have a letter from Ron
5 Williams saying they would settle for \$25,000.

6 Q. But your records do reflect you had a telephone conver-
7 sation with Allan Garrett on April 11?

8 A. Yes. I don't know who initiated the calls.

9 Q. On April 16, 1975, do your records indicate a telephone
10 conversation or a conference in person with Mr. Allan
11 Garrett on that date?

12 A. No.

13 Q. How about April 7?

14 A. Yes, there was a letter April 17, and right many entries.

15 Q. Let's go back to the 16th, before the 17th. In the
16 interim between your letter from Mr. Pasco indicating he
17 might be willing to contribute the costs of trying the
18 Martin v. Southern Railway case, did you ever get any
19 specific authority from Mr. Pasco or anyone else?

20 A. Before what date?

21 Q. On or before April 17, if you like.

22 A. I don't think so.

23 Q. Let's take our time and you go through your file so
24 we can be more specific.

A. From my review of the file, and I read through it the

1 other night, and from my own recollection I don't have any
2 recollection of receiving any authority before the 17th.

3 Q. Did you ever make any settlement offer in terms of con-
4 tribution by Southern Railway?

5 A. One time.

6 Q. How much and when?

7 A. This is obviously from a telephone call. I got \$2500
8 authority, if I am not mistaken, and I can't give you the time
9 and I don't know if it was before or after Ron Williams \$25,000
10 demand.

11 Q. But you did, in fact, somewhere along the line get
12 \$2500000?

13 A. It was given to me.

14 Q. By a duly authorized representative of Southern Railway?

15 A. Yes, Mr. Pasco.

16 Q. Do you know when this was communicated to Mr. Garrett or
17 Mr. Williams or Mr. Huggins, or all three of them?

18 A. When I let them know?

19 Q. Yes, that you had the \$2500 authority to contribute on
20 behalf of Southern Railway.

21 A. Offhand I don't recall, can't tell you the exact date when
22 I got it. On April 17, Mr. Williams withdrew his \$25,000
23 figure.

24 Q. Had you ever communicated your \$2500 authority?

A. I would assume so because I do know it was rejected. In

1 fact it was an offer of \$17,500 that was rejected. Southern's
2 offered \$2500 towards settlement and Mr. Garrett had \$15,000.
3 Rather than \$20,000 they gave him \$15,000.

4 Q. Do you recall if you made that offer to Mr. Williams or
5 Mr. Huggins or whether Mr. Garrett made it?

6 A. It may have been in view of the previous negotiations
7 and what I thought was an exorbitant demands of plaintiffs
8 counsel, that either I suggested we make an offer to them and
9 let them know in no uncertain terms that was all I could get,
10 or Mr. Garrett may have done it.

11 Q. You don't deny you may have made the offer yourself?

12 A. I very well may have.

13 Q. And you have indicated this offer was somewhere along
14 the line refused. Does your file indicate when?

15 A. I don't believe so.

16 Q. Trial commenced on April 23, 1975?

17 A. Yes.

18 Q. Do you recall discussing settlement of this case with
19 either Mr. Garrett, Mr. Huggins or Mr. Williams the first day?

20 A. Yes, there were some discussions on it on that first day,
21 I am sure.

22 Q. What part did you play in the discussions on behalf of
23 Southern Railway?

24 A. The part I would play, I was representing Southern
Railway.

1 Q. And you were still indicating there might be some
2 possibility of some contribution by Southern Railway, if
3 they came down on their demand to what you considered a reason-
4 able level?

5 A. No. I had at one point \$2500 authority and I do not
6 think it had been withdrawn prior to the time of trial. I
7 am quite sure, I am positive that the \$2500 was available
8 that first day of trial, if the case could have been settled
9 for whatever Mr. Garrett would put up, plus the \$2500.

10 Q. At that stage Southern Railway was still willing to con-
11 tribute \$2500 to eliminate the risk of judgment against it,
12 as well as the risk the indemnification agreement might not
13 be enforceable under Virginia law?

14 A. I can't say that. I don't know what their thinking was
15 at that point.

16 Q. The \$2500 was still open?

17 A. I can't say that. The offer had been rejected, and as
18 far as Southern, as far as I was concerned, they would have
19 had to make another offer to settle and I would have had to
20 get authority. I would have assumed it was still holding
21 the authority.

22 Q. Was anyone other than you there for Southern Railway on
23 the day of trial?

24 A. Yes.

Q. Who else was present?

1 A. Bill Stalnaker, the claims agent was present.

2 Q. Was anyone else present?

3 A. Mike Howie, with Southern out of Atlanta sat at counsel
4 table with me. You realize the third party complaint had been
5 severed the morning of trial?

6 Q. Yes. Was anyone else from Southern Railway present?

7 A. No.

8 Q. At this stage, the case was postured such that the case
9 going to trial was only the case of Martin v. Sothern?

10 A. Right.

11 Q. And on motion made by Arlen, the third party complaint,
12 over your objection, had been severed from trial at the same
13 time?

14 A. I believe I objected to it.

15 Q. You are pretty sure, aren't you?

16 A. No, for the record I am not sure at all. But, *off. 3-10-76* ~~for the~~
17 record I preferred it that way personally.

18 Q. You preferred it severed?

19 A. Yes.

20 Q. So at that stage, the only legal entity before the Court
21 for defense was Southern Railway?

22 A. Right.

23 Q. And Mr. Allan Garrett, rather than sitting at counsel
24 table sat at the back of the courtroom as an observer?

A. Right.

1 Q. That was at your suggestion and direction?

2 A. No. He asked, as I recall, if I wanted him at counsel
3 table and I told him I didn't think it was necessary, that I
4 would undertake the defense.

5 Q. Tell us what happened with reference to settlement
6 negotiations? Tell us what happened the night of the 23 and
7 the morning of April 24, chronologically.

8 A. You mean in Court?

9 Q. In Court or out, by telephone or in person.

10 A. If I am not mistaken, we reconvened at ten that morning.

11 Q. You are talking about the second day of trial?

12 A. Yes.

13 Q. The night before, did you have any telephone calls with
14 reference to settlement?

15 A. I think there was a flurry of telephone calls.

16 Q. Did you participate in these calls?

17 A. I received calls.

18 Q. Did you participate in stating Southern Railway's position
19 at that stage in reference to proposed settlement?

20 A. You are right in the middle of a law suit and you don't
21 have a chance at home to write these things down. I think
22 Ron Williams called me at home and he wanted to settle the
23 case and he would do anything to settle it, and apparently
24 he and Ted had a little bit different evaluation on the case,
and my position With Ron ^{in the case} ~~over the years~~ was if he got

this 3-10-76
\$15,000 for ~~a~~ case he was stealing it. He called me at home and said if I could get anything, if I had anything... I don't know if I told him at that time if I had the \$2500 or not. I think he indicated at that time he would take the previous offer of \$15,000 from Arlen and the \$2500 of Southern Railway. I believe that was his position. That is what he said he would do, but I didn't tell him anything I would do except I would give him the courtesy of calling ~~Mel Pasco~~ ^{MELPAC} that morning, which I did, and told the company of the offer that morning. It was agreed between ~~Mel Pasco~~ ^{MELPAC} and myself we would not contribute the \$2500 we offered on economic basis because the money had been spent.

Q. Had been spent?

A. Yes.

Q. Did you tell this to Mr. Williams and Mr. Huggins?

A. Yes.

Q. Did the trial resume the next day?

A. No, I don't think so. I think all of these negotiations took place in the lawyers lounge.

Q. Would it be fair to say there were not only conferences between you and other counsel but between all parties concerned?

A. They were conferring, yes.

Q. Were you conferring?

A. No. They called me in a couple of times, at least once.

1 Q. I know you said Southern Railway had withdrawn any
2 money, but what was your position with reference to advising
3 the parties as to whether or not they should accept the
4 offering being made by Arlen to pay \$15,000? Did you tell
5 them, as you indicated before you told Mr. Williams over the
6 telephone, that it was a good deal and they should take it?

