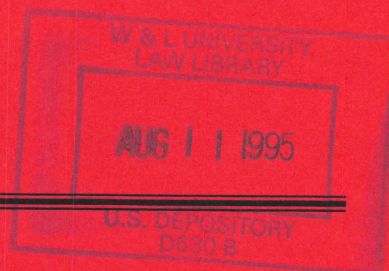
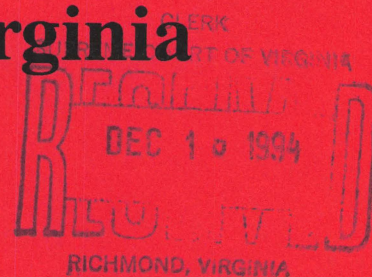


249 Va 376



IN THE
Supreme Court of Virginia

RECORD NO. 940660



GEORGIA ANNE SNYDER-FALKINHAM,

Appellant,

V.

BRUCE C. STOCKBURGER, et al.,

Appellees.

**JOINT APPENDIX
VOLUME I**

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Filed in the Clerk's Office this 18 day of Nov, 19 71
 Writ Tax \$ 25.00
 Fee \$ 20.00
 Lib. Fee \$ 4.00
 Total Paid \$ 49.00
 Testee
 PAISY TESTERMAN, Clerk
Lena Tester

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF ROANOKE
 AT ROANOKE, VIRGINIA

GEORGIA ANNE SNYDER-FALKINHAM

PLAINTIFF

VS.

MOTION FOR JUDGMENT

9/00/212

✓ BRUCE C. STOCKBURGER
 800 Colonial Plaza
 10 Franklin Road SE
 Roanoke, Virginia

and

✓ GENTRY, LOCKE, RAKES and MOORE,
 a partnership, with its principal
 offices at 800 Colonial Plaza
 10 Franklin Road SE
 Roanoke, Virginia (serve any
 general partner at said partnership)

and

✓ JOHN H. LOCKE
 3015 Carolina Avenue
 Roanoke (City), Virginia 24014

✓ RICHARD C. RAKES
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 Roanoke (County), Virginia 24014

✓ S. D. ROBERTS MOORE
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✓ WILLIAM O. TUNE, JR.
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 LITIGATION

✓
EUGENE E. DERRYBERRY ✓
6954 Briar Ridge Circle
Roanoke (County), Virginia 24018

DEFENDANTS

1. Plaintiff is a citizen and resident of Montgomery County, Virginia.

2. Defendant, Bruce C. Stockburger is an attorney with his principal office at 800 Colonial Plaza, Roanoke, Virginia.

3. The Defendant, Gentry, Locke, Rakes and Moore is a partnership with its principal offices at 800 Colonial Plaza, Roanoke, Virginia. Said partnership is the employer of and a partner with the defendant Bruce C. Stockburger.

Hereinafter, the defendant, Gentry Locke, Rakes and Moore will be referred to as "Gentry Locke" and the defendant, Bruce C. Stockburger will be referred to as "Stockburger".

3A. The defendants, John H. Locke, Richard C. Rakes, S. D. Roberts Moore, William R. Rakes, James R. Austin, William O. Tune, Jr., Charles L. Williams, Jr., and Eugene E. Derryberry, are general partners of the above designated partnership, along with others, not known to the plaintiff and are jointly and severally liable as partners for the acts of their employee and partner, Bruce C. Stockburger, under Sections 50-13, 50-14, 50-15 and 50-16 of the Code of Virginia, 1950, as amended. These defendants, as well as the partnership above named, and Bruce C. Stockburger are sued individually as well as in their partnership capacity. These defendants are partners with the defendant, Bruce C. Stockburger and are liable for his acts as hereinafter stated.

4. At all times material hereto, the defendants have

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undertaken to represent and have been charged with the duty to represent the plaintiff in all of her business and personal affairs as her legal representative. This representation by defendant Stockburger began around 1979 and continued after his affiliation with and partnership in the defendant law firm, Gentry, Locke. This representation continued in regard to certain matters until December, 1990.

5. By way of factual statement, the plaintiff alleges that in 1977, her husband, Peter Snyder, died leaving her with two (2) small children. Prior to his death, Peter Snyder established two (2) trusts designated as a "marital trust" and "residual trust". These trusts are and have been, for the past several years, administered by the Crestar Bank trust department in the City of Roanoke. The defendant, Stockburger, represented the plaintiff and her then minor children with regard to these trusts and the various business enterprises in which the plaintiff was engaged. The defendants represent Crestar Bank and have continued to represent the trusts. These defendants have never advised plaintiff of any potential conflicts of interest. As the plaintiff's legal representative, this defendant and later, his partners in the defendant law firm, Gentry, Locke, had complete and total access to all financial information and other business information contained in the trusts documents, the trusts income, and all other information involving plaintiff's business ventures.

In 1985, The Snyder Company, a corporation completely owned by the plaintiff herein and which was also represented by the

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defendant Stockburger, formed a partnership with Sampson Development Corporation, a corporation wholly owned by Ralph Sampson whom the defendant Stockburger also undertook to represent. This defendant never advised plaintiff of any potential conflicts of interest in this situation. The purpose of this partnership which was known as "Snyder and Associates" was to develop a housing project in Blacksburg, Virginia known as "The Vistas". A corporation known as Olver Incorporated and John Olver were employed to perform all engineering and architectural work on this project.

In January, 1987, the defendant, Stockburger along with John Olver, proposed the development of a project in the Radford, Virginia area which became know as the "High Meadow" project. The defendant, Stockburger, was to handle all legal affairs involving this project and John Olver and Olver Incorporated were to handle all the engineering and development aspects of this project. The Snyder Company, which is primarily a construction company was to do certain construction work on the project. The defendant, Stockburger, in proposing this project to the plaintiff made certain representations to the plaintiff regarding this development and what the plaintiff's role would be, what his role would be and what the role of John Olver and the Olver Incorporated would be. During the development of this project, the defendant, Stockburger, and his law partners, defendants, Gentry, Locke, continued to act and did act as legal counsel for the plaintiff and also undertook to represent the corporation set up to develop this project which corporation was

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known as "Rich Hill Development Corporation". Defendant Stockburger initially owned one-third of the shares in this corporation, plaintiff owned one-third of the shares and John Olver owned one-third of the shares. Plaintiff has learned that defendant, Stockburger, owns a pleasure yacht and certain business properties with John Olver. This relationship was never revealed to the plaintiff.

The project began experiencing substantial problems which primarily involved the work of John Olver and Olver Incorporated. The plaintiff discussed with defendant Stockburger the problems she was having with John Olver and Olver Incorporated at the Blacksburg project and requested he take action but Stockburger did not take any action nor did he advise the plaintiff to take any action involving that project against John Olver and/or Olver Incorporated.

6. As heretofore stated, the project near Radford, Virginia, known as "High Meadows" and involved the corporation Rich Hill Development Corporation, which the plaintiff, defendant Stockburger, and John Olver were stockholders in, began with problems and continued with problems with regard to the engineering and/or architectural designs. Defendant Stockburger was consulted regularly concerning what action could be taken to correct these matters but refused to take any action or do anything about these matters. In July, 1988, John Olver was permitted to withdraw from the business venture without payment of any of the debts which he had co-guaranteed and plaintiff was never advised by defendants of the consequences of this action.

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Defendants did not advise plaintiff of their conflicts of interest regarding Olver and his withdrawal at this time either. Subsequently and over the period from 1987 to December, 1990, the plaintiff has been required and has paid in excess of Three Million Dollars from her personal funds for the "High Meadows" project and has been subjected to payment of several Million Dollars for "The Vistas" project.

7. Plaintiff charges that the defendants, herein have breached their contractual duties to represent her and her business interest properly, competently, diligently and within the rules of conduct established for Attorneys in the Commonwealth of Virginia. Plaintiff further charges that the defendants have been guilty of conflicts of interest during the several years they were being paid to represent her interest which conflicts this plaintiff has only recently discovered. Plaintiff charges that the defendant Stockburger, used the knowledge and information he obtained while acting as her legal representative to advance and/or attempt to advance his own financial interest; that he used this information to extract himself from a disastrous financial position and placed the entire financial burden of this business venture upon the plaintiff and the trust fund left to her and her children by her deceased husband; and that the defendant, Gentry, Locke, in its partnership role and as an employer and partner of the defendant Stockburger, is responsible and liable for his acts and their acts.

8. Plaintiff further charges that the defendants herein,

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were negligent in their representation of her. Specifically, plaintiff charges that the defendants owed a duty to properly, competently, diligently and properly represent her interest. Said defendants owed a duty to advise and counsel plaintiff in the manner and method exercised by attorneys in the same or similar circumstances; to take action to protect her interest; to avoid conflicts of interest; and to avoid any improprieties or even the appearance of improprieties in their representation of her. Despite these duties owed by the defendants to the plaintiff, plaintiff charges that these defendants failed to take action against John Olver and Olver Incorporated which they knew or should have known was necessary to prevent the losses subsequently suffered by the plaintiff at both "The Vistas" project and the "High Meadows" project. Plaintiff charges that the defendant did not take any such action because they represented both John Olver and Olver Incorporated at the same time they were undertaking to represent plaintiff's interest; that said defendant never advised the plaintiff of these conflicts of interest and, in fact, the plaintiff only discovered this conflict in representation within the past few months. Plaintiff charges that the defendant, Stockburger, using his knowledge of her financial affairs, managed to saddle her with almost the entire debt incurred at the "High Meadows" project and, with the connivance of others, came up with a scheme which he knew or by the exercise of reasonable care, should know will only result in additional costs and expense to her. This scheme resulted in the defendant, Stockburger, acquiring 51% of the

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stock of the corporation known as "Rich Hill Development Corporation" a corporation which defendant Stockburger set up and for which he acted as counsel. Plaintiff will show that the entire circumstances surrounding these defendants representation of her during the past five (5) years has been totally and completely improper, negligent, and contrary to the canons of ethics which govern the conduct of lawyers in the Commonwealth of Virginia. Such conduct constitutes and amounts to negligence, malfeasances, misfeasances, and breach of contract, as aforesaid.

9. Plaintiff charges that as a direct and proximate result of the breach of contract, negligence, misfeasances, malfeasants, and improper conduct of the defendants herein, she has suffered and will continue to suffer losses in the future totalling in excess of Eight Million Dollars. Plaintiff charges that because of the willful, wanton, reckless and improper conduct of the defendant, Bruce C. Stockburger, she is entitled to punitive damages as to him and, therefore, seeks an additional amount of Two and One Half Million Dollars in punitive damages against this defendant and demands a jury to try this cause.

GEORGIA ANNE SNYDER-FALKINHAM

BY: C O U N S E L


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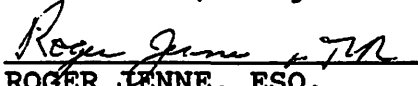
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VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF ROANOKE
AT ROANOKE, VIRGINIA

GEORGIA ANNE SNYDER-FALKINHAM

PLAINTIFF

VS.

SECOND AMENDED MOTION FOR JUDGMENT

BRUCE C. STOCKBURGER
800 Colonial Plaza
10 Franklin Road SE
Roanoke, Virginia

and

GENTRY, LOCKE, RAKES and MOORE,
a partnership, with its principal
offices at 800 Colonial Plaza
10 Franklin Road SE
Roanoke, Virginia (serve any
general partner at said partnership)

and

S. D. ROBERTS MOORE
2711 South Jefferson Street
Roanoke (City), Virginia 24014

WILLIAM R. RAKES
420 Willow Oak Drive
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JAMES R. AUSTIN
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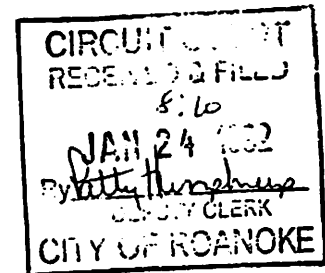
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W. William Gust
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Guy M. Harbert, III
800 Colonial Plaza
Roanoke, Virginia

David G. Weaver
800 Colonial Plaza
Roanoke, Virginia

DEFENDANTS

1. Plaintiff is a citizen and resident of Montgomery County, Virginia.

2. Defendant, Bruce C. Stockburger is an attorney with his principal office at 800 Colonial Plaza, Roanoke, Virginia.

3. The Defendant, Gentry, Locke, Rakes and Moore is a partnership with its principal offices at 800 Colonial Plaza, Roanoke, Virginia. Said partnership is the employer of and a partner with the defendant Bruce C. Stockburger.

Hereinafter, the defendant, Gentry Locke, Rakes and Moore will be referred to as "Gentry Locke" and the defendant, Bruce C. Stockburger will be referred to as "Stockburger".

3A. The defendants, S. D. Roberts Moore, William R. Rakes, James R. Austin, Charles L. Williams, Jr., Eugene E. Derryberry, William J. Creech, James C. Joyce, Jr., Linda Davis Frith, W. David Paxton, W. William Gust, Guy M. Harbert, III, and David G. Weaver, are general partners of the above designated partnership, along with others, not known to the plaintiff and are jointly and severally liable as partners for the acts of

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CIVIL AND CRIMINAL
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their employee and partner, Bruce C. Stockburger, under Sections 50-13, 50-14, 50-15 and 50-16 of the Code of Virginia, 1950, as amended. These defendants, as well as the partnership above named, and Bruce C. Stockburger are sued individually as well as in their partnership capacity. These defendants are partners with the defendant, Bruce C. Stockburger and are liable for his acts as hereinafter stated.

4. At all times material hereto, the defendants have undertaken to represent and have been charged with the duty to represent the plaintiff in all of her business and personal affairs as her legal representative. This representation by defendant Stockburger began around 1979 and continued after his affiliation with and partnership in the defendant law firm, Gentry, Locke. This representation continued in regard to certain matters until December, 1990.

5. By way of factual statement, the plaintiff alleges that in 1977, her husband, Peter Snyder, died leaving her with two (2) small children. Prior to his death, Peter Snyder established two (2) trusts designated as a "marital trust" and "residual trust". These trusts are and have been, for the past several years, administered by the Crestar Bank trust department in the City of Roanoke. The defendant, Stockburger, represented the plaintiff and her then minor children with regard to these trusts and the various business enterprises in which the plaintiff was engaged. The defendants represent Crestar Bank and have continued to represent the trusts. These defendants have never advised plaintiff of any potential conflicts of interest. As the

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plaintiff's legal representative, this defendant and later, his partners in the defendant law firm, Gentry, Locke, had complete and total access to all financial information and other business information contained in the trusts documents, the trusts income, and all other information involving plaintiff's business ventures.

In 1985, The Snyder Company, a corporation completely owned by the plaintiff herein and which was also represented by the defendant Stockburger, formed a partnership with Sampson Development Corporation, a corporation wholly owned by Ralph Sampson whom the defendant Stockburger also undertook to represent. This defendant never advised plaintiff of any potential conflicts of interest in this situation. The purpose of this partnership which was known as "Snyder and Associates" was to develop a housing project in Blacksburg, Virginia known as "The Vistas". A corporation known as Olver Incorporated and John Olver were employed to perform all engineering and architectural work on this project.

In January, 1987, the defendant, Stockburger along with John Olver, proposed the development of a project in the Radford, Virginia area which became know as the "High Meadow" project. The defendant, Stockburger, was to handle all legal affairs involving this project and John Olver and Olver Incorporated were to handle all the engineering and development aspects of this project. The Snyder Company, which is primarily a construction company was to do certain construction work on the project. The defendant, Stockburger, in proposing this project

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to the plaintiff made certain representations to the plaintiff regarding this development and what the plaintiff's role would be, what his role would be and what the role of John Olver and the Olver Incorporated would be. During the development of this project, the defendant, Stockburger, and his law partners, defendants, Gentry, Locke, continued to act and did act as legal counsel for the plaintiff and also undertook to represent the corporation set up to develop this project which corporation was known as "Rich Hill Development Corporation". Defendant Stockburger initially owned one-third of the shares in this corporation, plaintiff owned one-third of the shares and John Olver owned one-third of the shares. Plaintiff has learned that defendant, Stockburger, owns a pleasure yacht and certain business properties with John Olver. This relationship was never revealed to the plaintiff.

The project began experiencing substantial problems which primarily involved the work of John Olver and Olver Incorporated. The plaintiff discussed with defendant Stockburger the problems she was having with John Olver and Olver Incorporated at the Blacksburg project and requested he take action but Stockburger did not take any action nor did he advise the plaintiff to take any action involving that project against John Olver and/or Olver Incorporated.

6. As heretofore stated, the project near Radford, Virginia, known as "High Meadows" and involved the corporation Rich Hill Development Corporation, which the plaintiff, defendant Stockburger, and John Olver were stockholders in, began with

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problems and continued with problems with regard to the engineering and/or architectural designs. Defendant Stockburger was consulted regularly concerning what action could be taken to correct these matters but refused to take any action or do anything about these matters. In July, 1988, John Olver was permitted to withdraw from the business venture without payment of any of the debts which he had co-guaranteed and plaintiff was never advised by defendants of the consequences of this action. Defendants did not advise plaintiff of their conflicts of interest regarding Olver and his withdrawal at this time either. Subsequently and over the period from 1987 to December, 1990, the plaintiff has been required and has paid in excess of Three Million Dollars from her personal funds for the "High Meadows" project and has been subjected to payment of several Million Dollars for "The Vistas" project.

7. Plaintiff charges that the defendants, herein have breached their contractual duties to represent her and her business interest properly, competently, diligently and within the rules of conduct established for Attorneys in the Commonwealth of Virginia. Plaintiff further charges that the defendants have been guilty of conflicts of interest during the several years they were being paid to represent her interest which conflicts this plaintiff has only recently discovered. Plaintiff charges that the defendant Stockburger, used the knowledge and information he obtained while acting as her legal representative to advance and/or attempt to advance his own financial interest; that he used this information to extract

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himself from a disastrous financial position and placed the entire financial burden of this business venture upon the plaintiff and the trust fund left to her and her children by her deceased husband; and that the defendant, Gentry, Locke, in its partnership role and as an employer and partner of the defendant Stockburger, is responsible and liable for his acts and their acts.

8. Plaintiff further charges that the defendants herein, were negligent in their representation of her. Specifically, plaintiff charges that the defendants owed a duty to properly, competently, diligently and properly represent her interest. Said defendants owed a duty to advise and counsel plaintiff in the manner and method exercised by attorneys in the same or similar circumstances; to take action to protect her interest; to avoid conflicts of interest; and to avoid any improprieties or even the appearance of improprieties in their representation of her. Despite these duties owed by the defendants to the plaintiff, plaintiff charges that these defendants failed to take action against John Olver and Olver Incorporated which they knew or should have known was necessary to prevent the losses subsequently suffered by the plaintiff at both "The Vistas" project and the "High Meadows" project. Plaintiff charges that the defendant did not take any such action because they represented both John Olver and Olver Incorporated at the same time they were undertaking to represent plaintiff's interest; that said defendant never advised the plaintiff of these conflicts of interest and, in fact, the plaintiff only discovered

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this conflict in representation within the past few months. Plaintiff charges that the defendant, Stockburger, using his knowledge of her financial affairs, managed to saddle her with almost the entire debt incurred at the "High Meadows" project and, with the connivance of others, came up with a scheme which he knew or by the exercise of reasonable care, should know will only result in additional costs and expense to her. This scheme resulted in the defendant, Stockburger, acquiring 51% of the stock of the corporation known as "Rich Hill Development Corporation" a corporation which defendant Stockburger set up and for which he acted as counsel. Plaintiff will show that the entire circumstances surrounding these defendants representation of her during the past five (5) years has been totally and completely improper, negligent, and contrary to the canons of ethics which govern the conduct of lawyers in the Commonwealth of Virginia. Such conduct constitutes and amounts to negligence, malfeasances, misfeasances, and breach of contract, as aforesaid.

9. Plaintiff charges that as a direct and proximate result of the breach of contract, negligence, misfeasances, malfeasants, and improper conduct of the defendants herein, she has suffered and will continue to suffer losses in the future totalling in excess of Eight Million Dollars. Plaintiff charges that because of the willful, wanton, reckless and improper conduct of the defendant, Bruce C. Stockburger, she is entitled to punitive damages as to him and, therefore, seeks an additional amount of Two and One Half Million Dollars in punitive damages against this defendant and demands a jury to try this cause.

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CIVIL AND CRIMINAL
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GEORGIA ANNE SNYDER-FALKINHAM

BY: C O U N S E L


THOMAS L. RASNIC, ESQ.

Rasnic and Rasnic, PC

PO Box 733

Jonesville, Virginia 24263


ROGER JENNE, ESQ.

Attorney at Law

PO Box 161

Cleveland, Tennessee 37364

CERTIFICATE OF SERVICE
WE CERTIFY THAT I HAVE PERSONALLY DELIVERED TO THE FOREGOING
NAME OF THE PARTY TO BE SERVED, A COPY OF THE FOREGOING
DOCUMENTS, AND I HAVE THEREUPON RETURNED TO THE
COURT THE RECEIPT OF THE PARTY TO BE SERVED, OR
SOMEONE TO WHOM I HAVE DELIVERED THE SAME TO THE
COURT.
THIS 22nd Jan 19 92

BY 

Rasnic & Rasnic, P.C.

James E. Rasnic

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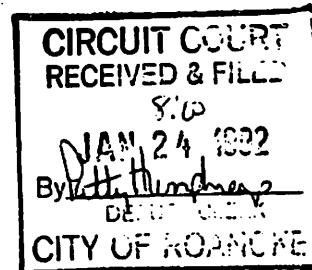
JAMES E. RASNIC

LICENSED TO PRACTICE
IN VIRGINIA ONLY

January 22, 1992

Arthur B. Crush, III, Clerk
Circuit Court for the City
of Roanoke
315 West Church Street
Roanoke, Virginia 24010

RE: Georgia Anne Snyder-Falkinham
vs. Bruce C. Stockburger, et al



Dear Mr. Crush:

Enclosed herein is a Second Amended Motion for Judgment to be filed in the above styled case. By copy of this letter, I am forwarding an Order to Frank Miller, attorney for defendants, allowing this amendment and extension to file responsive pleadings and ask that he forward it on the you for entry with the Court.

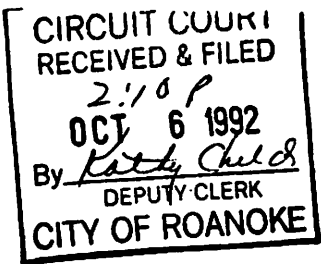
Sincerely,

Thomas L. Rasnic

TLR/pbr

Enclosure

c: Frank Miller, III, Esq.



VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ROANOKE

GEORGIA ANNE SNYDER-FALKINHAM,)	
)	
Plaintiff,)	
)	
V.)	THIRD AMENDED MOTION
)	FOR JUDGMENT
)	
BRUCE C. STOCKBURGER, <u>et al.</u> ,)	CL 91-1212
)	
Defendants.)	

TO THE HONORABLE JUDGES OF THE CIRCUIT COURT:

Without waiving her exceptions and objections to the Court's prior ruling and her Motion to Reconsider, the Plaintiff, Georgia Anne Snyder-Falkinham, by counsel, files this Third Amended Motion for Judgment, alleging the following:

1. Every allegation contained in the paragraphs of the original and amended Motions for Judgments filed in CL 91-1212 are repeated and re-alleged as if the same were set forth fully herein.

2. Plaintiff is a citizen and resident of Montgomery County, Virginia.

3. Defendant, Bruce C. Stockburger, is an attorney with his principal office at 800 Colonial Plaza, Roanoke, Virginia.

4. Defendant, Gentry, Locke, Rakes & Moore, is a Virginia general partnership with its principal offices at 800 Colonial Plaza, Roanoke, Virginia. Each of the individual defendants in this proceeding is, or was at applicable times, a general partner in, and employed by, Gentry, Locke, Rakes & Moore. Each of the

individual defendants in this proceeding, as a general partner in Gentry, Locke, Rakes & Moore, and Gentry, Locke, Rakes & Moore will sometimes hereinafter be, and have at times heretofore been, referenced as either "Gentry Locke" or "Defendants." The defendant, Bruce C. Stockburger, will sometimes hereinafter be, and has at times heretofore been, referenced as "Stockburger" or "Defendant." Gentry Locke and the individual defendants, including Stockburger, will sometimes hereinafter be, and have at times heretofore been, referenced collectively as the "Defendants."

4A. The individual general partner-Defendants, as general partners of Gentry Locke are jointly and severally liable as general partners for the acts of Gentry Locke and Stockburger. Each of the individual Defendants, including Stockburger, is being sued in his individual capacity, as well as in his/her capacity as a general partner of Gentry Locke. Gentry Locke and each of the other individual Defendants, excluding Stockburger, are liable for Stockburger's actions as hereinafter and heretofore stated.

5. At all times material hereto, the Defendants have undertaken to represent, have represented, and have been charged with the duty to represent the Plaintiff in all of her business, financial, and personal affairs as her legal representatives and lawyers. Stockburger began the representation around 1979 and continued until December, 1990. In 1983, Stockburger became affiliated with the partnership of Gentry Locke and, subsequently, became a general partner in that partnership.

5A. Defendants entered into both expressed and implied contractual arrangements with Plaintiff during the period beginning in 1983 and continuing until December 1990. Plaintiff paid valuable consideration totaling in excess of \$300,000 for Defendants' representation during this period, in which the Defendants agreed to perform and represent her interests in various legal matters. Pursuant to these contractual arrangements, the Defendants owed to the Plaintiff certain responsibilities and duties, as established by the attorney-client relationship, and Defendants breached their contractual duties to the Plaintiff, thereby causing the Plaintiff damages as hereinafter and heretofore stated.

6. Defendants breached their contractual duties to represent the Plaintiff and her business interests properly, competently, diligently, and within the standards established for attorneys in the Commonwealth of Virginia. Defendants engaged in conduct which amounted to conflicts of interest during the period of time that they represented her. Further, Stockburger used knowledge and information obtained while acting as Plaintiff's legal representative to advance and/or attempt to advance his own financial interest; used his position as her attorney to financially benefit himself and partners in Gentry Locke; and failed to adequately and competently advise the Plaintiff as to actions which she needed to take with regard to matters about which Defendants represented her during the period of 1983 through December 1990.

7. Defendants violated §54.1-3906 of the 1950 Code of Virginia, as amended, (hereafter "Code") by neglecting their duties to Plaintiff, thereby causing Plaintiff to sustain damages as stated hereinafter and in Plaintiff's prior pleadings. Further, Defendants, as attorneys at law charged with representing the Plaintiff, violated their duties under Code §26-5 by negligent and/or improper conduct, thereby causing Plaintiff to incur debts and to lose or pay money which she would not have had to incur, lose, or pay had her attorneys exercised the reasonable degree of care, skill, and dispatch required by law in carrying out the business for which the Plaintiff had employed them.

8. In 1986, Defendants (i.e., Gentry Locke and Stockburger) and John Olver (hereafter "Olver") contemplated purchasing and/or developing into residential housing, either separately and/or with some members of the Wiley family (hereafter "the Wileys"), a 600-acre piece of undeveloped real estate in the City of Radford, Virginia (hereafter "High Meadows Project"). Gentry Locke eventually decided not to participate as an owner in the High Meadows Project. Stockburger, Olver, and the Wileys, however, continued planning to develop the High Meadows Project.

Stockburger, Olver, and/or Olver, Incorporated (a Corporation owned by Olver) prepared plans, budgets, and projections for the development of the High Meadows Project and decided to attempt the development without the financial assistance of the Wileys. However, financial means to accomplish the development became an ever-pressing need; and Stockburger and Olver, for that reason,

turned to the Plaintiff. Stockburger and Olver presented the plans, budgets, and projections to the Plaintiff to induce her to invest in the stock of a corporation, which became known as the Rich Hill Development Corporation (hereafter "Rich Hill") , to develop the High Meadows Project. The plans, budgets, and projections presented to the Plaintiff disclosed that the development would produce profits in the millions of dollars. Stockburger and Olver represented that the figures in the plans, budgets, and projections were conservative and accurate and that a substantial profit would be inevitable. Stockburger and Olver made these representations knowing them to be false, incomplete, and inaccurate at the time in order to induce Plaintiff to invest in the project. The plans, budgets, and projections contained material misrepresentations which were known to Stockburger and Olver at the time they were made. Stockburger and Olver further represented that the development of the High Meadows Project in stages would not require any substantial investment by the owners of stock in Rich Hill and that, if any contributions were required, such contributions and/or responsibilities would be pro rata, based upon the percent of stock ownership.

When Plaintiff reminded Stockburger of some previous problems with Olver at "The Vistas" before she purchased her stock in Rich Hill, Stockburger represented to Plaintiff that those types of problems would not happen again and that he would "ride herd" on Olver to make sure that everything was done correctly. This representation was made to directly induce Plaintiff to purchase

the shares in Rich Hill. Stockburger knew that the false and misleading impressions and representations created by him and Olver were in fact false and that Olver did have significant problems which Stockburger, as counsel for Olver, could not disclose to Plaintiff. Stockburger nevertheless acted with the intent that the impressions and representations that he and Olver made would be acted upon by Plaintiff to her detriment.

After Plaintiff had orally committed to the project, Stockburger and Olver required Plaintiff to pay in excess of \$20,000 for the same number of shares in Rich Hill which they paid at \$100 each to acquire. The Plaintiff was never told of this unequal purchase price for 100 shares and did not discover it until approximately June of 1992. Plaintiff's contribution to purchase her 100 shares in Rich Hill was used to pay Gentry Locke, et al., for the services it/they rendered to the Wileys before Plaintiff became involved in the High Meadows Project. Stockburger had previously solicited the help of Plaintiff's husband to encourage her to invest in and pay an amount in excess of \$20,000 (Plaintiff's husband also being unaware that this contribution would be far in excess of that by Stockburger and Olver) to Rich Hill.

The High Meadows Project ultimately failed as a result of errors by Stockburger and Olver in the plans, budgets, and projections presented to Plaintiff. Plaintiff has suffered in her business of construction and in her business reputation because of this failure. Plaintiff purchased her stock in Rich Hill in

reliance upon the fraudulent appearances and representations of Stockburger and Olver. By their actions aforesaid, Stockburger, Olver, and others knowingly executed and attempted to execute a plan, scheme, or artifice to obtain moneys, funds, credits, assets, securities, or other property owned by Plaintiff by means of false and fraudulent pretenses, representations, or promises. It was a foreseeable and natural result of Stockburger's fraudulent activities that the Plaintiff would rely upon the false impressions and representations created by Stockburger and that Plaintiff would believe that the impressions and representations created by Stockburger were true, when in fact they were false. As a proximate result of the false and misleading impressions and representations created by Stockburger and Olver, Plaintiff was induced to purchase stock in Rich Hill. The false and misleading impressions and representations created by Stockburger and Olver were of critical importance to Plaintiff in deciding to purchase her shares of stock in that the shares were purchased directly from Stockburger, as the incorporator and preparer of the stock certificates, and in reliance upon the belief that Stockburger was a trusted, trustworthy, law abiding, and capable attorney who was serving her needs without any conflicts of interest.

By the actions and omissions described herein, Stockburger and others participating in the schemes made, or caused to be made, false and misleading representations to persons and entities which included Plaintiff, with knowledge of the falsity of the representations and with reckless disregard for the truth or

falsity of the representations, willfully and maliciously with the intent that the representations be relied upon by the Plaintiff so as to induce her to part with property or to surrender legal rights. As previously alleged herein, Plaintiff justifiably relied upon the false and misleading representations made by Stockburger and Olver.

The false and misleading representations made by Stockburger and Olver, aided and abetted by the other Defendants, and the Plaintiff's justifiable reliance thereupon, proximately caused the damage and prejudice of the Plaintiff, entitling her to an award of actual and punitive damages against each of the Defendants, with liability of the Defendants to be joint and several. The damages proximately caused by the Defendants' fraud and participation in fraud include the damages set forth herein and in the original and Amended Motions for Judgment filed in this proceeding.

9. Stockburger engaged in concerted action which amounted to fraud and deceit in that he, in conspiracy and concert with others, during the period beginning in September, 1990, and ending in December, 1990, developed a scheme, artifice, or devise whereby he could avoid any and all responsibility to the Plaintiff as a co-guarantor on certain notes and obligations executed by the both of them (i.e., Plaintiff and Stockburger) to Central Fidelity Bank. Stockburger, in conspiracy and in concerted action with others, devised a deceptive and fraudulent scheme to procure the Plaintiff's execution of a document, purporting to be a release from the Plaintiff. The execution of this document was procured by

fraud and deceit on the part of Stockburger, while Stockburger, as a co-director with Plaintiff in Rich Hill and as a legal representative to Plaintiff and her various entities, owed a fiduciary duty to Plaintiff. As a result of this fraudulent and deceptive scheme, Plaintiff lost her rights as a co-guarantor to be reimbursed by Stockburger, who was a co-guarantor on certain notes and obligations owed to Central Fidelity Bank in the amount of approximately 1.8 million dollars. Plaintiff did not learn of this scheme until June, 1992. Further, Stockburger committed fraud and deceit by purporting to obtain a loan in the approximate amount of \$700,000 from Central Fidelity Bank and thereafter failing to go through with this loan, while leaving Plaintiff under the impression that such loan had been procured, made, and completed. Stockburger's fraud and deceit in not closing on this additional loan was specifically designed to avoid obligating himself for an additional \$700,000, which was desperately needed by Rich Hill to avoid bankruptcy.

10. Stockburger, while acting as counsel for Plaintiff, either negligently misrepresented or willfully and intentionally misrepresented certain facts to her, which she reasonably relied upon to her detriment, in that Stockburger and Olver represented to Plaintiff that the High Meadows Project would cost 1.4 million dollars to develop, while knowing that the actual cost would far exceed this represented amount. The High Meadows Project actually cost in excess of 3.5 million dollars to develop. As a result of the negligence and willful and intentional misconduct of

Defendants, as identified in the prior pleadings and herein, Plaintiff has sustained compensatory damages in excess of 4.5 million dollars.

11. By their actions and omissions aforesaid, the Defendants by fraudulent concealment or other actions intentionally prevented Plaintiff from acquiring material information regarding the acquisition and sale of stock in Rich Hill and the management and operation of the High Meadows Project. Defendants' fraudulent concealment proximately caused the damage and prejudice of Plaintiff, entitling her to an award of actual and punitive damages against each of the Defendants, with liability of the Defendants to be joint and several.

12. Defendants and Stockburger failed to disclose to Plaintiff facts which they knew might justifiably induce Plaintiff to act or refrain from acting in the business transactions in question. Defendants and Stockburger were under a duty to exercise reasonable care to disclose the facts concerning the matters in question in that:

- a) Defendants and Stockburger were obligated to disclose to Plaintiff its legal representation of Olver and Olver, Incorporated, since they owed a fiduciary duty to Plaintiff;
- b) Defendants and Stockburger were obligated to disclose to Plaintiff all conflicts of interest and procure an informed waiver of such conflicts, since they owed a fiduciary duty to Plaintiff and since Stockburger owned an interest in Rich Hill;
- c) Defendants and Stockburger were obligated to disclose to Plaintiff the errors in the plans, budgets, and projections of Stockburger, Olver, and/or Olver, Incorporated;

- d) Defendants and Stockburger were obligated to disclose to Plaintiff the consequence of her and Stockburger's unequal initial contributions to purchase shares in Rich Hill;
- e) Defendants and Stockburger were obligated to disclose to Plaintiff the financial resources of Stockburger and Olver and the effect of such "resources" on: the viability of the High Meadows Project; the execution of various notes to financial institutions; and the ability to pay the debt obligations of Rich Hill by Stockburger and/or Olver;
- f) Defendants and Stockburger were obligated to disclose to Plaintiff the financial reasons for Olver's departure from the High Meadows Project;
- g) Defendants and Stockburger were obligated to timely disclose to Plaintiff the reasons why they refused to take legal actions against Olver and/or Olver, Incorporated, when the actionable conduct was first discovered;
- h) Defendants and Stockburger were obligated to disclose to Plaintiff that she was not legally obligated to pay the general liabilities of Rich Hill;
- i) Defendants and Stockburger were obligated to disclose to Plaintiff and others the consequence of Plaintiff's selling a block of stock in Rich Hill to Stockburger, including the potential tax effect of such transaction on Plaintiff, her Marital Trust, Residual Trust, and other beneficiaries of the two trusts;
- j) Defendants and Stockburger were obligated to disclose to Plaintiff the consequence of any purported "release" of Stockburger on the Plaintiff's ability to sue Stockburger for contributions; and
- k) The actions and omissions of the Defendants and Stockburger were constructively fraudulent in that they had a tendency to deceive the Plaintiff, violated the public trust and private confidence reposed in attorneys and the legal system, and were injurious to the public interest.