7 A. I may have. I indicated it was my view that the chances
8 were tremendously high that there would be no plaintiff's
9 verdict in this case, the way it had developed.

10 Q. Did you urge Mr. Garrett to settle it?

11 A. Urge him?

12 Q. Yes.

13 A. I think that was his decision.

14 Q. Did you urge him by saying, "You should settle it" and
15 so forth?

16 A. I may have.

17 Q. You don't recall?

18 A. No. He obviously wanted to settle it.

19 Q. You were present on the 24th when settlement was
20 discussed?

21 A. Not necessarily. I was a defendant in the action and
22 was told or asked if I could pay any money and Allan was
23 rather insistent I should try to get \$2500. At that time
24 the case could be settled for \$17,500 and he was quite
insistent and I told him I didn't have it. He insisted I

1 call Mr. Paseo. "I finally said I haven't got it and I can't
2 get it". I said, "That is it, don't bother me any more". I
3 may have told him I called Mr. Pasco that morning. He was
4 insisting about it, and I left the room and they continued
5 to negotiate apparently.

6 Q. Did you discuss what effect a settlement by Arlen would
7 have on the Southern Railway suit?

8 A. No.

9 Q. Did you ever discuss with Mr. Garrett, prior to the time
10 the case was actually settled, and I take it it was later
11 settled on the 24th?

12 A. It wasn't long after I left the room. I told him it was
13 no sense in asking me for money. I left the room. It
14 wasn't long before Ted Huggins or somebody came back and
15 said the case was settled.

16 Q. Up until that time had you discussed the effect of settle-
17 ment of the primary claim of Martin vs. Southern, what effect
18 it would have on the third party claim, with Mr. Garrett?

19 A. The effect of the settlement?

20 Q. The effect of a settlement, in other words if the claim
21 of Martin vs. Southern was settled, how would it affect the
22 third party claim?

23 A. I don't think so. I was never asked.

24 Q. You were asked for the \$2500 contribution?

A. I think it was obviously it would a ~~right~~ off of the
whole thing.

1 Q. The way you figured was if it was settled for \$17,500,
2 Arlen putting in \$15,000 and you \$2500, it would be the end
3 of both suits?

4 A. I would think so. I would be inclined to believe so.

5 Q. You said inclined, that was what you had in mind as
6 counsel for Southern, wasn't it, as trial counsel for
7 Southern?

8 A. Yes, in all fairness I think if we both contributed it
9 would be a washout.

10 Q. Meaning Arlen would absorb its legal expense and Southern
11 would absorb its legal expense?

12 A. Yes.

13 Q. It was only after the \$2500 was withdrawn by Southern
14 Railway and Arlen paid the entire \$15000 that your opinion
15 changed and it was no longer a washout?

16 A. I am not saying I was expressing this. It was my opinion
17 to me. It is a hindsight proposition. I don't think the
18 matter ever came up.

19 Q. You don't recall the matter coming up?

20 A. No.

21 Q. I take it on April 24, 1975, up until the moment of
22 settlement, that you never told Mr. Garrett that if he went
23 on at that time and settled Martin's claim with Arlen's
24 money that, in your opinion, it would settle the third party
claim that Southern had against Arlen?

1 A. I didn't tell him any such thing.

2 Q. You never told him that?

3 A. No.

4 Q. Even though you told us your opinion had apparently
5 changed, in your own mind, from the time when Southern was
6 considering contribution and it would be a washout but if
7 Southern did not contribute then Southern would have a claim
8 against Arlen for its legal expenses?

9 Mr. Stone: You are incorrectly stating what he said.
10 You are talking about two separate situations. He never
11 testified his opinion changed. There was some settlement
12 negotiations and settlement was not reached on that basis,
13 and then there was later a settlement, and Mr. Meade didn't
14 testify his opinion changed.

15 Q. Did your opinion ever change? You stated at the time
16 of the offer on or about April 17, at that time had the
17 offer be accepted with Southern making the \$2500 contribution
18 it would have been declared a washout. That was your opinion
19 on the 17th?

20 A. I didn't say that. I don't have any recollection of
21 forming an opinion at that time. This is a hindsight thing.
22 I think if the issue was put to me at the time, it might
23 have been my thinking. I don't think it was asked.

24 Q. You are saying you never recall the issue ever having
been put to you by Mr. Garrett?

A. No.

1 A. Do you recall making a statement when Mr. Huggins came
2 out and said they were going to take \$15,00 in full settlement,
3 do you recall making the statement, "I guess that settles
4 them both"?

5 A. No. I had no reason to make that statement.

6 Q. Do you recall advising Mr. Huggins, at the time you were
7 in these conferences apparently the morning of the 24th and
8 as early as the 23d, do you recall urging Mr. Allan Garrett to
9 settle, go on and pay the \$15,000 because it would eliminate
10 the possibility of a claim of Southern against Arlen, or words
11 to that effect?

12 A. No.

13 Q. Do you deny making any such statement to Mr. Huggins?

14 A. I deny it.

15 Q. Did you make a statement in Mr. Huggins' presence, or
16 words to the effect that if Arlen did not settle, Southern
17 would have to make claim against Arlen?

18 A. If it didn't settle?

19 Q. If it wasn't settled by Arlen, Southern Railway would
20 have to make claim against Arlen Realty?

21 A. No, but obviously we would. We were making the third
22 party claim all along.

23 Q. I am not asking you that. I asked did you make any
24 such statement in Mr. Huggins' presence?

A. Not in that context.

1 Q. What did you say?

2 A. Would the reporter read the question back?

3 Q. Rather than read the question back, what did you say, let
4 me ask you this. On the morning of the 24th, were you hoping
5 they would accept Mr. Garrett's offer of \$15,000?

6 A. I don't know if I did or not. I wanted to finish the
7 case, ⁵⁻¹⁰⁻⁷⁶ but I thought we had a good chance, I felt we would
8 win it. I was surprised.

9 Q. Did you suggest that settlement be made on that basis,
10 rather than they settle on that basis?

11 A. I don't know if I urged Allan to do it. That was his
12 decision. I might have told Ron and Ted they would be fools
13 not to take it. I know I told Ron that the night before on
14 the telephone. I told him they would be well advised to
15 settle it for that.

16 Q. As early as the night before you were attempting to
17 settle it?

18 A. No, I wasn't attempting to settle it.

19 Q. At the time, it would have been in the best interests
20 of your client to settle it, wouldn't it?

21 A. I think that is for them to make a judgment on. I thought
22 it would be in the best interest of Southern Railway if the
23 case was tried and there was no verdict for the plaintiff.
24 This is a deterrent type of thing. I think Southern Railway
has been successful in defending claims in this area. Mr.

1 Garrett knows that and you do too.

2 Q. Regardless of that, it would have been in the best
3 interest of your client to eliminate any exposure to
4 Southern Railway as far as Troy Martin, whether by verdict
5 or settlement?

6 A. To what?

7 Q. To eliminate Martin's claim either by verdict for the
8 defendant or by Arlen paying the claim?

9 A. If you defeat a plaintiff's claim, you have...

10 Q. You have served your client best?

11 A. Yes, to the best advantage.

12 Q. Do you recall telling Mr. Williams the night of the 23d
13 he should take what he could get and that you would try to
14 get Southern Railway to try to contribute something?

15 A. I said I would call the company and see what they would do.
16 Whether I expressed my personal opinion or not to him, I
17 don't know. It was my opinion we shouldn't contribute
18 \$2500 to the settlement.

19 Q. Do you deny telling Mr. Ron Williams the night of the
20 23d that you would try to get Southern Railway to contribute
21 something?

22 A. I would have to be consistent. My position with Mr.
23 Pasco was that they shouldn't contribute anything.

24 Q. I am not talking about your position with Mr. Pasco. Do
you deny telling Mr. Williams that?

1 A. I do. I told him I would call the company. It wouldn't
2 have been fair to the company to do that.

3 Q. Just answer the question. If you didn't tell him that,
4 you didn't tell him. Do you recall telling Mr. Huggins on
5 the morning of the 24th that you either had tried or would
6 try to get Southern to contribute to the \$15,000 Arlen was
7 leaving open?

8 A. On the 24th?

9 Q. Yes.

10 A. No, in view of my report to Mr. Pasco on the 24th.

11 Q. You have told about that.

12 A. Not about this one.

13 Q. I was referring to Mr. Huggins, what about that?

14 A. I was asked by the lawyers to call the company and I
15 declined to do it..

16 Q. Before that is what I mean. Before the second request,
17 you had called him that morning?

18 A. Yes.

19 Q. When did you call him?

20 A. Before I went to the courthouse, about 9:30 I would say.

21 Q. Did you tell Mr. Huggins you had tried to get Southern to
22 contribute and they had declined to do so, or words to that
23 effect?

24 A. What?

Q. You didn't tell Mr. Williams or Mr. Huggins you did try to
get Southern to contribute?

1 A. When was this?

2 Q. On either the evening of the 23d or the morning of the
3 24th?

4 A. I have no recollection of talking to Mr. Huggins the
5 evening of the 23d.

6 Q. The morning of the 24th?

7 A. At the courthouse, on that morning, I told Mr. Huggins
8 I didn't have any authority.

9 Q. Did you tell him you had tried to get Southern to contri-
10 bute?

11 A. No, I couldn't have.

12 And further this deponent saith not.

13

Frank O. Meade

14 -----
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1 THE WITNESS, ALLAN GARRETT, being first duly sworn, deposed
2 and stated as follows:

3 EXAMINATION BY MR. STONE:

4 Q. I believe you are Allan Garrett?

5 A. That is correct.

6 Q. And you are an attorney here in the City of Danville?

7 A. Yes.

8 Q. And I believe you are an associate member of a law firm
9 here?

10 A. I am a partner in the law firm of Garrett, Garrett, Smith
11 & Garrett.

12 Q. How long have you been practicing law here in Danville?

13 A. My first day of practice was June 19, 1950.

14 Q. Mr. Garrett, I believe in your professional capacity you
15 represented Arlen Realty & Development Corporation in a suit
16 pending in the Circuit Court of the City of Danville, entitled
17 Martin v. Southern Railway and a third party claim of Southern
18 Railway vs. Arlen Realty?

19 A. Yes.

20 Q. I believe that the basis of the third party action brought
21 by Southern Railway against Arlen Realty in this matter was
22 the matter of indemnification with respect to a hold harmless
23 agreement between Southern Railway and Arlen Realty?

24 A. I think the contract would speak for itself. I don't think
Arlen was a party to it, and I think the third party action for

1 judgment will speak for itself rather than to go into my
2 recollection of what it was.

3 Mr. Stone: I think it is up to your counsel to enter an
4 objection and up to you to answer the questions.

5 Mr. Carter: He answered it.

6 A. I think Arlen was not a party to it.

7 Q. Are you familiar with a concern by the name of E. J.
8 Corvette?

9 A. Generally, yes.

10 Q. Does that have any relationship to Arlen Realty &
11 Development Corporation, to your knowledge?

12 A. I don't know it as a fact. I was told it was a subsidiary
13 corporation.

14 Q. A subsidiary or a division?

15 A. I don't really know.

16 Q. It was your understanding that the basis for the third
17 party motion for judgment was the position of Southern Railway
18 wherein they felt they were entitled to indemnification based
19 on a hold harmless agreement?

20 A. Yes.

21 Q. And they were entitled to indemnification from Arlen
22 Realty?

23 A. Based on the contract, that was their position they stated.

24 Q. Whether it was meritorious or not, that was their position?

A. Yes.

1 Q. With respect to the primary claim of Martin vs. Southern
2 Railway, what part, if any, did you take with respect to this
3 matter? Did you attend any of the conferences with respect
4 to the depositions of the plaintiff or of any of the doctors,
5 or anything else like that related to the primary claim?

6 A. Yes, I did.

7 Q. And why was that?

8 A. I was retained by Arlen Realty & Development Corporation
9 and it was my job to represent them as an attorney and on
10 most if not all of the conferences, I was consulted by both
11 Frank Meade and Ron Williams or Ted Huggins, and asked to
12 attend, I think in every case by Mr. Meade and possibly in
13 every case by the other attorneys. Every deposition and
14 every conference was arranged around my calendar either by
15 Mr. Meade or his secretary, Anna Borden.

16 Q. You felt a duty to your client to take an active interest
17 in the defense of the plaintiff's claim against Southern
18 Railway, is that correct?

19 A. Well, at the outset both of the claims were in court in
20 one suit but obviously, as brought out previously, as time
21 progressed a motion was made for a severance very early,
22 earlier than Mr. Meade indicated. In fact, he made no refer-
23 ence to the joint motion made for severance which Judge
24 Craig ruled on and granted an oral order severing them. I
thought Judge Craig would prepare the order but no actual

1 written order was entered and later Mr. Maade took the
2 petition that it had never happened and I asked for a confer-
3 ence with Judge Craig and he was teaching at Las Vegas, and
4 he referred it to Judge Davis. Judge Davis asked that we
5 wait on the matter until he was in Danville and it was ruled
6 on by Judge Davis the first day of trial, over Mr. Maade's
7 objection. Judge Davis ruled they were severed, that one was
8 in tort and the other in contract and should not be tried
9 together. I don't think any written order was entered.

10 Q. Are you indicating if an order was entered by the court
11 at that time you would not take an active interest in the
12 proceedings of the plaintiff's claim against Southern Railway?

13 A. I didn't say that. I didn't mean to infer it. I was
14 invited by Mr. Maade and the other lawyers wanted me there.
15 I think I would have attended regardless of the order, one
16 way or the other, as an observer at least.

17 Q. I don't think you answered by preceding question exactly
18 in the manner I wanted you to. I take it it was your under-
19 standing it was partly of your duty to take an active part in
20 the defense of the plaintiff's claim against Southern Railway?

21 A. Yes, as an observer, as an ^{OPPORTUNITY} experience to learn the law
22 on ~~an~~ ^{THE} issues ^{THE} in any case.

23 Q. Some interrogatories have been filed by Southern Railway
24 in this action at bar concerning an alleged release given
in favor of Arlan Realty & Development Corporation. In the

1 answer to interrogatories it says this release was first
2 discussed on a trip to Winston-Salem on February 21, 1975, when
3 Frank Meade and yourself went to attend the taking of
4 a deposition. Are you familiar with that contention?

5 A. Yes.

6 Q. And this was the day you and Mr. Meade went to Winston-
7 Salem for the taking of a deposition?

8 A. Yes.

9 Q. Whose car were you in?

10 A. Dr. Alexander was the doctor in Winston-Salem we deposed.
11 Either Frank or his secretary alerted me of the date and
12 Frank and I talked on the telephone first and I offered to
13 take my car and he said no, he wanted to drive his diesel.
14 He had had it worked on. I was thinking of trading at the
15 time and I think ~~he~~ I even made him an offer on that trip.
16 We talked a lot about cars, among other things, on that trip.