By their actions and omissions aforesaid, the Defendants, other than Stockburger, participated in, and aided and abetted, Stockburger's fraudulent nondisclosure of material facts to

Plaintiff. Defendants' nondisclosure proximately caused the damage and prejudice of Plaintiff, entitling her to an award of actual and punitive damages against each of the Defendants, with liability of the Defendants to be joint and several.

13. By virtue of their employment as attorneys at law for Plaintiff, Defendants owed a fiduciary duty to Plaintiff. The fiduciary duty owed by Defendants included the duties previously alleged. By the actions and omissions described herein and in the prior pleadings, Defendants and Stockburger willfully breached the fiduciary duties they owed to Plaintiff, proximately causing Plaintiff damage and prejudice and entitling Plaintiff to an award of actual and punitive damages against each of the Defendants, including Stockburger. By their actions and omissions described herein, the Defendants, other than Stockburger, each participated in, and aided and abetted, the breaches by Stockburger of his fiduciary obligations to Plaintiff. The Defendants' breach of fiduciary duty proximately caused the damage and prejudice of Plaintiff, entitling her to an award of actual and punitive damages against each of the Defendants, with liability of the Defendants to be joint and several.

14. As a result of the Defendants' actions and omissions aforesaid, the Defendants and specifically Stockburger were unjustly enriched by the receipt of attorneys' fees from Plaintiff and the removing of Stockburger from further liability related to the business transactions of Rich Hill and the High Meadows Project. The Defendants received said benefits with knowledge of

the fact that the benefits were the direct and proximate result of their unlawful activities. Plaintiff is entitled to rescind the purchase and/or sale of Rich Hill stock, releases, and other transactions which Plaintiff entered into as a result of Defendants' wrongdoing, is entitled to an accounting by Defendants regarding the application and use of funds in Rich Hill, is entitled to restitution of the monies paid out by Plaintiff to pay off the general liabilities of Rich Hill, and is entitled to restitution of the monies paid out by Plaintiff to pay off the debts of Rich Hill on which Stockburger was once liable.

15. Because of Defendants', and specifically Stockburger's, willful, intentional, wanton, and reckless conduct, Plaintiff is entitled to punitive damages against each of the Defendants, jointly and severally.

WHEREFORE, Plaintiff demands judgment against the Defendants Stockburger, Gentry Locke, S. D. Roberts Moore, William R. Rakes, James R. Austin, Charles L. Williams, Jr., Eugene E. Derryberry, William J. Creech, Jr., James C. Joyce, Jr., Linda Davis Frith, W. David Paxton, W. William Gust, Guy M. Harbert, III, David G. Weaver, Howard J. Beck, Jr., Jane S. Glenn, and G. Michael Pace, Jr., jointly and severally, in the sum of FOUR MILLION AND FIVE HUNDRED THOUSAND DOLLARS (\$4,500,000) plus prejudgment interest until paid and costs expended in this action, together with punitive damages in the sum of ONE MILLION DOLLARS (\$1,000,000), and further prays for rescission, restitution, an accounting, and all other relief which is warranted on the evidence at trial.

A trial by jury is demanded by Plaintiff.

GEORGIA ANNE SNYDER-FALKINHAM

by: Thomas L. Rasnic
Of Counsel

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(703) 346-3690
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and

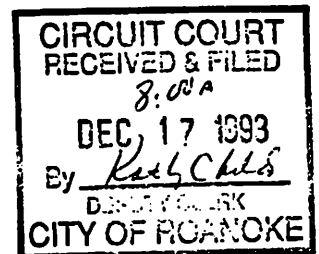
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(615) 476-5506
Tennessee State Bar #000966

COUNSEL FOR PLAINTIFF

C E R T I F I C A T E

I, Thomas L. Rasnic, do hereby certify that a true and accurate copy of the foregoing Third Amended Motion for Judgment was mailed to counsel of record for the Defendants on this 6th day of October, 1992.

Thomas L. Rasnic
THOMAS L. RASNIC, ESQ.



VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ROANOKE

GEORGIA ANNE SNYDER-FALKINHAM,

Plaintiff,

versus

No. CL91-1212

BRUCE C. STOCKBURGER, ET AL.,

Defendants.

**MOTION FOR A
DISPUTE RESOLUTION EVALUATION SESSION**

This defendant, Bruce C. Stockburger, by counsel, comes now and respectfully moves, pursuant to *Va. Code Ann.* § 8.01-576.5, this Court to enter an Order referring this case to a dispute resolution evaluation session.

**MEMORANDUM IN SUPPORT OF
MOTION FOR A DISPUTE RESOLUTION EVALUATION SESSION**

In *Va. Code Ann.* §§ 8.01-576.4, *et seq.*, the General Assembly established a mechanism for referring any contested civil matter or selected issues in a civil matter to dispute resolution proceedings. Under Code § 8.01-576.5, "a court . . . on motion of one of the parties, may refer any contested civil matter, or selected issues in a civil matter to a dispute resolution evaluation session in order to encourage the early settlement of disputes."

In the dispute resolution evaluation session, the parties conduct a preliminary meeting with a trained "neutral" and assess the case and decide whether to continue with a dispute resolution proceeding or with adjudication. *See Va. Code Ann.* § 8.01-576.4. With the complex transactions in this case, the large number of allegations, and the protracted

nature of this case, Defendant Stockburger believes that the above procedure would be useful and potentially could save judicial resources.

WHEREFORE, Defendant Bruce C. Stockburger respectfully requests that this Court enter an Order referring this case to a dispute resolution evaluation session.

BRUCE C. STOCKBURGER

By Counsel



Frank B. Miller, III
S. Vernon Priddy, III
Michele H. Metcalfe
Rudolph Bumgardner, IV
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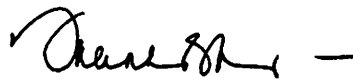
CERTIFICATE

I certify that on this 15th day of December, 1993, a true copy of the foregoing was delivered by hand to:

Thomas L. Rasnic
RASNIC AND RASNIC, PC
Post Office Box 733
Jonesville, Virginia 24263

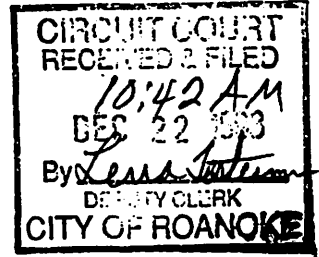
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Post Office Box 161
Cleveland, Tennessee 37364-0161

Ronald D. Hodges
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100 S. Mason Street
Harrisonburg, Virginia 22801

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VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ROANOKE



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BRUCE C. STOCKBURGER

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Richmond, Virginia 23216-1998
(804) 782-7255

CERTIFICATE

I certify that on this 15th day of December, 1993, a true copy of the foregoing was delivered by hand to:

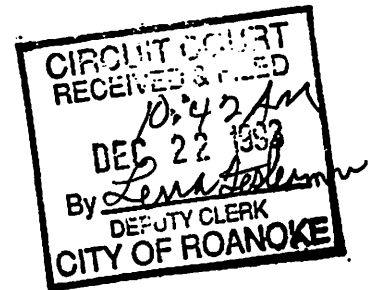
Thomas L. Rasnic
RASNIC AND RASNIC, PC
Post Office Box 733
Jonesville, Virginia 24263

Roger Jenne
JENNE, BRYANT AND SCOTT
Post Office Box 161
Cleveland, Tennessee 37364-0161

Ronald D. Hodges
WHARTON, ALDHIZER & WEAVER
100 S. Mason Street
Harrisonburg, Virginia 22801

 —

LAW OFFICES
SANDS, ANDERSON, MARKS & MILLER
A PROFESSIONAL CORPORATION
THE ROSS BUILDING
801 EAST MAIN STREET
POST OFFICE BOX 1998
RICHMOND, VIRGINIA 23216 - 1998
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FRANK B. MILLER, III

DIRECT DIAL NO.:
804/783-7255

December 15, 1993

Arthur B. Crush, III, Clerk
Circuit Court of the City of Roanoke
315 Church Avenue, SW
P. O. Box 2610
Roanoke, VA 24010

Re: Georgia Anne Snyder-Falkinham
v. Bruce C. Stockburger, et al.
Case No. CL91-1212
Our File No. 48-023375

Dear Mr. Crush:

Enclosed please find a Motion for a Dispute Resolution Evaluation Session pursuant to Va. Code Ann. § 8.01-576.5, which we would appreciate your filing among the papers in this matter.

We are enclosing a copy of the sketch for the order based upon this motion. The original of the sketch, along with a copy of this motion, is being sent directly to Judge Jennings for his consideration.

Please advise if you need further information from us.

Sincerely yours,

ORIGINAL SIGNED BY
FRANK B. MILLER, III

Frank B. Miller, III

FBMIII/sfp
Enclosure

cc: The Honorable Barnard F. Jennings (w/enc.)
Thomas L. Rasnic, Esquire (w/enc.)
Roger Jenne, Esquire (w/enc.)
Ronald D. Hodges, Esquire (w/enc.)

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ROANOKE

GEORGIA ANNE SNYDER-FALKINHAM,

Plaintiff,

versus

BRUCE C. STOCKBURGER, ET AL.,

Defendants.

No. CL91-1212

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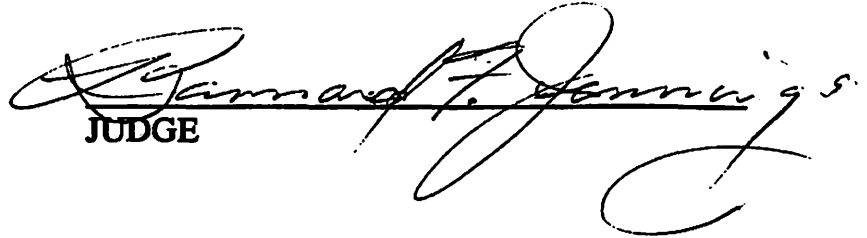
ORDER

This day came Defendant Bruce C. Stockburger, by counsel, and moved, pursuant to *Va. Code Ann.* § 8.01-576.5, that the above case be referred to a dispute resolution evaluation session. Upon consideration of which, it is hereby ADJUDGED, ORDERED and DECREED that this case and all parties be referred to a dispute resolution evaluation session to be held in accordance with the *Va. Code Ann.* §§ 8.01-576.4, *et seq.*

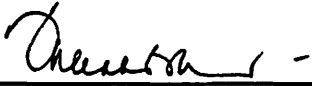
The Court also ORDERS and DIRECTS the parties to return to Court on January 31, 1994, in accordance with its regular docket and procedure, irrespective of the referral to an evaluation session.

If Plaintiff Snyder-Falkinham objects, she shall be excused if, within fourteen days after entry of this Order, she personally signs and files with the Court a written statement stating that the dispute resolution process has been explained and she objects to the referral.

ENTERED: December 21, 1993


JUDGE

I ASK FOR THIS:

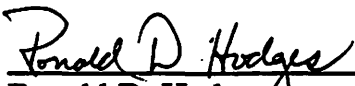


Frank B. Miller, III
S. Vernon Priddy, III
Michele H. Metcalfe
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100 S. Mason Street
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VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF ROANOKE

GEORGIA ANNE SNYDER-FALKINHAM

Plaintiff

vs.

Case No.: No. CL91-1212

BRUCE C. STOCKBURGER, ET AL.

Defendants

PLAINTIFF'S TRIAL BRIEF

I.

Statement of the Case

The within cause is a professional liability case. The plaintiff has sued her former attorney, Bruce Stockburger, and the partners of the law firm Gentry, Locke, Rakes and Moore (hereinafter referred to as GLRM), to-wit: S.D. Roberts Moore, William R. Rakes, James R. Austin, Charles L. Williams, Jr., Eugene E. Derryberry, William J. Creech, Jr., James C. Joyce, Jr., Linda Davis Frith, W. David Paxton, W. William Gust, Guy M. Harbert, III, David G. Weaver, Howard J. Beck, Jr., Jane S. Glenn, and G. Michael Pace, Jr. Plaintiff's cause of action is predicated upon the following theories of liability:

- (1) Breach of fiduciary duty
- (2) Defendant's breach of the standard of care required of attorneys in the Commonwealth of Virginia
- (3) Fraud and misrepresentation
- (4) Vicarious liability

Plaintiff asserts that in many instances Stockburger's liability, as well as some of the individual partners, is predicated upon affirmative acts. In other instances, the plaintiff asserts the liability of the defendants, who are Stockburger's partners, is predicated under the theory of vicarious liability.

The plaintiff seeks compensatory and punitive damages or, in the alternative, rescission.

II.

Statement of the Facts

Plaintiff contends that the preponderance of the evidence, in this case, establishes the following facts: The plaintiff is a high school graduate. She was married to Peter Snyder, a housewife and mother of two children, Michael and Stacy. Mr. Snyder met an untimely death, as the result of an airplane crash, in 1977. Mr. Snyder's Will provided for a marital and residual trust, with the plaintiff and her children designated as beneficiaries.

The attorney-client relationship, between the plaintiff and defendant Stockburger, began in early 1980, while Mr. Stockburger was a partner in the law firm of Long, Long & Stockburger, Blacksburg, Virginia. The attorney-client relationship, between the plaintiff and the defendant Stockburger and his associated law firms of Long, Long & Stockburger, and Gentry, Locke, Rakes & Moore, continued from that time through 1990 and into early 1991. Mr. Stockburger left the law firm of Long, Long & Stockburger in

1983 and became a partner in the Roanoke firm of Gentry, Locke, Rakes & Moore.

The relationship between the plaintiff and the defendant Stockburger evolved from a simple attorney-client relationship to a friendship relationship and eventually to the point where defendant Stockburger was providing legal and financial advice in all of the plaintiff's personal and business dealings. The plaintiff contends that she checked with Mr. Stockburger in making all major business decisions. Mr. Stockburger himself acknowledges that he and his law firm represented the plaintiff in thousands of matters. The evidence establishes that, from the time Mr. Stockburger joined the Gentry, Locke firm, the plaintiff and her related business paid the defendant and his law firm in excess of \$300,000 in legal fees.

In the early 1980's, plaintiff, with the advice of Mr. Stockburger, started a construction business. Mr. Stockburger also entered into a business relationship with the plaintiff, in an enterprise known as LSF, a partnership which owned certain real estate in Blacksburg that was originally owned by plaintiff.

At the same time as Stockburger had the attorney-client/friendship/business advisor relationship with the plaintiff, he also had an attorney-client/friendship/business advisor relationship with John Olver. Stockburger also was a business partner with John Olver. Further, Stockburger and his law firm did legal work for Olver Incorporated, an engineering firm wherein John Olver was a principal. In addition, Stockburger and Olver were

partners in the ownership of a recreational sail boat. The relative relationship of the plaintiff, Stockburger, Olver, the plaintiff's business entities, Olver's business, and the personal relationship was essentially as above outlined in 1985. In addition, Mr. Stockburger had drafted a Last Will and Testament for the plaintiff, designating himself as an alternate co-executor.

At this point in time, the defendant Stockburger knew as much or more about the plaintiff's finances than did the plaintiff. Stockburger directed her in her day-to-day activities. She had complete trust and confidence in Stockburger. In Stockburger's own language in a letter dated October 1, 1986, directed to Ralph Sampson, Jr., wherein he sought to become counsel for Ralph Sampson, he characterized the relationship which Stockburger and the law firm of Gentry, Locke, Rakes and Moore had with the plaintiff, as follows:

We are very sensitive to your hesitancy to place total faith in any adviser in light of the situation in which you find yourself. Our involvement on your behalf comes about solely as a result of your relationship with Georgia Anne Snyder-Falkinham, for whom we have performed legal and advisory services in all aspects of her financial and business dealings . . .

We sincerely hope that in the future, we will earn your trust in the same manner we have earned Georgia Anne's.

Plaintiff's complaints, which form the basis of her lawsuit herein, arise principally from the activities associated with two projects. The first, known as "The Vistas," was a cluster housing

project in Blacksburg, Virginia, developed by one of the plaintiff's business entities (Snyder and Associates). The second involved activities associated with a corporation known as Rich Hill Development Corporation, which was created by Stockburger to develop a subdivision in Radford, Virginia, known as "High Meadows."

A. The Vistas: As stated, The Vistas was a cluster housing project in Blacksburg, Virginia. In December of 1985, while the plaintiff was recuperating from a fractured knee, plans were underway for the development of The Vistas. John Olver contacted the plaintiff, to solicit the site engineering work concerning this project. The site engineering included the development of a site plan, utilities, and erosion and sediment control. The plaintiff was familiar with Olver, as an engineering firm, with expertise limited to the development of sewage treatment plants. The plaintiff questioned Olver concerning his ability to do site engineering work involving town houses and received assurances that Olver and Olver Incorporated possessed this expertise. The plaintiff conferred with her attorney and advisor, Stockburger, and was likewise told that Olver possessed this expertise. Stockburger encouraged the plaintiff to use Olver for the site engineering work on The Vistas project. Stockburger handled the legal aspects of the development of this project, including the formation of a separate entity known as Snyder & Associates, which was a partnership between The Snyder Company, Inc., a company owned solely by the plaintiff, and Ralph Sampson Develop-

ment Corporation, a company owned by former Virginia basketball standout Ralph Sampson, Jr. Stockburger also rendered legal advice to Sampson, in the creation of his business entity, formed for the purposes of The Vistas development.

Stockburger did not advise the plaintiff to secure a written contract from Olver or Olver Incorporated. Nor did the defendant advise the plaintiff to require the engineer to provide a performance bond or proof of insurance. Stockburger had actual knowledge that neither Olver nor Olver Incorporated had any professional liability insurance, to protect the plaintiff in the event of Olver's default. The plaintiff experienced various problems during the development of The Vistas, beginning in early 1986. She contended that the problems were the result of engineering mistakes of Olver. Plaintiff looked to Stockburger, to protect her interests and correct problems which she attributed to Olver. However, Stockburger discouraged her from taking any legal action against Olver or Olver Incorporated and encouraged her to continue putting funds into The Vistas project, which far exceeded the reasonable costs required to do the site development.

B. High Meadows: Unbeknownst to the plaintiff, and during the construction of The Vistas in 1986, Stockburger and Olver were negotiating with a landowner near Radford, by the name of Jim Wiley, for the development of a 600 acre tract in Radford, Virginia. Stockburger, by letter dated March 6, 1987, proposed to Wiley a plan for the development of the 600 acre tract. His

proposal included the equity owners, for this development, as the Wiley family, Olver, and the law firm of Gentry, Locke, Rakes & Moore. Stockburger specifically recommended that the contractor, to be utilized in the development of the project, not be an equity owner. The Wiley family was represented by Attorney Talford Kemper of the law firm of Woods, Rogers & Hazlegrove, Roanoke, Virginia. Projections, concerning development costs and profitability, were prepared by Stockburger and Olver. For yet unknown reasons, the Wiley family and GLRM chose not to participate as equity owners of the development. At that time, Stockburger was the moving force in bringing the plaintiff into this business transaction, wherein Stockburger, her legal advisor in all aspects of her business and personal affairs, was also her business partner. John Olver was also to be an equity owner in this project. The plaintiff and Olver had become adversarial at this time (1986-1988), as the result of the development of The Vistas. The plaintiff did not want to become involved as owner with John Olver; however, Stockburger encouraged the plaintiff to become involved as an owner and, as an inducement, advised her that he would look after her interest, ride herd over Olver, and not let the mistakes occur in the High Meadows development that had occurred in The Vistas project. Stockburger also represented to the plaintiff that profits would be high and she would recoup any loss, which she suffered on The Vistas. Stockburger provided projections to the plaintiff as to cost and profitability, and represented unto the plaintiff that the project would be built on

borrowed funds, without the need of any personal funds being used as capital outlay. At the same time, Olver, being adversarial with the plaintiff over The Vistas, did not want to become involved as a business owner with the plaintiff. Again, Stockburger induced Olver to take the plaintiff into the project, as a business partner, because of her financial strength.

Because of the attorney-client relationship between Stockburger and the plaintiff, he was aware of all her finances. Stockburger even discussed the plaintiff's financial worth with Olver, on recreational outings. Based upon Stockburger's representations, inducements, and encouragement, the plaintiff, Stockburger and Olver struck an agreement to form the Rich Hill Development Corporation (RHDC), for the development of the High Meadows project. Stock ownership was to be owned equally among the three. Capital contribution for the stock ownership was to be \$100 per person. Stockburger advised the plaintiff that he and his law firm had been employed by Jim Wiley to do legal work concerning the High Meadows project. He represented that, since Wiley was not going forward with the project, it would be necessary for the plaintiff to pay the legal bill incurred by Wiley. As the result of this, Stockburger prepared and submitted to the plaintiff a bill for services, purporting to have been incurred by James Wiley, in the amount of \$11,461.01, and had the plaintiff issue a check to the defendant law firm for said amount. In actuality, Jim Wiley was represented by Talford Kemper. Jim Wiley never employed Stockburger or Gentry, Locke, Rakes & Moore, nor

did he agree to pay any legal fees to the defendants. At the same time, Stockburger represented unto the plaintiff that Wiley had incurred certain engineering fees to Olver and further represented that it would be appropriate for the plaintiff to pay these fees. Stockburger had Olver prepare a bill and submitted to the plaintiff for payment. Therefore, plaintiff paid over \$20,000 for one-third of the stock, as compared to Stockburger and Olver paying \$100 each. Stockburger amusingly referred to this payment, in discussion with Olver, as the plaintiff's "initiation fee." Stockburger intended from the outset to take advantage of his client to his benefit.

GLRM did the legal work to establish Rich Hill Development Corporation, a corporation in which one-third of the stock was owned by the plaintiff, Olver, and Stockburger. Initially, the corporate purpose was to develop the High Meadows project.

In furtherance of the development, the three shareholders went to the First National Bank of Christiansburg, Virginia, for purposes of securing initial development funds. The development funds, including a line of credit, were all individually guaranteed by Stockburger, the plaintiff and Olver. Stockburger had a personal interest in Rich Hill Development Corporation, personally obligated himself on the indebtedness, represented Rich Hill Development Corporation, continued to represent the plaintiff and Olver in their individual capacities and also continued to represent Olver, Incorporated and the various entities owned by or associated with the plaintiff (i.e. The Snyder Company, Snyder

& Associates, Peter C. Snyder Trust).

Olver proceeded with the engineering work on the High Meadows project. Stockburger, again, having knowledge that Olver and Olver, Incorporated had no liability insurance coverage, did not require a bond, nor did he require his friend and client Olver to enter into a written contract. As this project developed, the parties also sought financing from Central Fidelity Bank, which included a development loan, construction loan and other commitments. The bank conditioned its loan commitments upon the personal guarantees of the plaintiff, Olver and Stockburger. The bank required the parties to provide their financial statements. The financial statement provided by the plaintiff indicated her net worth to be in excess of \$3,000,000. Although unknown to the plaintiff, the financial statement provided by Olver indicated his net worth to be in excess of \$3,000,000, and the financial statement provided by Stockburger indicated his net worth to be in the neighborhood of \$300,000. Stockburger has testified by discovery deposition that, at the time he signed the guarantee agreements, he did not have the financial ability to make good on the guarantees, and testified that he never intended to make any personal payment under the guarantees.

Not long after the site development at High Meadows started, the plaintiff perceived engineering mistakes she attributed to Olver. At about this time, Olver opted to withdraw as a shareholder, before the principal loans were made and the guarantees executed. Stockburger recommended to the plaintiff that Olver be

allowed to withdraw and proceed with the ownership of Rich Hill Development Corporation on a 50/50 basis. Plaintiff and Stockburger each owned 50 percent of the stock. It was intended that they would share equally in the profits of the corporation. At that point in time, Stockburger permitted Olver, who did have financial ability, to withdraw from the corporation and released him of any of the financial burden.. The evidence will establish that, from that point forward, Stockburger cast the entire financial burden of this enterprise upon the plaintiff, even though he owned 50 percent of the stock and even though the initial construction loan from Central Fidelity Bank was guaranteed by Stockburger. The initial financial commitment, personally guaranteed by the plaintiff and Stockburger, was approximately \$2,990,660.

Stockburger's original projections, concerning development costs of High Meadows proved to be greatly understated. Further Stockburger advised the plaintiff, as an inducement to involve her in this project, that the project would be built on borrowed funds, without the necessity of infusing individual funds. This also proved to be false. When the need for the infusion of additional capital became apparent, Stockburger contrived various plans to get money from properties owned by the plaintiff and from plaintiff's trusts, and from the plaintiff's children, to invest in this project, while at all times failing to invest any funds himself. In fact, Stockburger did not even execute notes for his share of these funds. In addition, during this time

period, Stockburger arranged to have Rich Hill Development Corporation purchase for his use a 1988 Isuzu Trooper and prepared an agreement dated July 7, 1988, reflecting that the consideration for the use of the vehicle would be charged against Stockburger's share of the company profits. Of course, there never were any company profits. All funds, even for this vehicle used by the defendant Stockburger, were provided by the plaintiff.

By early 1989, Stockburger realized that the project needed substantial additional funds. On February 2, 1989, Stockburger wrote a letter to Fred Baldwin, Vice President of Central Fidelity Bank, advising Baldwin of a major cost overrun on the project and requesting an additional \$1,000,000 in loans. Central Fidelity reviewed Stockburger's request and by letter dated April 27, 1989, advised Stockburger that, if the developer would infuse \$500,000 in capital, Central Fidelity would loan an additional \$612,000. At this point, Stockburger contrived a series of schemes to secure the additional funds from the plaintiff or her trusts, while at all times protecting himself.

Stockburger recommended to the plaintiff that she have her children withdraw \$500,000 from the residual trust income, ostensibly for the purposes of buying stock in one of the plaintiff's businesses known as The Snyder Company. On May 9, 1989, Stockburger drafted a letter to the Crestar Trust Department, wherein the children were to receive these funds. The plaintiff received the \$500,000 from her children and put it into Rich Hill

Development; however, the stock that was to be issued to the children in exchange for the \$500,000 was never issued. Instead, Stockburger later had the plaintiff sign a note payable to her children, requiring her to repay said amount and, at the same time, had Rich Hill Development sign a note to the plaintiff, representing unto her that she would be paid. At this point, Stockburger did not guarantee the note back to the plaintiff.

Since Stockburger had managed to get \$500,000 of the plaintiff's funds infused into Rich Hill, it was now time to go forth with the \$612,000 Central Fidelity loan. All loan documents, including the personal guarantees of Stockburger and the plaintiff, were put in place for closing; however, funds were never drawn against this loan. The plaintiff learned, for the first time, during the course of the within litigation, that Stockburger did not draw against the Central Fidelity loan as was planned. Instead, Stockburger devised other ways to obtain the needed funds from the plaintiff, while at all times leading her to believe that the Central Fidelity loan had been used and was exhausted. The plaintiff had sold some lots at Nags Head, North Carolina, that had been held as collateral for the Central Fidelity loan. She had the monies received from that property, together with some interest, totalling \$251,321.17, placed in a certificate of deposit with Central Fidelity Bank. Central Fidelity Bank drew against the certificate of deposit, to service the interest requirements on the construction loan wherein Stockburger was a guarantor. Again, the plaintiff received a

promissory note from Rich Hill Development Corporation. The plaintiff expected repayment; however, at a later time, \$62,556 of this money was converted to worthless stock.

In October, 1989, Stockburger conceived yet another idea to obtain funds from the plaintiff. He suggested and did the legal work for the creation of the Snyder Land Trust. He had the plaintiff's children obtain \$326,756 from the residual trust to fund the Snyder Land Trust. Stockburger then had the Snyder Land Trust buy three pieces of rental property from the plaintiff. The plaintiff then put the entire \$326,756 into Rich Hill Development and again received a note, with Stockburger's representation that the note would be repaid. Again, at a later time, the plaintiff received worthless Rich Hill Development stock in exchange for the cancellation of the note obligation. (The monies required by the plaintiff, as outlined above, which were infused into Rich Hill, was in direct response to a loan request made to Central Fidelity Bank. Central Fidelity agreed to loan the corporation an additional \$612,000, provided first that the stockholders would infuse at least \$500,000. As stated, the funds came from the plaintiff, to comply with Central Fidelity's predicate to loan the \$612,000. The documents for the \$612,000 loan, including the personal guarantees of the plaintiff and Stockburger, were then executed; however, at Stockburger's direction, monies were never drawn against this loan, obviously because Stockburger had signed his personal guarantee. Gentry Locke was paid for services rendered involving this loan.

Between November 8, 1989, and July, 1990, Stockburger had the plaintiff withdraw income from the marital trust, in the amount of \$397,474.43. This entire amount went to Rich Hill Development Corporation. The plaintiff received a promissory note for \$362,446 and stock for the other \$35,026.

By August, 1990, the Central Fidelity note, guaranteed by the plaintiff and Stockburger, was technically in default. Stockburger contrived yet another plan to take advantage of the plaintiff. As of this date, Stockburger knew that the plaintiff's funds that she had put into the project were lost, never to be recovered, yet he convinced her and others that it would be to her advantage to create yet another land trust. This was created and is known as the High Meadows Land Trust, whose beneficiaries are Mike and Stacy Snyder, plaintiff's children. The High Meadows Land Trust then borrowed money from the marital and residual trusts, totalling approximately \$1,600,000. This loan was required to be guaranteed by the plaintiff by Crestar Bank's trust department. The purpose of this plan, as represented to the plaintiff, was to generate income tax refunds; however, out of refunds generated, the plaintiff was required to pay 80 percent of refunds back to the marital trust. At any rate, at Stockburger's suggestion, the High Meadows Land Trust was created, the \$1,600,000 borrowed from the two trusts, and used by the High Meadows Land Trust to pay Central Fidelity. At this time, Stockburger had accomplished his underlying purpose of being relieved from the notes and guarantees at Central Fidelity, and, in

addition, he created for himself a tax loss in excess of \$94,000, because of his stock ownership in Rich Hill. Once the High Meadows Land Trust paid off the Central Fidelity note obligation, the guarantees were automatically released as a matter of law and his co-guarantor, plaintiff, had no rights against him or these guarantees.

The defendant Stockburger continued to represent to the plaintiff and to the lending institutions that the project would be profitable during the infusion of this money by plaintiff. The plaintiff relied upon Stockburger's representations and advice in making financial commitments and investments in this project. As a matter of fact, as the plaintiff would infuse additional money into the project, at Stockburger's direction, corporate promissory notes were executed to reflect that the plaintiff would recover these funds.

In June, 1989, the defendant came to the realization that the success of this project was doomed. Stockburger wrote a letter to the plaintiff dated June 9, 1989, suggesting to her four methods to increase her stock ownership, essentially by canceling the notes, accepting stock in the doomed corporation for cancellation of the note obligations. Stockburger stated that "although my financial existence is pledged to this project, I feel that you must decide on how you want to deal with my ownership interest." In this letter, he, for the first time, advised the plaintiff that she should seek independent counsel; however, even after this point and time, Stockburger and his law firm

continued to serve as legal counsel to the plaintiff. The plaintiff continued to believe that Stockburger and the law firm were acting in her best interest.

In a letter dated November 26, 1989, Stockburger assures the plaintiff that he continues to be "fully committed to the project from an interest and involvement standpoint;" however, in the same letter, he goes forth and advises the plaintiff that his financial ability is not sufficient to cover his obligations to Central Fidelity Bank and essentially tells the plaintiff that he will seek the protection of the bankruptcy laws, in the event he is sued under his guarantees. The net effect of this is casting the entire financial burden upon the plaintiff.

At the time Stockburger conceived the plan to extricate himself from his financial commitments to the project, his commitments to the bank, and his commitments to the plaintiff, his law partners assisted him in getting out of the deal. At the completion of the transaction, Stockburger and his law partners had managed to have the plaintiff put all funds into Rich Hill Development Corporation and assume all liabilities; however, Stockburger wound up with over 50 percent of the stock of Rich Hill Development Corporation. This plan was Stockburger's plan and specifically designed to relieve Stockburger from his personal guarantees. This plan was finalized December 19, 1990. Stockburger's plan provided for the creation of the "High Meadows Land Trust." The Peter C. Snyder Trust, administered by Crestar Bank, which bank is also represented by Stockburger and his law

firm, loaned to High Meadows Land Trust the sum of \$1,032,900 from the Peter Snyder Marital Trust and \$588,400 from the Peter Snyder Residual Trust. Plaintiff was required to guarantee the loans back to the marital and residual trusts and had to further agree to pay 80 percent of tax refunds received by the plaintiff and her husband back to the residual trust. The High Meadows Land Trust paid the funds received from these loans to Central Fidelity Bank, which loans were personally guaranteed by Stockburger. Rich Hill Development Corporation, the owner of the land, then transferred this property to the High Meadows Land Trust, which gave deeds of trust to secure the Peter C. Snyder Trust. These High Meadows notes were guaranteed by plaintiff but not by Stockburger.

Plaintiff claims that, as a result of Stockburger and Gentry, Locke's wrongful conduct, she has been damaged in the total amount of \$6,669,881 as follows:

1. Vistas	\$ 1,219,186
2. Loans from Mike Snyder and Stacy Snyder	500,000
3. Proceeds from sale of 2 lots in North Carolina	251,321
4. Proceeds from sale of 3 rental properties	326,757
5. Distributions from Marital and Residual Trusts	398,781
6. Receipt of RHDC assets	(39,877)
7. Proceeds from sale of RHDC assets received	21,022
8. Personal monies	20,023

9.	Payments by Peter Snyder Residual Trust to HMLT to fund trust operation	835,950
10.	Peter C. Snyder Marital Trust	1,032,900
11.	Peter C. Snyder Residual Trust	588,400
12.	Total cost of money (loss of use of funds)	1,140,097
13.	Future obligations for acceleration/deceleration lane	99,933
14.	Tax refund paid to Peter C. Snyder Residual Trust	275,388
	Total	\$ 6,669,881

The evidence will also show that in June, 1989, a newspaper article appeared in the Roanoke newspaper about the High Meadows project, naming Stockburger as a participant. Within a couple of days, the "Management Committee" at Gentry, Locke met and was told by Stockburger that he was a "passive investor." On June 9, 1989, Stockburger wrote plaintiff a handwritten letter suggesting she seek independent counsel. Thereafter, plaintiff discussed with Bob Glenn the problems at High Meadows and Glenn was involved in the second loan transaction with Central Fidelity Bank. As previously stated herein, Central Fidelity agreed to loan another \$612,000 if the principals put up \$500,000. The plaintiff borrowed this money from her children, as stated above, but the bank never paid out the \$612,000 unbeknownst to the plaintiff. Instead Stockburger induced the plaintiff to sell rental properties in Blacksburg and take money from her marital trust, which totalled over \$700,000.

III.

Brief of Law

A. Breach of Fiduciary Duty:

As stated in Ronald E. Mallen and Jeffrey M. Smith, Legal Malpractice (3rd Ed.), § 11.1 (1989):

The attorney is under a duty to represent the client with undivided loyalty, to preserve the client's confidences, and to disclose any material matters bearing upon the representation of these obligations. Thus, the basic fiduciary obligations are two-fold: undivided loyalty and confidentiality. Although the phrasing of the definition of fiduciary obligations is varied and often dependent upon the context of particular circumstances, this rule exists in every jurisdiction in the United States. [Emphasis added]

In the case of In the Matter of Neville, 147 Az. 106, 708 P.2d 1297, 1307, the Arizona Supreme Court ruled:

That [fiduciary] duty continues beyond the completion of any particular matter which the attorney undertakes for the client. The fiduciary duty arises when the attorney-client relationship is established and continues until it is abandoned. Abandonment is found when the lawyer's influence over the client has dissipated. [Emphasis added]

In Thomas v. Turner's Adm'r., 87 Va. 1, 12 S.E. 149, 153 (1890), the Supreme Court of Appeals of Virginia ruled:

[A]ll dealings between attorney and client, for the benefit of the former, are not only regarded with jealousy and closely scrutinized, but they are presumptively invalid on the ground of constructive fraud, and that presumption can be overcome only by the clearest and most satisfactory evidence. This rule is founded in public policy, and operates independently of any ingredient of actual fraud or of the age or capacity of the client, being intended as a protection to the

client against the strong influence to which the confidential relationship naturally gives rise. It is the duty of an attorney to give to his client the benefit of his best judgment, advice, and exertions, and it would be a just reproach to the law if he were permitted to bring his own personal interest into conflict with that duty by securing a benefit to himself through the influence which the relation implies. All transactions between the parties to be upheld in a court of equity must be uberrima fides, and the onus is the attorney to show not only that no undue influence was used or advantage taken, but that he gave his client all the information and advice as against himself that was necessary to enable him to act understandingly. He must show, in other words, (1) that the transaction was perfectly fair; (2) that it was entered into by the client freely; and (3) that it was entered into with such a full understanding of the nature and extent of his rights as to enable the client to thoroughly comprehend the scope and effect of it. [Emphasis added]

The ruling in Thomas v. Turner's Adm'r., supra, was reiterated in Stiers v. Hall, 197 S.E. 450 (1938). The burden of proof, relative to a contract between attorney and client executed during the existence of the fiduciary relationship, is upon the attorney. He must prove that the contract was fair and reasonable and free from undue influence. The Stiers court further ruled:

[I]f the contract is suspicious, oppressive, or fraudulent, exacts an unreasonable or exorbitant fee, or was made without a fair and full disclosure of the facts on which it is predicated, it cannot be enforced against the client. It is well settled, also, that contracts between attorney and client made after the relation has been established are construed most strongly against the attorney and are regarded with suspicion and jealousy and closely scrutinized by the courts. In

many instances they have been declared to be voidable, even though they would be deemed unobjectionable between other parties. In fact, there is a presumption of unfairness and invalidity. [Emphasis added]

In Bruce's Executrix v. Bibb's Executrix, 129 Va. 45, 105 S.E. 570, 572 (1921), it was held:

All dealings between the attorney and client must be characterized by the utmost fairness and good faith, and transactions between them are closely scrutinized. There are cases in which such transactions have been held to be prima facie fraudulent, and, where it is of advantage to the attorney, he is required to show, not only that he exercised no undue influence, but that he gave his client all the information and advice which it would have been his duty to give if he himself had not been interested, and that the transaction was as beneficial to the client as it would have been if the client had been dealing with a stranger.

In Byars v. Stone, 186 Va. 518, 42 S.E.2d 847 (1947), it was held:

An attorney occupies toward his client a high position of trust and confidence, and in his relations with his client it is his duty to exercise and maintain the utmost good faith, integrity, fairness and fidelity. This relationship precludes the attorney from having any personal interest antagonistic to those of his client, or from obtaining any personal advantage out of the relationship, without the knowledge or consent of his client. [Emphasis added]

The Virginia State Bar Course on Professionalism handbook addresses attorney-client business relationships, at page IV-4, as follows:

1. A lawyer may not enter into a business transaction with a client if they have

differing interests and the client expects the lawyer to exercise professional judgment on the client's behalf, except with the consent of the client after full and adequate disclosure and provided the transaction is fair and equitable when made. [DR 5-104(A)] See also EC 5-3.

2. While not prohibited absolutely, business dealings with clients are disfavored and viewed with suspicion. Committee on Professional Ethics v. Mershon, 316 N.W.2d 894 (Iowa 1982). Reasons ascribed to the disfavor and suspicion include:
 - a. The superior knowledge and ability of the lawyer and the consequent influence over the client; and
 - b. The possibility that a lawyer could use this position of influence to take advantage of the client in the business dealing.
3. Prior to entering into a business transaction with a client wherein the lawyer and client have differing interests and the client expects the lawyer to exercise professional judgment for his or her protection, a lawyer must satisfactorily disclose any potential for conflict and must obtain the client's consent. Moreover, the transaction must be fair and equitable.
 - a. "Differing interests" are defined by the Code to include "every interest that will adversely affect either the judgment or the loyalty of a lawyer to a client, whether it be a conflicting, inconsistent, diverse or other interest."
 - b. Satisfactory disclosure includes:
 1. All relevant circumstances known to the lawyer;

2. The nature of the transaction and its effects on the client's interests;
 3. The nature of the lawyer's interests and the effect those interests could have on the exercise of professional judgment (Committee on Professional Ethics v. Mershon, 316 N.W.2d 895, 899 (Iowa 1982);
 4. The risks and disadvantages to the client entailed in the transaction, including all liabilities that will or may foreseeably accrue (Matter of James, 452 A.2d 163, 167 (D.C. App. 1982), cert. denied, 460 U.S. 1063 (1983); and
 5. The advantages of seeking independent legal advice. Id.
- c. If the transaction is challenged, the lawyer has the burden of showing that it was fair and equitable, that the lawyer fully informed the client of the effect of the transaction on the client's interests, and, if the client declined independent legal advice, that the client received the same advice the lawyer would have given had the transaction been between the client and a stranger. Committee on Professional Ethics v. Mershon, 316 N.W.2d 894, 899 (Iowa 1982).
- d. A lawyer may serve as legal advisor to a business in which he or she has a financial interest, provided there is full disclosure, the client gives its consent, and the representation does not affect the lawyer's professional judgment. LEO 1027.

Full disclosure was defined in Financial General Bankshares,

Inc. v. Metzger, 523 F.Supp. 744, 771 (1981) as follows:

Full disclosure means just that -- affirmative revelation by the attorney of all the facts, legal implications, possible effects, and other circumstances relating to the proposed representation. A client's mere knowledge of the existence of his attorney's other representation does not alone constitute full disclosure.

Disclosure was also addressed in Avianca, Inc. v. Corriea, 705 F.Supp. 666, 679 (D.D.C. 1989), wherein it was held:

Full disclosure includes a clear explanation of the differing interests involved and the advantage of seeking independent legal advice. It also requires a detailed explanation of the risks and disadvantages to the client including any liabilities that will or may foreseeably accrue to him. Where an attorney takes a position that is actually or potentially adverse to his client, the burden is on the attorney to show that he made a full, affirmative disclosure and acted with the utmost good faith. Because attorney-client relationship provides easy opportunity for attorney to take unfair advantage of client, attorney must prove good faith rather than client proving lack of good faith. [Citations omitted]

Plaintiff further contends that the defendant Stockburger breached his fiduciary duty to her by divulging confidential information, about her finances, to others. Specifically, Stockburger informed Olver of plaintiff's financial strength and the necessity of getting her involved in the development of "High Meadows," because of this financial strength. As stated in 2A Michie's Jurisprudence of Virginia and West Virginia, Attorney and Client, § 33, "There is no rule of law better settled than that an attorney will not be permitted to divulge any matter

communicated to him in professional confidence."

The Virginia State Bar Course on Professionalism handbook also addresses client's confidences, at page V-10, as follows:

Canon 4 of the Code of Professional Responsibility imposes on a lawyer the duty to preserve the confidences and secrets of a client. If it were not generally known that lawyers are required to preserve the confidences and secrets of clients, persons with legal problems would be reluctant to seek legal help and confide in lawyers. See EC 4-1.

1. Confidences

A confidence includes all matters protected by the evidentiary rule known as the "attorney-client privilege," and also protects matters beyond the evidentiary privilege to include anything a client tells his or her lawyer in private. Any private fact or communication is thus by definition protected under Canon 4 as a confidence.

2. Secrets

A secret is a much broader term than a "confidence" and encompasses "other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client." [DR 4-101(A)] Such information is protected without regard to its nature or source, or the fact that others share the knowledge. [EC 4-4]

- a. Lawyers should make it a practice not to discuss their clients or their clients' business outside the office except in the course of said representation.

.

Absent consent, and the exceptions thereto

contained in Section C below, a lawyer shall not knowingly reveal, use to the disadvantage of the client, or use to the advantage of himself/herself or a third person, a confidence or secret of the client. [DR 4-101(B)]

As stated in Ronald E. Mallen and Jeffrey M. Smith, Legal Malpractice (3rd Ed.), § 11.5 (1989):

Malpractice liability may be predicated upon a breach of confidence. The attorney's motive in breaching the confidence is not material since an unauthorized disclosure is the wrong. Liability can exist if an attorney discloses the client's confidences to the Internal Revenue Service for revenge, uses the information for private gain, or acts for the interest or benefit of another client.

B. Defendant's breach of the standard of care required of attorneys in the Commonwealth of Virginia:

In Norman v. Insurance Co. of North America, 239 S.E.2d 902, 907 (1978), the Virginia Supreme Court ruled:

No one questions the fact that the standards of the legal profession require undeviating fidelity of a lawyer to his client, and no exceptions can be tolerated. A client may presume that his attorney has no interest which will interfere with his devotion to the cause confided in him.

In accordance with ABA/BNA Lawyer's Manual on Professional Conduct (1989), published by the American Bar Association and The Bureau of National Affairs, Inc., the plaintiff must prove the following elements, in order to establish a prima facie case of malpractice:

The existence of an attorney-client relationship giving rise to a duty owed on behalf of the attorney to the client;

An act or omission by the attorney in breach of the duty owed;

Injury suffered by the client; and

A "proximate cause" relationship between the attorney's breach of duty and the injury suffered by the client.

Further, in accordance with Charles W. Wolfram, Modern Legal Ethics (1986), § 5.6.3:

There is no requirement that the plaintiff demonstrate that the malpractice was the only cause, so long as there is competent proof that it was a cause that contributed to the plaintiff's loss.

As stated in Avianca, Inc. v. Corriea, 705 F.Supp. 666 (D.D.C. 1989):

The Disciplinary Rules (DR) of the American Bar Association's Code of Professional Responsibility, which have been adopted . . . while not strictly providing a basis for a civil action, nonetheless may be considered to define the minimum level of professional conduct required of an attorney, such that a violation of one of the DRs is conclusive evidence of a breach of the attorney's common law fiduciary obligations. [Emphasis added]

Accordingly, a violation of a Disciplinary Rule, which does not result in an injury to the attorney's client, would be no basis for civil suit. However, the Disciplinary Rules do set forth a basis for determining the appropriate standard of care.

In Avianca, supra (copy attached), the United States District Court, District of Columbia, found against a defendant attorney, in a malpractice claim, ruling:

[D]efendant Corriea breached his common law fiduciary duties owed plaintiffs by virtue of

his on-going, continuous attorney-client relationship with plaintiffs . . . Corriea breached his fiduciary duty of undivided loyalty by failing to make an affirmative disclosure to plaintiffs of all material facts, legal implications, and potential conflicts, or gaining the informed consent of plaintiffs prior to acquiring and maintaining interests affecting the business of plaintiffs, entering into a business transaction with plaintiffs in which defendants stood to gain profit, and acting as attorney for plaintiffs where defendants' financial, business, property, or personal interests were or reasonably could have impaired the exercise of Corriea's independent, professional judgment for the protection and benefit of the plaintiffs.

Another case, similar to the one at bar, is Financial General Bankshares, Inc. v. Metzger, 523 F.Supp. 744 (D.D.C. 1981) (copy attached), wherein the court ruled against the defendant lawyer, finding:

He persistently placed his prerogatives as a shareholder above his fiduciary obligations as an attorney, substituting his own business judgment for that of the corporation he was hired to serve. His behavior fell far short of the high standards imposed on lawyers by common law and by the Code of Professional Responsibility.

Plaintiff insists the following Disciplinary Rules of the Virginia Code of Professional Responsibility are applicable:

DR 1-102 Misconduct

DR 2-105 Fees

DR 2-108 Terminating Representation

DR 4-101 Preservation of Confidences and Secrets of a client

DR 5-101 Refusing Employment When the
Interests of the Lawyer May Impair His
Independent Professional Judgment

DR 5-103 Avoiding Acquisition of Interest in
Litigation

DR 5-104 Limiting Business Relations With a
Client

DR 5-105 Refusing to Accept or Continue
Employment if the Interests of Another Client
May Impair the Independent Professional
Judgment of the Lawyer

DR 5-106 Avoiding Influence by Others Than
the Client

DR 5-107 Settling Similar Claims of Clients

DR 6-101 Competence and Promptness

DR 7-101 Representing a Client Zealously

DR 7-102 Representing a Client Within the
Bound of the Law

DR 9-102 Preserving Identity of Funds and
Property of a Client

C. Fraud and Misrepresentation:

As stated in 7 Am Jur 2nd, Attorneys at Law, § 215:

An attorney is liable for any loss sustained
by his client in consequence of the attor-
ney's fraud or unfair dealing. Thus, an
attorney who makes fraudulent misstatements
of fact or law to his client, or who fails to
impart to his client information as to
matters of fact and the legal consequences of
those facts, is liable for any resulting
damages which his client sustains.

In Newman v. Silver, 553 F.Supp. 485, 496 (D.C.N.Y. 1982),
affirmed in part, vacated in part 713 F.2d 14, the issue of
excessive fees was addressed. The District Court held that,

although the client had paid the fees, the attorney, "in his fiduciary capacity, used his influence to obtain his demanded fee from Newman and sought and obtained an unfair advantage." Finding the fees to be excessive, the court further ruled, "In substance a legal fraud was perpetrated on Newman by his attorney for which recovery should be granted."

The Newman court, supra at 497, further addressed the plaintiff's claim of fraudulent misrepresentation, and stated:

A cause of action for fraudulent misrepresentation requires a showing of a representation of a material fact, the falsity of the representation, scienter, reliance and damages.

In accordance with Michie's Jurisprudence of Virginia and West Virginia, Fraud & Deceit, § 2, page 287-89:

"Fraud," in the sense of a court of equity, properly includes all acts, omissions, and concealments which involve a breach of a legal duty, trust, or confidence justly reposed, and are injurious to another, or by which an undue and unconscientious advantage is taken of another.

Further, as stated in Michie's Jurisprudence of Virginia and West Virginia, Fraud & Deceit, § 14, page 300:

The mere expression of an opinion, though false, respecting the subject matter of a contract will not generally be regarded as fraudulent, but when there exists a fiduciary relationship between the parties, and it is accompanied by other matters going to establish misrepresentation, imposition, undue influence, undue confidence, mental inability, or surprise, it may amount to fraud justifying a rescission of the contract.

D. Vicarious liability:

Va. Code Ann.. § 50-13 (1992) provides that a partnership is liable for the acts or omissions of a partner committed while the partner is "acting in the ordinary course of the business of the partnership, or with the authority of his copartners," and by reason of such acts or omissions "loss or injury is caused to any person, not being a partner in the partnership, or any penalty is incurred." This statute follows the long-recognized common law rule holding a partnership liable for the wrongful acts of a partner committed in the ordinary course of the firm's business. See Henry Myers & Co. v. Lewis, 121 Va. 50, 92 S.E. 988 (1917).

Although case law directly interpreting the scope of partnership liability under V.C.A. § 50-13 is limited, the scope of liability under the statute is based on well-established principles of agency law. In Henry Myers & Co. v. Lewis, *supra*, the Virginia Supreme Court expressly noted that the liability of a partnership for the acts of an individual partner rests on the doctrine of agency and common law agency principles. 92 S.E. at 922. In discussing the scope of partnership liability, the court emphasized that a partnership may be held liable for acts of a partner which are neither expressly authorized nor ratified by the partnership, as well as for intentional wrongful acts of a partner, so long as the acts were committed in the course of the partnership business. *Id.* at 992-94.

In support of its ruling, the court quoted a number of earlier cases interpreting the scope of partnership liability.

Quoting the case of Barwick v. English Joint Stock Co., L. R. 2

Exch. 259, for example, the court stated:

With respect to the question whether a principal is answerable for the act of his agent in the course of his master's business, and for his master's benefit, no sensible distinction can be drawn between the case of fraud and the case of any other wrong. The general rule is that the master is answerable for every such wrong of the servant or agent as is committed in the course of his service and for the master's benefit, though no express command or privity of the master be proved . . . That principle is acted upon every day in running down cases . . . In all these cases it may be said, as it was said here, that the master has not authorized the act. It is true, he has not authorized the particular act, but he has put the agent in his place to do that class of acts, and he must be answerable for the manner in which the agent has conducted himself in doing the business which it was the act of the master to place him in.

Henry Myers & Co. v. Lewis, supra, 92 S.E. at 992-93 (citations omitted) (emphasis by the court). After reviewing this and authority from other courts, the court concluded in its own words:

The authorities on the subject develop the conclusion that, where there is neither express authority in advance nor ratification afterwards, the test of the liability of the master or principal for the tortious act of the servant or agent is not whether the tortious act itself--the act in the manner in which it was done-- is a transaction within the ordinary course of the business scope of the servant's or agent's authority; but the true test is whether, if the act had been done in a nontortious manner, the service itself in which the tortious act was done, was within the ordinary course of such business or within the scope of such authority.

Id. at 994-995. Based on these principles, the court concluded that the partnership, Henry Myers & Co., could be held liable for damages for libel resulting from a letter sent by one of its partners which concerned partnership business but contained defamatory statements. Id. at 996.

A similar ruling was made in United Brotherhood of Carpenters and Joiners of America, AFL-CIO v. Humphreys, 203 Va. 781, 127 S.E.2d 98 (1962). In Humphreys, the court considered whether a union could be held liable for the acts of assault committed by individual union members. The court recognized the rule that "A principal is responsible for the willful or malicious acts of his agent committed within the scope and course of his employment." 127 S.E.2d at 101-02. The court further followed the rule set forth in Henry Myers & Co. v. Lewis, supra, that the test of liability of a principal for its agent's tortious acts is not whether the tortious act itself is an act within the ordinary course of the business of the principal, but whether the service itself in which the tortious act was done was within the ordinary course of such business. United Brotherhood of Carpenters and Joiners of America, AFL-CIO v. Humphreys, supra, 127 S.E.2d at 102 (citing Henry Myers & Co. v. Lewis, supra, 92 S.E. at 994-95; Davis v. Merrill, 133 Va. 69, 112 S.E. 628 (1922); Tri-State Coach Corp. v. Walsh, 188 Va. 299, 49 S.E.2d 363-66 (1948)).

The court further discussed the meaning of "scope of employment" within the stated rule. The court stated:

In many cases no better definition can be given that the words themselves suggest. But, in general terms, it may be said that an act is within the course of the employment if (1) it be something fairly and naturally incident to the business, and if (2) it be done while the servant was engaged upon the master's business and be done, although mistakenly or ill-advisedly, with a view to further the master's interests, or from some impulse or emotion which naturally grew out of or was incident to the attempt to perform the master's business, and did not arise wholly from some external, independent, and personal motive on the part of the servant to do the act upon his own account.

United Brotherhood of Carpenters and Joiners of America, AFL-CIO v. Humphreys, supra, 127 S.E.2d at 102 (quoting Davis v. Merrill, supra, 112 S.E. at 630-31) (emphasis by the court). The Humphreys court noted that once an agency relationship has been established, the burden is on the principal to prove that the agent was not acting within the scope of his authority when he committed the acts complained of, and when the evidence is not conclusive, the issue becomes a question of fact for determination by the jury. United Brotherhood of Carpenters and Joiners of America, AFL-CIO v. Humphreys, supra, 127 S.E.2d at 102. Based on the evidence before it, the court concluded that there was sufficient evidence to find that the union members at issue were acting within the scope of the business of the union when they committed the assaults, and thus, the union was liable for those acts.

It should be noted that, as the discussion above suggests, a partnership may be held liable even for acts committed outside

the scope of the partnership business where the partnership ratifies such acts which cause injury to a third party. In Kilby v. Pickural, 240 Va. 271, 396 S.E.2d 666 (1990), the court stated the rule that

[a] principal is bound by his agent's previously unauthorized act if he ratifies the act by accepting its benefits with full knowledge of the relevant facts, Dawson v. Hotchkiss, 160 Va. 577, 582, 169 S.E. 564, 565-66 (1933); Owens v. Boyd Land Co., 95 Va. 560, 562, 28 S.E. 950, 951 (1898), or, if upon learning of the act, he fails to promptly disavow it, Bank of Ocoquan v. Davis, 155 Va. 642, 648, 156 S.E. 367, 368 (1931); Winston v. Gordon, 115 Va. 899, 907, 80 S.E. 756, 760 (1914).

396 S.E.2d at 668-69. In Kilby, attorney Young settled a lawsuit on behalf of his client, Scruggs. Scruggs sought to avoid the settlement agreement on grounds that he had not authorized Young to enter into the agreement on Scruggs' behalf. Citing the principles quoted above, the court held that Scruggs was bound by the agreement. Id. at 669. The court noted that Scruggs accepted the benefits of the settlement agreement by avoiding the cost and inconvenience of the scheduled trial in the matter and that Scruggs failed to promptly disavow Young's authority to act as his agent upon learning of two letters of settlement sent by Young and his partner. Id.

Under the principles set forth above, there is at the very least ample evidence in the instant case to establish a triable issue whether Gentry Locke may be held liable for the wrongful acts of Stockburger against plaintiff. There is evidence that

representation of Rich Hill and Snyder-Falkinham's individual interest in Rich Hill were incidents of the business of Gentry Locke and that Stockburger's acts in the course of providing such representation to Snyder-Falkinham was also an incident of the partnership business. The evidence is further sufficient to establish that Stockburger acted in furtherance of the interests of Gentry Locke as Gentry Locke received substantial fees for services in connection with the Rich Hill Development project. Additionally, Gentry Locke may be held liable for Stockburger's acts because the firm accepted the benefits of Stockburger's acts with knowledge of his involvement in the project and with knowledge of the wrongful acts.

Respectfully submitted.

GEORGIA ANN SNYDER-FALKINHAM

By 
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Roger E. Jenne
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Cleveland, TN 373634

Counsel for plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of this pleading has been served upon:

Frank B. Miller, III, Attorney
SANDS, ANDERSON, MARKS & MILLER
P. O. Box 1998
Richmond, VA 23216

Ronald D. Hodges, Attorney
WHARTON, ALDHIZER & WEAVER
100 S. Mason Street
Harrisonburg, VA 22801

by placing a true and exact copy of said pleading in the United States mail addressed to said counsel's office, with sufficient postage thereon to carry the same to its destination, this 20 day of January, 1994.

JENNE, SCOTT & BRYANT

By 

MEDIATION CONSENT FORM

INITIATOR:

CASE NUMBER:

RESPONDER:

MEDIATION DATE:

we, the undersigned, understand that:

1. The mediator(s), the litigants, their attorneys and any other participants in the mediation session agree that everything said or done in the mediation session is confidential and may not be used in any subsequent judicial or administrative procedure, except as allowed by statute. We also understand, however, that allegations of child abuse shall not be confidential.
2. Each party will provide substantial full disclosure of all relevant property and financial information.
3. The mediator(s) does not give legal advice; each party will have the opportunity to have counsel present during mediation or to consult with independent legal counsel at any time during the mediation. Parties are encouraged to seek such advice.
4. Any mediated agreement the parties reach will affect their legal rights.
5. Each party should have any draft agreement reviewed by independent counsel prior to signing the agreement or should waive his or her opportunity to do so.
6. Each party agrees not to involve the mediator(s), the Court Mediation Program, the Dispute Resolution Center or the records of this mediation session in any court proceedings and hereby waives any right to sue these parties.

George Irene English - Saltspring
Initiator Date 1/25/94

Responder

Date

Mediator

Date

Mediator

Date

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 1-5-94
Initiator _____ Date _____ Responder _____ Date _____

Mediator _____ Date _____ Mediator _____ Date _____

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Initiator

1-25-94
Date

Responder

Date

Mediator

Date

mediator

Date

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Initiator

Date

[Signature]

Responder

1/27/91

Date

Mediator

Date

Mediator

Date

MEDIATION CONSENT FORM

INITIATOR:

CASE NUMBER:

RESPONDER:

MEDIATION DATE:

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Responder

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Respondor

Date

Mediator

Date

Mediator

Date

MEDIATION CONSENT FORM

INITIATOR: *Angela J. Kingham*

CASE NUMBER:

RESPONDER: *Mark Kingham,
Auntie, 10/10...*

MEDIATION DATE: *1-25-94*

We, the undersigned, understand that:

1. The mediator(s), the litigants, their attorneys and any other participants in the mediation session agree that everything said or done in the mediation session is confidential and may not be used in any subsequent judicial or administrative procedure, except as allowed by statute. We also understand, however, that allegations of child abuse shall not be confidential.
2. Each party will provide substantial full disclosure of all relevant property and financial information.
3. The mediator(s) does not give legal advice; each party will have the opportunity to have counsel present during mediation or to consult with independent legal counsel at any time during the mediation. Parties are encouraged to seek such advice.
4. Any mediated agreement the parties reach will affect their legal rights.
5. Each party should have any draft agreement reviewed by independent counsel prior to signing the agreement or should waive his or her opportunity to do so.
6. Each party agrees not to involve the mediator(s), the Court Mediation Program, the Dispute Resolution Center or the records of this mediation session in any court proceedings and hereby waives any right to sue these parties.

Initiator

Date

Angela J. Kingham
Responder

1-25-94
Date

Mediator

Date

Mediator

Date

MEDIATION CONSENT FORM

INITIATOR:

CASE NUMBER:

RESPONDER:

MEDIATION DATE:

We, the undersigned, understand that:

1. The mediator(s), the litigants, their attorneys and any other participants in the mediation session agree that everything said or done in the mediation session is confidential and may not be used in any subsequent judicial or administrative procedure, except as allowed by statute. We also understand, however, that allegations of child abuse shall not be confidential.
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6. Each party agrees not to involve the mediator(s), the Court Mediation Program, the Dispute Resolution Center or the records of this mediation session in any court proceedings and hereby waives any right to sue these parties.


Initiator

Date


Responder

4/27/94
Date

Mediator

Date

Mediator

Date

MEDIATION CONSENT FORM

INITIATOR:

CASE NUMBER:

RESPONDER:

MEDIATION DATE:

We, the undersigned, understand that:

1. The mediator(s), the litigants, their attorneys and any other participants in the mediation session agree that everything said or done in the mediation session is confidential and may not be used in any subsequent judicial or administrative procedure, except as allowed by statute. We also understand, however, that allegations of child abuse shall not be confidential.
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4. Any mediated agreement the parties reach will affect their legal rights.
5. Each party should have any draft agreement reviewed by independent counsel prior to signing the agreement or should waive his or her opportunity to do so.
6. Each party agrees not to involve the mediator(s), the Court Mediation Program, the Dispute Resolution Center or the records of this mediation session in any court proceedings and hereby waives any right to sue these parties.

Initiator

Date

Responder

Date

Mediator

Date

Mediator

Date

IN THE CIRCUIT COURT OF THE CITY OF ROANOKE

GEORGIA ANNE SNYDER-FALKINHAM, Plaintiff,

v. Case No.: CL91-1212

BRUCE C. STOCKBURGER, et al., Defendants.

FINAL ORDER

On motion of the parties, by counsel, it is ORDERED that this action be dismissed with prejudice.

It is further ORDERED, on motion of the parties, by counsel, that violation of the confidentiality portion of the Mutual Release and Settlement Agreement shall constitute contempt of court, and violations shall be punished accordingly.

ENTER:

Judge Designate

WE ASK FOR THIS:

Thomas L. Rasnic, Esquire
Rasnic and Rasnic, P.C.
P.O. Box 733
Jonesville, VA 24263

~~Roger Jenne, Esquire~~
~~P.O. Box 161~~
~~Cleveland, TN 37364~~

Counsel for Plaintiff



Frank B. Miller, III, Esquire
Sands, Anderson, Marks & Miller
801 East Main Street
Suite 1500
P.O. Box 1998
Richmond, VA 23216-1998
Counsel for Defendant Stockburger



Ronald D. Hodges, Esquire
Wharton, Aldhizer & Weaver
A Professional Limited Liability Company
100 South Mason Street
Harrisonburg, VA 22801
Counsel for
Gentry, Locke, Rakes & Moore

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ROANOKE

GEORGIA ANNE SNYDER-FALKINHAM,

Plaintiff,

v.

Case No.: CL91-1212

BRUCE C. STOCKBURGER,
 GENTRY, LOCKE, RAKES AND MOORE,
 S. D. ROBERTS MOORE,
 WILLIAM R. RAKES,
 JAMES R. AUSTIN,
 CHARLES L. WILLIAMS, JR.,
 EUGENE E. DERRYBERRY,
 WILLIAM J. CREECH,
 JAMES C. JOYCE, JR.,
 LINDA DAVIS FRITH,
 W. DAVID PAXTON,
 W. WILLIAM GUST,
 GUY M. HARBERT, III,
 AND
 DAVID C. WEAVER,

Defendants.

ORDER


Upon motion of plaintiff, by counsel, it is ORDERED that this action be and the same is hereby dismissed with prejudice as to defendants, S.D. Roberts Moore, William R. Rakes, James R. Austin, Charles L. Williams, Jr., Eugene E. Derryberry, William J. Creech, James C. Joyce, Jr., Linda Davis Frith, W. David Paxton, W. William Gust, Guy M. Harbert, III and David C. Weaver.


And it is further ORDERED that the claim for punitive damages be and the same is hereby dismissed with prejudice.

Enter this 31st day of January, 1994.

Darrard F. Jones
 Judge

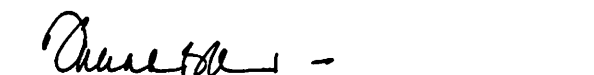
WE ASK FOR THIS:

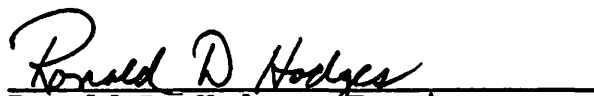

Thomas L. Rasnic, Esquire
Rasnic and Rasnic, P.C.
P.O. Box 733
Jonesville, VA 24263


Roger Jenne, Esquire
P.O. Box 161
Cleveland, TN 37364

Counsel for Plaintiff

SEEN AND AGREED


Frank B. Miller, III, Esquire
Sands, Anderson, Marks & Miller
801 East Main Street
Suite 1500
P.O. Box 1998
Richmond, VA 23216-1998
Counsel for Defendant Stockburger


Ronald D. Hodges, Esquire
Wharton, Aldhizer & Weaver
A Professional Limited Liability Company
100 South Mason Street
Harrisonburg, VA 22801
Counsel for Defendants
S.D. Roberts Moore, William R. Rakes,
James R. Austin, Charles L. Williams, Jr.
Eugene E. Derryberry, William J. Creech,
James C. Joyce, Jr., Linda Davis Frith,
W. David Paxton, W. William Gust,
Guy M. Harbaert, III and David C. Weaver,
and Gentry, Locke, Rakes & Moore

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF ROANOKE

GEORGIA ANNE SNYDER-FALKINHAM

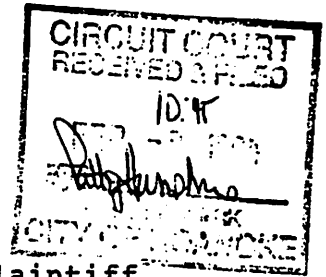
Plaintiff

vs.

Case No.: CL91-1212

BRUCE C. STOCKBURGER, ET AL.

Defendants

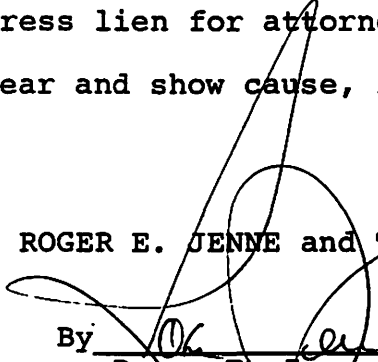


NOTICE

Take notice and be advised that the undersigned shall appear before the Honorable Barnard F. Jennings, holding the Circuit Court for the City of Roanoke by designation, while sitting at Martinsville, Henry County, Virginia, in the City Council Chambers, City Hall, 2nd Floor, 55 Church Street, Martinsville, Virginia, on February 14, 1994, at 10:30 a.m., to present the motion to withdraw and to impress lien for attorney attorney fees and expenses. You may appear and show cause, if any, why this relief should not be granted.

ROGER E. JENNE and THOMAS L. RASNIC

By



Roger E. Jenne (BPR #966)
JENNE, SCOTT & BRYANT
P. O. Box 161
Cleveland, TN 37364
(615) 476-5506

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of this pleading has been served upon:

Georgia Anne Snyder-Falkinham
SNYDER & ASSOCIATES
500 South Main Street
Blacksburg, VA 24040

Michael S. Horwatt, Attorney
MICHAEL HORWATT & ASSOCIATES, P.C.
8300 Boone Boulevard, Suite 800
Vienna, VA 22182-2626

Frank B. Miller, III, Attorney
SANDS, ANDERSON, MARKS & MILLER
P. O. Box 1998
Richmond, VA 23216

Ronald D. Hodges, Attorney
WHARTON, ALDHIZER & WEAVER
100 S. Mason Street
Harrisonburg, VA 22801

by placing a true and exact copy of said pleading in the United States mail addressed to said counsel's office, with sufficient postage thereon to carry the same to its destination, this 4 day of February, 1994.

JENNE, SCOTT & BRYANT

By  _____

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF ROANOKE

GEORGIA ANNE SNYDER-FALKINHAM

Plaintiff

vs.

Case No.: CL91-1212

BRUCE C. STOCKBURGER, ET AL.

Defendants

MOTION TO WITHDRAW AS COUNSEL

Thomas L. Rasnic and Roger E. Jenne, counsel of record for plaintiff, respectfully move the court for leave to withdraw as counsel for the plaintiff, being relieved and discharged of further responsibilities in the representation of the plaintiff's causes. In support of this motion, counsel states that irreconcilable conflict has developed between the client and attorneys of record. Counsel further states that they have received notification that Georgia Anne Snyder-Falkinham has employed the law firm of Michael Horwatt & Associates, P.C., to represent her interests.

Counsel further respectfully moves the court to impress a lien, for attorney fees and expenses, against any recovery effected in the within cause.

WHEREFORE, counsel ask judgment on their motion.

ROGER E. JENNE and THOMAS L. RASNIC

By 

Roger E. Jenne (BPR #966)
JENNE, SCOTT & BRYANT
P. O. Box 161
Cleveland, TN 37364
(615) 476-5506

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and exact copy of this pleading has been served upon:

Georgia Anne Snyder-Falkinham
SNYDER & ASSOCIATES
500 South Main Street
Blacksburg, VA 24040

Michael S. Horwatt, Attorney
MICHAEL HORWATT & ASSOCIATES, P.C.
8300 Boone Boulevard, Suite 800
Vienna, VA 22182-2626

Frank B. Miller, III, Attorney
SANDS, ANDERSON, MARKS & MILLER
P. O. Box 1998
Richmond, VA 23216

Ronald D. Hodges, Attorney
WHARTON, ALDHIZER & WEAVER
100 S. Mason Street
Harrisonburg, VA 22801

by placing a true and exact copy of said pleading in the United States mail addressed to said counsel's office, with sufficient postage thereon to carry the same to its destination, this 4 day of February, 1994.

JENNE, SCOTT & BRYANT

By  _____

JENNE, SCOTT & BRYANT

ATTORNEYS-AT-LAW
260 NORTH OCOEE STREET
P. O. BOX 161

CLEVELAND, TENNESSEE 37364-0161

ROGER E. JENNE
D. MITCHELL BRYANT

February 4, 1994

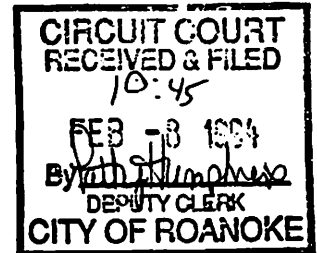
ROBERT A. SCOTT
(1940-1984)

TELEPHONE NUMBER:
615/476-5506

FACSIMILE NUMBER:
615/476-5058

Arthur B. Crush, III, Clerk
Circuit Court of the City of Roanoke
315 West Church Avenue
Roanoke, VA 24010

Re: Georgia Anne Snyder-Falkinham v.
Bruce C. Stockburger, et al.
Case No. CL91-1212



Dear Mr. Crush:

Please find enclosed herewith a motion to withdraw as counsel, together with notice, for filing in the above-styled action.

Thank you for your kind cooperation in this matter.

Very truly yours,

JENNE, SCOTT & BRYANT

By [Signature]
Roger E. Jenne

REJ/sw

Enc.

cc: Thomas L. Rasnic, Attorney
RASNIC AND RASNIC
P. O. Box 733
Jonesville, VA 24263

PRINTER'S NOTE:

**THESE PAGES WERE INTENTIONALLY LEFT BLANK
FOR PURPOSES OF PAGINATION**

JENNE, SCOTT & BRYANT

ATTORNEYS-AT-LAW
260 NORTH OCOEE STREET
P. O. BOX 161

CLEVELAND, TENNESSEE 37364-0161

ROGER E. JENNE
D. MITCHELL BRYANT

February 4, 1994

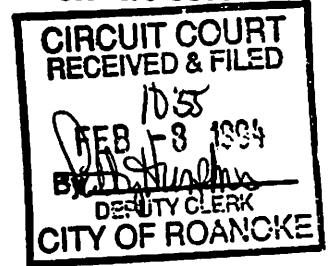
ROBERT A. SCOTT
(1940-1984)

TELEPHONE NUMBER:
615/476-5506

FACSIMILE NUMBER:
615/476-5058

Arthur B. Crush, III, Clerk
Circuit Court of the City of Roanoke
315 West Church Avenue
Roanoke, VA 24010

Re: Michael E. Snyder and Stacy A. Snyder
v. Bruce C. Stockburger, et al.