17 Q. Did you talk about this case on that trip?

18 A. Yes.

19 Q. What was the substance of the discussion?

20 A. Well, there was some discussion before February 2, 1975.
21 I received the case on January 2, 1975 from Marleen P. McGain
22 with Market Facilities, Inc., in Los Angeles. She gave me
23 a rundown on the case and said Arlen was long in default,
24 five or six months in default, before I was in the case,
and she remarked what problems I would have in trying to bail

1 them out, and we laughed about it. I called Frank that day
2 after that conversation, and we talked about the case and
3 he reviewed some of the facts with me, and I asked at that
4 time if there had been settlement negotiations. He said
5 "Yes, but not much". I told him at the proper time I would like
6 to be brought ~~up~~ ^{UP TO DATE}. He said, "Your main problem is whether or
7 not you get in at all". I asked if an order had been
8 entered on the default. He said not to his knowledge. I
9 asked if he would allow me to file a late answer and he said
10 he would feel it out with the other lawyers and we would
11 talk about it. He contacted me on January 7 about making a
12 late answer. I was trying to get voluntary permission. He
13 told me he would have to confer with Southern Railway and
14 the others. I pointed out at that time that I had not received
15 all the pleadings or a copy of the trailer agreement, which
16 was the basis of the third party complaint. He said it was
17 on file and he would give me a copy, and said he was going to
18 file a copy with the pleadings and said he had really intended
19 to. When I did get a copy of it, it was obvious the agreement
20 was signed after the accident. The next thing that happened
21 was on January 9. I talked to Mr. Ben Williams with regard
22 to filing a late answer and he agreed to allow me to do so
23 and to furnish me what I wanted, said there was no objection
24 to my coming in. I called Frank Wade again and he again
called and said he would have to have a hearing on that. 2/16

1 Judge Craig allowed the late answer and there was absolutely
2 no prejudice to me because of the lateness or default. The
3 late answer was filed I believe on January 28, 1975. Before
4 the hearing, Anna Borden, Frank's secretary called me and
5 notified me of depositions to be taken in Winston-Salem and
6 I later talked to Frank and agreed to go. That day going over
7 over we talked about cars. We both enjoy cars and we talked
8 about colleges and schools our children were attending. As
9 we approached Winston-Salem, we started getting down to business
10 started talking about the case, and Frank told me he wanted
11 me to handle any and all settlement negotiations. He made the
12 statement that he did not get along well with Ted Huggins,
13 and for that matter not much better with Ron Williams, and
14 he felt there would never be any settlement whatever unless
15 it came through me. We talked about him being an attorney
16 known for hardnose tactics and me being known for settlement,
17 if possible. He said, "You be the good guy and I will be the
18 bad guy", and I said, "Yes, but only if you understand
19 Southern Railway will contribute on a 50/50 basis". I
20 pressed him. I said I wanted to get an understanding that
21 Southern would come in 50/50. He said Southern would con-
22 tribute, but he didn't know how much. He doubted they would
23 want to come in on a 50/50 basis, but he would ask them.
24 He said he could assure me there would be some contribution
from Southern. I said, "If we settle one of the cases there

1 would be a settlement of both." I pressed him on this. He
2 said there would be no problem whatever with the third party
3 motion for judgment, that if we settled the primary case the
4 third party motion would be out of the picture.

5 Q. You said Mr. Meade said he would ask the company, Southern
6 Railway, about a 50/50 contribution. Did he say they would
7 or he would call them and urge them to do so?

8 A. I don't think he said either of the ways you posed it.
9 He told me he didn't see any difficulty in getting contribution
10 but he didn't think they would contribute 50/50, but he would
11 ask that they do so and let me know what they said.

12 Q. He would ask Southern would they do so, rather than they
13 would?

14 A. Repeat that.

15 Q. I understand Mr. Meade said he would ask them to contri-
16 bute 50/50, rather than ask them whether they would do so?

17 A. I don't know if I get the distinction. I was asking that
18 as a condition for me picking up the negotiations that Southern
19 put up half of the money for settlement. Frank indicated
20 that he didn't think they would, but he would ask and would
21 let me know what they said.

22 Q. The distinction I want to clarify in my mind is your
23 understanding of what he was saying. Did you understand he
24 was saying he would urge Southern to make a 50/50 contribution,
not that he would ask?

1 A. No, that is your word "urge".

2 Q. You are saying he said he would ask them to contribute
3 50/50?

4 A. That is what he said. I said that twice, that he would
5 ask Southern for a 50/50 contribution and for me to get
6 them as low as I could.

7 Q. Did you come back in Mr. Maade's car that day?

8 A. Yes, I did and we had lunch together that day.

9 Q. Were there any subsequent discussions on that day
10 concerning settlement possibilities on the plaintiff's
11 primary claim or on both cases?

12 A. I don't think so. I think everything was said going down.
13 Everyone was in a hurry, after the deposition. It was late
14 and everyone was trying to get places. I don't know that
15 Frank and I talked about it on the way back. We didn't have
16 any opportunity over there for me to talk to Ted or Ron.
17 Either Ted or the court reporter had an appointment they had
18 to make and they left very quickly, left together.

19 Q. He said, on this occasion, he didn't think Southern would
20 be interested in a 50/50 situation but he would ask them to,
21 and he would let you know, but he didn't see any problems as
22 to contribution?

23 A. Yes. I went to his offices before we went to Winston-
24 Salem. I waited for him to finish dictating although we were
already pushing time. That is when he gave me this very 2/9

1 voluminous medical summary, and at the time he gave it to me,
2 he said I could use it anyway I wanted to, but not to give it
3 to Ted Huggins. That was before we started down there that
4 day. It was in Frank's office.

5 Q. It is also stated in the answers to the interrogatories
6 that you had further indications from Mr. Meade of a release
7 or settlement on March 5, 1975. I would appreciate your
8 stating to us your recollection of any conference or conver-
9 sation that took place on or about that date.

10 A. After he asked me to take over settlement negotiations and
11 as I said before, it was not possible on February 21 to do
12 it, but later I conferred with Ted Huggins on February 25,
13 1975 and again on March 4, 1975. I had more than one confer-
14 ence with both Ron Williams and Ted Huggins. On March 5,
15 1975, I think Frank called me and asked for an update on
16 what had transpired. I said I would like to tell him in
17 person. He said he would come up to my office. I offered
18 to come to his, but he said he would come to my office, that
19 he wanted to get out of his office. He did come up and we
20 conferred that day and my recollection is it was in the
21 morning. That was March 5, 1975.

22 Q. Do you have a notation on your calendar of what time you
23 talked to him on that day?

24 A. It isn't on my daily calendar. On my file itself I have

1 a note from one of our secretaries saying, "Allan call Frank
2 Maade", with his telephone number 792-3911, and that is dated
3 March 5, 1975, and the time on it is 12:23 P.M., so apparently
4 I was in error about it being in the morning. It was appar-
5 ently sometime after 12:23 P.M. Then I have a penciled memo
6 on a yellow sheet, dated March 5, indicating a conference
7 with Frank Maade, and also indicating a conference with Ron
8 Williams on that date.

9 Q. What was the substance of your conference with Mr. Maade
10 on that date?

11 A. Well, it was kind of a mutual thing. We were talking
12 about settling the case and I asked him to tell me first of
13 all what he had done. I asked him to be more specific. He
14 got more specific and again said he couldn't talk with Ted
15 Huggins, they just could not communicate, they didn't get
16 along and he couldn't settle cases with Ted. He told me the
17 original demand. This is somewhat contradictory of what he
18 said. He said there had been some settlement negotiations,
19 before I was in it. Frank told me Ted's demand was \$90,000,
20 and he considered it to be ridiculous. We talked about value,
21 I again told him that I was not going to proceed with negotiation
22 unless it was clear that if we settled one case it settled
23 both, and he again said, "That is no problem". He said, "If
24 we settle one, it will settle both". He again told me he
didn't think he would be able to get Southern to contribute

1 on a 50/50 basis.

2 Q. Where was this statement made?

3 A. It was in my law office. It is one of the few times Frank
 4 ^{HAS COME}~~came~~ up, and I offered to come to his office. He said there
 5 was something he wanted to run from in his office and he would
 6 come up.

7 Q. Did you have any further discussions with him, on that
 8 occasion, concerning this case?

9 A. That was the substance of it. I don't think it was an
 10 extremely long conference.

11 Q. Were there any other statements made by Mr. Meade on that
 12 occasion concerning the settlement of either the plaintiff's
 13 claim of the Southern Railway claim, to your knowledge?

14 A. Certainly we talked about value. I don't remember
 15 specifically where we were at that time, but Frank and I
 16 discussed it. I put a higher value on the case than he did.
 17 At that time he was placing a lower value. We were talking
 18 about \$30,000 to \$40,000 at that time and Frank, at that time,
 19 agreed to see if he could get such sums, or half of such
 20 sums. That is what he was reporting to me. What he told
 21 Southern may have been something different. He was talking
 22 about getting half of the settlement. I was at \$40,000, what
 23 I thought it was worth. Frank was at \$25,000 to \$30,000. At
 24 that time, he stated to me that regardless of what ^{WE}~~he~~ put in,
 he was going to try to get half of the sum.