Dear Mr. Crush:

Please find enclosed herewith a motion to withdraw as counsel, for filing in the above-styled action.

Thank you for your kind cooperation in this matter.

Very truly yours,

JENNE, SCOTT & BRYANT

By 
Roger E. Jenne

REJ/sw

Enc.

cc: Thomas L. Rasnic, Attorney
RASNIC AND RASNIC
P. O. Box 733
Jonesville, VA 24263

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF ROANOKE

GEORGIA ANNE SNYDER-FALKINHAM,

Plaintiff,

v.

Case No.: CL91-1212

BRUCE C. STOCKBURGER, et al.,

Defendants.

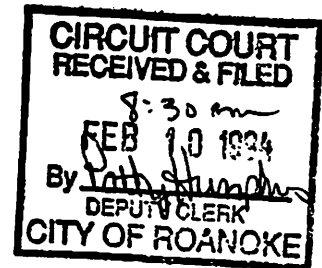
NOTICE

TO: Thomas L. Rasnic, Esquire
Rasnic and Rasnic, P.C.
P. O. Box 733
Jonesville, VA 24263

Roger Jenne, Esquire
P. O. Box 161
Cleveland, TN 37364

Ronald D. Hodges, Esquire
Wharton, Aldhizer & Weaver
100 South Mason Street
P.O. Box 809
Harrisonburg, VA 22801


Michael S. Horwatt, Esquire
Michael Horwatt & Associates, P.C.
8300 Boone Boulevard
Vienna, VA 22182-2626



PLEASE TAKE NOTICE that on the 15th day of February, 1994, beginning at 10:00 a.m., or as soon thereafter as counsel may be heard, I shall appear before The Honorable Barnard F. Jennings, sitting in the Circuit Court for Wythe County, to confirm the settlement of this matter.

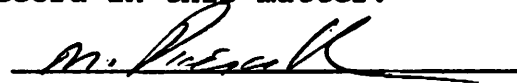
BRUCE C. STOCKBURGER,

By Counsel


Frank B. Miller, III
SANDS, ANDERSON, MARKS & MILLER
801 East Main Street
Suite 1500, Ross Building
P O Box 1998
Richmond, VA 23216
804-783-7255

CERTIFICATE

I hereby certify that a true copy of the foregoing pleading was mailed and faxed this the 8th day of February, 1994, postage fully prepaid, to all counsel of record in this matter.



LAW OFFICES
SANDS, ANDERSON, MARKS & MILLER

A PROFESSIONAL CORPORATION
THE ROSS BUILDING
801 EAST MAIN STREET
POST OFFICE BOX 1998
RICHMOND, VIRGINIA 23218-1998
804/648-1636

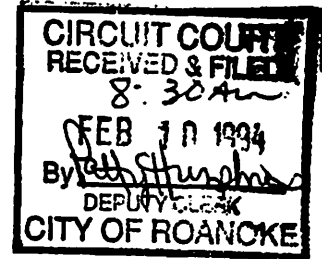
TELECOPIER
804/783-2926
804/783-7291

FRANK B. MILLER, III

DIRECT DIAL NO:
(804) 783-7255

February 8, 1994

Mr. Arthur B. Crush, III, Clerk
Circuit Court of the City of Roanoke
315 Church Avenue, SW
Roanoke, VA 24010



Re: *Georgia Anne Snyder-Falkinham v. Bruce C. Stockburger,*
et al.
Case No.: CL91-1212

Dear Mr. Crush:

Please file the enclosed Notice with the other papers in this matter.

Thank you very much.

Sincerely yours,

Frank B. Miller, III

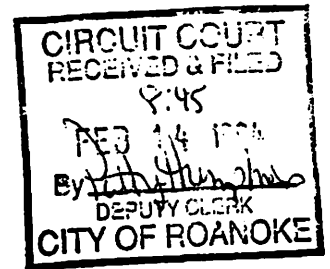
lr

Enc.

cc: Thomas L. Rasnic, Esquire
Roger Jenne, Esquire
Ronald D. Hodges, Esquire
Michael S. Horwatt, Esquire
The Honorable Barnard F. Jennings

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ROANOKE



GEORGIA ANNE SNYDER-FALKINHAM,

Plaintiff,

v.

Case No.: CL91-1212

BRUCE C. STOCKBURGER, et al.

Defendants.

NOTICE

Please take notice that on the 15th day of February, 1994, beginning at 10:00 a.m., or as soon thereafter as counsel may be heard, the undersigned shall appear before the Honorable Barnard F. Jennings, Judge Designate for the Circuit Court for the City of Roanoke, to present a Motion to Vacate an Order and a Final Order entered in these proceedings on January 31, 1994, by the Honorable Barnard F. Jennings. The hearing for such motion shall take place in the general district courtroom located on the second floor of the Wythe County Old Courthouse in Wytheville, Virginia.

A handwritten signature in black ink, appearing to read "Michael S. Horwatt".

Michael S. Horwatt, VSB 004943
Charles F. Wright, VSB 30609
Michael Horwatt & Associates, P.C.
8300 Boone Boulevard, Suite 800
Vienna, VA 22182
(703) 847-1900

CERTIFICATE OF SERVICE

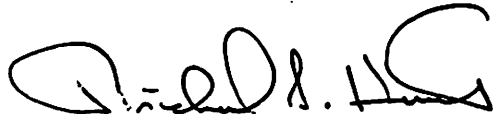
I hereby certify that a true copy of the foregoing Notice was sent by facsimile and by U.S. mail, postage pre-paid, this 9th day of February, 1994, to counsel as follows:

Frank B. Miller, III, Esquire
Sands, Anderson, Marks & Miller
P.O. Box 1998
Richmond, VA 23216

Ronald D. Hodges, Esquire
Wharton, Aldhizer & Weaver
A Professional Limited Liability Company
100 South Mason Street
Harrisonburg, VA 22801

Thomas L. Rasnic, Esquire
Rasnic and Rasnic, P.C.
P.O. Box 733
Jonesville, VA 24263
Counsel for Plaintiff

Roger Jenne, Esquire
P.O. Box 161
Cleveland, TN 37364
Counsel for Plaintiff



Michael S. Horwatt

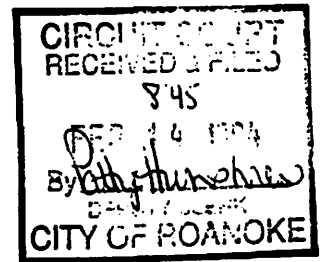
MICHAEL HORWATT & ASSOCIATES P.C.

8300 BOONE BOULEVARD
VIENNA, VIRGINIA 22182-2626
703 847-1900

MICHAEL S. HORWATT

DIRECT DIAL
703 847-1919

FACSIMILE: 703 847-4618



February 9, 1994

By Federal Express Overnight

Mr. Arthur B. Crush, III
Clerk of the Court
Circuit Court for the City of Roanoke
315 West Church Avenue
Roanoke, VA 24010

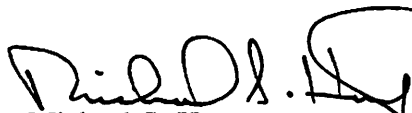
RE: Georgia Anne Snyder-Falkinham v. Bruce C. Stockburger, et al.;
Case No. CL91-1212;
Our File No. H8180.122.2

Dear Mr. Crush:

Please find enclosed two (2) copies of Notice (of hearing on Motion to Vacate scheduled for February 15, 1994, at 10 a.m., in Wytheville, Virginia) in the above-referenced matter. Please file the Notice and return one (1) file-marked copy to the undersigned in the enclosed postage-paid envelope.

Thank you for your attention to this matter.

Sincerely,


Michael S. Horwatt

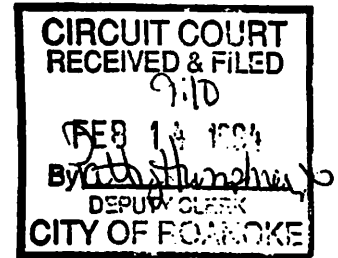
jcb

Enclosures

cc: Mrs. Georgia Anne Snyder-Falkinham

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ROANOKE



GEORGIA ANNE SNYDER-FALKINHAM,

Plaintiff,

v.

BRUCE C. STOCKBURGER, et al.

Defendants.

Case No.: CL91-1212

MOTION TO REINSTATE AND FOR VACATION OF ORDER AND FINAL ORDER

GEORGIA ANNE SNYDER-FALKINHAM, Plaintiff ("Ms. Snyder-Falkinham"), by the undersigned counsel, and pursuant to Rule 1:1 of the Rules of the Supreme Court of Virginia, respectfully moves that this Court vacate the Order ("the Order") and ("Final Order") previously entered in these proceedings (collectively the "Orders") on January 31, 1994. She further moves that this Court reinstate her Motion for Judgment (including amendments to said Motion for Judgment). Copies of the Orders appear as Exhibits A and B affixed to this Motion to Reinstate and for Vacation of Order and Final Order (the "Motion").

In support of this Motion, Ms. Snyder-Falkinham states the following:

1. On January 31, 1994, this Court entered the Order and Final Order.
2. These Orders dismissed with prejudice the pending case against each of the individual defendants and against the defendant law partnership.
3. On information and belief, one of Ms. Snyder-Falkinham's attorneys, Mr. Thomas

L. Rasnic ("Rasnic") moved for entry of these Orders. On information and belief this occurred about 10:00 a.m. on January 31, 1994 ("the Appearance" or "the Proceeding"). Although Rasnic's co-counsel Mr. Roger E. Jenne ("Jenne") did not attend the Proceeding, on information and belief Rasnic appeared pursuant to Jenne's instructions. The Motion will refer to Jenne and Rasnic collectively as "Plaintiff's Trial Attorneys" or "the Trial Counsel."

4. Plaintiff's Trial Attorneys endorsed the Orders and moved for their entry without their client's knowledge or consent and outside of her presence.

5. On information and belief no court reporter attended the Proceeding and transcribed the record.

6. On information and belief, Plaintiff's Trial Attorneys either represented or implied to this Court that Ms. Falkinham-Snyder had entered into a written, fully executed settlement agreement.

7. The Final Order establishes that the Court understood that the parties had entered a written agreement. The pertinent language appears below:

It is further ORDERED, on motion of the parties, by counsel, that violation of the confidentiality portion of the Mutual Release and Settlement Agreement shall constitute contempt of court, and violations shall be punished accordingly (emphasis added).

8. This language assumes that a duly executed instrument existed before entry of this Final Order. Otherwise, this Court would have refused to make a violation of the confidentiality provision of such purported Mutual Release and Settlement Agreement punishable by contempt.

9. Yet, prior to the entry of the Final Order, Ms. Snyder-Falkinham never even saw a draft of the document referred to in the Court's Final Order as "the Mutual Release and

Settlement Agreement" ("the Purported Settlement Agreement"). In fact, no draft of the Purported Settlement Agreement may have existed prior to entry of the Orders.

10. At 8:00 a.m. on the morning of January 31, Ms. Snyder-Falkinham made her first request for a copy of the Purported Settlement Agreement.

11. During this same conversation, Jenne told her that Rasnic and a counsel for the Defendants, Mr. Frank B. Miller, III ("Miller") had already left for court. Jenne did not tell Ms. Snyder-Falkinham that Rasnic would move for entry of the Order and Final Order that very morning. She assumed that counsel wanted merely to inform the court of the status of the negotiations and to "cancel court."

12. Once she learned that her Trial Counsel had obtained a dismissal of her case with prejudice, Ms. Snyder-Falkinham repeatedly asked them for a copy of the Purported Settlement Agreement.

13. Not until 4:10 p.m. February 1, 1994, did Plaintiff's Attorneys provide her with a copy of the Purported Settlement Agreement. Only then did she see the instrument for the first time. A copy of the partially executed instrument appears as Exhibit C affixed to this Motion.

14. Although the document contains the signature of Bruce D. Stockburger, the signature of Ms. Snyder-Falkinham does not appear.

15. Mr. Stockburger's signature on the Purported Settlement Agreement demonstrates that his counsel provided him with an opportunity to review and sign the document before Ms. Snyder-Falkinham ever got an opportunity to see it.

16. Even now, Plaintiff's Trial Attorneys have failed to honor Ms. Snyder-

Falkinham's request to provide her with meaningful information about the negotiations, the terms of settlement and the particulars of the Proceeding.

17. More specifically, in a letter dated February 8, 1994, Ms. Snyder-Falkinham raised the following points and made the following requests:

- a. Did they have a copy of the Orders on Sunday, January 30, 1994?
- b. Did they endorse the Orders on the evening of Sunday, January 30, 1994, or in the morning on Monday, January 31, 1994?
- c. Do they have a list of all persons who attended the Proceeding?
- d. Did a court reporter attend the hearing and transcribe it?
- e. Who canceled the court reporter?
- f. Who were the court reporters assigned to transcribe the trial proceedings and the court reporting service of each such reporter?
- g. What did Rasnic and Miller represent to this Court about the purported settlement agreement and the status of the negotiations to support entry of the Orders?
- h. In the Proceeding did this Court deny any motions or refuse to enter any orders?
- i. What happened at the Proceeding?
- j. What happened with respect to conversations about whether counsel had "made" an "agreement" and the precise terms of such "agreement"?
- k. Furnish any documents or information about the financial condition of Gentry, Locke, Rakes & Moore.
- l. Tender any financial material or information about the financial condition about Defendant Stockburger.

m. Transmit any financial material or information about the financial condition of Gentry, Locke, Rakes & Moore.

n. Provide any information or documents pertaining to a reservation of rights or denial of coverage by the Virginia Reciprocal of Gentry, Locke, Rakes & Moore.

o. Deliver material or information about other kinds of insurance coverage carried by Gentry, Locke, Rakes & Moore, besides malpractice insurance.

Ms. Snyder Falkinham also made other requests in her letter. A copy of this letter appears as Exhibit D.

18. As of the filing of this Motion, Rasnic and Jenne have failed to provide a satisfactory response to these requests.

19. By not giving Ms. Snyder-Falkinham the information and material enumerated in Paragraph 17 above, Rasnic and Jenne have helped the defense and acted adversely to their client's interests.

20. After Ms. Snyder-Falkinham and her legal representatives raised questions about the authority of her Trial Counsel to endorse the Orders or commit her to any "agreement" settling the case, Jenne and Rasnic have given self-serving versions of events in vague, general terms and with virtually no supporting documentation. They have yet to answer the specific questions enumerated in Paragraph 17, or to provide the material requested in Exhibit D.

21. Without prior consultation or reasonable notice, Plaintiff's Trial Attorneys precipitously moved to withdraw from this case (and others). Neither Ms. Snyder-Falkinham, nor any of her other attorneys, requested or demanded such withdrawal by them. Nor did she

or her representatives renounce any obligations she may have to them under her engagement letter. Nor did Ms. Snyder-Falkinham or any of her other attorneys say that she would reject the dollar amount of the proposed settlement.

22. Without an executed settlement agreement and release, without providing answers to the specific questions raised in Paragraph 17, and giving her the information and material that she requested in Exhibit D, both her counsel and counsel for the Defendants have placed Ms. Snyder-Falkinham at a distinct disadvantage. While she has proof that she did not authorize a settlement or the dismissal of any defendants, or of the case, her counsel have put her in a position where she must match her word against theirs (and their employees). Under these circumstances, the law of agency puts the burden on counsel, not Ms. Snyder-Falkinham, of establishing by clear and convincing evidence that she gave them authority to bind her to the Purported Settlement Agreement and to dismiss her case (and the individual parties) with prejudice. Her attorneys stand to lose a 40 percent contingency fee. Defense counsel stand to lose a settlement that they regard as advantageous to their clients.

23. This Court should protect Ms. Snyder-Falkinham from this unjustified and impermissible course of conduct by her Trial Attorneys. This Court should vacate the Orders. It should stay the proceedings, so that Ms. Snyder-Falkinham has an opportunity to revisit the proposed settlement with the assistance of independent counsel. If such settlement explorations don't succeed, this Court should allow her to find substitute trial counsel in prosecuting her claims against the Defendants.

24. Similarly, Defendants' counsel knew or should have known that they had no reasonable basis to assume that Ms. Snyder-Falkinham had agreed to a dismissal of the

individual partners and the defendant law firm. Nor could defense counsel reasonably assume that she had accepted the purported settlement agreement until she actually signed an agreement. Indeed defense counsel knew that Ms. Snyder-Falkinham had expressed concerns about the tax implications of the alleged settlement.

25. Plaintiff's Trial Attorneys knew or should have known that they had no authority to bind their client without her knowledge and consent.

26. The issue of client consent to any settlement had arisen from the very inception of the relationship between Ms. Snyder-Falkinham and Rasnic and Jenne.

27. The initial draft of their retainer agreement with Ms. Snyder-Falkinham gave Trial Counsel authority to settle their case without her consent. A copy of such draft appears as Exhibit E affixed to this Motion.

28. By transmittal letter dated January 30, 1992, to Ms. Snyder-Falkinham from Rasnic, he requested the following:

I enclose the new employment contracts which I told you we would need to get signed. Please sign these and date them September, 1991 as they will replace those that we presented to you at that time (emphasis added).

29. The new engagement letter transmitted with that letter contained only one significant change from the original draft. The critical excerpt appears below:

The attorneys accept the above employment and are authorized to effect a settlement or compromise, subject to the client(s) [sic] approval, or to institute such legal action, or actions, file such claims or counter-claims, as they may deem advisable in their judgment in order to enforce the client's rights (emphasis added).

A copy of the retainer agreement and transmittal letter appears as Exhibit E.

30. Despite this contractual obligation, her Trial Counsel attempted to commit her to

the purported agreement without her consent.

31. At no point prior to the endorsement of the Orders by Plaintiff's Trial Attorneys did Ms. Snyder-Falkinham ever receive a comprehensive, complete proposal in writing that definitively spelled out a settlement agreement. She couldn't. The negotiations never culminated in a settlement agreement.

32. In anticipation of the opening day of trial the next day, Ms. Snyder-Falkinham arrived in Roanoke about 11:30 a.m. on Sunday, January 30, 1994. She had come to meet with Messrs. Jenne and Rasnic to prepare for trial.

33. Instead Jenne and Rasnic conducted settlement negotiations with Defendants' attorneys for most of the day.

34. She recalls her Trial Counsel participated in three meetings with Defendants' attorneys on January 30. The first session ran from about noon to 2:00 p.m.; the second from shortly before 3:00 p.m. to about 5:00 p.m.; and the final session lasted from about 7:00 p.m. to 8:30 p.m.

35. The opening round of negotiations began when Mr. Ronald D. Hodges, one of Defendants' counsel, called Jenne and Rasnic and requested that they meet with them in their suite.

36. When Plaintiff's Trial Attorneys returned about 2:00 p.m. from this first negotiating session of the day, they informed her that the defense had given them a new settlement amount. Ms. Snyder-Falkinham tentatively accepted that figure. However this preliminary acceptance occurred in a vacuum. After she expressed a willingness to accept Defendant's settlement amount, Rasnic and Jenne told her that she must agree to four

conditions:

- i. She had to sign a personal release.
- ii. Her son Michael and her daughter Stacey had to sign a personal release.
- iii. She must agree to preserve the confidentiality of the settlement.
- iv. Her counsel had to withdraw a trial brief that they had apparently previously filed with the court.

37. Ms. Snyder-Falkinham immediately told her Trial Counsel that she had to confer with her son and daughter to find out if they would release their personal claims. She learned that each wanted a cash payment of a certain amount in exchange for their releases.

38. Based on the position of her two children, she instructed Jenne and Rasnic to make a counter offer to the Defendants at a higher figure. This higher figure included just enough to accommodate the expectations of Michael and Stacey Snyder, her children.

39. A second round of negotiations then began about 3:00 p.m. When they returned about 5:00 p.m., Jenne and Rasnic told Ms. Snyder-Falkinham that defense counsel had called the Judge Designate, to inform him that he did not have to come to Roanoke. Her counsel viewed this development as positive. Mr. Rasnic also tried unsuccessfully to reach Judge Jennings.

40. About 7:00 p.m. Plaintiff's Trial Attorneys received a call from defense counsel requesting a third negotiating session. Jenne and Rasnic returned with a global counteroffer from Defendants. This counteroffer modified the previous counteroffer of Ms. Snyder-Falkinham. Rasnic and Jenne informed Ms. Snyder-Falkinham that the defense's new counteroffer contained the following new elements:

i. Defendants refused to increase the Ms. Snyder-Falkinham's higher settlement demand. However, Defendants dropped their requirement that Michael Snyder sign personal releases.

ii. Defendants required a release from Ms. Snyder-Falkinham's husband, Joe Falkinham.

iii. Defendants required that the Trustees of the Peter C. Snyder Marital and Residual Trusts ("the Trusts") execute a release.

iv. Defendant Gentry, Locke, Rakes & Moore insisted that Mr. Stockburger's 51 percent interest in Rich Hill Development Corporation be transferred to Ms. Snyder-Falkinham.

41. Ms. Snyder-Falkinham refused to accept the last two elements of Defendants' new counter offer. She told Plaintiff's Trial Attorneys that she would only accept the counteroffer if she could satisfy herself that a) the Co-Trustee of the Trust, Central Fidelity Bank, would agree to sign such a release; b) that Mr. Joseph Anthony, her tax attorney, could assure her that such transfer of Mr. Stockburger's stock to her would not result in adverse tax consequences.

42. On Sunday, January 30, Jenne and Ms. Snyder-Falkinham telephoned Mr. Anthony to find out about the potential tax consequences of her receiving Mr. Stockburger's 51 percent stock interest in Rich Hill Development Corporation. Mr. Anthony said that he could not give them a "clean opinion" without thoroughly analyzing the problem. Once Mr. Jenne learned of this problem, he should have immediately advised defense counsel that he could not commit his client to a settlement. He did not. Instead,

Jenne berated Mr. Anthony to Ms. Snyder-Falkinham because Mr. Anthony could not serve up instantaneously a simple answer to a complex issue.

43. Undeterred, Jenne turned to Ms. Snyder-Falkinham's CPA, Richard C. Crabbs, to resolve this problem. Mr. Crabbs told Jenne that he certainly could not opine as to the tax consequences of Mr. Stockburger's transferring his shares to Ms. Snyder-Falkinham without carefully analyzing the problem and conferring with Mr. Anthony.

44. The potential adverse impact of the contemplated stock transfer by Mr. Stockburger to Ms. Snyder-Falkinham was subsequently determined to subject her to a potential tax exposure of approximately one million dollars. Counsels' duty to their client (both under the terms of their engagement letter and under the Code of Professional Responsibility) required that they immediately inform defense counsel that Ms. Snyder-Falkinham had a serious problem with the proposed settlement agreement. They should have told defense counsel that until further study by her tax attorney and CPA, Ms. Snyder-Falkinham could not accept Defendant's counteroffer to her prior counteroffer.

45. Yet, when Jenne suggested to Ms. Snyder-Falkinham about 9:00 p.m. Sunday evening that she go home, neither Jenne nor Rasnic had called Defendants' attorneys to tell them that she would need more time to consider Defendants' counteroffer. In seeking Ms. Snyder-Falkinham to accept the settlement terms irrespective of the inherent tax problems, Jenne, in effect, told Ms. Snyder-Falkinham to disregard the advice of her personal tax attorney and her CPA (neither of whom had a 40 percent contingency fee riding on her acceptance of the settlement). Further, Mr. Anthony had advised her to make no agreement regarding the disposition of Mr. Stockburger's interest in Rich Hill Development Corporation

until he studied the issue carefully.

46. Still worse, Jenne pressured her to accept a provision in the proposed settlement agreement regarding the transfer of shares, knowing the potential adverse implications to his client, by stating that Defendant's CPA saw no tax problem with such contemplated transfer.

47. Ms. Snyder-Falkinham remained firm in her position and reiterated it to Mr. Jenne on Monday morning. She asked Jenne how the Defendant's CPA could opine on her tax position? She insisted upon resolving the tax issue to her satisfaction before she would accept a settlement.

48. Again, before she left for the night, neither Rasnic, Jenne or members of their staffs advised defense counsel that she had refused their latest counteroffer.

49. However, Ms. Snyder-Falkinham believed that the parties had come close to a settlement. Based on her refusal to accept the Defendants' new counteroffer, she understood that her attorneys would "cancel" court the next morning so that the parties could complete their negotiations. Indeed, Jenne told her to "go home and think about it" [the proposed settlement]. Moreover, she regarded the negotiations as continuing until both parties signed the release and settlement agreement. Finally, Jenne told Ms. Snyder-Falkinham not to call them Monday morning. They would call her.

50. Accordingly, Ms. Snyder-Falkinham had no concern or worry about the fact that the trial would not occur the following day. She expected that after further negotiations, the parties would conclude a settlement. That evening she informed her relatives and witnesses that the attorneys had "canceled" the trial and they need not come to court.

51. After her departure Sunday evening, Ms. Snyder-Falkinham also called her tax

attorney, Mr. Anthony. She requested that he call Jenne first thing in the morning to discuss the tax problem with him. If the transaction would result in additional tax to her, she said she would reject the contemplated settlement.

52. About 8:00 a.m. Monday, January 31, Jenne called Ms. Snyder-Falkinham. He informed her that Defendants' attorney, Mr. Miller, had just called to inform him that an official of Virginia Reciprocal who had to approve the contemplated settlement amount had done so Sunday night at 11:00 p.m.. She inquired about the tax problem. Jenne reiterated to Ms. Snyder-Falkinham that Defendants' tax expert had advised that the transfer of Stockburger's stock to her would not have adverse tax consequences. When she asked Jenne about the concerns that her tax attorney and CPA had raised Sunday night, Jenne responded: "You are not going to let this kill the deal are you?" She answered that she would not agree to any settlement that might result in a tax problem for her and that he would soon receive a call from Mr. Anthony about the tax issues.

53. During that discussion, Jenne still did not tell his client about the imminent dismissal with prejudice of her case that morning.

54. Following her conversation with Jenne, she called Mr. Anthony's office to request that he confer with Jenne quickly. Mr. Anthony engaged in further research on the tax question. His concern about the potential adverse tax implications of the proposed settlement became even greater. When Mr. Anthony called Jenne, Jenne left him with the impression that settlement discussions had continued. Jenne never mentioned the imminent or already accomplished dismissal of the case in that discussion with Mr. Anthony.

55. Around 1:00 p.m. on January 31, Jenne called Ms. Snyder-Falkinham "to get Joe

Falkinham [her husband] and come to the Roanoke Marriott and sign [the settlement papers]." She informed him again that she would not sign papers that she had not seen. Jenne then informed her that "It was too late. All lawsuits had been dismissed with prejudice this morning." Never on Sunday or Monday did Plaintiff's Trial Attorneys inform her of their plan to have the pending actions dismissed with prejudice.

56. That day, she retained counsel for the sole purpose of seeking to set aside the Orders.

57. Two days later, on February 3, 1994, the undersigned counsel entered an appearance for the purpose of moving to vacate the Orders.

58. Based upon Ms. Snyder-Falkinham's preliminary agreement to accept a stipulated settlement amount with no conditions attached, the contemplated settlement terms went through three separate iterations. Even after she received a draft of the Purported Settlement Agreement for the first time, at shortly after 4:10 p.m. on February 1, 1994, Plaintiff's Trial Attorneys continued to negotiate with defense counsel. They arrogated to themselves the authority to decide which of the conditions in the Purported Settlement Agreement were "material" and which were not. They had no right or authority to substitute their judgment for their client's. They had no right to have her case dismissed. She had told them that she had not agreed to all of the contemplated conditions of the settlement. The parties had signed no final agreement.

59. Had Plaintiff's Attorneys discharged their duty to Ms. Snyder-Falkinham, they would have made certain that they had given their client a written version of a settlement and release agreement. They would have carefully reviewed each section with her. They should

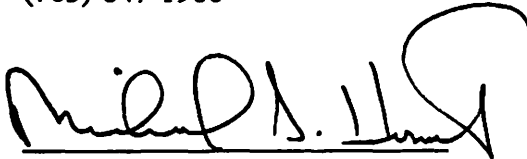
determined whether her tax attorney found the contemplated transaction acceptable. They should have made certain that the Co-Trustee no a problem with the contemplated settlement. They never should have dismissed the case with prejudice until their client signed a settlement and release agreement. They should have told this Court that the parties had no final draft of a settlement agreement. They should have told this Court that Ms. Snyder-Falkinham had not seen or signed the agreement. They should have told the court that a Co-Trustee had to sign the Agreement. Finally, and most importantly, her attorneys should have told this Court that their client had raised specific objections to the settlement proposed by Defendants. Had they met their responsibilities, this Court never would have entered the Orders. Finally, while defense counsel may not have known all of the foregoing facts, they certainly knew that Ms. Snyder-Falkinham had not signed an agreement referenced in the Final Order. Defense counsel certainly knew that the terms of settlement under discussion had gone through many iterations. They knew or should have known that the inherent nature of this controversy meant that the parties had no settlement agreement until all of the parties signed a written instrument incorporating all the terms and conditions of the settlement.

WHEREFORE, Ms. Snyder-Falkinham respectfully moves that this Court vacate the Orders, and stay the proceedings in these cases until further order of this Court. She further requests that she have thirty (30) days within which to review the proposed settlement and resolve her concerns about it. If she decides not to accept such settlement, or if Defendants withdraw it, she asks the court for an additional thirty (30) days to find substitute counsel. If the parties do not reach a settlement within such thirty (30) day period, she asks that this Court give her thirty (30) days within which to obtain new counsel. Within ten (10) days

after she obtains new counsel, she asks that this Court hold a status conference with all counsel.

GEORGIA ANNE SNYDER-FALKINHAM
By Counsel

Michael Horwatt & Associates, P.C.
8300 Boone Boulevard, Suite 800
Vienna, VA 22182
(703) 847-1900

A handwritten signature in black ink, appearing to read "Michael S. Horwatt", written over a horizontal line.

Michael S. Horwatt
Virginia State Bar No. 004943
Charles F. Wright
Virginia State Bar No. 030609
Counsel for Plaintiff Georgia Anne Snyder-Falkingham

CERTIFICATE OF SERVICE


I hereby certify that a true copy of the foregoing Motion to Reinstate and for Vacation of Order and Final Order was sent by facsimile and by U.S. mail, postage pre-paid, this 11th day of February, 1994, to counsel as follows:

Frank B. Miller, III, Esquire
Sands, Anderson, Marks & Miller
P.O. Box 1998
Richmond, VA 23216

Ronald D. Hodges, Esquire
Wharton, Aldhizer & Weaver
A Professional Limited Liability Company
100 South Mason Street
Harrisonburg, VA 22801

Thomas L. Rasnic, Esquire
Rasnic and Rasnic, P.C.
P.O. Box 733
Jonesville, VA 24263

Roger E. Jenne, Esquire
P.O. Box 161
Cleveland, TN 37364


Michael S. Horwatt

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ROANOKE

GEORGIA ANNE SNYDER-FALKINHAM,

Plaintiff,

v.

Case No.: CL91-1212

BRUCE C. STOCKBURGER,
GENTRY, LOCKE, RAKES AND MOORE,
S. D. ROBERTS MOORE,
WILLIAM R. RAKES,
JAMES R. AUSTIN,
CHARLES L. WILLIAMS, JR.,
EUGENE E. DERRYBERRY,
WILLIAM J. CREECH,
JAMES C. JOYCE, JR.,
LINDA DAVIS FRITH,
W. DAVID PAXTON,
W. WILLIAM GUST,
GUY M. HARBERT, III,
AND
DAVID C. WEAVER,

Defendants.

ORDER

Upon motion of plaintiff, by counsel, it is ORDERED that this action be and the same is hereby dismissed with prejudice as to defendants, S.D. Roberts Moore, William R. Rakes, James R. Austin, Charles L. Williams, Jr., Eugene E. Derryberry, William J. Creech, James C. Joyce, Jr., Linda Davis Frith, W. David Paxton, W. William Gust, Guy M. Harbert, III and David C. Weaver.

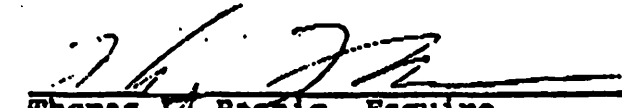
And it is further ORDERED that the claim for punitive damages be and the same is hereby dismissed with prejudice.

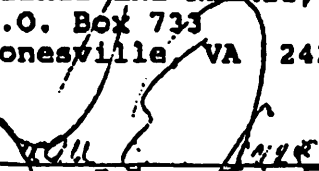
Enter this 31st day of January, 1994.


Judge

EXHIBIT A


WE ASK FOR THIS:

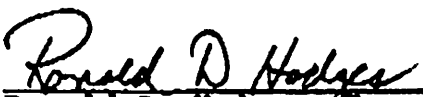

Thomas L. Rasnic, Esquire
Rasnic And Rasnic, P.C.
P.O. Box 733
Jonesville, VA 24263


Roger Jehne, Esquire
P.O. Box 161
Cleveland, TN 37364

Counsel for Plaintiff

SEEN AND AGREED


Frank B. Miller, III, Esquire
Sands, Anderson, Marks & Miller
801 East Main Street
Suite 1500
P.O. Box 1998
Richmond, VA 23216-1998
Counsel for Defendant Stockburger


Ronald D. Hodges, Esquire
Wharton, Aldhizer & Weaver
A Professional Limited Liability Company
100 South Mason Street
Harrisonburg, VA 22801
Counsel for Defendants
S.D. Roberts Moore, William R. Rakes,
James R. Austin, Charles L. Williams, Jr.,
Eugene E. Derryberry, William J. Creech,
James C. Joyce, Jr., Linda Davis Frith,
W. David Paxton, W. William Gust,
Guy M. Harbaert, III and David C. Weaver,
and Gentry, Locke, Rakes & Moore

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ROANOKE

GEORGIA ANNE SNYDER-FALKINHAM, Plaintiff,

v. Case No.: CL91-1212

BRUCE C. STOCKBURGER, et al., Defendants.

FINAL ORDER

On motion of the parties, by counsel, it is ORDERED that this action be dismissed with prejudice.

It is further ORDERED, on motion of the parties, by counsel, that violation of the confidentiality portion of the Mutual Release and Settlement Agreement shall constitute contempt of court, and violations shall be punished accordingly.

ENTER:


WE ASK FOR THIS:

Thomas L. Rasnic, Esquire
Rasnic and Rasnic, P.C.
P.O. Box 733
Jonesville, VA 24263


Roger Jenne, Esquire
P.O. Box 161
Cleveland, TN 37364

Counsel for Plaintiff

EXHIBIT B



Frank B. Miller, III, Esquire
Sands, Anderson, Marks & Miller
801 East Main Street
Suite 1500
P.O. Box 1998
Richmond, VA 23216-1998
Counsel for Defendant Stockburger



Ronald D. Hodges, Esquire
Wharton, Aldhizer & Weaver
A Professional Limited Liability Company
100 South Mason Street
Harrisonburg, VA 22801
Counsel for
Gentry, Locke, Rakes & Moore

Mutual Release and Settlement Agreement

It is hereby agreed, by and between Georgia Anne Snyder-Falkinham (hereafter, "Snyder-Falkinham"), Bruce G. Stockburger (hereafter, "Stockburger"), Gentry, Locke, Rakes & Moore (hereafter, "the firm"), Robert E. Glenn (hereafter, "Glenn"), and Glenn, Flippin, Feldmann & Darby, P.C. (hereafter, "his firm") that all claims made by Snyder-Falkinham against Stockburger and the firm currently pending in the Circuit Court for the City of Roanoke styled Georgia Anne Snyder-Falkinham, et al. v. Bruce G. Stockburger, et al., Case No. CL91-1312 (hereafter, "the action"), be settled and compromised on the following terms and conditions:

1. This is a compromise settlement of disputed claims and demands. The parties hereto recognize and acknowledge that neither this Agreement nor the resulting compromise settlement shall constitute an admission of any of the allegations in the action and/or of claims made by Snyder-Falkinham against Stockburger for alleged moneys due under a letter agreement dated December 14, 1990 (hereafter, "the letter agreement") and promissory note signed by Stockburger and dated December 15, 1990 (hereafter, "the note").

2. Snyder-Falkinham agrees to the dismissal of the action with prejudice.

3. The parties hereto and their respective counsel agree to keep the terms and provisions of this Agreement confidential and shall not make any public disclosure of the terms and provisions of this Agreement or amount of the settlement, absent an order of a court or tribunal of competent jurisdiction that the terms and/or

EXHIBIT C

provisions be disclosed, and only then as required by the terms of the order.

4. In consideration of the covenants and agreements herein contained and the payment of good and valuable consideration to Snyder-Falkinham and her counsel in the action by or on behalf of Stockburger and the firm (hereafter, "the payment"), the receipt and sufficiency of which is acknowledged by Snyder-Falkinham and her counsel in the action, Snyder-Falkinham, for herself and her heirs and assigns, The Snyder Company, Inc. (hereafter, "Snyder Co."), Snyder and Associates, Rich Hill Development Corporation and their officers, directors and shareholders, does release, remise and forever discharge Stockburger and his heirs and assigns and the firm and its partners, officers, employees, successors and successors in interest from and against any and all claims, demands, actions, causes of action and expenses of whatever kind she may have against Stockburger and the firm, their heirs, assigns, partners, officers, employees, successors and successors in interest now or in the future.

5. In further consideration of the covenants and agreements herein contained and the payments, Snyder-Falkinham, for herself and her heirs and assigns, Snyder Co., Snyder and Associates, Rich Hill Development Corporation and their officers, directors and shareholders, does release, remise and forever discharge Glenn and his firm, their heirs, assigns, officers, directors, shareholders, employees, successors and successors in interest from and against any and all claims, demands, actions, causes of action and expenses

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of whatever kind she may have against Glenn and 's firm, their heirs, assigns, officers, directors, shareholders, employees, successors and successors in interest, now or in the future.

6. In further consideration of the covenants and agreements herein contained and the payment, Joseph O. Falkinham, for himself and his heirs and assigns, does release, remise and forever discharge Stockburger, the firm, Glenn and his firm, their heirs, assigns, officers, directors, partners, shareholders, employees, successors and successors in interest, from and against any and all claims, demands, actions, causes of action and expenses of any kind he may have against Stockburger, the firm, Glenn and his firm, their heirs, assigns, officers, directors, partners, shareholders, employees, successors and successors in interest.

7. In further consideration of the covenants and agreements herein contained and the payment, Snyder-Falkinham and Central Fidelity Bank, N.A., as trustees of the Marital Trust and Residual Trust created under the Will of Peter C. Snyder, deceased (hereafter, "the Trustees"), do release, remise and forever discharge Stockburger, the firm, Glenn and his firm, their heirs, assigns, officers, directors, partners, shareholders, employees, successors and successors in interest, from and against any and all claims, demands, actions, causes of action and expenses of any kind the Trustees may have against Stockburger, the firm, Glenn and his firm, their heirs, assigns, officers, directors, partners, shareholders, employees, successors and successors in interest, now or in the future arising out of matters and things alleged in the

legal actions described in this Agreement, the latter agreement and the note.

8. The parties agree that a part of the consideration includes the satisfaction of a promissory note dated December 15, 1990, from Stockburger to Snyder-Falkinham the original to be marked "paid" and delivered to counsel for Stockburger.

9. Stockburger, the firm, Glenn and his firm release, remise and discharge Snyder-Falkinham and her heirs and assigns from and against any and all claims, demands, actions and causes of action they might have against her for any cause whatsoever, save and except those claims for indemnity and/or contribution which might arise against Snyder-Falkinham by reason of the civil actions filed against Stockburger and Glenn in the Circuit Court for the City of Roanoke by Michael E. Snyder and Stacy A. Snyder, both individually and as beneficiaries under the Peter C. Snyder Marital and Residual Trusts styled Michael E. Snyder, et al., et al. v. Bruce G. Stockburger, et al., Case No. 1 92-1373, for acts, errors or omissions of Snyder-Falkinham as Co-trustee of the Marital and Residual Trusts created by the will of Peter C. Snyder.

10. This Agreement is a Release and it is not a covenant not to sue. This Agreement shall not inure to the benefit of any person or entity other than those designated herein nor shall it be construed to be a release of any person or entity other than those persons and entities specifically named herein.

11. This writing contains all of the agreements of the parties hereto and shall be construed and interpreted in accordance with the laws of the Commonwealth of Virginia.

Signed and sealed this 31st day of January, 1994.

Georgia Anne Snyder-Falkinham,
individually and as President
of The Snyder Company, Inc.,
and Snyder and Associates, Rich
Hill Development Corporation
and as co-Trustee of the
Marital Trust and Residual
Trust under the Will of Peter
C. Snyder, deceased

STATE OF VIRGINIA

CITY/COUNTY OF _____, to-Wit:

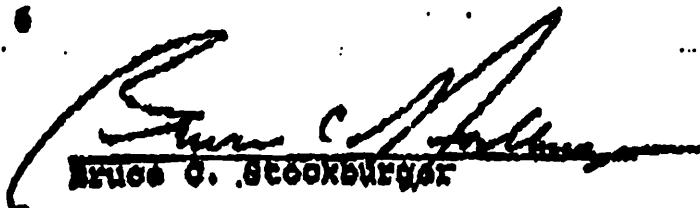
This day personally appeared before me, the undersigned Notary Public, in my jurisdiction aforesaid, Georgia Anne Snyder-Falkinham, who, being first duly sworn, deposed and said that (1) she is authorized to execute this Mutual Release and Settlement Agreement on her behalf and the behalf of the Snyder Company, Inc., Snyder and Associates, Rich Hill Development Corporation and the Marital Trust and Residual Trust under the Will of Peter C. Snyder, deceased, (2) she has read and understands the terms and conditions of the Mutual Release and Settlement Agreement and (3) she and the described companies and trusts agree to be bound by the terms and provisions of the Mutual Release and Settlement Agreement.

Sworn and subscribed before me this _____ day of _____, 1994.

My Commission expires: / / .

Notary Public

FEB 11 1994 13:31


Bruce O. Stockburger

STATE OF VIRGINIA
CITY/COUNTY OF Roanoke, to-wit:

This day personally appeared before me, the undersigned Notary Public, in my jurisdiction aforesaid, Bruce O. Stockburger, who, being first duly sworn, deposed and said that (1) he has read and understands the terms and conditions of the Mutual Release and Settlement Agreement and (2) he agrees to be bound by the terms and provisions of the Mutual Release and Settlement Agreement.

Sworn and subscribed before me this 31st day of January, 1994.

My Commission expires: 5/9/1997.


Notary Public

Gentry, Locke, Rakes & Moore

By: William R. RakesTitle: Managing PartnerSTATE OF VIRGINIA
CITY/COUNTY OF Roanoke, to-wit:

This day personally appeared before me, the undersigned Notary Public, in my jurisdiction aforesaid, William R. Rakes, who, being first duly sworn, deposed and said that (1) he/she is authorized to execute this Mutual Release and Settlement Agreement on behalf of Gentry, Locke, Rakes & Moore, (2) he/she has read and understands the terms and conditions of the Mutual Release and Settlement Agreement and (3) Gentry, Locke, Rakes & Moore agree to be bound by the terms and provisions of the Mutual Release and Settlement Agreement.

Sworn and subscribed before me this 31st day of January, 1994.

My commission expires: 5/31/97.

Sharon B. Smith
Notary Public

FEB 11 94 13:32

Central Fidelity Bank, N.A.

By: _____

Title: _____

STATE OF VIRGINIA

CITY/COUNTY OF _____, to-wit:

This day personally appeared before me, the undersigned Notary Public, in my jurisdiction aforesaid, _____, who, being first duly sworn, deposed and said that (1) he/she is authorized to execute this Mutual Release and Settlement Agreement on behalf of Central Fidelity Bank, N.A., (2) he/she has read and understands the terms and conditions of the Mutual Release and Settlement Agreement and (3) Central Fidelity Bank, N.A. agrees to be bound by the terms and provisions of the Mutual Release and Settlement Agreement.

Sworn and subscribed before me this _____ day of _____, 1994.

My Commission expires: / / .

Notary Public

Robert E. Glenn

STATE OF VIRGINIA

CITY/COUNTY OF _____, to-wit:

This day personally appeared before me, the undersigned Notary Public, in my jurisdiction aforesaid, Robert E. Glenn, who, being first duly sworn, deposed and said that (1) he has read and understands the terms and conditions of the Mutual Release and Settlement Agreement and (2) he agrees to be bound by the terms and provisions of the Mutual Release and Settlement Agreement.

Sworn and subscribed before me this _____ day of _____, 1994.

My Commission expires: / / .

Notary Public

10

Glenn, Flippen, Feldman
& Darby, P.C.

By: _____

Title: _____

STATE OF VIRGINIA

CITY/COUNTY OF _____, to-wit:

This day personally appeared before me, the undersigned Notary Public, in my jurisdiction aforesaid, _____, who, being first duly sworn, deposed and said that (1) he/she is authorized to execute this Mutual Release and Settlement Agreement on behalf of Glenn, Flippen, Feldman & Darby, P.C., (2) he/she has read and understands the terms and conditions of the Mutual Release and Settlement Agreement and (3) Glenn, Flippen, Feldman & Darby, P.C., agrees to be bound by the terms and provisions of the Mutual Release and Settlement Agreement.

Sworn and subscribed before me this _____ day of _____, 1994.

My Commission expires: / / .

Notary Public

Joseph O. Falkinham

STATE OF VIRGINIA

CITY/COUNTY OF _____, to-wit:

This day personally appeared before me, the undersigned Notary Public, in my jurisdiction aforesaid, Joseph O. Falkinham, who, being first duly sworn, deposed and said that (1) he has read and understands the terms and conditions of the Mutual Release and Settlement Agreement and (2) he agrees to be bound by the terms and provisions of the Mutual Release and Settlement Agreement.

Sworn and subscribed before me this _____ day of _____, 1994.

My commission expires: / / .

Notary Public

12

Thomas L. Rashio
 Counsel for Georgia Anne
 Snyder-Falkinham

Noger Janna
 Counsel for Georgia Anne
 Snyder-Falkinham

Frank B. Miller, III
 Counsel for Bruce G. Stockburger

Ronald D. Hodges
 Counsel for Gentry, Looka, Rakes & Moore

Erwin R. Burnette
 Counsel for Robert E. Glenn
 and
 Glenn, Flippen, Feldman & Darby, P.C.

**SNYDER
& ASSOCIATES
GENERAL CONTRACTORS**

February 8, 1994

GEORGIA ANNE SNYDER-FALKINHAM
PRESIDENT

VIA TELECOPIER & US MAIL

Mr. Roger E. Jenne (615-476-5058)
Jenne, Scott & Bryant
P.O. Box 161
Cleveland, Tennessee 37364-0161

RE: Georgia Anne Snyder-Falkinham
vs Bruce C. Stockburger, et al

and

Mr. Thomas L. Rasnic (703-346-0229)
Rasnic and Rasnic, P.C.
P.O. Box 733
Jonesville, Virginia 24263

Dear Roger and Tom:

Last Friday I faxed each of you a letter requesting information which I desperately need to protect my interest. As of this time, I have not received any of the requested information. Again, I must have that information immediately in order to, among other things, file the motion to vacate, which you have indicated should be done. If you cannot or are not going to provide me with any of this information, I must, also, know that fact immediately. If you cannot or are not going to provide me with the requested information, it would appear that I would need to seek the court's assistance in this regard.

I am apprehensive that if I do not have this information before I appear in court for any reason that, my case will be severely prejudiced, especially since you both state that you will testify for the defense "that this case had been settled." If you can honestly testify that the case has been settled, then it is obvious that you know some facts which I do not know. From what I learned in this case, you two, as attorneys for me, are required to protect and act in my best interest when you represent me and when you terminate that relationship. I have recently learned that you either have filed (or are anticipating the filing of) a motion to withdraw as my counsel. In attempting withdrawal without reasonable notice to me, I hereby respectfully demand that you tell the truth regarding all matters and that you act with loyalty to protect my interest.

In this regard, and in addition to the information previously requested, I must have the following information and/or questions answered immediately:

1. A copy of all engagement letters and/or agreements (including letters of transmittal) which I have signed granting you the right to represent me;

EXHIBIT D

500 South Main Street, Blacksburg, VA 24060 (703) 552-3377 Fax (703) 552-2972

2. Whether you had in your possession a copy of the order ("Order") and final order ("Final Order") entered by Judge Jennings on Sunday, January 30, 1994?;
3. Whether you, Tom/Roger, signed the Order and/or Final Order Sunday night or Monday morning?;
4. The identification of all parties present at the hearing before Judge Jennings on Monday, January 31, 1994, when the Order and Final Order was entered;
5. Whether there was a Court Reporter there at the hearing and whether that Court Reporter recorded the proceedings?;
6. If the Court Reporter was dismissed without recording this important hearing, who dismissed the Court Reporter?;
7. The name of all Court Reporters scheduled to record the trial proceedings and the name of the organizations they work for;
8. Whether and/who (if applicable) made a summary recitation of the settlement negotiations/purported "settlement agreement" to the Court in order to procure the entry of the Order and Final Order?;
9. Whether any motions/orders were made and/or submitted to the Court on January 31, 1994, which were not granted?;
10. A detailed account of what was said and by whom at the hearing before Judge Jennings on January 31, 1994;
11. A detailed account by date, time, and subject matter, and outcome of every conversation/communication you had with opposing counsel since the hearing before Judge Jennings on January 31, 1994, specifically as to conversations on whether or not there was an agreement and what was the alleged agreement you two reached with opposing counsel without my authorization and/or approval;
12. Any and all documents/information you have on the financial condition of Gentry, Locke, Rakes & Moore, including balance sheets and income information;
13. Any and all documents/information you have on the financial condition of Bruce C. Stockburger, including balance sheet and income information;

14. Any and all documents/information you have on the financial condition of any partner at Gentry, Locke, Rakes & Moore, including balance sheets and income information;
15. Any and all documents/information you have on the reservation of rights and/or exclusion regarding Gentry, Locke's insurance through the Virginia Reciprocal; and
16. Any and all documents/information you have regarding non-Virginia Reciprocal insurance coverage (e.g., errors and omission, umbrella) which Gentry, Locke (and each of its partners named in this action) carry.

I hereby respectfully demand that each of you immediately box up for my pickup all the information and files you have of mine, or any entity in which I have an interest, including, without limitation, all pleadings; discovery; correspondence; memoranda; drafts of documents; notes; computer diskettes containing information relating to these matters; telephone message slips; copies of cases, statutes, or other research; records and bills; etc., created in preparation for this trial. If you are retaining any documents/information which you refuse to allow me to pick up, you are directed to prepare a list of those items with the type of print (e.g., handwritten or typed) and the number of pages making up each document. I will have someone at Roger's office on Thursday, February 10, 1994, at approximately 10:00 a.m. to pick up my files. I will have someone at Tom's office on Thursday, February 10, 1994, at approximately 3:00 p.m. to pick up my files. For your information, I have enclosed LEO# 1544 which was recently provided to me.

All of the requests/demands in this letter are continuing in nature. Further, I expect you to up-date me promptly regarding any information/document you procure after this date of the letter on any matter addressed in this letter or any litigation matter of mine which is now pending. Furthermore you are hereby directed not to file anything in any Court regarding any of my cases without written authority from me.

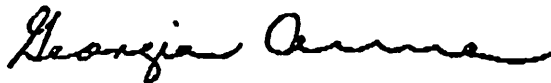
I hereby respectfully demand and instruct you not to discuss any of my litigation matters with the Defendants or their counsel. Any prior authorizations (written and/or oral) allowing you to negotiate, settle, and/or compromise any matter for my benefit, subject to my approval, is hereby revoked. As attorneys engaged to represent me, you are hereby directed to write to and/or discuss any matter with Joseph L. Anthony, which you believe is in my best interest. You are, also, hereby directed to pass on to Joseph L. Anthony any and all information and/or opinions which you have regarding what I need to do to protect my interest in any of the litigation matters with which you have been associated.

Mr. Thomas L. Rasnic and Mr. Roger E. Jenne
February 8, 1994
Page 4

As you are surely able to determine from the language and the subject matter used/covared in this letter, I did employ other legal counsel to assist me in drafting this letter. As you know, however, I continued to employ Joseph L. Anthony, as legal counsel regarding essentially all non-litigation matters for me and my related entities, while this litigation was proceeding. Accordingly, it should not surprise you that I received legal assistance in drafting this letter. Further, my use/employment of additional counsel does not relieve you of any of your obligations and responsibilities as my attorney to take the actions necessary to continue to protect my interest. Furthermore, please understand that the instructions, directives, and/or demands in this letter are from me and are not from my legal counsel. Further, these directives are made by me to you in order to procure the information necessary to protect my interest in the litigation matter you are pursuing for me.

I eagerly await your response and compliance.

Sincerely,



Georgia Anne Snyder-Falkinham

AGREEMENT

In consideration of legal services to be rendered by the firm of McAfee, Rasnic & Bledsoe, P.C., and Roger Jenne, lawyers, the undersigned client hereby retains said lawyers to pursue such actions and courses of actions which they, in their opinion, may determine to be viable and justiciable and against such person or persons as they may deem proper arising out of the Rich Hill Development Corporation matters and the VISTAS matters which occurred in Montgomery County, Virginia, during the period beginning in 1985 and running through 1990.

It is understood and agreed that the lawyers herein have conducted an investigation and have been supplied materials by the client; that factual statements have been made by client and are relied upon by lawyers in pursuing these claims; that lawyers accept employment and are authorized, subject to client's approval, to institute such legal action or actions, file claims or counter-claims, and effect settlements or compromises against any and all potential defendants; and to take such action as may be necessary and proper, in the lawyers' judgment, to enforce the client's rights.

Attorneys' fees shall be forty percent (40%) of the amount recovered.

Costs may be advanced by the lawyers from time to time including any investigation and expert fees and such costs advanced shall be billed to the client from time to time or may be billed at the time settlement of the suit is made, at the lawyers' discretion. It is understood and agreed that no extraordinary

EXHIBIT E

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PAGE.002

expense for experts or investigation will be incurred without consulting with the client and obtaining approval beforehand. Associate counsel may be employed at the discretion and expense of the lawyers and the lawyers shall have a lien on any claim, suit or recovery for any fees or expenses expended, if applicable.

In the event an appeal is taken from any judgment obtained by lawyers, a separate and new agreement will be entered into by the parties as to services rendered and attorneys' fees. It is understood by client that in the event an appeal is taken, a higher percentage of attorneys' fees may be required.

The lawyers may withdraw at any time by giving reasonable written notice to the client and, where necessary, obtaining court approval. In the event of any withdrawal, client agrees to sign a substitution of attorneys.

Client agrees to keep her lawyers informed of any and all matters which may be important to her case, to cooperate with the lawyers in preparation and prosecution of her cases and to make herself available for consultation and preparation. Client further agrees, where necessary, to use her sources to assist lawyers in preparation of the case.

This _____ day of _____,
1991.

GEORGIA ANNE SNYDER-FALKINHAM
Retainer accepted

MOAFEE, RASNIC & BLEDSON
By Counsel

ROGER JENNE

Rasnic and Rasnic

LAW OFFICES
P.O. BOX 788
JONESVILLE, VIRGINIA 24363

702-344-8888
TELECOPIER: 702-344-8889
CIVIL, DOMESTIC & CRIMINAL LITIGATION

THOMAS L. RASNIC

LICENSED TO PRACTICE
IN VIRGINIA & TENNESSEE

THOMAS L. RASNIC
LICENSED TO PRACTICE
IN VIRGINIA

January 30, 1992


Georgia Anne Snyder-Falkinham
508 S. Main Street
Blacksburg, Virginia 24060

Dear Georgia Anne:

1992
I enclose the new employment contracts which I told you we would need to get signed. Please sign these and date them September, 1991 as they will replace those that we presented to you at that time. *signed 2/5/92 with date of 19/September, 1991*

I will be corresponding with David Izakowitz as soon as we get these contracts back because I assume that we will be sending him a copy of the contracts.

Sincerely,


Thomas L. Rasnic
TLR/pbr
Enclosure

c: Roger Jenne, Esq.
Jenne, Scott & Bryant
PO Box 161
Cleveland, Tennessee 37364-0161

EXHIBIT F

4/4/73

AGREEMENT

In consideration of legal services to be rendered by Rasnic and Rasnic, PC and Roger Jenne, Esq., lawyers, the undersigned client hereby retains said lawyers to prosecute such case or cases as they may deem necessary against Bruce Stockburger and any other person who may be responsible and/or liable for losses suffered by the undersigned due to Stockburger and Gentry, Locke, Attorneys representation of her.

The attorneys accept the above employment and are authorized to effect a settlement or compromise, subject to the client(s) approval, or to institute such legal action, or actions, file such claims or counter-claims, as they may deem advisable in their judgment in order to enforce the client's rights.

The attorneys' fee shall be as follows:

Forty (40%) per cent of the amount recovered.

Costs may be advanced by attorneys including investigation and experts fees, and said advance shall be billed to the client when paid or may be billed at the time settlement of the suit is made, at attorney's discretion. Associated counsel may be employed at the discretion and expense of the attorneys. Attorneys shall have a lien on any claim, suit or recovery for any fees and expenses expended, if applicable.

In the event an appeal is taken, a new and separate agreement shall be entered into by the parties as to service and fees.

Attorneys may withdraw at any time by giving

Rasnic & Rasnic, P.C.

James E. Rasnic
ATTORNEY AT LAW
P.O. BOX 133
KNOXVILLE, VIRGINIA 26261

LICENSED TO PRACTICE
IN VIRGINIA ONLY

Thomas L. Rasnic
ATTORNEY AT LAW
P.O. BOX 133
KNOXVILLE, VIRGINIA 26261

LICENSED TO PRACTICE
IN
VIRGINIA AND TENNESSEE
CIVIL AND CRIMINAL
LITIGATION

reasonable written notice and the client agrees to a substitution of attorneys in the event of such withdrawal.

Entered this 19th day of September, 1991.

Georgia Anne Snyder - Falkinham
GEORGIA ANNE SNYDER-FALKINHAM

ATTORNEYS:

[Signature]
THOMAS L. RASNIC, ESQ.
RASNIC AND RASNIC, PC

[Signature]
ROGER JENNE, ESQ.
JENNE, SCOTT and BRYANT

Rasnic & Rasnic, P.C.

James E. Rasnic
ATTORNEY AT LAW
P.O. BOX 120
JONESVILLE, VIRGINIA 22093

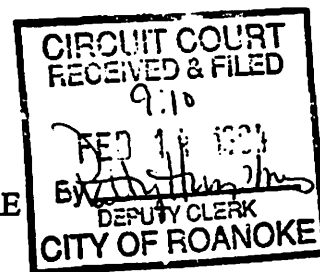
LICENSED TO PRACTICE
IN VIRGINIA ONLY

Thomas L. Rasnic
ATTORNEY AT LAW
P.O. BOX 120
JONESVILLE, VIRGINIA 22093

LICENSED TO PRACTICE
IN

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ROANOKE



GEORGIA ANNE SNYDER-FALKINHAM,)
)
 Plaintiff,)
)
)
)
 v.)
)
 BRUCE C. STOCKBURGER, et al.)
)
 Defendants.)
 _____)

Case No.: CL91-1212

**PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
MOTION TO REINSTATE AND FOR VACATION OF ORDER AND FINAL ORDER**

I. The Order Dismissing This Action Should be Vacated and the Action Reinstated

A. The Overriding Concern of The Judicial Process is To Protect The Litigant's Rights

One of the fundamental concerns of the judicial process is the protection of a litigant's rights and to insure fairness and proper administration of justice. This concern manifests itself in judicial precedent, the Rules of the Supreme Court ("Rules") and in the Code of Virginia ("Virginia Code"). Ms. Snyder-Falkinham's rights were severely prejudiced by the unauthorized, inappropriate and erroneous actions of her attorneys, Messrs. Jenne and Rasnic, on January 31, 1994. Fortunately, under well settled principles of law, this Court can reverse the prejudice inflicted upon Ms. Snyder-Falkinham through no fault of her own and return the parties to the status quo.

As shown below, this Court has the power to vacate the Final Order dismissing the case with prejudice entered on January 31, 1994 and to reinstate this action. First, under Rule 1:1, the Court has nearly unfettered power for twenty-one days to modify, vacate or suspend its final orders. The facts, law and equities support the vacating of the January 31, 1994 Final Order and reinstatement of the case. Second, inasmuch as the attorneys involved made certain representations to the Court during the January 31, 1994 proceeding about the status of nascent settlement discussions, the Court may set its Orders aside. Third, under the leading case of Virginia Concrete Co. v. Board of Supervisors, 197 Va. 821, 91 S.E.2d. 415 (1956), Ms. Snyder-Falkinham's attorneys could not -- as a matter of law -- move to dismiss her action with prejudice without her express authority. Fourth, the parties never entered into a settlement agreement.

a. Rule 1:1 Grants the Court the Right To Modify, Vacate or Suspend Its Final Order, Judgment and Decree

Rule 1:1 gives this Court twenty-one days from the date of entry of a final judgment the right to modify, vacate or suspend its final orders, judgments and decrees. See generally, Kelley v. Kelley, 435 S.E.2d 421, 423 (Va. App. 1993) ("Upon the expiration of twenty-one days, the judgment of the trial court may not be modified unless the judgment is void as having been obtained by extrinsic or collateral fraud, or entered by a court that did not have jurisdiction over the subject or the parties." (citing Rook v. Rook, 233 Va 92, 95, 353 S.E.2d 756, 757 (1987); Owunsu v. Commonwealth, 11 Va. App. 671, 672, 401 S.E.2d 431 (1991))).

It is axiomatic that this Court has broad equitable powers to enter orders to insure the proper administration of justice. Those powers include the authority to vacate a judgment

wrongfully obtained, especially if such an impermissible judgment works to prejudice a litigant, who is blameless and harmed by another's actions.

There are abundant reasons to vacate the judgment. First, the Plaintiff, Ms. Snyder-Falkinham, was not present at the January 31, 1994 proceeding before this Court. She had no knowledge that her attorneys would dismiss her lawsuit with or without prejudice. Nor did Ms. Snyder-Falkinham know that her attorneys represented to this Court that the case had settled. Ms. Snyder-Falkinham never consented to dismissal of her case. Nor did she authorize her counsel to represent to this Court that the case had settled. It had not.

Second, Ms. Snyder-Falkinham's attorney's actions, if left uncorrected, will severely prejudice her rights. On November 18, 1991, Ms. Snyder-Falkinham, by counsel, filed a Motion for Judgment against the Defendants. On October 6, 1992, she filed a Third Emended Motion for Judgment seeking \$4.5 million in compensatory damages and \$1 million in punitive damages. By dismissing the Third Amended Motion for Judgment with prejudice on January 31, 1994 -- without obtaining a final, thorough, comprehensive and executed settlement -- her attorneys deprived her of her judicial remedies and eviscerated her bargaining power.

Finally, Ms. Snyder-Falkinham never consented to an order that holds her in criminal contempt pursuant to a confidentiality provision that she did not see or approve before its entry.¹ Yet, her counsel consented, without authorization, to subject Ms. Snyder-Falkinham to

¹ Another example of the Rules and the Virginia Code's fundamental concern for providing litigants with proper notice appears in Rule 1:13. Rule 1:13 states in pertinent part that "drafts of orders and decrees shall be endorsed by counsel of record, or reasonable notice of the time and place of presenting such drafts together with copies thereof shall be served by delivering or mailing to all counsel of record who have not endorsed them."

this open-ended confidentiality agreement.²

1. Virginia Code § 8.01-428 Supports Vacating the Final Order and Order.

Other statutory authority supports the vacating of the erroneous final judgment after the trial court's jurisdiction lapses under Rule 1:1. For example, Virginia Code § 8.01-428 provides for, under certain circumstances, the setting aside of final judgments. Virginia Code § 8.01-428(D) provides the following:

Other judgments or proceedings. This section does not limit the power of the court to entertain at any time an independent action to relieve a party from any judgment or proceeding, or to grant relief to a defendant not served with process as provided in § 8.01-322, or to set aside a judgment or decree for fraud upon the court.

(emphasis added.)

Significantly, the plain language of § 8.01-428(D) grants explicit -- and unbounded -- authority to "set aside a judgment or decree for fraud upon the court" and is not limited solely to instances of actual fraud. Without this limiting language, the section's generic reference to "fraud" includes both constructive and actual fraud.

Rule 1:13 is designed to protect parties without notice. In Walt Robbins, Inc. v. Damon Corp., 232 Va. 43, 47, 348 S.E.2d 223, 226 (1986) the court noted that "[o]ne of the essentials of due process is notice" (citing Finkel Products v. Bell, 205 Va. 927, 931, 140 S.E.2d 695, 698 (1965)). Of course, the purpose of Rule 1:13 should also be applied to vacating under Rule 1:1. By dismissing the action without our Ms. Snyder-Falkinham's permission, she was, in effect, "without notice" even though her attorneys implicitly or explicitly represented to the Court that they were acting with her full knowledge and consent.

² For example, Mr. Rasnic has suggested in correspondence to his client that communicating the terms of settlement to her tax attorney and to the undersigned counsel violated the agreement.

Here, Ms. Snyder-Falkinham's attorneys, irrespective of moral guilt, made representations to the Court that tended to deceive others, violate the private trusts and injure public interests.³ As such, Mr. Rasnic's January 31, 1994 representations in open court about the status of settlement negotiations constitute constructive fraud and provide this Court with grounds to vacate. See generally, regarding elements of constructive fraud, Diaz Vicente v. Obenauer, 736 F. Supp. 679, 690 (E.D. Va. 1990) (applying Virginia law, "[C]onstructive fraud does not require scienter or intent to mislead; it can be established whether the representation is knowingly or innocently made.") (citing Chandler v. Satchell, 160 Va. 160, 168 S.E.2d 744 (1933); Mears v. Accomac Banking Co., 160 Va. 311, 168 S.E.2d 740 (1933)).

B. Messrs. Jenne and Rasnic Had No Authority to Compromise Their Client's Case and this Court Should Vacate the Final Judgment

1. There Was No Express Authority to Dismiss the Case with Prejudice

It is axiomatic that an attorney must have express authority from his client before entry of an order dismissing a matter is submitted to the court.⁴ Indeed, this rule was best stated and applied by the Virginia Supreme Court in Virginia Concrete Co. v. Board of Supervisors, 197 Va. 821, 91 S.E.2d 415 (1956).

³ Although Mr. Jenne did not appear in court on January 31, 1994, his endorsement of the Orders indicated his agreement with the representations Mr. Rasnic made in open court.

⁴ Express authority is "that which confers power to do a particular identical thing set forth and declared exactly, plainly, and directly with well-defined limits. [Express authority is an] authority given in direct terms, definitely and explicitly, and not left to inference or implication, as distinguished from authority which is general, implied, or not directly stated or given." Black's Law Dictionary, Sixth Ed. (emphasis added.)

In Virginia Concrete, the Board of Supervisors of Fairfax County initially filed a bill to enjoin Virginia Concrete from violating the County's zoning ordinances. The County hired Robert J. McCandlish, a distinguished Virginia lawyer of impeccable integrity, as its attorney.

In February 1953, while the injunction proceeding was pending, the Board of Supervisors passed a resolution that appeared to affect that section of the zoning ordinances at issue in the injunction suit. The resolution, however, did not repeal the subsection of the zoning ordinance at issue. 91 S.E.2d at 417-18. A month later, on April 3, 1953, the court conducted an ore tenus hearing on the injunction. During the trial, Mr. McCandlish, the Complainant's attorney, apparently misunderstood the significance of the Board's February resolution. He moved to dismiss the action with prejudice. Mr. McCandlish did so without first informing his client or obtaining its consent.

Approximately two weeks later, the Board passed another resolution rescinding the one it had promulgated in February 1953. In August 1953, approximately four months after the Board's attorney -- without its permission -- moved to dismiss with prejudice, the Board filed a Bill of Review. It asked the trial judge (Judge Sinclair) to set aside the judgment and hold it void, "or be amended so as to be without prejudice to the right of the Board to prosecute another suit for the same cause." Judge Sinclair granted the Board's motion to vacate.

On appeal, the Supreme Court affirmed the trial court's decree. It did so because the Board's attorney lacked express authority from his client to have the matter dismissed with prejudice.

In the absence of express authority from the Board the consent of its attorneys did not bind it or deprive it of a right to have the "with prejudice" feature of the decree set aside. The decree

appealed from which set aside the dismissal with prejudice and adjudged that the dismissal should be without prejudice, is therefore, affirmed.

Id. at 421. Significantly, the Board's attorneys "acted in good faith and in the belief that they had the authority which they undertook to exercise." In fact, one of the Board's attorneys "testified that he believed he had authority to dismiss under his general retainer." Id. at 419. However, neither attorney "claimed any express authority from the Board to dismiss the case with prejudice and it is clear that none was given." Id.⁵ See also, Absar v. Jones, 833 S.W.2d 86, 89 (Tenn. App. 1992) (in setting aside a compromise and settlement that dismissed a lawsuit, the court stated "The general rule in Tennessee is that an attorney cannot surrender substantial rights of a client, including agreeing to a dismissal of litigation which permanently bars a client from pursuing his claim, without the express authority of the client." (citations omitted.))

Here, as in Virginia Concrete, Ms. Snyder-Falkinham's attorneys had no express authority to consent to a motion to dismiss with prejudice. To the contrary, the retainer agreement expressly required her consent to any settlement. Therefore, regardless of their

⁵ In Virginia Concrete the Court succinctly stated that the "prevailing rule" is:

"In the absence of statute, an attorney can enter a dismissal, discontinuance, or retraxit, which terminates the case on its merits, only where he has been expressly authorized to do so; but it is generally held that an attorney has implied authority to enter or take a dismissal, discontinuance, or nonsuit, which does not bar the bringing of another suit on the same cause of action."

(emphasis added.)(quoting 7 C.J.S., Attorney and Client, § 87, p. 908.) The "prevailing rule" is also the rule in Virginia.

alleged motives or possible testimony, this Court should set aside its order dismissing the case with prejudice aside and reinstate her lawsuit.

2. Messrs. Jenne and Rasnic Did Not Have Authority To Compromise Ms. Snyder-Falkinham's Claims

It is also axiomatic that without a client's authority there can be no "settlement agreement."⁶ Thus, Ms. Snyder-Falkinham's attorneys needed express authority to "settle" her lawsuit. They had no such authority. Moreover, the party asserting such authority bears the burden of proving by clear and convincing evidence the existence of the agency relationship. See Friend, C., The Law of Evidence In Virginia, 4th Ed.

As the court in Virginia Concrete recognized, without express authority,

[T]he client may ignore an unauthorized compromise and either proceed with the suit or institute a new suit as if no such compromise had been made, or he may have the compromise set aside and the case reinstated.

91 S.E.2d at 420 (emphasis added) (citing Dawson v. Hotchkiss, 160 Va. 577, 581, 169 S.E.2d 564, 565 (1933)). See generally, Harris v. Diamond Construction Co., 184 Va. 711, 36 S.E.2d 573, 578 (1946) (appeal from Industrial Commission, "a judgment based on unauthorized compromise may be vacated 'on seasonable application,' " finding no

⁶ See, e.g., Kazale v. Flowers, 185 Ill. App. 3d 224, 541 N.E.2d 219 (1989) (applying Illinois law; no presumption of authority to settle, burden of proof is on party alleging authority to show that attorney had express consent or authority to settle); Evans v. Skinner, 742 F. Supp. 30 (D.D.C 1990) (applying D.C. law; motion to enforce settlement agreement denied despite plaintiff's attorney's statement that "And I thought, to the best of my knowledge, that I had authority and I acted within that authority"); Vantage Broadcasting Co. v. WINT Radio, Inc., 476 So.2d 796, 797-98 (Fla. App., 1 Dist. 1985) (applying Florida law; attorney's testimony that his clients "didn't have any objection to [a settlement offer]" and "I did not receive any objection from them to [the settlement offer]" insufficient to establish that attorney had "clear and unequivocal" authority to settle claim.)

compromise, rather attorney stipulated to facts (citing, inter alia, Dwight v. Hazlitt, 107 W. Va. 192, 147 S.E. 877, 880 (1929); Dwight v. Hazlitt, 107 W. Va. 192, 147 S.E. 877, 879 (setting aside unauthorized consent decree and compromise; "It is now generally held throughout the United States that the mere relation of attorney and client does not clothe the attorney with implied authority to compromise the matters in litigation.")⁷

The written agreement between Ms. Snyder-Falkinham and Messrs. Jenne and Rasnic unequivocally requires her express consent and authority before they may compromise her lawsuit. The retainer agreement between Ms. Snyder-Falkinham and Messrs. Jenne and Rasnic explicitly states that all settlements or compromises are "subject to the client(s) approval."