1 Q. And this conference was in your office?

2 A. Yes.

3 Q. Do you have any recollection of how much time this confer-
4 ence took?

5 A. I would estimate, around fifteen, twenty maybe thirty
6 minutes.

7 Q. After you parted that time, did you have any discussion
8 about what steps he would take after that conference?

9 A. He did indicate he would see what he could get from
10 Southern.

11 Q. So he indicated to you, it was your understanding, that
12 he would talk to Southern about getting one-half of \$25,000
13 to \$30,000, whatever?

14 A. Yes.

15 Q. Was that discussion followed up at a later time with
16 Mr. Mende?

17 A. Yes.

18 Q. And you understood he would check with Southern and come back
19 and advise you of what they said?

20 A. That is right.

21 Q. Did he do that?

22 A. Yes.

23 Q. When was the next conference or communication with Mr.
24 Mende?

A. The next conference in which Frank participated was March
25, 1973.

1 Q. Was there any later conversation between the two of you
2 during the interim?

3 A. I don't recall.

4 Q. What happened on March 25?

5 A. There were conferences with all counsel and also with
6 Frank and me. At that time it seemed that Ron Williams was
7 really acting as controlling counsel. At that time, he let
8 us know... let me know... the case could be settled for
9 \$40,000. This was indicated to Mr. Maade. Frank asked me to
10 me what I could do, to see if I could get \$20,000 and if I
11 got \$20,000, he would see if he could get \$20,000.

12 Q. That was March 25?

13 A. Yes.

14 Q. Who was present?

15 A. There were several conferences on that day and I think
16 that there was probably a telephone conversation between me
17 and Frank about getting the monies.

18 Q. This was subsequent to Ron Williams making a demand of
19 \$40,000?

20 A. Yes. This was confirmed by a letter on March 24, 1975, to
21 Frank G. Maade, Esquire. I think you have a copy of that.

22 Q. What was confirmed?

23 A. I will just read you the letter. "Dear Frank: I confer-
24 enced this case with plaintiff's counsel, Theodore P. Huggins,
at length on March 21, 1975. He made a formal demand of

1 \$90,000. We let him know that we thought this to be exorbitant
2 and that there was no chance of the case being settled in this
3 range. Based on our conference with him, we feel that the
4 case can be settled in the neighborhood of \$40,000. If you
5 want to settle the case, we will take the matter up with our
6 client and see if they are willing to contribute on a fifty-
7 fifty basis with your client. Please take this up with
8 Southern Railway and let us know their position. This letter
9 is written without prejudice. With kind personal regards,
10 we are". That should be on your file.

11 Q. This letter was written on the 24th and I understood you
12 to say you had a telephone conversation with Mr. Meade on
13 the 25th?

14 A. That could have been in person, March 25. I believe
15 March 25 was the date we had the pre-trial conference with
16 Judge Craig, and that was the day he ruled the matters would
17 be severed but the order was never prepared by the Judge, nor
18 by me or anyone. I was in personal contact with Frank that
19 day, so that conference could well have been in person in
20 one of the rooms adjoining the courtroom.

21 Q. So on March 25 you had some kind of conference with the
22 judge and also on that day you had some kind of conference
23 with Frank Meade?

24 A. Yes, and several others, Ted Huggins and Ben Williams.

Q. What was the substance of the conference with Frank

1 Meade on that day?

2 Mr. Carter: I think he testified to that.

3 Q. Maybe I am dense. I would like to have you repeat that.

4 Mr. Garrett: Have the reporter read back my answer.

5 (The reporter read back Mr. Garrett's answer as shown
6 on page 53, lines 5 through 11.)

7 Q. Were there any other discussions between you and Mr.
8 Meade on that day about this case?

9 A. There were a lot of discussions that day, and yes, there
10 was other conversation. There was a pre-trial conference that
11 lasted an hour and a half.

12 Q. Were there any other discussions between the two of your
13 relating to settlement of this case?

14 A. That is the substance of it, the part I recall.

15 Q. There were several conferences that day, but what you
16 detailed was the only conversation relating to settlement,
17 is that right?

18 A. There were several conferences, not necessarily with
19 Frank. I had a conference with Ted Huggins and with Ron
20 Williams.

21 Q. But with Mr. Meade, that was the only one?

22 A. I had a further conference with Ron Williams, after the
23 pre-trial that lasted an hour and a half, and I had a confer-
24 ence with Frank Meade that took place after the pre-trial.

Later in the day, I had a conference with Ted Huggins, and

1 I reported to my claims man, Jack Brown, in Los Angeles. I
2 called Jack Brown and asked for \$20,000, after I talked with
3 Mr. Meade. That takes care of the conferences on March 25.

4 Q. The conference you related as to Mr. Meade was the only
5 conference you recall with him on that day about settlement?

6 A. That is the only one I recall. It was quite a bit of
7 discussion, but the only pertinent conversation was the one
8 I mentioned. I am sure we talked a lot during the day.

9 Q. What was the next contact you had with Frank concerning
10 settlement possibilities in this period?

11 A. I have some conferences indicated with no notes of what
12 was said. Frank and I talked twice on April 4. He and I
13 talked again on April 7, and I do have some notes of a
14 conversation on April 7, 1975. He called me and wanted to
15 arrange an independent medical examination by Dr. Ames. He
16 asked if I was willing to pay half of Dr. Ames' charges and
17 also half of whatever he would charge us to testify, and I
18 readily agreed to pay one-half of both, and did so. That was
19 when Frank advised me that Southern Railway, or their
20 division counsel, had said no to 50/50 contribution, on
21 April 7, but they were willing to make a contribution. He
22 mentioned a figure of \$10,000 and I showed immediate interest
23 and he backed off that immediately, and said, "I was wrong
24 about that, it was \$5000", and I got a firm commitment from
him at that time that they would be willing to pay \$2500 of

1 a total settlement of \$5000. Frank kind of plays with you and wh
2 I jumped on the \$10,000 he jumped off like a cat on a hot tin
3 roof. He said ~~\$5000~~^{\$10,000} together and I thought I could probably
4 get \$5000 out of a settlement of \$10,000. I was still in-
5 sisting on a contribution of 50/50, even after he said they
6 woldn't do it. I have known Frank and his father to change,
7 after telling you one thing previously. I pursued the 50/50.
8 I thought what he was telling me might be different from what he
9 was telling his company.

10 Q. Did you get the 50/50 authority from your company that
11 you requested? Did they give you any authority?

12 A. Well, we talked again, Frank and I. We talked again on
13 April 11, 1975, and I was still thinking in terms of 50/50
14 settlement.

15 Q. The question was did they give you any authority?

16 A. I am getting to that, Mr. Stone. I was still pursuing
17 the 50/50 contribution and we again discussed value, and I
18 still thought the case was worth \$30,000 to \$40,000, and
19 again offered to see if I could get half of \$30,000 or half
20 of \$40,000, and I don't recall that I got too far with him
21 on that, but I was still pursuing the 50/50 contribution.
22 Frank told me that he thought they might, that Ron Williams
23 and Ted Huggins might, take \$22,500, and for us to offer that.
24 He wanted me to put up most of the money and I said no, and
then he wanted to know how far I would go if they only put up

1 \$2500 and wa... I don't know that we had any understanding on
2 it. He came up finally with the idea they might take \$15,000
3 and came up with the idea we put up \$12,500 and Southern put
4 up \$2500, and I told him I would take it up with the claimsman,
5 which I did on April 11.

6 Q. This was contrary to your discussions about the 50/50
7 contribution?

8 A. In a sense, that is right.

9 Q. I believe I understand correctly that you testified that
10 on March 25, after you conferences with the attorneys, that
11 you later called your company with respect to getting \$20,000?

12 A. On April 16 I talked with Jack Brown and he gave me
13 \$15,000 authority and directed me to pursue the effort to
14 get Southern to contribute 50/50. He did not really authorize
15 me to use the \$15,000, I don't think at that time. We also
16 discussed Mr. Meade's trial tactics and settlement tactics,
17 which Mr. Brown was familiar with, and he gave me some suggest-
18 ions on how to deal with Frank Meade at that time.