The nature of the parties' settlement discussions, the inherent complexity of the subject matter, the intricacy of the negotiations, all should have made it apparent to defense counsel that Ms. Snyder-Falkinham had to approve any settlement and manifest such approval by executing a formal instrument containing all of the settlement terms. Defense counsel knew that Messrs. Jenne and Rasnic required assistance in groping with the complex tax issues involved in the settlement discussions. They knew that Ms. Snyder-Falkinham consulted tax specialists as late as Sunday, January 30. Defense counsel knew that Messrs. Jenne and Rasnic did not act alone. They knew or should have known that Ms. Snyder-

⁷ Although difficult to prove, in the rare instance where a client permits an attorney to act with apparent authority to compromise the action, a court may uphold a compromise. Singer Sewing Machine v. Ferrell, 144 Va. 395, 132 S.E. 312 (1926). Singer's precedential value, however, has been largely supplanted by the more recent Supreme Court decision in Virginia Concrete, 197 Va. 821, 91 S.E.2d 415. Moreover, Singer is readily distinguishable on the facts.

Falkinham would not accede to “cram down” tactics and that she needed her tax advisors to satisfy her that the contemplated settlement would not adversely impact her tax position. In short, this was no “slip and fall” case where opposing counsel sometimes assume that a settlement agreement simply requires reaching a mutually acceptable dollar figure. Instead, it is a complex case involving 15 parties and a multitude of inextricably related issues.

Finally, defense counsel knew, or should have known that to protect their client’s interests, that the issue of whether Central Fidelity Bank, co-trustee of the Trusts, would agree to any release was not determined or resolved when Ms. Snyder-Falkinham left the Marriott. In fact, the individual responsible for the Trusts at Central Fidelity was not available and would not be available until Tuesday, February 1, 1994.

C. No Settlement Agreement Existed Between the Parties

**1. The Parties Intended That There Be No Settlement Agreement Until
A Written Draft Was Fully Executed**

The Court may find, as a matter of law, that under well settled legal principles the parties intended and agreed that until they had a written and fully integrated settlement agreement signed by all the parties, they had no binding agreement. Atlantic Coast Realty Co. v. Robertson's Azure., 135 Va. 247, 116 S.E. 476 (1923). In Atlantic Coast, the Supreme Court stated:

This rule of law, presumption or rule of evidence, is certain and well-established. Expressed differently, it may be said that when it is shown that the parties intend to reduce a contract to writing this circumstance creates a presumption that no final contract has been entered into, which requires strong evidence to overcome.

See also, O'Connor v. GCC Beverages, Inc., 182 W.Va. 689, 391 S.E.2d 379, 382 (1990)

(even though agreement may have tentatively reached during telephone conversations between opposing counsel, court finds no settlement agreement; intended agreement to be reduced to writing before binding on parties); Brookfield Centre Limited Partnership v. CFS Mgt. Co., 135 B.R. 23 (Bankr. E.D. Va. 1991) (applying Virginia law to determine whether written letter satisfied Statute of Frauds, "It is a matter of law that even though parties fully agree on the terms of their contract, where they do not intend to be bound by the terms until they can fully be set forth in a formal written contract, there is no contract." (quoting Boisseau v. Fuller, 96 Va. 45, 30 S.E. 457 (1898)).⁸

Here, the parties clearly intended to reduce the settlement agreement to writing and have an instrument signed by all parties. Consequently, the presumption arises that no agreement existed until all parties signed a formal, written contract. Other facts support this presumption. First, all counsel knew about the unresolved tax issue regarding the tax consequences of one of the conditions of settlement that Ms. Snyder-Falkinham re-acquire Defendant Stockburger's shares in the Rich Hill Development Corporation. Therefore, there was no agreement, and it could not have been reduced to writing until that matter was resolved. Indeed, until both parties knew all the terms they intended to include in a settlement agreement, neither party could find the other -- with or without a written agreement.

⁸ The purported "Mutual Release and Settlement Agreement" is also not enforceable because it fails to satisfy the Statute of Frauds. The alleged "Mutual Release and Settlement Agreement" contains agreements (i.e., confidentiality) that cannot be performed within a year. The Statute of Frauds prohibits actions "upon any agreement that is not be performed within a year" unless "some memorandum or note thereof, is in writing by the party to be charged." See Virginia Code § 11-2.

Second, prudent attorneys put settlement agreements in writing and have them signed by the parties. The draft "Mutual Release and Settlement Agreement" anticipates that all parties in interest will sign and seal the document and have their signatures notarized. Clearly, the parties did not intend the review and execution process of obtaining a written agreement as a hollow formality. The document itself supports the opposite contention. Defendants' insistence that non-parties enter into the settlement agreement fortifies this conclusion.

Third, the contemplated settlement involved numerous complex issues and many details. For example, the draft "Mutual Release and Settlement Agreement" required that Ms. Snyder-Falkinham enter into the agreement in no less than six capacities.⁹ As President of the Snyder Company, Inc., Ms. Snyder-Falkinham may have required the consent of her Board of Directors by a formal resolution before she could bind the corporation to a settlement with the Defendants. Similarly, the draft "Mutual Release and Settlement Agreement" anticipates that it will be reviewed and signed by at least 11 different individuals, including Messrs. Jenne and Rasnic. The settlement agreement necessarily needed approval of the Trusts' trustee. Ms. Snyder-Falkinham's husband also had to review and sign the release.

Fourth, the amount involved indicates that the parties intended to be bound only when they had a fully executed written agreement. The economics of the settlement and substantial

⁹ Defendants require that Ms. Snyder-Falkinham sign the purported settlement agreement "individually and as President of The Snyder Company, Inc., and Snyder and Associates, Rich Hill Development Corporation, and as beneficiary and co-Trustee of the Marital Trust and Residual Trust under the Will of Peter C. Snyder, * * * ."

tax implications made a handshake and agreement to agree wholly inappropriate in these circumstances.

Fifth, only a written settlement agreement could contain a confidentiality provision that would subject a violator to "contempt of court, and violations shall be punished accordingly." See Final Order, January 31, 1994. A vague and ambiguous confidentiality provision that addresses the complex issues implicated here, is unconstitutional as overly broad and violative of due process under both the United States and Virginia Constitutions. Certainly, each of the four different law firms initially involved in this matter understood this hornbook principle of constitutional law and would not have submitted their clients to criminal sanctions without first defining in concrete terms the scope of the prohibition, reducing it to writing and then having the provision reviewed and acknowledged and signed by their clients.¹⁰

Sixth, the parties' communications and actions indicate that they treated a written, fully integrated and executed Mutual Release and Settlement Agreement as a condition precedent to a settlement in this matter. Notwithstanding subsequent efforts by Messrs. Jenne and Rasnic and opposing counsel to create an apparent ratification (e.g., transmittal of check and the creation of self-serving correspondence), all parties undoubtedly intended that the case would not be settled until the written agreement was circulated to the parties, reviewed and

¹⁰ The current and proposed draft provision prohibits "any public disclosure of the terms and provisions of this Agreement." To comply, this means that all defendant attorneys, including Gentry, Locke, Rakes & Moore, cannot disclose to their liability carriers in future years that they were sued and settled. Arguably, it prohibits any of the parties from discussing the tax implications with their tax advisors or presumably to obtain legal advice and representation regarding the disputed settlement and Orders with attorneys other than those of record on January 31, 1994.

signed by all parties.

2. There Was No Settlement Agreement Because Certain Affected Individuals Were Not Part of the Agreement

An integral part of Defendant's last settlement offer involved the relinquishment of rights of third parties not represented by Messrs. Jenne and Rasnic. Those parties -- The Peter C. Snyder Marital Trust, The Peter C. Snyder Residual Trust (collectively, "Trusts") and Ms. Snyder-Falkinham's husband, Joe Falkinham -- never expressly agreed to any settlement agreement or to release Defendants. Indeed, Ms. Snyder-Falkinham's attorneys could not -- under the Virginia Code of Professional Responsibility -- exercise independent judgment on behalf of the Trusts because their interests (collecting a 40 percent contingency fee) are adverse to those of the Trusts (preserving recoverable assets for the beneficiaries). There was no settlement agreement because Messrs. Jenne and Rasnic did not, and could not, represent parties whose interests were adverse and in conflict with theirs.

3. There Was No Settlement Agreement Because There Was No Offer And Acceptance And There Was No Mutual Assent

To have a valid, binding and enforceable agreement, there must be mutual assent. Valjar, Inc. v. Maritime Terminals, Inc., 265 S.E.2d 734, 737 (Va. 1980) (Supreme Court affirming trial judges J.N.O.V. of jury verdict because, as a matter of law, "A contract cannot exist if the parties never mutually assented to terms proposed by either as essential to an accord.") (citing Progressive Construction v. Thumm, 209 Va. 24, 30-31, 161 S.E.2d 687, 691 (1968)).¹¹

¹¹ The facts and holding of Maritime Terminals are instructive. There, the plaintiff rented cranes and the services of crane operators to customers. The defendant and plaintiff

Here, there was no mutual assent to the essential terms of an agreement. Messrs. Jenne and Rasnic and opposing counsel engaged in negotiations at the Roanoke Marriott during Sunday, January 30, 1994. Offers and counter offers were made and rejected. Finally, at approximately 9:00 p.m. Sunday night, Ms. Snyder-Falkinham left the Marriott. When she left, she did not know if the payor -- Virginia Reciprocal -- would agree to pay the dollar amount. Nor did Mr. Jenne know. Nor did Mr. Rasnic know. In short, when Ms. Snyder-Falkinham left the Marriott to return home, a dollar figure had not even been tendered by the payor. This is significant because it illustrates the lack of contract formation or mutual assent. It also raises the following issue: If the Virginia Reciprocal had not agreed to pay, could Ms. Snyder-Falkinham have forced that payment from the Defendants (versus their insurance carrier)? There was no agreement, even as to dollar amount, much less agreement about the other crucial "deal killing" terms, conditions and provisions.

discussed a possible contractual relationship. Among the terms discussed, were length of term, a non-compete covenant and a hold harmless provision. 265 S.E.2d at 735. Shortly after this meeting, the plaintiff purchased a crane. Approximately two months later, the plaintiff's president submitted a letter summarizing the plaintiff's understanding of the contract. Six months later, the defendant sent plaintiff a "proposed draft of an agreement." *Id.* The letter described "in minute detail" the terms of the proposed agreement. *Id.* at 736. Shortly thereafter, because of intervening events, the plaintiff treated the defendant's refusal to accept the crane as a breach of contract. Plaintiff sued. The trial court held that there was no contract despite the defendant's employee's testimony that "[w]e were not in complete agreement in every detail, but essentially we were in agreement." *Id.* at 735.

The Supreme Court, "applying elementary legal principles", affirmed the J.N.O.V *Id.* at 737. The Supreme Court found that the parties never reached an understanding or mutual assent and that inasmuch as the defendant's proposed terms were "indispensable" -- but not accepted by plaintiff -- no contract existed.

In this case, Ms. Snyder-Falkinham expressly refused to accept two terms that she said made Defendants' counteroffer unacceptable: the transfer of Defendant Stockburger's shares to her and the signing by the co-trustee of the Peter C. Snyder Marital and Residual Trusts. Until she agreed to all essential terms embodied in one agreement, no contract existed between her and Defendants.

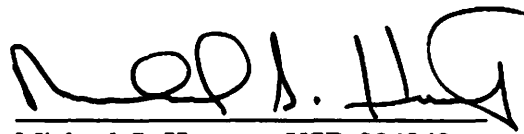
Moreover, Ms. Snyder-Falkinham did not accept Defendants' last settlement offer. By injecting new conditions (third parties signing and releasing claims and insistence on a deleterious "buy back" of one Defendant's stock) defense counsel proposed a counteroffer. It is fundamental that an offer is rejected by a counteroffer.

CONCLUSION

Under the facts and circumstances, Messrs. Jenne and Rasnic had no authority to move for entry of the Orders and the resulting dismissal of the case against the Defendants with prejudice. Moreover, entry of such Orders presupposed that the parties had signed a formal written contract prior to the entry of such Orders. They had not. Entry of the Orders also occurred because counsel either expressly or impliedly represented to this Court that they had settled the case. Clearly they had not. Considering the totality of circumstances, Defendants' cannot meet their burden of proving by clear and convincing evidence that Jenne and Rasnic could act as Ms. Snyder-Falkinham's agents for purposes of settling her case. Here, as a matter of law, her attorneys had no apparent authority to settle the case without their client's express consent. In fact, her retainer agreement expressly required her consent to any prospective settlement negotiated on her behalf by Messrs. Jenne and Rasnic. Given the multiplicity of parties, the many versions of the settlement, the issues posed by the six different capacities in which Ms. Snyder-Falkinham had to sign the Purported Settlement Agreement, her attorneys had no real or implied authority to settle the case. Contractually, as of January 30, 1994, the parties had not decided upon all the terms of the settlement they intended to embody in a settlement agreement. Virginia Reciprocal had not agreed to the settlement figure before Ms. Snyder-Falkinham's departure Sunday evening, January 30.

Ms. Snyder-Falkinham had specifically refused to accept Defendants' last counteroffer. Moreover, execution of a formal written agreement constituted a condition precedent to the parties' entering a binding contract. Finally, no settlement agreement existed because the parties had not formed a contract. They had not agreed on all terms each of them considered material. Nor had they communicated acceptance to one another. Under these circumstances, the Court should vacate the Orders and deny Defendants' Motion to Confirm Settlement.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael S. Horwatt", with a stylized flourish at the end.

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Charles F. Wright, VSB 30609
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(703) 847-1900

CERTIFICATE OF SERVICE

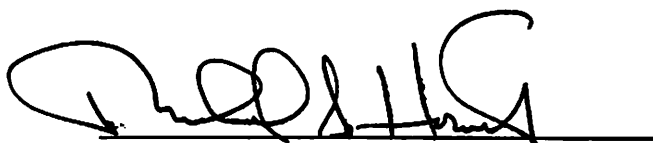
I hereby certify that a true copy of the foregoing Memorandum of Points and Authorities in Support of Motion to Reinstate and for Vacation of Order and Final Order were sent by facsimile and by U.S. mail, postage pre-paid, this 11th day of February, 1994, to counsel as follows:

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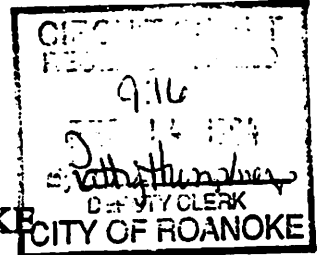
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Michael S. Horwatt

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ROANOKE



GEORGIA ANNE SNYDER-FALKINHAM,

Plaintiff,

versus

BRUCE C. STOCKBURGER, ET AL.,

Defendants.

No. CL91-1212

**DEFENDANTS'
MOTION
TO
CONFIRM SETTLEMENT**

The Defendants, Bruce C. Stockburger ("Stockburger") and Gentry, Locke, Rakes & Moore ("the firm"), by counsel, come now and respectfully move this Court to confirm the compromise and settlement between Plaintiff, Georgia Anne Snyder-Falkinham ("Snyder-Falkinham"), and all Defendants on January 30, 1994, which resulted in this Court's entry of an Order and a Final Order on January 31, 1994, on the grounds that a binding compromise and settlement exists, barring Snyder-Falkinham's further prosecution of her claims.

**MEMORANDUM IN SUPPORT
OF
MOTION TO CONFIRM SETTLEMENT**

STATEMENT OF FACTS

Pursuant to this Court's Order of December 21, 1993, this case was referred to a Dispute Resolution Evaluation Session. On January 25, 1994, this session was held. The parties agreed,

in pertinent part, that (1) Snyder-Falkinham would waive her claims for punitive damages as to all defendants; (2) Snyder-Falkinham would waive any claim in excess of five (5) million dollars; (3) Snyder-Falkinham shall nonsuit all individual parties other than Stockburger.¹ The concessions by each party, as detailed in the Mediation Memorandum of Agreement, constitute valuable consideration. Several witnesses can testify that Snyder-Falkinham consented to this agreement. As a result, this agreement is a legal contract and resulted in this Court's Order of January 31, 1994.

On the evening before trial, an agreement to settle the remainder of this controversy was reached. Stockburger and the firm, by counsel, reached an oral agreement with Snyder-Falkinham's counsel. The terms of this agreement were that Defendants would pay an agreed amount in exchange for Snyder-Falkinham's dismissing her action against defendants herein and Robert E. Glenn and the law firm of Glenn, Flippin, Darby & Feldmann and other considerations, all as spelled out in the Mutual Release and Settlement Agreement previously forwarded to counsel for plaintiff which details out all the terms of the agreed settlement.² Counsel for Snyder-Falkinham possessed actual authority to accept Defendants' offer of compromise. Snyder-Falkinham, in front of several witnesses, authorized her attorney to accept the settlement. Snyder-Falkinham's acceptance is manifested further by her placing telephone calls to relatives and friends and informing them that the case was settled. Snyder-Falkinham's acceptance also is demonstrated by her, via counsel, appearing before this Court and agreeing to the entry of a Final Order dismissing her claims with prejudice on January 31, 1994.

¹ A copy of the Mediation Memorandum of Agreement is attached hereto as Exhibit 1.

² A copy of this document is attached hereto as Exhibit 2.

This settlement is supported by valuable consideration. Defendants promised to pay a specified settlement figure. In turn, Snyder-Falkinham promised to drop her lawsuit and perform certain other acts. Under the laws of the Commonwealth of Virginia, these acts constitute valuable consideration.

Yet despite the existence of a valid mediation contract and a valid settlement contract, Snyder-Falkinham apparently seeks to breach these contracts. Snyder-Falkinham has not executed the written memorialization of the settlement and has hired new counsel, who has given notice that plaintiff is attempting to set aside this Court's Order and Final Order of January 31, 1994. Although no grounds for same have been expressed. Snyder-Falkinham's actions are after this contract was created and are a violation of the binding contracts between Snyder-Falkinham, Stockburger and the other Defendants.

LAW AND ARGUMENT

I. The mediation agreement is a consummated, verified, and enforceable oral contract.

The law is well settled that an oral contract is as binding as a written contract. An oral contract, like all contracts, requires an agreement and consideration. In the mediation session, Snyder-Falkinham and Defendants agreed that Snyder-Falkinham would drop her claims in excess of five million and for punitive damages. In exchange the firm's agent would drop its reservation of rights. The firm provided funds from which Snyder-Falkinham could collect if she received a favorable judgment. Snyder-Falkinham provided consideration by conceding her claims in excess of five million dollars and for punitive damages. Such concessions are valuable considerations. *See Thompson v. Commonwealth*, 197 Va. 208, 212, 89 S.E.2d 64, 67 (1955).

The mediation memorandum illuminates with clarity and precision the terms of this oral contract. Consequently, the mediation agreement constitutes an enforceable contract and prevents Snyder-Falkinham from resurrecting her claims in excess of five million dollars and for punitive damages.

II. A binding, valid and complete compromise and settlement exists between all parties, barring Snyder-Falkinham's further prosecution of her claims.

In Virginia, compromises are a necessary, binding, and valid means of resolving a controversy between individuals. Entering a compromise, however, does not reflect upon the merits of an individual's claims. As the Supreme Court of Virginia has stated, "It may be said of compromises generally that 'the compromise of any matter is valid and binding, not because it is the settlement of a valid claim, but because it is the settlement of a controversy.' " *Weade v. Weade*, 153 Va. 540, 547, 150 S.E. 238 (1929)(citations omitted). In order to have a binding compromise settlement, the Supreme Court of Virginia requires that:

The essential elements of a valid contract must exist to support a binding compromise settlement; there must be a complete agreement which requires acceptance of an offer, *Bangor-Punta Operations, Inc. v. Atlantic Leasing, Ltd.*, 215 Va. 180, 183, 207 S.E.2d 858, 860 (1974), as well as valuable consideration.

Montagna v. Holiday Inns, Inc., 221 Va. 336, 346, 269 S.E.2d 838, 844 (1980). The agreement may be either executory or a substituted contract. *Id.* Moreover, the fact that the oral agreement was later to be memorialized in writing is of no consequence. The Supreme Court of Virginia holds:

If . . . the parties are fully agreed and intend to be bound thereby, the mere fact, that a later formal writing is contemplated will not vitiate the agreement.

North America Managers, Inc. v. Reinach, 177 Va. 116, 121, 12 S.E. 2d 806, 808 (1941); *Richardson v. Richardson*, 10 Va. App. 391, 398, 392 S.E.2d 688, 691 (1990). ("The parties to a pending lawsuit may by oral agreement compromise and settle the same, which will bind them although not reduced to writing"). *Richardson v. Richardson*, 10 Va. App. 391, 398, 392 S.E. 2d 688, 691 (1990).

Like *Reinach*, the parties reached an agreement that was to be memorialized by reducing the agreement to a writing. Defendants, by counsel, jointly offered to pay a certain sum if Snyder-Falkinham would dismiss her action against Stockburger and the other Defendants and perform certain other enumerated acts. Counsel for Snyder-Falkinham, with express authority from Snyder-Falkinham, accepted Defendants' offer. Several witnesses, in addition to her attorneys, can testify that Snyder-Falkinham gave her attorneys' actual authority to accept Defendants' offer of compromise. An attorney may bind his client to a settlement if from the defendants' perspective he has apparent authority. See *Singer Sewing Mach. Co. v. Ferrell*, 144 Va. 395, 402, 132 S.E. 312 (1926). Since Snyder-Falkinham's counsel had actual authority, this case presents an even stronger case than *Ferrell* for binding Snyder-Falkinham to her settlement agreement. With Snyder-Falkinham's acceptance of Defendants' offer, the agreement became that Stockburger and the other Defendants would pay a settlement amount in exchange for Snyder-Falkinham's dismissing her claims against the Defendants. These same obligations were to be reduced to writing in a Mutual Release and Settlement Agreement, which was nothing more than a memorialization of the terms of the oral contract made on January 30, 1994.

Consideration for a compromise settlement is provided by each parties' concessions. The Supreme Court of Virginia holds:

'A compromise usually involves an act of favor or concession by each of the parties. The favor or concession received by one is the consideration for the favor or concession granted by the other.'

Thompson, 197 Va. at 212, 89 S.E.2d at 67. In addition, the Court of Appeals of Virginia holds:

The termination of disputed claims is a valid and sufficient consideration to support a settlement agreement. Thus, where, as here, there is mutual assent and valuable consideration given, a valid contract exists. *See Montagna*, 221 Va. at 346, 269 Va. at 844.

Richardson, 10 Va. App. at 399, 392 S.E.2d at 692.

In *Thompson*, a dispute arose between plaintiff and the Commonwealth of Virginia over a contract calling for the manufacture and delivery of spare parts for the first electric voting machine at the General Assembly. This contract stemmed from the Commonwealth's and plaintiff's claims to tools in a state building. In rejecting plaintiff's argument that the contract lacked consideration, the Supreme Court held that plaintiff's concession to deliver spare parts and the Commonwealth's allowing plaintiff to occupy the state building was sufficient consideration. *Id.* Like *Thompson*, Defendants promised to pay an agreed amount as a concession to Snyder-Falkinham. In fact, Defendants' have fulfilled this executory promise by tendering this amount to counsel for Snyder-Falkinham. In turn, Snyder-Falkinham promised to concede the prosecution of her claims. Like Defendants, Snyder-Falkinham has fulfilled her executory promise by authorizing her attorney to dismiss her claims with prejudice. As a result, valuable consideration is present, revealing that a binding compromise settlement exists between

Snyder-Falkinham, Stockburger, and the other Defendants. Thus, Snyder-Falkinham's claims are extinguished.

III. Snyder-Falkinham lacks the requisite clear and convincing evidence necessary to set aside the Order and Final Order of January 31, 1994.

In attempting to set aside this settlement, Snyder-Falkinham faces a Herculean task. In order to set aside a compromise and settlement, Snyder-Falkinham must prove, by the "most satisfactory evidence," that no agreement exists and/ or that her attorneys exceeded their authority in agreeing to a settlement. *See Eggleston v. Crump*, 150 Va. 414, 419, 143 S.E. 688 (1928). The Supreme Court of Virginia holds:

"The law favors compromises and settlement of disputed claims. It is to the interest of all that there should be an end of litigation, and a settlement deliberately sought as this was, by the plaintiff, ought not to be set aside, except by the most satisfactory evidence."

Id. (emphasis added). In other words, Snyder-Falkinham must prove her case to set aside the Order and Final Order by clear and convincing evidence. If the Supreme Court had merely intended that a plaintiff must prove by a preponderance of the evidence, then the Supreme Court would have only said by satisfactory evidence. However, since the Court expressly said by the "most satisfactory evidence," the Supreme Court has heightened Snyder-Falkinham's evidentiary standard and mandated that Snyder-Falkinham prove her case by clear and convincing evidence. No evidence, much less clear and convincing evidence, exists to support Snyder-Falkinham's spurious allegations.

In this case, duress is not a ground for rescinding the settlement contract between Snyder-Falkinham and Defendants. The Supreme Court of Virginia holds that "a contract of compromise, entered into with full knowledge of all facts, cannot be set aside on the ground of duress when the other party has not been guilty of any unlawful act." *Cary v. Harris*, 120 Va. 252, 259, 91 S.E. 166 (1917). Snyder-Falkinham's actions demonstrate that she possessed full knowledge of the facts. She expressly authorized her attorney to accept Stockburger's settlement figure knowing that the case would not proceed to trial, which was scheduled to begin the next day. Snyder-Falkinham, also, contacted relatives and friends and informed them that she had settled the case. In addition, she permitted her attorneys to appear in court and agree to the entry of an Order dismissing her claims with prejudice. In light of this evidence, any attempt by Snyder-Falkinham to set aside her compromise settlement on the grounds of duress is totally without merit. Although Snyder-Falkinham may claim to have been reluctant, reluctance does not equal duress. *See Id.* at 258.

In addition, mental reservations do not negate the "meeting of the minds" between Snyder-Falkinham and all Defendants. As the Supreme Court of Virginia has held, "A meeting of the minds requires a *manifestation* of mutual assent and a party's mental reservation does not impair the contract he purports to enter. *See* Restatement (Second) of Contracts §§17-19, 17 comment (1981)." *Wells v. Weston*, 229 Va. 72, 79, 326 S.E.2d 672, 676 (1985). Like the husband in *Wells* who had mental reservations about a divorce settlement agreement, Snyder-Falkinham may argue that she had mental reservations about entering the oral contract on January 30, 1994. Yet, like the husband in *Wells*, Snyder-Falkinham has manifested her acceptance of this oral compromise and settlement contract. As stated earlier, she gave her

attorneys express authority to accept this compromise and settlement, contacted family members and friends, and allowed her attorneys to dismiss this case with prejudice. Consequently, as the Supreme Court of Virginia has ruled, Snyder-Falkinham's mental reservations do not impair the oral compromise and settlement reached on January 30, 1994.

CONCLUSION

The presence of two complete, valid, and enforceable contracts, encompassing and settling all of Snyder-Falkinham's claims, mandates that this Court confirm Snyder-Falkinham's settlement with all Defendants. By oral contract, Snyder-Falkinham dismissed her claims in excess of five million dollars and for punitive damages.

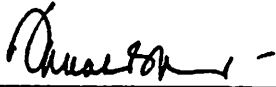
The remainder of Snyder-Falkinham's claims are barred by a compromise and settlement contract. A compromise settlement is a necessary, binding, and valid means of resolving a controversy between parties. In order to have a binding compromise settlement, the fundamentals of a contract must exist. Here, Stockburger and the other Defendants offered to pay Snyder-Falkinham a settlement figure in exchange for her dismissing her claims with prejudice. Snyder-Falkinham's attorney, with Snyder-Falkinham's authority, accepted this offer. The concessions of Defendants and Snyder-Falkinham provide the consideration supporting this agreement. Defendants promised to pay an settlement figure. Snyder-Falkinham promised to dismiss her lawsuit. Consequently, Snyder-Falkinham is bound by her compromise settlement contract and is forbidden from attempting to prosecute further her claims against Defendants.

WHEREFORE, Defendants respectfully request that this Court confirm the compromise settlement of January 30, 1994 with Georgia Anne Snyder-Falkinham.

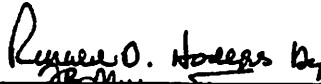
Respectfully submitted,

BRUCE C. STOCKBURGER AND
GENTRY, LOCKE, RAKES & MOORE

By Counsel



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CERTIFICATE

I hereby certify that on this 10 day of February, 1994, a true copy of the foregoing *Answers via Federal Express Inc* was mailed, postage prepaid, to:

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Michael Horwatt & Associates, P.C.
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Vienna, Virginia 22182.

Chenault -

MEDIATION MEMORANDUM OF AGREEMENT

INITIATOR:

Georgia Ann Snyder - Falkingham

CASE NUMBER: CL91-1212

RESPONDER:

Stockburger, et al

MEDIATION DATE: 1-25-94

THIS IS A LEGAL CONTRACT.

WE, the undersigned parties, hereby agree that our settlement, outlined in the "Terms and Conditions" below is an accurate reflection of our resolution.

We agree that the terms and conditions set forth here are the result of substantial full disclosure of all relevant property and financial information.

We understand that we have the opportunity to have this Memorandum of Agreement reviewed by independent legal counsel prior to signing it and have either had this agreement so reviewed prior to signing it or have chosen to waive our opportunity to do so.

This agreement is recorded in the words of the parties by the mediators acting as scriveners only.

TERMS AND CONDITIONS

1. Reciprocal (TVIR) ~~will~~ ^{does} withdraw the reservation of rights as to the firm (Gentry Locke Rakes & Moore) and all ~~affected~~ ^{damages} partners other than Bruce Stockburger.
2. The plaintiff ~~will~~ ^{does} waive punitive ^{damages} as to all defendants.
3. The plaintiff ~~will~~ ^{does} waive any claim in excess of the firm's policy limits of Five (5) Million Dollars.
4. The plaintiff ~~will~~ ^{shall} nonsuit all individual partners other than Mr. Stockburger.

Initiator

Date

Responder(s)

Date

Mutual Release and Settlement Agreement

It is hereby agreed, by and between Georgia Anne Snyder-Falkinham (hereafter, "Snyder-Falkinham"), Bruce C. Stockburger (hereafter, "Stockburger"), Gentry, Locke, Rakes & Moore (hereafter, "the firm"), Robert E. Glenn (hereafter, "Glenn"), and Glenn, Flippin, Feldmann & Darby, P.C. (hereafter, "his firm") that all claims made by Snyder-Falkinham against Stockburger and the firm currently pending in the Circuit Court for the City of Roanoke styled Georgia Anne Snyder-Falkinham, etc. v. Bruce C. Stockburger, et al., Case No. CL91-1212 (hereafter, "the action"), be settled and compromised on the following terms and conditions:

1. This is a compromise settlement of disputed claims and demands. The parties hereto recognize and acknowledge that neither this Agreement nor the resulting compromise settlement shall constitute an admission of any of the allegations in the action and/or of claims made by Snyder-Falkinham against Stockburger for alleged moneys due under a letter agreement dated December 14, 1990 (hereafter, "the letter agreement") and promissory note signed by Stockburger and dated December 15, 1990 (hereafter, "the note").

2. Snyder-Falkinham agrees to the dismissal of the action with prejudice.

3. The parties hereto and their respective counsel agree to keep the terms and provisions of this Agreement confidential and shall not make any public disclosure of the terms and provisions of this Agreement or amount of the settlement, absent an order of a court or tribunal of competent jurisdiction that the terms and/or

provisions be disclosed, and only then as required by the terms of the order.

4. In consideration of the covenants and agreements herein contained and the payment of good and valuable consideration to Snyder-Falkinham and her counsel in the action by or on behalf of Stockburger and the firm (hereafter, "the payment"), the receipt and sufficiency of which is acknowledged by Snyder-Falkinham and her counsel in the action, Snyder-Falkinham, for herself and her heirs and assigns, The Snyder Company, Inc. (hereafter, "Snyder Co."), Snyder and Associates, Rich Hill Development Corporation and their officers, directors and shareholders, does release, remise and forever discharge Stockburger and his heirs and assigns and the firm and its partners, officers, employees, successors and successors in interest from and against any and all claims, demands, actions, causes of action and expenses of whatever kind she may have against Stockburger and the firm, their heirs, assigns, partners, officers, employees, successors and successors in interest now or in the future.

5. In further consideration of the covenants and agreements herein contained and the payment, Snyder-Falkinham, for herself and her heirs and assigns, Snyder Co., Snyder and Associates, Rich Hill Development Corporation and their officers, directors and shareholders, does release, remise and forever discharge Glenn and his firm, their heirs, assigns, officers, directors, shareholders, employees, successors and successors in interest from and against any and all claims, demands, actions, causes of action and expenses

of whatever kind she may have against Glenn and his firm, their heirs, assigns, officers, directors, shareholders, employees, successors and successors in interest, now or in the future.

6. In further consideration of the covenants and agreements herein contained and the payment, Snyder-Falkinham, as beneficiary and Trustee of the Marital Trust and Residual Trust created under the Will of Peter C. Snyder, deceased (hereafter, "the Trustees"), does release, remise and forever discharge Stockburger, the firm, Glenn and his firm, their heirs, assigns, officers, directors, partners, shareholders, employees, successors and successors in interest, from and against any and all claims, demands, actions, causes of action and expenses of any kind the beneficiary and Trustee may have against Stockburger, the firm, Glenn and his firm, their heirs, assigns, officers, directors, partners, shareholders, employees, successors and successors in interest, now or in the future arising out of matters and things alleged in the legal actions described in this Agreement, the letter agreement and the note.

7. The parties agree that a part of the consideration includes the satisfaction of a promissory note dated December 15, 1990, from Stockburger to Snyder-Falkinham, the original to be marked "paid" and delivered to counsel for Stockburger.

8. Stockburger, the firm, Glenn and his firm release, remise and discharge Snyder-Falkinham and her heirs and assigns from and against any and all claims, demands, actions and causes of action they might have against her for any cause whatsoever, save and

except those claims for indemnity and/or contribution which might arise against Snyder-Falkinham by reason of the civil actions filed against Stockburger and Glenn in the Circuit Court for the City of Roanoke by Michael E. Snyder and Stacy A. Snyder, both individually and as beneficiaries under the Peter C. Snyder Marital and Residual Trusts styled Michael E. Snyder, etc., et al. v. Bruce C. Stockburger, et al., Case No.: 93-1373, for acts, errors or omissions of Snyder-Falkinham as Co-trustee of the Marital and Residual Trusts created by the Will of Peter C. Snyder.

9. This Agreement is a Release and it is not a covenant not to sue. This Agreement shall not inure to the benefit of any person or entity other than those designated herein nor shall it be construed to be a release of any person or entity other than those persons and entities specifically named herein.

10. This writing contains all of the agreements of the parties hereto and shall be construed and interpreted in accordance with the laws of the Commonwealth of Virginia.

Signed and sealed this 31st day of January, 1994.

Georgia Anne Snyder-Falkinham,
 individually and as President
 of The Snyder Company, Inc.,
 and Snyder and Associates, Rich
 Hill Development Corporation
 and as beneficiary and co-
 Trustee of the Marital Trust
 and Residual Trust under the
 Will of Peter C. Snyder,
 deceased

STATE OF VIRGINIA

CITY/COUNTY OF _____, to-wit:

This day personally appeared before me, the undersigned Notary Public, in my jurisdiction aforesaid, Georgia Anne Snyder-Falkinham, who, being first duly sworn, deposed and said that (1) she is authorized to execute this Mutual Release and Settlement Agreement on her behalf and the behalf of the Snyder Company, Inc., Snyder and Associates, Rich Hill Development Corporation and as beneficiary and Co-Trustee under the Marital Trust and Residual Trust under the Will of Peter C. Snyder, deceased, (2) she has read and understands the terms and conditions of the Mutual Release and Settlement Agreement and (3) she and the described companies and trusts agree to be bound by the terms and provisions of the Mutual Release and Settlement Agreement.