19 Q. Did you have a discussion with your claimsman on March
20 25?

21 A. Yes. I asked for \$20,000 at that time and he said he would
22 take it under consideration, didn't give me anything. He said
23 he would have to take it to his superiors. They had a
24 committee and they would conference it.

Q. Did he give you any authority on April 16?

1 A. I don't believe he actually did. I have studied this
2 thisk file twice and my notes on it and my study of it
3 suggests he gave me some authority first on April 16, 1975,
4 a type of authority.

5 Q. Did you talk with Frank Meade on the 17th of April?

6 A. Mr. Meade and I talked both on April 16 and on April 17.
7 I have those times indicated in my original notes, "conference
8 Frank Meade April 16" and again on April 17.

9 Q. On either or both of those dates did you discuss settlement
10 possibilities?

11 A. Yes.

12 Q. And what was the substance of those discussions?

13 A. We were discussing the authority each of us had and how
14 to approach plaintiff's counsel to effect settlement.

15 Q. Could you be a little more specific on that?

16 A. By that time, I had rightly ^{OR} ~~and~~ wrongly concluded that
17 Mr. Meade was playing games with his authority, and possibly
18 with Southern also. I had surmised he was telling me one
19 thing and telling Southern Railway another. This was discussed
20 with Ron Williams, and to avoid any difficulty or misunder-
21 standing about what Mr. Meade's authority was, I suggested
22 he negotiate with plaintiff's counsel, using our authority
23 and his authority also, which he indicated was \$2500. Frank
24 did that. Later in the day, we talked again, and he had not
done what he said he was going to do, offer \$17,500. He

1 only offered \$15,000 and they refused that offer. We talked
2 some more, had some more conferences. Finally Mr. Meade put
3 up his \$2500. That was offered on April 17 and it was refused
4 and they dropped their demand, plaintiff's counsel dropped
5 their demand, to \$25,000.

6 Q. What was that date?

7 A. Which date?

8 Q. The date they dropped their demand to \$25,000?

9 A. I referred to it in a letter I dictated on April 17 to my
10 claims supervisor, Jack Brown. That is the best I can do
11 for you at the moment.

12 Q. As I understand you, on the 16th of April you authorized
13 Mr. Meade to proceed to attempt to settle the case on the
14 basis of \$15,000 payment by Arlen and \$2500 payment by Mr.
15 Meade's client, Southern Railway. Is that right?

16 A. To see what he could do with it.

17 Q. Did he have the authority? Were you stating if he could
18 settle it on that basis, you would make that contribution,
19 your client would?

20 A. It was understood between Frank and me that he would go
21 down and offer \$17,500. Well, really it wasn't limited to
22 \$17,500. We were trying to smoke him out in the open to
23 make his own offer so there would be no misunderstanding
24 later. They felt the same about Frank as I felt about him.
We were trying to smoke him out to make his offer, but he

2.3/
didn't budge on it. He indicated he had \$2500, and would

1 offer that and our \$15,000 and he came back and said he only
2 had \$15,000 to them and he came back.

3 Q. He indicated that?

4 A. Yes, but he didn't tell me that at first. That is why
5 I wanted him to do the negotiating.

6 Q. Did you authorize him to settle the Martin claim, if it
7 could be settled, by the \$15,000 payment by Arlen and the
8 \$2500 by Southern?

9 A. I think so. At one time, that was the deal.

10 Q. That was your understanding when you parted?

11 A. Yes.

12 Q. When was it that he came back and told you he offered
13 \$15,00 rather than the \$17,500? Was that on the same day or
14 the next day, or when?

15 A. I reported it in a letter of April 17, so it was April
16 16 or 17, I would assume. By my written record, the only
17 thing I can say is it is in a letter of April 17 from me to
18 Jack Brown. I said, "Later in the day we talked again. Mr.
19 Meade stated he offered \$15,000 only and this was refused",
20 so I assume when I said later in the day I was talking about
21 April 16 or April 17. I conferred with Jack Brown on the 16th,
22 so that could have taken place on the 16th. I am not sure
23 about that date, but it would be one or the other, the 16th
24 or 17th.

Q. Did you have any further communication or discussion with

1 Mr. Meade between April 17 and the actual trial of the case?

2 A. Yes. I talked with him again on April 21, 1975. I have
3 a written memo in my file indicating the conversation took
4 place, although my notes are rather skimpy.

5 Q. Do you remember what the discussion was as to settlement?

6 A. He was telling me Dr. Ames was general ^{ly} favorable to our
7 side of the case, and we may have talked about something else,
8 but the part I wrote down is I wrote Frank's name and I wrote
9 kind of a synopsis of what Ames told him.

10 Q. So you don't recall any discussion about settlement on
11 that date?

12 A. I don't recall it right now.

13 Q. I assume if you do recall it at a later time, you will
14 let us know about that, is that correct?

15 A. Not necessarily. You can pursue your discovery remedies
16 anyway you want to.

17 Q. Were there any other discussions between the 17th and
18 actual trial date, that is settlement discussions with Frank
19 Meade?

20 A. I think the next conversations were the morning of the
21 first day of trial, with Frank, on the 23d of April, 1975.

22 Q. Do you recall what the substance of those conversations
23 were?

24 A. ~~It~~ ^{There} was a lot going on that morning. The jury was waiting.
A lot of lawyers were present. Judge Davis had the matter of

1 the renewal of the motion for severance. I think there was
2 some discussion of settlement very briefly, in which all the
3 lawyers participated, before we got in on our motion for
4 severance, and arguments were heard on that and Mr. Meade
5 again opposed severance and Judge Davis ruled they would be
6 severed, and at that time officially severed the two motions
7 for judgment. Frank got a little bit upset, showed a little
8 temper, told me he didn't want me to sit with him. He said,
9 "Sit in the back of the courtroom". That is what I did.

10 Q. Were there any other discussions between you and Mr.
11 Meade concerning settlement possibilities?

12 A. There were some conferences. I was not in position to
13 take notes on them. A lot was going on. I did take trial
14 notes. Let's see if I wrote anything on that. (Looking at
15 his notes.) I don't believe there was a whole lot said about
16 settlement. Frank was under a lot of pressure. He was having
17 to try the case and was upset over the court's ruling and
18 after being pugnacious towards me and Ron Williams we
19 frankly avoided him. The ^{FIRST} ~~next~~ ^{OF THE TRIAL} day he reported to Judge
20 Davis that I had improperly participated, and I was not
21 supposed to attend the depositions and I interrupted him and
22 told him he had notified me of every deposition, invited me
23 to go, that we had lunch together, that he asked me to share
24 the costs, which I did, and he backed off of that. It was
~~not too pleasant, and he jumped on Ron Williams about something.~~

1 so we didn't talk to Mr. Meade much that day.

2 Q. What conference did you have with Mr. Meade that day or the
3 next day in reference to settlement or the release to Arlen?

4 A. The second day of trial, we are speaking of April 24, 1975?

5 Q. On either of those two days, April 23 or 24, that you
6 haven't already testified to.

7 A. Ted Huggins called me at home the night of April 23, 1975
8 and asked that I renew my efforts to get everything I could
9 out of Frank towards settlement, that they had decided to
10 settle the case, that they wanted to settle the case, and the
11 next day, April 24, I had a conference with Ted Huggins,
12 followed by a conference with Frank Meade. Then Judge Davis
13 called us in and wanted to know what ^{TO DO} about the jury. The
14 jury was waiting and ready to go on. All of us had conferences
15 with Judge Davis, and then there was a conference between
16 Ted Huggins, Ron Williams and Frank Meade. I wasn't in on
17 that one, and I think Judge Davis or the Clerk of Court asked
18 what was going on. I talked to them for a while. I had one
19 or more conferences with Frank Meade and with his associate
20 from Southern Railway. His name was Bill Stalnaker. He
21 was there and he and I talked several times, and Frank and I
22 talked several times at the counsel table when Mr. Stalnaker
23 was not present.

24 Q. When you and Mr. Meade were talking, did you discuss
settlement of the case or of both cases?

1 A. We did.

2 Q. What did he say?

3 A. Frank is saying something different, at least it is different
4 as to what he said to me about the \$2500. He had made
5 it clear or tried to make it clear to me and to plaintiff's
6 counsel that the minute the trial started that the \$2500 was
7 withdrawn and would not be offered again. Apparently he
8 said something different to others. My understanding of what
9 he said to me was the minute that trial started the \$2500 was
10 gone forever.

11 Q. Did he tell you anything different from that?

12 A. He testified today to something different from that.
13 That second day of trial we were after him to get first
14 \$5000 from him and he said he talked to Stalnaker and they
15 wouldn't pay the \$5000, and then we tried to get him to
16 come in with his \$2500, and he talked with Stalnaker, he said
17 he talked with him, and said they were fully agreed they
18 weren't going to put the money up. After the case was settled,
19 Stalnaker came over and apologized, said he thought maybe they
20 should have put the \$2500 in but they wanted to teach people
21 when they sued Southern Railway they meant business, and
22 when they said the \$2500 was withdrawn, it was withdrawn.
23 After the case was settled and Frank and everyone else was
24 getting ready to leave. Judge Davis was getting ready to
leave too. Frank turned to me and said, "I guess that settles

1 them both", and I was still not talking to him any more than
2 ^{"AS FAR AS I'M CONCERNED, IT DOES"}
3 I had to. I said, "~~I guess it does~~". He said, "~~I guess that~~
4 settles them both".

5 Q. What happened at that point, after Frank said Southern was
6 not willing to contribute towards settlement of the case?

7 A. Somewhere along the way, when Frank made it absolutely
8 clear that we weren't going to get a dime out of Southern
9 Railway, and I don't remember if I told Mr. Huggins or Mr.
10 Williams or if Frank did, but one of us went back and they
11 asked if we would pay \$15,000 and I indicated that we would,
12 then ^{THEY} ~~the~~ started hassling about court costs. I think they
13 made a pass at Mr. Meade to pay some of the court costs and
14 Mr. Meade refused to pay the court costs. I bargained with
15 them on the court costs and they accepted \$75.00 towards the
16 court costs, so the total settlement was \$15,075. This was
17 on April 24, 1975.

18 Q. And this was when Mr. Meade advised you that Southern was
19 not willing to contribute to the court costs even, in settle-
20 ment of this case?

21 A. Yes, that was his position on April 24.

22 Q. And the claim was settled on that basis?

23 A. Yes.

24 Q. You said he mentioned, as you were leaving, "I guess that
settles them both", and you said, "as far as you were concerned
it did?"

1 A. I was surprised at his comment.

2 Q. Why?

3 A. Because it was already understood that if we settled one
4 we settled both. When Frank got up on his ^{HUNCHES} ~~hunches~~ during the
5 trial, I kept my distance. I didn't encourage any conversation
6 with him. I went over to my office, walked away from him, at
7 that point.

8 Q. Was there any more comments that day about settling one,
9 settling both, or anything?

10 A. I think he said somebody had to prepare the order, and
11 I said I would, and I did.

12 Q. You in fact prepared an order?

13 A. Yes, I did.

14 Q. Was that order entered?

15 A. No. Mr. Meade refused to endorse the order I prepared,
16 on May 8, 1975, and that was the first time I knew he was
17 thinking about trying to claim we owed him, Southern, some
18 more money, when he refused. He had never ever said that
19 before May 8, 1975, to my recollection. He refused to endorse
20 the order, and I drew it up once or twice. He never would
21 endorse my order, and I asked Judge Davis about it, and he
22 said, "Y'all get together". He didn't want to get in the
23 middle of it, and Frank wouldn't endorse any order I prepared.
24 I said, "Frank you fix what you want." We wanted to conclude
the matter in some manner. He fixed two short^{er} orders and I

1 endorsed them, and they were entered by the court.

2 Q. At anytime on the 23d or 24th or on any other occasion
3 in which there was any settlement being discussed, which did
4 not involve monetary payment by Southern, did you specifically
5 discuss with Mr. Maade or ask him whether or not if Arlen
6 proceeded to settle the case of the plaintiff, that the claim
7 of Southern against Arlen for expenses incurred in defending
8 the claim would also be released or concluded?

9 A. I don't think we discussed legal fees and expenses, in that
10 frame of reference. We were talking about two law suits and
11 it was clearly and explicitly understood that if settlement
12 was made on one, it settled both.

13 Q. You are not saying he never said that covered legal fees
14 and costs?

15 A. I don't think he was thinking of it. We were discussing
16 two law suits. He sued for that in his motion for judgment,
17 which you can see if you read it. He was talking generally.
18 I didn't start any negotiations until he agreed to that.
19 That was his exact words, "if we settle one, we settle both".

20 Q. I believe the motion for judgment asks for attorneys fees
21 and in addition to indemnification?

22 A. I think it does.

23 Q. The order actually entered in the case, is it your
24 recollection that that order dismissing the plaintiff's
claim specifically states it was settled by Arlen Realty with

1 no contribution by Southern?

2 A. I think that is correct. The order is available. I rather ²
3 not say what my recollection of it is, when you have the order
4 in your hand.

5 Q. Did you review or examine the order, which was ultimately
6 entered in connection with the third party claim?

7 A. Yes, I did. I endorsed both orders. That is the only way
8 Judge Davis would conclude the litigation.

9 Q. Does this appear to be a true copy of the order which was
10 entered? (Mr. Stone handing Mr. Garrett a document.)

11 A. Yes, it appears to be correct.

12 Q. Did you examine this order before you endorsed it?

13 A. Yes, indeed.

14 Q. The order states that the third party claim was dismissed
15 without prejudice. Did you discuss this facet of it with Mr.
16 Meade when you endorsed this order?

17 A. I am not sure. I believe he sent the order up. I don't
18 think he came by the office.

19 Q. Did you send it to the court or return it to him, or what?

20 A. I think I returned the order to him. I think at the time
21 I was avoiding him and he was seemingly avoiding me, and I
22 think my secretary took it back.

23 Q. You think your secretary took it back to his office?

24 A. This is my recollection. I didn't appreciate what he
had done and I was trying to keep out of his way.

1 Q. Did you talk to your company concerning the order dismissing
2 the claim without prejudice?

3 A. I don't recall specifically. I think I reported by
4 telephone several times and there was some correspondence.

5 Q. Did you specifically write to them or call them about
6 the fact it was being dismissed without prejudice?

7 A. I don't recall. I have done my best to look through
8 this file and you can see it is a voluminous file. My
9 recollection is I reported it to Jack Brown by telephone.

10 Q. What did you tell him?

11 A. Just what the situation was, that Frank Meade had changed
12 his position and was now claiming we owed them some more
13 money, that Frank wasn't clearcut in assuming that posture,
14 that he tried to put it on Southern Railway and apologized
15 for it. He said it wasn't really his decision. He mentioned
16 the name Paseo, I believe it was Pasco, assuming that position,
17 I suppose, to try to soften the blow. He was changing his
18 position with me and trying to make it look like someone else
19 was controlling it, putting it on him, trying to get it off
20 himself personally.

21 Q. That was your feeling, why he was doing that?

22 A. Yes.

23 Q. I assume he didn't tell you that, is that right?

24 A. He had told me something on April 24 that I didn't put
into this record, which I think I should. Ted Huggins and

1 Ron Williams were back with Troy Martin, without me. Frank
2 and I were at counsel table alone and we started talking about
3 whether or not they were going to take this offer, and Frank
4 made the comment to me, "I hope they don't take it". I said
5 "What do you mean you hope they don't take it?" He said,
6 "Confidentially, my retainer covers this first suit and I want
7 get any more fee for it and I will make a bigger fee if the
8 second suit is tried."

9 Q. When was this?

10 A. On April 24, just before the case was settled and we were
11 discussing about whether or not they would take the \$150,000
12 and he said he hoped they wouldn't. He said, "I am on
13 retainer for this suit against Southern Railway and I am in
14 a better fee position, I will get a bigger fee on the second
15 suit, and I hope it doesn't settle".