Sworn and subscribed before me this _____ day of _____, 1994.

My Commission expires: / / .

 Notary Public


Bruce C. Stockburger

STATE OF VIRGINIA
CITY/COUNTY OF Roanoke, to-wit:

This day personally appeared before me, the undersigned Notary Public, in my jurisdiction aforesaid, Bruce C. Stockburger, who, being first duly sworn, deposed and said that (1) he has read and understands the terms and conditions of the Mutual Release and Settlement Agreement and (2) he agrees to be bound by the terms and provisions of the Mutual Release and Settlement Agreement.

Sworn and subscribed before me this 31st day of January, 1994.

My Commission expires: 5/31/97.


Notary Public

Gentry, Locke, Rakes & Moore

By: William R. RakesTitle: Managing PartnerSTATE OF VIRGINIA
~~CITY~~ COUNTY OF Roanoke, to-wit:

This day personally appeared before me, the undersigned Notary Public, in my jurisdiction aforesaid, William R. Rakes, who, being first duly sworn, deposed and said that (1) he/she is authorized to execute this Mutual Release and Settlement Agreement on behalf of Gentry, Locke, Rakes & Moore, (2) he/she has read and understands the terms and conditions of the Mutual Release and Settlement Agreement and (3) Gentry, Locke, Rakes & Moore agrees to be bound by the terms and provisions of the Mutual Release and Settlement Agreement.

Sworn and subscribed before me this 31st day of January, 1994.

My Commission expires: 5/31/1997.

Sharon B. Smith
Notary Public

Robert E. Glenn

STATE OF VIRGINIA

CITY/COUNTY OF _____, to-wit:

This day personally appeared before me, the undersigned Notary Public, in my jurisdiction aforesaid, Robert E. Glenn, who, being first duly sworn, deposed and said that (1) he has read and understands the terms and conditions of the Mutual Release and Settlement Agreement and (2) he agrees to be bound by the terms and provisions of the Mutual Release and Settlement Agreement.

Sworn and subscribed before me this _____ day of _____, 1994.

My Commission expires: / / .

Notary Public

Glenn, Flippin, Feldmann
& Darby, P.C.

By: _____

Title: _____

STATE OF VIRGINIA

CITY/COUNTY OF _____, to-wit:

This day personally appeared before me, the undersigned Notary Public, in my jurisdiction aforesaid, _____, who, being first duly sworn, deposed and said that (1) he/she is authorized to execute this Mutual Release and Settlement Agreement on behalf of Glenn, Flippin, Feldman & Darby, P.C., (2) he/she has read and understands the terms and conditions of the Mutual Release and Settlement Agreement and (3) Glenn, Flippin, Feldman & Darby, P.C., agrees to be bound by the terms and provisions of the Mutual Release and Settlement Agreement.

Sworn and subscribed before me this _____ day of _____, 1994.

My Commission expires: / / .

Notary Public

Thomas L. Rasnic
Counsel for Georgia Anne
Snyder-Falkinham

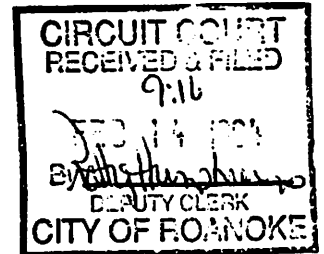
Roger Jenne
Counsel for Georgia Anne
Snyder-Falkinham

Frank B. Miller, III
Counsel for Bruce C. Stockburger

Ronald D. Hodges
Counsel for Gentry, Locke, Rakes & Moore

R. Edwin Burnette
Counsel for Robert E. Glenn
and
Glenn, Flippin, Feldmann & Darby, P.C.

LAW OFFICES
SANDS, ANDERSON, MARKS & MILLER
A PROFESSIONAL CORPORATION
THE ROSS BUILDING
801 EAST MAIN STREET
POST OFFICE BOX 1998
RICHMOND, VIRGINIA 23218-1998
804/648-1838



TELECOPIER
804/783-2928
804/783-7291

DIRECT DIAL NO.:
804/783-7255

FRANK B. MILLER, III

February 10, 1994

Arthur B. Crush, III, Clerk
Circuit Court of the City of Roanoke
315 Church Avenue, SW
P. O. Box 2610
Roanoke, VA 24010

Re: Georgia Anne Snyder-Falkinham
v. Bruce C. Stockburger, et al.
Case No. CL91-1212
Our File No. 48-023375

Dear Mr. Crush:

Enclosed please find the original of Defendants' Motion to Confirm Settlement and Memorandum in Support thereof, which we would appreciate your filing among the papers in this matter.

By copy of this letter to Judge Jennings, we are sending a copy of the motions directly to him.

Sincerely yours,

Frank B. Miller, III

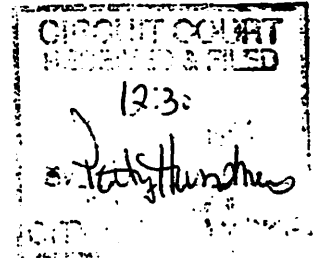
FBMIII/sfp
Enclosure

cc: The Honorable Barnard F. Jennings
Thomas L. Rasnic, Esquire
Roger Jenne, Esquire
Ronald D. Hodges, Esquire
Michael S. Horwatt, Esquire

THE COMMONWEALTH OF VIRGINIA,

WE COMMAND THAT YOU SUMMON

Roger Jenne
Jenne, Scott & Bryant
250 North Ocoee Street
Cleveland, TN 37364



to appear before a Judge of our Circuit Court of the City of Roanoke, sitting in the courthouse of the Circuit Court Court of Wythe County, at a Courtroom thereof, 225 Fourth Street, Wytheville, Virginia, on February 15, 1994

 at 10:00 o'clock a.m. to testify and the truth to say on behalf of Bruce C. Stockburger in a certain matter of controversy in our said Court, between Georgia Anne Snyder-Falkinham plaintiff, and Bruce C. Stockburger, et al.

defendants.

And have then there this writ.

Witness, ARTHUR B. CRUSH, III, Clerk of our said Court, this 14 day of February, and in the 1994 year of our Commonwealth.

ARTHUR B. CRUSH, III

By

Patty Hunsch
Deputy Clerk

Any questions regarding this subpoena should be directed to Frank B. Miller
 telephone (804) 648-1636

CCP

V I R G I N I A

IN THE CIRCUIT COURT FOR THE
CITY OF ROANOKE

GEORGIA ANNE SNYDER-FALKINHAM,

Plaintiff

-vs-

BRUCE C. STOCKBURGER, et al.,

Defendants

CASE: CL91-1212

FEBRUARY 15, 1994
10:00 A.M.

HEARD BEFORE:

THE HONORABLE BERNARD JENNINGS

CENTRAL VIRGINIA REPORTERS
P.O. BOX 12628
ROANOKE, VIRGINIA

1
2
3
4 APPEARANCES:

5
6 MICHAEL HORWATT & ASSOCIATES
7 Vienna, Virginia
8 By: MICHAEL S. HORWATT, ESQ.
9 CHARLES F. WRIGHT, ESQ.

10 Counsel on behalf of the Plaintiff

11 SANDS, ANDERSON, MARKS & MILLER
12 Richmond, Virginia
13 By: FRANK B. MILLER, ESQ.

14 Counsel on behalf of Bruce C. Stockburger

15 WHARTON, ALDHIZER & WEAVER
16 Harrisonburg, Virginia
17 By: RONALD D. HODGES, ESQ.

18 Counsel on behalf of Gentry, Locke, Rakes & Moore
19

20 * * * * *

<u>I N D E X</u>				
<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
<u>FOR THE PLAINTIFF:</u>				
Ms. Snyder-Falkinham	15	46,64	78	- -
Mr. Hunt	84	- -	- -	- -
Mr. Whitaker	87	- -	- -	- -
Mr. Anthony	92	94,98	102	- -
Mr. Crabbs	103	- -	- -	- -
Plaintiff Rests			108	
<u>FOR THE DEFENDANT:</u>				
Mr. Jenne	118	154	- -	- -
Mr. Rasnic	183	197	- -	- -
Ms. Arthur	212	216	- -	- -
Ms. Robbins	219	224	- -	- -
Mr. Robbins	226	- -	- -	- -
Ms. Pointin	229	- -	- -	- -
Mr. Agee	233	- -	- -	- -
Defendant Rests			239	
<u>REBUTTAL WITNESSES:</u>				
Mr. Hunt	241	- -	- -	- -
Mr. Snyder	243	- -	- -	- -
Mr. Sheffler	247	- -	- -	- -
Ms. Heath	248	- -	- -	- -
Ms. Carr	251	- -	- -	- -
Mr. Rasnic	253	- -	- -	- -
Ms. Snyder-Falkinham	256	- -	- -	- -
* * * * *				
<u>E X H I B I T S</u>				
NUMBER	DESCRIPTION			ENTERED
<u>FOR THE PLAINTIFF:</u>				
1	Copy of Order Entered 1/31/94			16
2	Copy of Order Entered 1/31/94			16
3	Employment Agreement			41
4	Letter dated 2/1/94			43
5	Letter dated 2/9/94			45
6	First Agreement			38
9	Second Agreement			41
<u>FOR THE DEFENSE:</u>				
A	Mediation Agreement			54

1 The following cause came on to be heard
2 before the Honorable Bernard Jennings, Judge of the Circuit
3 Court, sitting at Wytheville, Virginia, on this, the 15th
4 day of February, 1994:

5
6 THE COURT: I guess this comes out on several
7 motions. The first motion, if I have all the
8 pleadings in this case, is for Mr. Rasnic and
9 Mr. Jenne to withdraw; is that correct?

10 MR. RASNIC: Yes, Your Honor. We have
11 prepared an order that Mr. Jenne and I have signed,
12 and I'll show it to Mr. Horwatt.

13 Basically it provides that we are
14 permitted to withdraw as counsel, and that
15 Ms. Snyder-Falkinham is provided 30 days in which to
16 obtain new counsel, and any coverage impressed with
17 attorneys fees.

18 THE COURT: Well, from the previous
19 conversation I've had with you all on the telephone
20 conference call, I assume there's no objection to
21 that motion; is that correct?

22 MR. HORWATT: Your Honor, we do not object to
23 the motion to withdraw. We certainly object to this
24 order, and we have a number of issues that we would

1 like to raise with respect to it.

2 THE COURT: I haven't seen the order, so --

3 MR. HORWATT: Is this the only one?

4 MR. RASNIC: It's the only one I've got.

5 THE COURT: I guess he means do you have a
6 copy for him.

7 MR. RASNIC: I didn't bring a copy.

8 MR. HORWATT: Your Honor, if I might --

9 THE COURT: Is there something else
10 you want to say, Mr. Rasnic?

11 MR. RASNIC: Nothing, Your Honor.

12 THE COURT: Go ahead, Mr. Horwatt.

13 MR. HORWATT: Your Honor, the substitute
14 order that we would propose to enter, and I regret
15 that we don't have copies either, because we weren't
16 sure whether we would be getting to this stage this
17 morning, but the issue from the client's perspective
18 is that the client did not discharge these
19 attorneys.

20 She did not tell them that she would
21 repudiate the dollar figure of a settlement that had
22 been ongoing, settlement negotiations that had been
23 ongoing. And I will say out of respect --

24 THE COURT: Do I understand then that she

1 wants to keep Mr. Jenne and Mr. Rasnic as her
2 attorneys?

3 MR. HORWATT: No, not now. I'm pointing out
4 that I came into this case for the sole purpose of
5 dealing with the issue of the entry of these orders
6 of dismissal, and the question of the release.

7 We really never got to the point of being
8 able to have any formal ongoing discussion to see if
9 there was a way to deal with these issues, because
10 the two counsel informed me almost immediately that
11 they were withdrawing; that they would be looking
12 to their fee; that there was a settlement, and that
13 they would be testifying for the defendants.

14 And there is very little question from the
15 correspondence that we've seen and from the notes
16 that we've seen that those two attorneys indeed have
17 had communications about this disputed issue with
18 opposing counsel. So we don't oppose the motion --

19 THE COURT: I'm not sure what you're
20 objecting to. I assume then you're objecting to the
21 lien on any recovery?

22 MR. HORWATT: Yes, Your Honor.

23 THE COURT: All right. Go ahead.

24 MR. HORWATT: That's one item. Secondly, we

1 would ask the Court for at least the opportunity to
2 meet with defendants' attorneys after -- assuming
3 that this Court were to grant a motion to vacate, we
4 would want the opportunity to meet with the
5 defendants' attorneys to see whether some of these
6 problems could be resolved, and if they couldn't,
7 then for substitute counsel to be brought in.

8 And in the meantime, there are many documents
9 that are in the possession and control of the other
10 parties; they have information of these counsel we
11 would like --

12 THE COURT: Mr. Horwatt, I think these are
13 separate matters, distinguished from whether or not
14 they should withdraw.

15 MR. HORWATT: Can I give this substitute
16 order to the Court and ask you to look at it?

17 THE COURT: Sure.

18 MR. HODGES: Do you have a copy for us,
19 Mr. Horwatt?

20 MR. HORWATT: I don't have a copy, sir.

21 THE COURT: Mr. Horwatt, you're asking me to
22 do things in this that I just don't think I can do
23 under these circumstances. Most of these things, if
24 you intend to pursue them, I think would be some

1 subsequent sort of litigation, as distinguished from
2 this question of whether or not the attorneys should
3 be withdrawing, and whether or not they would be
4 permitted to withdraw, and whether or not this order
5 of dismissal should be vacated.

6 I think these are matters that you take up in
7 some other type of proceeding.

8 MR. HORWATT: Your Honor, I agree that it is
9 difficult to draw a line here about what should be
10 separate from the motion to withdraw and what should
11 be tied to the motion to vacate and what may be tied
12 to a separate action, either by the attorneys or
13 otherwise against their former client, but the
14 conditions under which these attorneys withdraw are
15 relevant here, because of the fact that right now we
16 are in the midst of a controversy that arises from
17 what they did on her behalf.

18 We may be in a subsequent trial or appeal,
19 depending upon what they did in her behalf. We have
20 evidence that we can present this morning of many
21 things that we have asked the plaintiff's attorneys
22 to provide to us, which we have not, in --

23 THE COURT: Again, I think that's a separate
24 decision. I don't think that's a part of this.

1 MR. HORWATT: Very well, Your Honor.

2 THE COURT: Insofar as the motion to withdraw
3 is concerned, I'll granted your motion to withdraw.

4 MR. RASNIC: Thank you, Your Honor.

5 I don't know if Your Honor spoke to the court
6 reporter, but if she could be sworn.

7

8 (The Court Reporter was sworn.)

9

10 THE COURT: As I started to say, I will grant
11 your motion to withdraw. So far as your motion to
12 granting a lien upon any recovery, and for your
13 expenses, I just don't think I should rule on that
14 at this point. I think you can file your lien, and
15 it would be a matter of record.

16 MR. RASNIC: If Your Honor wants to delineate
17 that, that would be fine.

18 THE COURT: If you want to have other Counsel
19 to endorse it, Mr. Horwatt will note his exception.

20 MR. HORWATT: Can we hold open how long the
21 plaintiff will have to obtain new counsel, depending
22 on the outcome of here today?

23 THE COURT: I thought you had been retained.

24 MR. HORWATT: I have only been retained for

1 one purpose, Your Honor, and that is only to deal
2 with this motion to vacate.

3 THE COURT: Let's go ahead with that. After
4 that, that's up to you.

5 The next motion -- let's get this signed
6 first. The language relating to the lien would be
7 eliminated.

8 MR. RASNIC: Yes, sir. I've eliminated that
9 by striking through it.

10 THE COURT: And if you would all initial it.

11 MR. MILLER: Your Honor, it might be
12 appropriate at this time to reflect that while
13 Mr. Rasnic and Mr. Jenne have withdrawn today,
14 Mr. Horwatt is representing the plaintiff, and she
15 is not in court pro se.

16 THE COURT: I understand Mr. Horwatt is
17 representing her solely for this purpose, the motion
18 to vacate and the motion for the attorneys to
19 withdraw. Is that correct, Mr. Horwatt?

20 MR. HORWATT: That's absolutely correct, Your
21 Honor.

22 MR. MILLER: We would also ask about the
23 position of Joseph Anthony. Is he counsel also for
24 Ms. Snyder-Falkinham?

1 THE COURT: I assume he's cocounsel.

2 MR. HORWATT: He is her personal attorney,
3 Your Honor.

4 THE COURT: So both of you are entering an
5 appearance for her for this purpose?

6 MR. HORWATT: Solely for this purpose, Your
7 Honor.

8 MR. MILLER: Your Honor, the reason I ask
9 that question is that Mr. Anthony, according to the
10 court records, has been subpoenaed as a witness
11 today, and we would move by --

12 THE COURT: Let's cross that bridge when we
13 come to it.

14 MR. HORWATT: Your Honor, I have to put our
15 names on it, because there's no place on the order
16 for our endorsement.

17 THE COURT: On the motion to vacate, we can
18 proceed on that, Mr. Horwatt.

19 MR. MILLER: Your Honor, we would have a
20 motion that the witnesses be excluded.

21 THE COURT: Who do you want to testify,
22 Mr. Horwatt? If you would call them out.

23 MR. HORWATT: Your Honor, the witnesses will
24 be Georgia Anne Snyder-Falkinham --

1 THE COURT: Of course she can remain.

2 MR. HORWATT: Charles Hunt, Joyce Hunt Heath,
3 Michael Snyder, Barry Whitaker, Larry Sheffler,
4 Bobbie Carr, and Mr. Anthony.

5 THE COURT: If Mr. Anthony has entered an
6 appearance as attorney, I think you'd have a problem
7 with him testifying.

8 MR. HORWATT: I would then ask him not to
9 participate in the hearing so he could testify as a
10 witness.

11 THE COURT: What witnesses do you all have?
12 If you would call them out.

13 MR. HODGES: We'll call Mr. Rasnic,
14 Mr. Jenne, Ms. Arthur, and Pam and Randy -- I forget
15 their last names --

16 MR. MILLER: Robbins.

17 MR. HODGES: -- Robbins, and Ms. Pointin.

18 THE COURT: There's been a request for the
19 Rule on the witnesses. This means you'll have to
20 stay outside the courtroom except during the period
21 of time you're testifying. I would direct each of
22 you not to discuss the case with each other or
23 anyone that you would come in contact with until
24 such time as I've made a decision later on,

1 hopefully this morning, but in any event today. Do
2 not leave this area, please, because hopefully we'll
3 get to you shortly.

4 MR. MILLER: Your Honor, he deals with the
5 subpoena duces tecum. We need to keep him here
6 until we resolve that issue.

7 THE COURT: He's not a witness as far as
8 these other things are concerned?

9 MR. MILLER: No, sir.

10 THE COURT: You can stay in the courtroom,
11 then.

12 Who do you want first, Mr. Horwatt?

13 MR. MILLER: I have a preliminary matter,
14 Your Honor, before we get started.

15 MR. HORWATT: Ms. Snyder-Falkinham.

16 THE COURT: If you'd come up and take the
17 stand.

18 Go ahead, Mr. Miller.

19 MR. MILLER: If Your Honor please, Mr. Hodges
20 and I received at 9:58 a.m. this morning a stack of
21 papers purporting to be a subpoena duces tecum
22 directed to each of us, among other parties.
23 The duces tecum, I will show it to the Court,
24 is highly irregular in that it has not been issued

1 by the Court. It has no signature of any court
2 official; it has no stamp of any Court.

3 At the time I checked the court file
4 yesterday morning at noon, there was no request for
5 a subpoena duces tecum; at the time I checked the
6 court file at 4:10 --

7 THE COURT: What is your motion?

8 MR. MILLER: To quash it.

9 MR. HORWATT: Your Honor, these are the
10 originals right here.

11 MR. MILLER: We move to quash, Your Honor.
12 We have not been, under the statute --

13 THE COURT: Let's get these other things. If
14 he offers anything that relates to that --

15 MR. MILLER: Your Honor, I don't think I can
16 be required as counsel in this case to produce any
17 of my work product.

18 THE COURT: Nobody has ordered you to.
19 All right. You can go ahead, Mr. Horwatt.

20
21 GEORGIA ANNE SNYDER-FALKINHAM
22 was called as a witness, and after having first been duly
23 sworn to tell the truth, the whole truth and nothing but the
24 truth, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HORWATT:

Q You are Georgia Anne Snyder-Falkinham?

A That's correct.

Q And you are the plaintiff in this case?

A Yes, sir.

Q I want to show you a document that has been identified as Plaintiff's Exhibit 1 and ask whether you recognize that document, and I'm giving her a copy of that document, and I've given Exhibit 1 to the judge.

MR. MILLER: Have you got one for both of us, Mr. Horwatt? We represent different parties.

MR. HORWATT: Sure. I'm sorry.

THE COURT: I don't think there's any question that this is a copy of the order that was entered. And I don't think there would be any objection to that.

MR. HORWATT: And if there's no objection, Your Honor, then Exhibit 2 is the other order.

THE COURT: All right. Is there any objection to those, Mr. Miller, Mr. Hodges?

MR. MILLER: No, sir.

MR. HODGES: No.

1 THE COURT: If not, they'll be received,
2 then.

3
4 (Exhibits 1 and 2 were received in evidence.)
5

6 BY MR. HORWATT:

7 Q Ms. Snyder-Falkinham, when did you first see
8 copies of those orders?

9 A They were Faxed to me on Monday afternoon,
10 January the 31st, 1994, by my personal attorney, Joe
11 Anthony.

12 Q Now, prior to the time that you received
13 those orders on January 1st, 1994, had you ever seen a copy
14 or draft of those orders?

15 A No, sir, I had not.

16 Q Prior to January 31, 1994, can you tell the
17 Court whether or not you ever gave either Mr. Anthony --
18 either Mr. Jenne or Mr. Rasnic authority to go into court
19 and move for the dismissal of these cases?

20 MR. MILLER: If Your Honor please, we object
21 to that question. He's asking a legal conclusion.

22 MR. HODGES: And he's leading.

23 MR. MILLER: And he's leading the witness.

24 THE COURT: Objection overruled.

1 MR. HORWATT: You can answer the question.

2 Do you want me to repeat the question?

3 THE WITNESS: Yes, please.

4 THE COURT: Did you give them authority to
5 settle?

6 THE WITNESS: No, sir, I did not. Never.

7

8 BY MR. HORWATT:

9 Q On January 30th, 1994, you were with
10 Mr. Jenne and Mr. Rasnic, were you not?

11 A That's correct.

12 Q And for how long were you with them?

13 A Nine hours.

14 Q What prompted you to meet with them on
15 January 30th, 1994 for nine hours?

16 A To prepare for trial the next morning.

17 Q And when you prepared for trial the next
18 morning, did you go to meet with them at their hotel?

19 A Yes. I called them up and asked them if I
20 could come.

21 Q And you met with them at the Marriott Hotel?

22 A That's correct.

23 Q And that's where your counsel were staying?

24 A That's correct.

1 Q And that's where Mr. Hodges and Mr. Miller
2 were staying?

3 A That's correct.

4 Q All right. Now, will you tell the Court what
5 time you arrived at the Marriott.

6 A It was about 11:30 a.m.

7 Q Will you tell the Court what happened after
8 you arrived at 11:30 a.m.

9 A I was informed that the deposition of Barry
10 Mehler would not be taking place because he could not arrive
11 in Roanoke.

12 Q Who was Barry Mehler?

13 A Barry Mehler was the expert witness hired for
14 our case.

15 Q And he is a CPA?

16 A He is a CPA.

17 Q Now, did Mr. Jenne and Mr. Rasnic receive a
18 telephone call from defense counsel?

19 A Yes, sir.

20 Q About what time?

21 A Around 12:00 o'clock noon they received a
22 phone call from Ron Hodges.

23 Q And based on that telephone call, what did
24 your attorneys do at that time?

1 A They left the room and went to Roger Jenne's
2 suite and met with Mr. Hodges.

3 Q Was it just Mr. Hodges or was it Mr. Hodges
4 and Mr. Miller, or do you know?

5 A I was told it was just Mr. Hodges.

6 Q All right. And when did they return?

7 A Around 2:00 o'clock in the afternoon.

8 Q When they returned at 2:00 o'clock in the
9 afternoon, what did they report to you about what occurred
10 during their meeting?

11 A The first thing they --

12 MR. MILLER: If Your Honor please, anything
13 that Mr. Jenne and Mr. Rasnic may have reported to
14 this lady is hearsay.

15 THE COURT: I don't think so. Not under
16 these circumstances.

17 THE WITNESS: The first thing that was told
18 to me was that we had a deadline of 3:00 o'clock
19 that had to be met because Bill Rakes was to get
20 back with Virginia Reciprocal, and he had a friend
21 that he thought he could convince to take the
22 purported settlement that they were now offering,
23 which had increased from the number that was on the
24 table when I arrived.

1 MR. HORWATT: Your Honor, let me say that out
2 of respect for the concern that the defendants had
3 about the confidentiality about the dollar figure --

4 THE COURT: I think you can eliminate the
5 amount.

6
7 BY MR. HORWATT:

8 Q Now, would you continue with your testimony.

9 A The settlement amount, the monetary amount,
10 had been increased from the amount that was originally on
11 the table when I arrived at 11:30. It had been increased;
12 it was higher than what was on the table but lower than what
13 we had said we would be taking, and there was a 3:00 o'clock
14 deadline to get back with defense counsel to inform them of
15 whether we would take that amount.

16 After discussion about that, then there was
17 some more conditions.

18 Q Let me stop you for a moment there and ask
19 you whether or not you agreed to the figure that was
20 proposed.

21 A Yes, I did.

22 Q Now, what if anything happened after you
23 agreed to the condition that was proposed?

24 A I was then told that my children, Michael

1 Snyder and Stacey Snyder, would have to sign a personal
2 release.

3 Q That was a condition of the settlement?

4 A That's correct.

5 MR. HODGES: Your Honor, I'm sorry to
6 interrupt Counsel, and I realize there's a little
7 bit of a dilemma here on leading, but when we're
8 getting into some of these areas, I have to object
9 to this leading nature.

10 THE COURT: Try not to lead her.

11 MR. HORWATT: I will.

12

13 BY MR. HORWATT:

14 Q Would you tell the Court what other
15 conditions, if any, were given to you.

16 A There was a trial brief that had been filed
17 by my attorneys, and that had to be pulled.

18 Q Anything else?

19 A I had to sign a personal release; I had to
20 sign a personal release to Bruce Stockburger, Gentry, Locke
21 Rakes & Moore; Bob Glenn, Glenn, Flippin, Feldmann & Darby.
22 And that's all I can think of right now.

23 THE COURT: Excuse me just a minute. I think
24 this is Mr. Eskridge, and do I understand

1 Mr. Eskridge to be a witness, or --

2 MR. ESKRIDGE: No, sir.

3 THE COURT: You may stay in the courtroom,
4 then.

5 All right. Go ahead; I'm sorry.

6 THE WITNESS: I think that was all. I
7 finished that.

8
9 BY MR. HORWATT:

10 Q Can you tell the Court what you instructed
11 your attorneys to do based upon everything that you had
12 heard from them.

13 A I told them there was no way that I could
14 speak for my children that they would sign a personal
15 release, and requested that I be able to call them, at least
16 my son. I didn't know if I could get in touch with my
17 daughter, she's at Indiana University and hard to get in
18 touch with, but that I would like to call and see how they
19 felt about the situation. I did so, and Roger Jenne and Tom
20 Rasnic spoke to my son.

21 Q Based upon the conversation that Roger Jenne
22 and Mr. Rasnic had with your son, what if anything did you
23 do based upon what you learned from that discussion?

24 A After talking to my son, he said that if he

1 was going to have to sign a personal release, that he would
2 require to be compensated for that, because it was releasing
3 Gentry, Locke, Rakes & Moore and Glenn, Flippin, Feldmann &
4 Darby of a pending lawsuit that they personally had against
5 that firm.

6 And at that point my son said that they
7 wanted to be paid for having to sign for that, and I in turn
8 told Mr. Jenne and Mr. Rasnic that the offer that had been
9 presented was not acceptable; they had to take another offer
10 back to defense counsel.

11 Q Counsel, if you will permit me to lead here,
12 I think it will help keep things confidential, just on the
13 amount.

14 THE COURT: Go ahead.

15 MR. HORWATT: I'm just going to ask her, how
16 much did you tell them to take back.

17 MR. MILLER: If Your Honor please, can we
18 approach the bench?

19 THE COURT: I think we're making an issue of
20 something we don't really need to here. You don't
21 need to mention the amount; just go ahead.

22

23 BY MR. HORWATT:

24 Q Can you tell the Court what you included here

1 in the higher amount that you instructed your attorneys to
2 take back to defense counsel?

3 A Can I say the amount?

4 THE COURT: No, don't mention the amount.

5
6 BY MR. HORWATT:

7 Q Don't say the amount, but can you tell them
8 what the amount reflected; did the amount reflect --

9 THE COURT: I assume what you're getting to,
10 if she were going to settle for a certain amount,
11 she wanted an additional amount for her children.
12 Is that what you're getting to?

13 MR. HORWATT: Thank you, Your Honor.

14 THE WITNESS: That's correct.

15
16 BY MR. HORWATT:

17 Q Now, when did Mr. Rasnic and Mr. Jenne go
18 back to talk with defense counsel?

19 A Since we had the 3:00 o'clock deadline, they
20 called defense counsel about 2:55 and said they would like
21 to meet with Mr. Miller and Mr. Hodges in Mr. Jenne's room.
22 At that time they left the room that I was in and went to
23 meet with them.

24 Q Now, do I understand that -- Can you tell the

1 Court whether or not in the first two sessions, the first
2 time that your attorneys met with defense counsel and the
3 second time that they met with defense counsel, whether you
4 were present during any of the negotiations that took place
5 between those attorneys.

6 A No, I was not.

7 Q All right. What time did your counsel return
8 and meet with you?

9 A It was about 5:00 o'clock.

10 Q What did they tell you when they returned
11 about 5:00 o'clock on Sunday, January 30th?

12 A They had taken back the additional amount of
13 money on the offer that had been originally presented at the
14 12:00 o'clock session. They said that they had been
15 informed by defense counsel that they had tried to contact
16 Judge Jennings to tell him that he did not have to come to
17 Roanoke, and they indicated that that was a good sign; that
18 maybe telling the judge not to come was a good sign that we
19 might settle.

20 Q Now, what did you conclude from the report
21 that defense counsel had attempted to -- had tried to reach
22 Judge Jennings to tell Judge Jennings not to come?

23 MR. MILLER: If Your Honor please, I would
24 object to any conclusion that this lady would have

1 reached.

2 THE COURT: I would agree. I would sustain
3 the objection on that.

4 MR. HORWATT: Thank you, Your Honor.

5
6 BY MR. HORWATT:

7 Q When did your counsel next meet with defense
8 counsel?

9 A They were called around 7:00 o'clock p.m. by
10 defense counsel, that they would like to come down -- they
11 were staying on the eighth floor; my counsel were staying on
12 the first floor -- that they would like to come down and
13 meet with them, and I was asked to leave the room. I asked
14 if I could stay, and they said, "No, you have to leave."

15 Q What happened?

16 A They met till about 8:30 and came back into
17 the room.

18 Q This is 8:30 Sunday night?

19 A Sunday night, 8:30 p.m.

20 Q And when Mr. Jenne and Mr. Rasnic returned at
21 8:30 that night, what if anything did they tell you about
22 their meeting with defense counsel?

23 A They said that the increased amount in the
24 offer for my children was not acceptable.

1 Q Your counteroffer to increase was not
2 acceptable?

3 A That's correct.

4 Q All right.

5 A That they would take their chances and not
6 require Michael Snyder and Stacey to sign; they would take
7 their chances with the pending lawsuit. They then told me
8 that the marital -- the Peter C. Snyder marital and residual
9 trust at Central Fidelity Bank, the cotrustee would have to
10 sign a personal release.

11 I indicated to them at the time that I could
12 not speak for the Central Fidelity Bank trust department
13 signing off. Mr. Rasnic said, "Well, if you sign, there
14 won't be any trouble with them signing." I said --

15 Q Now, let me ask you, what is your practice in
16 dealing with the cotrustee of that trust?

17 MR. MILLER: If Your Honor please, any
18 practices -- I would have to object to any
19 practices the lady may have in dealing with the
20 cotrustee.

21 THE COURT: I would agree. I don't think it
22 has anything to do with this. I would sustain the
23 objection.

24 MR. HORWATT: Very well, Your Honor.

1
2 BY MR. HORWATT:

3 Q After they gave you that requirement, what
4 other requirements, if any, did they give you?

5 A They had a requirement then that my husband,
6 Joe Falkinham, would have to sign a personal release.

7 Q And how did you respond to that?

8 A I said I cannot speak for my husband whether
9 he would sign a personal release.

10 Q And what did you do, based upon that
11 condition?

12 A I called my husband, who was in Blacksburg at
13 the time at a Superbowl party, and asked him if he would be
14 willing to sign a personal release, and he indicated that if
15 I would sign, he would sign.

16 Q Okay. Now, were there any other conditions
17 that were enumerated by your plaintiff's counsel when they
18 returned at 8:30 that night?

19 A I was told that the stock, the 51 percent
20 stock -- that Bruce Stockburger as the majority stockholder
21 of Rich Hill Development Corporation would be turning that
22 back over to me, and I immediately said, I don't think so; I
23 am not going to do anything that's going to create a tax
24 increase and cost me any more money by that man and by that

1 law firm.

2 Q What did Mr. Jenne and Mr. Rasnic do, if
3 anything, when you told them you would not accept that
4 condition?

5 A I was told by Mr. Jenne that defense
6 counsel's CPA found no problem with them -- with Bruce
7 Stockburger returning his 51 percent stock back to me.

8 Q The defense's tax expert found no problem
9 with --

10 A That's correct.

11 Q All right.

12 A I said, "What the hell does their CPA know
13 about my tax situation," and he said, "Well, that's what
14 they say, it's not a problem."

15 And I said, "Well, let me get my tax people
16 on the phone." And at that point I went to the phone and I
17 called Joe Anthony, who's the tax attorney, and I spoke to
18 him. I said, "There's a problem here with Bruce Stockburger
19 wanting to return his 51 percent stock back to me; would you
20 please talk to Roger Jenne about it," and Roger got on the
21 phone and talked to Mr. Anthony.

22 Q Okay. What was the result of Mr. Jenne's
23 discussion with Mr. Anthony about this tax situation?

24 A Mr. Jenne was very angry when he got off the

1 phone. He stood up in the room, throwing his arms around,
2 saying, "What the hell do you need that tax man for; he
3 cannot even give you an answer." And I sat there and
4 said, "I was trying to help, you know."

5 I was hoping that -- it was obvious defense
6 counsel wanted my counsel to listen to their tax expert; I
7 wanted my tax expert to tell our side what to do.

8 THE COURT: Without going into all those
9 details, I assume you didn't agree on that aspect.
10 Let's let it go with that.

11 MR. HORWATT: All right. Your Honor, I can
12 proffer to the Court that she then spoke with her
13 CPA.

14 THE COURT: Well, regardless, she didn't
15 agree to that aspect of it; that is, to taking the
16 stock back from Mr. Stockburger.

17 MR. HORWATT: Right.

18
19 BY MR. HORWATT:

20 Q At any time on the evening of January 30th,
21 1994, can you tell the Court whether or not you agreed to
22 accept the counteroffer you have just described.

23 A No, sir. I never told them I would accept
24 it.

1 Q At any time during that period after 8:30
2 p.m. on Sunday night, can you tell the Court whether or not
3 Mr. Jenne or Mr. Rasnic made any mention that they would be
4 going into court the next morning to dismiss your case with
5 prejudice?

6 A Never.

7 Q When was the next time that you talked with
8 Mr. Rasnic?

9 Let me back up for one moment. About what
10 time did your discussions with Mr. Rasnic and Mr. Jenne
11 conclude on Sunday evening?

12 A Well, they returned to the room, as I said,
13 around 8:30. It was a little after 9:00 that I left the
14 motel room.

15 Q Now, before you left the motel room, would
16 you tell the Court whether or not you made any telephone
17 calls to either witnesses or relatives.