16 Q. You talked with the claimant at your company and you
17 indicated Mr. Maade, or Southern as the case may be. had
18 changed positions regarding the settlement of both suits?

19 A. Right.

20 Q. What response did he make?

21 A. He said to keep him posted.

22 Q. Did you discuss with him on that day or on any other
23 occasion whether or not you should endorse the order dismissing
24 the claim without prejudice?

A. Yes, I discussed it with him.

1 Q. Did he give you authority to do that?

2 A. Yes, indeed.

3 Q. Did he say why?

4 A. Yes, he said why. He said he knew Frank Meade's reputation
5 for never settling cases and he thought it was a good offer
6 of settlement and he thought Frank was "a damn fool", and
7 we weren't going to let it escape, that we were going to
8 settle it, that somebody ought to settle the case, that it
9 would be a good settlement.

10 Q. When was this discussion?

11 A. I think it was late in the afternoon of April 23, that
12 conversation.

13 Q. You didn't know until after the case was settled that
14 Southern Railway would take the position that it had a right
15 to have attorneys fees reimbursed, and then you said you
16 talked with the claimman as to whether you should endorse
17 the order dismissing the claim without prejudice, and I
18 believe you said he said you could endorse the order and he
19 told you why, but this was after the case was settled?

20 A. Not necessarily. We thought we were settling both cases.
21 Frank had represented him previously. He knew Frank's
22 reputation for never settling cases, and the only way we
23 could save substantially on this case was to proceed, and
24 he said to proceed "solo", I believe "solo" was the word
he used, with the \$15,000.

1 Q. At that time did you discuss attorneys fees with him?

2 A. Not at that time. It was not an issue. Frank hadn't
3 indicated anything else.

4 Q. I understood you said previously, perhaps I misunderstood
5 you, that the question of Southern's attorneys fees did not
6 come up until after the plaintiff's claim had been settled?

7 A. Not in conversation between me and Frank, but if you will
8 go back and read the third party motion for judgment it is
9 right in there, so when you settled one case you settled them
10 both, and if you settle them both it took care of what was
11 in there. If you will read it, he is asking for what he was
12 asking for in the third party motion for judgment.

13 Q. My question was I understood you to testify you discussed
14 with your claimman the question of whether you should
15 endorse the order dismissing the claim without prejudice, and
16 he said to do so, and I asked you why, what he said, and you
17 related to an earlier conversation. I am talking about now
18 whether or not you discussed with your claimman whether or
19 not you should endorse the order dismissing Southern's third
20 party claim without prejudice.

21 A. I think I have answered that. I have given you the
22 answer I am capable of. I think I answered the question.

23 Q. Did you discuss the question with him?

24 A. I kept him posted daily over the telephone, if a
development occurred. If something occurred, I would call

1 him, and if Frank would send me correspondence, including the
2 order, I copied it and mailed it to Jack Brown.

3 Q. Did you discuss with Jack Brown prior to the order being
4 entered, that you should dismiss the claim of Southern Railway
5 without prejudice?

6 A. I think so. They gave me a copy of it to mail, and I
7 think I had a conversation about it at that time.

8 Q. Did you get in touch with him by letter or telephone
9 before you actually endorsed this order?

10 A. I don't recall.

11 Q. You don't recall?

12 A. I sent him everything, as I got it. We have a very nice
13 copying machine. That's the way I practice law. When I got
14 a letter or a pleading, I copied it and sent it on. I did it
15 on this file all the way.

16 Q. Do you know whether or not you got specific authority
17 from your company to endorse the order dismissing the suit
18 without prejudice?

19 A. I think I answered that question. I can only answer the
20 question based on my recollection.

21 Q. You don't recall whether or not your company specifically
22 authorized you to endorse the order dismissing the claim?

23 A. That is not what I said. I answered the question in depth.

24 Q. You did not say that?

A. I feel that I have answered the question more than once,

1 and it has already been taken down by the court reporter.

2 Q. I am going to ask you one more time. Is it your testimony y
3 do not recall whether or not you received specific authority
4 from your company to endorse the order dismissing the claim
5 without prejudice?

6 A. My recollection is I sent a copy of the order to him,
7 and he said it was okay. There is no written memo on that.
8 I thought the file was complete, and my notes from April 24
9 forward are not in depth, because I was thinking in terms of
10 the whole thing having been completed. I have a memo that
11 Jack Brown telephoned me on September 12, 1975, instructing
12 me to answer this suit, the one we are dealing with now, and
13 I thought it over carefully. Testifying is not to tasteful
14 to me and I decided I should get out and let another lawyer
15 handle it. There is a difference between what I say and what
16 Frank says, but I was kept posted on everything daily. They
17 were pleased with my services and wanted me to represent them
18 in this suit. I explained to them there would be a conflict,
19 that I would have to testify that Frank's position was
20 inconsistent, and I wasn't going to let him get away with it,
21 that I would have to testify under oath.

22 Q. This order you sent to the company, before you endorsed
23 it, did you send it with a covering letter, or did you just
24 send a copy of the order?

A. I talked with Jack Brown on September 12, I believe it was.

1 and on September 4 I had sent him a copy of the motion for
2 judgment.

3 Q. My question was did you send a covering letter with this
4 order, when you sent it to your company, or did you just
5 simply drop a copy of the order in the mail to them?

6 A. Let the record show I have been fishing through my file
7 page by page, trying to answer your question. I wrote to
8 Jack Brown on July 9, enclosing Frank Meade's letter of July
9 8. I wrote to Jack Brown on June 2, 1975, "Dear Mr. Brown:
10 We enclose a copy of the two orders entered on May 29, 1975,
11 by Judge Davis. We could not secure for you an order com-
12 pletely washing out the claim of Southern Railway Company.
13 Mr. Meade stated that they may have a claim for indemnification
14 and counsel fees. We will simply have to wait that out and
15 see what developes". I have a letter from Frank Meade dated
16 May 14, enclosing the two orders he fixed. That is all I see
17 on my file.

18 Q. I understood you to say previously you sent a copy of the
19 orders, before you endorsed them. It is now your testimony
20 you sent them after they were entered?

21 A. It is my understanding I sent them the minute I got them.
22 I can't say when it was. Frank was sweating me and I was
23 sweating Frank.

24 Q. You sent them with this letter in June?

A. I called this gentleman. We got to be pretty good friends

1 over the phone, and it is my recollection when I got the orders
2 I called him and he said to go ahead and get rid of it. I
3 don't see any notation in my file. As I said, I thought the
4 thing was completed, and my notes after the second day of
5 trial are very skimpy.

6 Q. Your recollection is you discussed the thing with the
7 claimsmen and he said, "Go on and endorse it"?

8 A. Yes, by telephone, and after the telephone conversation
9 I sent him copies, and I had his authority by telephone.

10 Q. After this conversation, you endorsed the order dismissing
11 the claim without prejudice?

12 A. Yes.

13 Q. And at that time you endorsed the order, you were aware
14 of the possibility Southern was going to raise a claim for
15 counsel fees and so forth in connection with the claim, is
16 that right?

17 A. Not necessarily. I haven't kept up on the dates. As I
18 told you about three times, after the matter was concluded
19 I didn't keep up with it. I thought the matter was concluded.
20 My first indication from Frank Meade was on May 8 when he
21 refused to endorse my order. He never said that would be
22 a possibility, up until that time. He allowed me to settle
23 the case for \$15,000 thinking everything would be washed out,
24 and he let the jury and the court go home, when that was
still our understanding, and the last thing he said on that

1 date was, "I guess that washes them both out". I said, "I
2 guess it does". I thought that was what he meant and it was
3 my understanding all the time, regardless of what he reported
4 to Southern.

5 Q. So you endorsed the order, after you had that indication
6 from Mr. Meade and after consultation with your company?

7 A. Yes.

8 EXAMINATION BY MR. CARTER:

9 Q. Mr. Meade endorsed the order dismissing the suit also,
10 did he not?

11 A. He did.

12 And further this deponent saith not.

13
14

Allan Garrett