18 A Yes, sir, I did.

19 Q Would you tell the Court who you called and
20 what you said.

21 A You want them all?

22 Q Yes.

23 A Okay. I called a brother, Charles Hunt, who
24 lives in Franklin County.

1 THE COURT: You just need to give the names.

2 THE WITNESS: Charles Hunt, my brother; Joyce
3 Heath, my sister; Bobbie Carr; and my son, Michael
4 Snyder.

5
6 BY MR. HORWATT:

7 Q Would you tell the Court the substance of
8 what you said to each one of them.

9 A To each one of them I told them, very quick,
10 short conversation, court had been canceled for Monday, we
11 were still working on an agreement, and I will talk to you
12 later.

13 Q All right. Starting on Monday morning, on
14 January 31st, did you have a conversation with Mr. Jenne?

15 A Yes, sir. Around 8:00 o'clock a.m.,
16 Mr. Jenne called me at home and reported that he had gotten
17 a phone call from Frank Miller who had indicated that the
18 last person with Virginia Reciprocal had put his blessing on
19 the dollar amount.

20 Q All right. What, if anything, did
21 Mr. Jenne -- what did you say to Mr. Jenne?

22 A I said, "Well, what about the tax
23 consequences of Bruce Stockburger returning his 51 percent
24 shares of stock?" I said, "You really need to talk to Joe

1 Anthony about that."

2 And he said, "But their tax CPA says it's
3 okay; it's not going to harm you in any way." And I again
4 said, "What does their tax attorney have to do with me?"

5 THE COURT: Again, you didn't agree to that
6 part of it, so let's let it go with that.

7

8 BY MR. HORWATT:

9 Q Now, would you tell the Court whether or not
10 during that conversation -- what time did that conversation
11 take place?

12 A Around 8:00 in the morning.

13 Q At 8:00 in the morning, can you tell the
14 Court whether or not Mr. Jenne made any mention about
15 counsel going to court.

16 A He said that Tom would be going to court this
17 morning.

18 Q And can you tell the Court whether or not
19 Mr. Jenne or Mr. Rasnic made any mention about the fact that
20 they were going to court for the purpose of dismissing your
21 cases with prejudice.

22 A No, sir, they did not.

23 Q When did you learn that your case had been
24 dismissed with prejudice?

1 A Around 1:00 o'clock in the afternoon on
2 Monday I received a phone call from Roger Jenne's
3 secretary. I answered the phone, and she said, "Get Joe
4 Falkinham and get down here and sign these papers," and I
5 said -- she said, "We've gone through two drafts and we're
6 on the third one, and it should be ready by the time you
7 come."

8 I said, "Well, Sherry, I cannot sign those
9 papers. I'm not ready to sign those papers; I have not even
10 seen a copy of what you want me to sign."

11 Then the phone call was given to Roger Jenne.

12 Q Mr. Jenne came on the phone?

13 A Mr. Jenne came on the phone.

14 Q What did he say?

15 A "What do you mean you're not ready to sign
16 these papers?" I said, "Roger, I have not even seen a copy
17 of it. I have asked you, told you, to Fax me a copy, and
18 Sherry said she would."

19 He said, "Well, it's too late. Tom Rasnic
20 and Mr. Hodges went to court this morning and dismissed
21 everything with prejudice," and I said, "Who told you to do
22 that?"

23 Q Now, based on that conversation, what did you
24 do?

1 A I exploded with anger. I was so mad.

2 Q Now, after you told them about your feeling,
3 what did you do?

4 A I was so consumed with anger at that point I
5 hung up the phone and I really didn't know what to do. I
6 sat there and cried. I didn't know what else to do.

7 Q Now, eventually did you receive a copy of a
8 document embodying the purported settlement agreement?

9 A On February the 1st, 1994, around 4:10 in the
10 afternoon, I finally got a copy of the release agreement.

11 Q And who sent you the release agreement?

12 A Tom Rasnic's office.

13 Q May I have the Court's indulgence for just a
14 moment.

15 I want to show you a copy marked Exhibit 6
16 for identification, Plaintiff's Exhibit 6, and ask you
17 whether you can identify that document.

18 A Yes, sir. This is the one that was sent to
19 me that afternoon.

20 Q Okay. Now, had you ever seen a draft of that
21 document prior to February 1st, 1994?

22 A No, sir, I had not. I had asked for it since
23 1:00 o'clock in the afternoon the day before and never
24 gotten it.

1 Q Prior to January 31st, 1994, had you ever
2 seen a draft or any version --

3 A No, sir, I hadn't.

4 Q -- of that document?

5 At any time prior to the entry of order of
6 dismissal did Mr. Rasnic and Mr. Jenne ever go over each and
7 every provision of that document with you?

8 A No, sir, never.

9 Q Now, I'd like to ask you to look at the third
10 provision of the agreement marked Exhibit 6 for purposes of
11 this hearing. Had you ever discussed with Mr. Rasnic or
12 Mr. Jenne the fact that there would be a confidentiality
13 provision in the agreement, and that the final order would
14 make that punishable with contempt if it were violated?

15 A No, sir. It was mentioned to me after the
16 first session that there would be a confidentiality clause,
17 but nothing about contempt of court.

18 Q And did they go through the specifics of what
19 that confidentiality requirement would embody?

20 A No, never.

21 Q Did the cotrustee of the Peter C. Snyder
22 marital and residual trust see this agreement prior to
23 January 31st, 1994?

24 A Not to my knowledge. The cotrustee that was

1 head of the account was out of the country at the time.

2 Q Now, I'd like you to look at condition -- or
3 Paragraph Number 8, and I'd like to ask you whether
4 Mr. Jenne or Mr. Snyder -- excuse me, Mr. Jenne or
5 Mr. Rasnic ever discussed with you this provision that
6 provides that a promissory note from Mr. Stockburger to you
7 would be delivered marked paid and canceled?

8 A Never.

9 Q This was the first time you saw it, on
10 February 1st, 1994, when you got this agreement?

11 A That's correct.

12 Q Now, I'd like you to look at the signature
13 page.

14 A Which one?

15 Q The last page after 11; I'm sorry.

16 A All right.

17 Q What position did you hold in Rich Hill
18 Development Corporation?

19 A I am president, but minority stockholder.

20 Q Who was the majority stockholder?

21 A Bruce C. Stockburger.

22 MR. HORWATT: This is Exhibit Number 9.

23 THE COURT: Are you offering Number 6 in
24 evidence?

1 MR. HORWATT: Yes, Your Honor. I would move
2 all of the exhibits that I've tendered so far in
3 evidence.

4 THE COURT: Any objection to it?

5 MR. HODGES: None.

6 MR. MILLER: No.

7 THE COURT: It will be received, then.

8
9 (Exhibit 6 was received in evidence.)

10
11 MR. MILLER: What's the proposed number of
12 this exhibit?

13 THE COURT: This is 6, the one that's been
14 received. The one he just gave me is Number 9.

15 MR. MILLER: 9.

16 MR. HORWATT: We prenumbered, so there isn't
17 an absolute sequence here in the numbering.

18 THE COURT: This looks like this is the same
19 thing, though, Number 9. Is there some difference
20 in it?

21 MR. HORWATT: Yes, Your Honor.

22
23 BY MR. HORWATT:

24 Q I show you Exhibit Number 9 and ask you if

1 you recognize this document.

2 A Yes, sir, I do.

3 Q And it obviously is a copy of a mutual
4 release and settlement agreement. Can you tell the Court
5 whether or not this document is the same as the previous one
6 you received?

7 A No, sir, it is not.

8 Q When did you receive the second document?

9 A This was Federal Expressed to me by Roger
10 Jenne on February the 5th.

11 Q All right. And will you tell the Court what
12 provisions in this agreement that you observed for the first
13 time?

14 A They took my husband, Joe Falkinham, out as a
15 person that would have to sign, and they also took out
16 Central Fidelity Bank Trust Department.

17 Q All right. Can you tell the Court whether or
18 not you ever said to your counsel, "If you take those things
19 out, if you make those changes, then I will accept a
20 settlement agreement."

21 A No, sir. They never discussed it with me.

22 Q And again, Paragraph Number 7 of the second
23 agreement --

24 A Yes, sir.

1 Q Had you between the first agreement and
2 second version of this purported agreement given any
3 indication to your counsel that you would accept the
4 condition that a promissory note would be returned to you
5 marked paid?

6 A No, sir.

7 Q Did you authorize the filing of a motion to
8 vacate the orders in this case?

9 A Yes, sir, I authorized you.

10 Q And on what basis did you authorize me to do
11 that?

12 MR. MILLER: We know the answer to this
13 question, but it looks like we're heading down a
14 street between these two people on an area that is
15 not relevant to the issues in the hearing this
16 morning.

17 MR. HORWATT: Your Honor, I would proffer to
18 the Court that the law firm saw fit to file a motion
19 for sanctions against Ms. Snyder-Falkinham, and I
20 wanted to bring it out in the testimony that she
21 took my legal advice, that I was the one that
22 recommended that she do this, and that she did not
23 direct me to do it without that legal advice.

24 THE COURT: Let's wait and see whether they

1 pursue the motion for sanctions.

2 MR. HORWATT: Thank you. If the Court will
3 indulge me one moment.

4 THE COURT: All right.

5

6 BY MR. HORWATT:

7 Q I'd like to show you Exhibit Number 3 and ask
8 you whether you recognize that document.

9 A Yes, sir, I do.

10 Q I'd like you to go to the paragraph above "40
11 percent of the amount recovered" and read the first few
12 lines to the Court.

13 A "The attorneys accept the above employment
14 and are authorized to effect a settlement or compromise
15 subject to the client's approval."

16 MR. HORWATT: I move this agreement into
17 evidence, Your Honor.

18 THE COURT: If there's no objection, 3 and 9
19 will be received.

20

21 (Exhibits 3 and 9 were received in evidence.)

22

23 BY MR. HORWATT:

24 Q I'd like to have you look at Exhibit Number 4

1 and ask whether you recognize this document.

2 A Yes, sir. It was Faxed to me on February the
3 1st from Tom Rasnic.

4 Q Now, I'd like you to go to Page 2 of the
5 letter, and I would like you to read for the Court the
6 following excerpt.

7 A "Since Judge Jennings had traveled from
8 Fairfax, it was necessary for an appearance to be made by
9 counsel on January the 31st, 1994. Tom was chosen to appear
10 before Judge Jennings since he is the local counsel, and was
11 accompanied by Ron Hodges. Judge Jennings had the
12 settlement explained to him and entered the Order of
13 Dismissal with Prejudice. This Order was entered because of
14 your agreement to the settlement."

15 Q That's fine. Now, I'd like you to next read
16 the following excerpt, beginning with the word "after."

17 A "After discussing the matter with Joe Anthony
18 and you, we advised Mr. Miller that neither Mr. Anthony or
19 anyone in your behalf would accept the transfer of this
20 stock. We suggested he could either transfer it to a
21 charity, the Easter Bunny, or anyone else of his choice, but
22 it would not be returned to you in any way."

23 Q Let me stop you there. At any point did you
24 tell Mr. Jenne or Mr. Anthony that you would agree to the

1 settlement if they transferred -- if Mr. Stockburger
2 transferred this stock to some third party?

3 A No, sir, I did not.

4 Q Do you recall whether or not Mr. Stockburger
5 eventually tried to return his stock to you?

6 A I've been told --

7 MR. MILLER: Your Honor, I'm going to
8 object. This is hearsay.

9 THE COURT: You can't --

10 MR. HORWATT: That's fine.

11 This will be Exhibit Number 5, and I move the
12 entry into evidence of the previous exhibits.

13 THE COURT: All of them have been admitted
14 with the exception of 4, and if there's no
15 objection, it will be admitted.

16 MR. HODGES: No objection.

17 MR. MILLER: No objection.

18 MR. HODGES: You said this is 5, proposed?

19 MR. HORWATT: Yes, 5.

20

21 (Exhibit 4 was received in evidence.)

22

23 BY MR. HORWATT:

24 Q Now, I would like to ask you to look at the

1 following excerpt and read it to the Court. First of all,
2 do you recognize this document?

3 A Yes, sir, I do.

4 Q And what is it?

5 A It's a letter from Tom Rasnic dated February
6 the 9th, 1994.

7 Q And I ask you to read the following excerpt
8 from the letter, beginning right on Page 1.

9 A "No discussion was held with the judge
10 concerning the settlement nor was a hearing held. No court
11 reporters were held as the matter was taken up with the
12 Court in chambers."

13 Q Now, I'd like you to drop down to the
14 sentence beginning with "The dismissal of this case," and
15 just read that sentence.

16 A "The dismissal of this case with prejudice
17 was done without any recital of any negotiations or
18 otherwise, and there were no other motions made other than
19 the two orders that were entered."

20 MR. HORWATT: I move Exhibit 5, if I haven't
21 done it.

22 MR. MILLER: If Your Honor please, I would
23 ask the Court that Exhibit 5 be redacted in one
24 certain place, and if Mr. Horwatt will approach the

1 bench, we'll do it.

2 THE COURT: Any objection to eliminating
3 that?

4 MR. HORWATT: No. I have no objection to the
5 redaction.

6 THE COURT: Go ahead with your question. It
7 will be received.

8
9 (Exhibit 5 was received in evidence.)

10
11 THE COURT: Do you have any other questions?

12 MR. HORWATT: Your witness.

13 THE COURT: Before you start your
14 cross-examination, let me talk to you all in
15 chambers just a minute, Mr. Horwatt, Mr. Hodges and
16 Mr. Miller. And you can step down if you want to
17 for just a minute.

18
19 (Court and Counsel conferred in Chambers.)

20
21 THE COURT: All right. You can go ahead with
22 your cross-examination.

23 Ms. Snyder-Falkinham, I might say for the
24 purposes of the Record, the reason for going back to

1 chambers was to be sure that I understood the
2 position of each of the parties, and that's the
3 reason I wanted to talk to Counsel.

4 You can go ahead, now, Mr. Miller.

5
6 CROSS EXAMINATION

7
8 BY MR. MILLER:

9 Q Ms. Snyder-Falkinham, do you remember being
10 in Richmond on the evening of January 25, 1994?

11 A Yes, sir, I do.

12 Q And that morning, you had appeared before
13 Judge Jennings in the small courtroom in Fairfax, had you
14 not?

15 A That's correct.

16 Q At which time we had sort of a pretrial
17 conference with the Court?

18 A That's correct.

19 Q Mr. Hodges and I were there, Ms. Sinnenberg
20 was there, and a court reporter was there; do you remember
21 anyone else being present? You and Mr. Rasnic and
22 Mr. Jenne?

23 A That's correct.

24 Q And at that time we advised Judge Jennings

1 that pursuant to the Court's order of December 21, 1993,
2 that we were going to a mediation session in Richmond, did
3 we not?

4 A Yes, sir.

5 Q And we went to that, and we met at the
6 Dispute Resolution Center at 701 East Franklin Street, did
7 we not?

8 A That's correct.

9 Q And you were present during the entire
10 proceeding, were you not?

11 A That's correct.

12 Q Mr. Rasnic was present --

13 A That's correct.

14 Q -- is that correct? Mr. Jenne was present?

15 A That's correct.

16 Q Mr. Stockburger was present?

17 A That's correct.

18 Q Mr. Hodges was present?

19 A Yes, sir.

20 Q Mr. Austin was present?

21 A Yes, sir.

22 Q Ms. Sinnenberg was present?

23 A Yes, sir.

24 Q Ms. Pointin was present?

1 A Yes, sir.

2 Q Along with myself. And they had a lady who
3 introduced us, a facilitator, who met with us to start with?

4 A That's correct.

5 Q And then we had a mediator, Ms. Della Noce,
6 who came in and worked with us, as did Mr. Bridger; is that
7 correct?

8 A I don't recall their names, but there was a
9 man and a woman, that's correct.

10 Q We met for a period of a little over three
11 hours, did we not?

12 A I don't recall the time length.

13 Q But we met for a considerable period of time?

14 A Yes, sir.

15 Q We went in during the daylight and we came
16 out during the dark, do you remember that?

17 A I think it started about 4:00, that's
18 correct.

19 Q And we came out about 7:00, something like
20 that?

21 A I don't remember what time we came out.

22 Q And at this mediation session, we discussed a
23 number of things, did we not?

24 A Yes, sir.

1 Q And were you given the opportunity by
2 Ms. Della Noce to speak at the mediation session?

3 A Yes, sir.

4 MR. HORWATT: Your Honor, at this point I am
5 going to enter an objection to any events that
6 transpired in a mediation session. The whole idea
7 of mediation is to create conditions where the
8 parties, without fear of contradiction, can meet and
9 confer, and it is absolutely, as I understand it, an
10 article of faith that nothing in those discussions
11 can be used in evidence in any proceeding in court.

12 I'm not particularly afraid of the Court
13 seeing that. There is a mediation contract that has
14 been tendered, but the Court will see that it was
15 never signed by either party. What concerns me is
16 that the defense would take proceedings that are
17 clearly supposed to be confidential and not part of
18 any proceeding, and bring them in in this proceeding
19 and try to make it appear that there was an
20 agreement when there was nothing signed.

21 MR. MILLER: If Your Honor please --

22 THE COURT: I would not think these
23 proceedings are confidential in any sense of the
24 word.

1 MR. HORWATT: Very well.

2 THE COURT: I certainly wouldn't want to go
3 through the entire mediation proceeding, but if
4 there are some statements that were relevant to what
5 we're here for today, I think that would be
6 admissible, if that's your purpose.

7 MR. MILLER: Yes, sir. Exhibit 2 is an --

8 THE COURT: I have it before me.

9 MR. MILLER: And Exhibit 2, Ms. Falkinham,
10 through her attorney, has moved to set aside.

11 THE COURT: I overruled the objection. You
12 can go ahead.

13 MR. MILLER: Thank you, sir.

14
15 BY MR. MILLER:

16 Q Ms. Snyder-Falkinham, did you have the
17 opportunity to speak?

18 A Yes, sir, I did.

19 Q And you did not speak, did you?

20 A I only said about two sentences.

21 Q And in fact you advised Ms. Della Noce that
22 you were going to speak through your attorneys?

23 A That's correct.

24 Q And so your attorneys spoke for you at that

1 session, did they not?

2 A Except for two sentences.

3 Q And at the mediation session, did we reach
4 some agreements?

5 A Yes, sir. There were some agreements
6 reached.

7 Q The agreements reached were that the
8 individual defendants other than Stockburger were to be
9 dismissed, were they not?

10 A Nonsuited, with prejudice.

11 Q With prejudice?

12 MR. HORWATT: Without prejudice.

13 MR. MILLER: Mr. Horwatt, I object to that.
14 The witness is testifying.

15 THE COURT: You can straighten it out on
16 cross-examination, or redirect, Mr. Horwatt.

17 MR. HORWATT: Your Honor, I object to the
18 question. It's a trick question.

19 THE COURT: Objection overruled.

20

21 BY MR. MILLER:

22 Q You agreed with what your attorneys said, did
23 you not?

24 A Yes, sir, I did.

1 Q At the mediation session, was it agreed that
2 the claim for punitive damages would be dismissed?

3 A I think that that was in there too.

4 Q All right; and in exchange for -- and you
5 also agreed to waive any claim for damages in excess of the
6 policy limits, did you not?

7 A That's correct.

8 Q And in exchange for that, the Reciprocal
9 agreed to withdraw a reservation of rights which it had
10 issued to the law firm and to the individual partners?

11 A Would you repeat that, please.

12 Q In exchange for your dismissal of the
13 individual partners other than Stockburger, and in exchange
14 for your waiver of punitive damages claim, your claim for
15 punitive damages, and in exchange for your agreement not to
16 exceed or not to claim an amount in excess of the policy
17 limits, the Reciprocal withdrew a reservation of rights it
18 had issued to the law firm and to the individual defendants
19 other than Stockburger, didn't they?

20 A That's right.

21 Q The Reciprocal did that, didn't they?

22 A I never saw a document. I assume they did.

23 Q I show you Defendant's Exhibit 1. Isn't that
24 the agreement that was made that night?

1 A It looks to be the same, yes, sir.

2 MR. MILLER: Judge, I just marked it as
3 Exhibit 1. It does not have an official sticker on
4 it.

5 THE COURT: We'll make it Exhibit A.

6 Any objection, Mr. Horwatt?

7 MR. HORWATT: Yes, Your Honor, I object to
8 it.

9 THE COURT: I assume you're offering it now,
10 Mr. Miller?

11 MR. MILLER: Yes, sir. I tender it as an
12 exhibit.

13 THE COURT: What's your objection?

14 MR. HORWATT: Your Honor, I object to it on
15 two grounds. First of all, this mediation agreement
16 was one that was in contemplation of presumably a
17 total settlement of the case, and honoring other
18 conditions, and I note that the defendant's own
19 document, both its first and second mutual release
20 contains the following: This writing contains all
21 of the agreements of the parties hereto and shall be
22 construed and interpreted in accordance with the
23 laws of the Commonwealth of Virginia.

24 Both of their mutual releases contain this.

1 Neither of them refers to that. There is no
2 signature on that, and there obviously was some
3 contemplation that there would be some steps taken,
4 but they themselves seem to want to have it both
5 ways.

6 They want to say there's a settlement
7 agreement and it's all here, and they want to
8 introduce this and say that's part of a settlement
9 agreement. So, Your Honor, my objection stands on
10 two grounds.

11 Number one, it's excluded because it's not
12 part of their own document, wasn't part of the
13 agreement, and secondly, I object to it as a
14 mediation instrument that is not signed and not
15 embodied in a final agreement.

16 THE COURT: Your client has indicated that
17 she -- that this was her agreement, even though it's
18 not signed. But regardless of that I think that the
19 argument goes to the weight to be given to it, as
20 distinguished from its admissibility. I would
21 receive it.

22 MR. HORWATT: Thank you, Your Honor.

23
24 (Exhibit A was received in evidence.)

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THE COURT: Do you have other questions?

MR. MILLER: Yes, sir.

BY MR. MILLER:

Q Between January 25, 1994, and January 31, 1994, did you ever instruct Mr. Rasnic and/or Mr. Jenne not to dismiss the individual partners other than Stockburger?

MR. HORWATT: I object to the question, Your Honor, on grounds of relevance and materiality. Under the law of Virginia, it is absolutely mandatory, under the Board of Supervisors case, that there be express authority for a lawyer to dismiss a case, and therefore the question that is put, did she ever tell them not do it, is neither relevant nor material, and it calls for a legal conclusion.

THE COURT: Objection overruled.

MR. HORWATT: Your Honor, I'm sorry; I didn't hear.

THE COURT: Objection overruled.

MR. HORWATT: Very well, Your Honor.

BY MR. MILLER:

Q Ms. Snyder-Falkinham, did you ever instruct

1 your attorneys not to dismiss the defendants other than
2 Stockburger, the individual defendants?

3 A It was never discussed with me.

4 Q Did you ever instruct your attorneys not to
5 dismiss the claim for punitive damages?

6 A It was never discussed with me.

7 MR. HORWATT: Your Honor, this will be a
8 continuing objection.

9 THE COURT: All right.

10
11 BY MR. MILLER:

12 Q Ms. Snyder-Falkinham, from the time you first
13 met with Mr. Jenne and Mr. Rasnic after Mr. Hodges talked
14 with them, you said between 12:00 and whatever time it was,
15 did the amount of money offered on behalf of defendants ever
16 change?

17 A I think I've already testified that it did.

18 Q Ms. Snyder-Falkinham, listen to me, if you
19 would. After the session Mr. Hodges had with Mr. Jenne and
20 Mr. Rasnic at about noon, you said it lasted about two
21 hours, Mr. Rasnic and Mr. Jenne came back to you with a new
22 figure, did they not?

23 A That's correct.

24 Q And you agreed to accept that figure?

1 A That's correct.

2 Q And that figure throughout the settlement
3 negotiations has never changed any?

4 A Yes, sir, it did.

5 THE COURT: Subsequent to that, he said.

6

7 BY MR. MILLER:

8 Q Subsequent to that time, how did it change?

9 A My children wanted to be compensated if they
10 were going to sign.

11 Q And the removal of your children as parties
12 signatory eliminated that amount of money, did it not?

13 A Yes, sir, it did.

14 Q And therefore you were willing to accept the
15 money offered, were you not?

16 A That's correct.

17 Q And the money has never changed until today,
18 has it?

19 A No, sir.

20 Q The fact that you would have to sign the
21 release individually, on behalf of the Snyder Company, on
22 behalf of Snyder and Associates, on behalf of Rich Hill
23 Development Corporation, and on behalf of the residual and
24 marital trust under the will of Peter C. Snyder has never

1 changed, has it?

2 A No, sir, it has not.

3 Q And the parties to be released, Bruce
4 Stockburger, Gentry, Locke, Rakes & Moore, Robert E. Glenn,
5 Glenn, Flippin, Feldmann & Darby, has never changed, has it?

6 A No, sir.

7 Q That's never changed at all. And the
8 release -- neither Exhibit 6 nor Exhibit 9 contains any
9 reference to the stock, does it?

10 THE COURT: That speaks for itself.

11 MR. MILLER: All right.

12
13 BY MR. MILLER:

14 Q And you telling this Court today that you
15 never authorized your attorneys to include as a part of the
16 settlement the note running from Stockburger to you dated
17 December 15, 1990?

18 MR. HORWATT: I object to the question, Your
19 Honor. It assumes that her attorney had
20 communicated that to her, it assumes that the
21 attorneys had communicated that to her prior to
22 January 31st, 1994, and it's a trick question, and I
23 object to it as to form.

24 MR. MILLER: I object to the objection.

1 THE COURT: Objection overruled.

2 MR. MILLER: Sir?

3 THE COURT: It's overruled.

4

5 BY MR. MILLER:

6 Q Can you answer the question?

7 A What was the question?

8 MR. MILLER: Could you do me a favor and read
9 it back?

10 THE COURT: Why don't you just rephrase it.

11

12 BY MR. MILLER:

13 Q Ms. Snyder-Falkinham, during the whole of the
14 discussions in this case -- going back to the first offer
15 made on December 15, 1993, do you remember the letter?

16 A I never saw the letter, Mr. Miller.

17 Q Did your attorneys tell you what was in the
18 letter of December 15, 1993?

19 A The first I heard of that letter was in
20 mediation, when you said you had received a letter; I have
21 yet to be furnished that letter. I have asked and asked,
22 and I have yet to be furnished a copy of that letter.

23 Q A letter I received or a letter I wrote?

24 THE COURT: Mr. Miller, I think you're

1 getting far away from --

2 MR. MILLER: What I'm trying to get to,
3 Judge, the issue of the \$25,000 note --

4 THE COURT: Just ask her that specific
5 question.

6
7 BY MR. MILLER:

8 Q Did you remember early on when the first
9 offer was made that the satisfaction of the note was
10 included as a condition precedent?

11 A I never saw the letter, Mr. Miller.

12 Q Did Mr. Rasnic or Mr. Jenne tell you what was
13 in the letter?

14 A They never told me what was in the letter.

15 Q And when did you, in your mind, first hear
16 that the \$25,000 note must be marked paid and returned to
17 me?

18 A When it was Faxed to me on February the 1st,
19 1994.

20 Q You deny that you ever talked to Mr. Rasnic
21 or Mr. Jenne about this on January 30, 1994?

22 A Yes, sir, I do.

23 MR. MILLER: Excuse me a minute, Judge.
24

1 BY MR. MILLER:

2 Q Ms. Snyder-Falkinham, at the present time are
3 you indebted to Gentry, Locke, Rakes & Moore for any legal
4 fees?

5 A I have some outstanding bills to them.

6 Q All right. At the present time do you have
7 outstanding bills to Glenn, Flippin, Feldmann & Darby?

8 A Yes, sir, I do.

9 Q As part of this agreement, mutually those
10 bills were being released, were they not?

11 A I believe that's what it says.

12 MR. HODGES: May I, Your Honor?

13 MR. MILLER: I forgot one thing. May I, Your
14 Honor?

15 THE COURT: Yes.

16

17 BY MR. MILLER:

18 Q Ms. Snyder-Falkinham, when did you first
19 contact Mr. Horwatt?

20 A It was about midday of Monday the 31st of
21 January, 1994.

22 Q In fact, you called him before you received
23 the telephone call from Sherry Arthur to come to Roanoke to
24 sign the papers, didn't you?

1 A Yes, sir, I did.

2 Q Why did you call Mr. Horwatt before you got
3 the call to come to Roanoke to sign the papers?

4 A I was so concerned that the stock transfer
5 was going to be a part of the settlement that I had
6 requested Joe Anthony, the night before, to be sure to check
7 with Barry Mehler, who was the expert CPA who had just done
8 an in-depth audit on myself and Rich Hill Development
9 Corporation --

10 THE COURT: Your answer is because you were
11 concerned about that. Let's leave it at that.

12

13 BY MR. MILLER:

14 Q You called Mr. Mehler before you got the call
15 from Ms. Arthur?

16 A No, Mr. Mehler called me.

17 Q Is his number not --

18 A Or he first called me, and then I called him
19 back.

20 Q After that you called Mr. Horwatt, did you
21 not?

22 A That's correct.

23 Q Is Mr. Horwatt known for his expertise in the
24 area of tax?

1 A I don't think so. I don't know.

2 Q Did you call Mr. Horwatt about tax advice
3 concerning the stock in Rich Hill Development Corporation?

4 A No, sir, I did not.

5 Q Why did you call Mr. Horwatt?

6 A On advice from Barry Mehler who was concerned
7 that the stock transfer was going to be a major expense and
8 impact on me personally. He felt that I should get a second
9 opinion.

10 Q A second opinion on what?

11 A On the situation that I was in at the time.

12 Q On the stock transfer?

13 A Everything. That was included.

14 Q You mean on the whole setup?

15 A Yes, sir.

16 MR. HORWATT: Your Honor, I have let this
17 go --

18 THE COURT: I would sustain your objection.

19 MR. MILLER: Thank you.

20 THE COURT: Let me ask one question of you,
21 Mr. Miller, Mr. Hodges. You all might remember
22 this, because I don't have the motion for judgment
23 in front of me, but was this note from
24 Mr. Stockburger to Mrs. Snyder-Falkinham, was that a

1 part of the pleadings in the motion for judgment?

2 MR. MILLER: It was identified in the
3 pleadings, the transaction from which the note came
4 was identified in the pleadings.

5 THE COURT: But it was not a part of the
6 claim as such?

7 MR. MILLER: No, sir.

8 THE COURT: That answers that. Mr. Hodges,
9 do you have a question, then?

10 MR. HODGES: I have a couple. Yes, Your
11 Honor, if I might ask a couple questions.

12
13 CROSS EXAMINATION

14
15 BY MR. HODGES:

16 Q I'm going to hand you a copy of the
17 memorandum agreement of the mediation session.

18 A Yes, sir.

19 Q Before I ask you about a couple details about
20 it, I'd like to reflect back for a moment and follow two or
21 three points that were raised by Mr. Miller.

22 Do you recall the lady who came in and
23 initially sat with us and identified herself as Ms. Barbara
24 Holbert from over at the Virginia Supreme Court and talked

1 with us for a little while; do you recall that?

2 A I recall that. I don't recall her name.

3 Q And now my questions are solely to the first
4 lady, before the woman and the man came in and met with us.

5 A Okay.

6 Q And in that context, this lady went around
7 the table, asking each person to identify themselves, and
8 telling all of us that it was their practice and procedure
9 there to have the parties themselves speak rather than have
10 the attorneys speak. Do you remember that?

11 A That's correct.

12 Q And at that time you very clearly made your
13 position known to everyone present that you did not intend
14 to speak; your lawyers spoke for you. Correct?

15 A That's correct.

16 MR. HORWATT: Excuse me, Counsel. For the
17 record, and I won't interrupt again, but I must make
18 this objection, and I'll make it a continuing
19 objection, it is the position of the plaintiff that
20 any discussions that occurred in that mediation
21 session were not confidential in the sense that they
22 were secret, but certainly they were confidential in
23 the sense that they were not to be part of any
24 proceeding, and there was no transcription made of

1 that proceeding.

2 There is an integration clause in the very
3 agreement that the defendants are seeking to
4 enforce, and they are seeking to bring in through
5 the back door of a mediation conference a supposed
6 agreement that their own settlement excludes by
7 virtue of its integration clause.

8 So I'm objecting on procedural grounds; this
9 should not be part of this proceeding. I think it
10 will do great damage to any future mediation if
11 material like this is allowed to come in. And
12 secondly, I object on the ground that it is neither
13 relevant nor material because of the fact that the
14 very agreement they seek to enforce here excludes
15 anything but what's in that agreement.

16 THE COURT: My ruling is the same. Objection
17 overruled.

18
19 BY MR. HODGES:

20 Q Now, after that lady, Ms. Holbert, excused
21 herself, we then had the two mediators themselves,
22 Ms. Della Noce and Mr. Bridger come in, sit down, and to
23 some extent we had a repetition of what happened with the
24 first lady; correct?

1 A I don't recall that, but that's fine.

2 Q And I'm going to get into a little more
3 specifics. Do you recall when Ms. Della Noce and
4 Mr. Bridger were seated at the head of the table, they said
5 they wanted to go around the table, each person to say why
6 they were there, and what they wanted to achieve, and once
7 again you stated, "I will have my attorneys speak for me; I
8 am not going to make any statements on my own behalf."
9 Correct?

10 A I'm not sure I said that, or whether
11 Mr. Jenne said it for me.

12 THE COURT: In any event, that was your
13 position; is that correct?

14 THE WITNESS: (Witness nods head).

15

16 BY MR. HODGES:

17 Q In fact, Mr. Jenne did say it, and you
18 repeated it; you just reflected back what Mr. Jenne had just
19 stated. Do you recall that?

20 A No, I don't.

21 THE COURT: She indicated that was her
22 position.

23 MR. HODGES: Yes, sir.

24 THE COURT: Let's let it go with that.

1 BY MR. HODGES:

2 Q The reason I'm asking to you look at the
3 document, do you recall --

4 MR. HORWATT: Your Honor, with all due
5 respect, I don't think she necessarily agreed that
6 was her position, in the sense it was her position
7 or her lawyers' recommendation and advice to her. I
8 don't really know, and I think to say --

9 THE COURT: You will have an opportunity to
10 ask her questions.

11 MR. HORWATT: Thank you.
12

13 BY MR. HODGES:

14 Q At the conclusion of our entire session,
15 Ms. Della Noce wrote in her own handwriting, what you have
16 before you as Defendant's Exhibit 1, in terms of the
17 handwritten portion, Terms and Conditions?

18 THE COURT: Defendant's Exhibit A.

19 THE WITNESS: That's correct.
20

21 BY MR. HODGES:

22 Q You recall at that time after each sentence
23 was written out, she read it back to us, the persons
24 present; is that correct?

1 A That's correct.

2 Q And do you remember there was conversation
3 about "will do" something in the future, versus we're doing
4 something right now, right this minute. And as a result of
5 the participation of all the folks present, the scribbler,
6 that is Ms. Della Noce, changed on Paragraph 1, Term 1,
7 "will" to "does"; that is, right now, effective now, the
8 Reciprocal does certain things, they withdraw the
9 reservation of rights.

10 And Paragraph 2, it's not that you, the
11 plaintiff, will waive your punitive damages; you're doing so
12 right that moment. And we had that discussion, do you
13 recall that?

14 A Yes, sir.

15 Q Third paragraph, the plaintiff will waive any
16 claim in excess of the policy limits, and once again the
17 wording was changed because you were agreeing on the spot to
18 do so?

19 A That's correct.

20 Q And when we got to 4, we had a little bit of
21 a problem, because she had written, "The plaintiff will
22 nonsuit," and we discussed in your presence the fact, well,
23 we don't have the power, either lawyers or parties, to enter
24 an order; that has to be presented to a judge in an

1 appropriate court at an appropriate time. Correct?

2 A I don't remember that discussion, but --

3 Q And at that time the word "will" was changed
4 to "shall" because it was understood by you and everyone
5 around the table, given the context of the conversation,
6 we've gone as far tonight as we can go; this agreement must
7 be presented to a judge so a court order can be entered;
8 correct?

9 A I don't know. I don't recall that.

10 Q All right. Now, as of the time that you
11 walked out the door in Richmond and got in the car with the
12 attorneys to go to wherever you needed to go, it was your
13 understanding and you had specifically agreed that from that
14 point forward the defendants in the case were
15 Mr. Stockburger, represented by Mr. Miller, and the law
16 firm, Gentry, Locke, Rakes & Moore, represented by me, and
17 all other defendants were out of the case; correct?

18 A That's correct.

19 Q And it was also your agreement and
20 understanding at that time that the punitive damage claims
21 that were being asserted and for which damages were being
22 asked in your lawsuit were no longer part of the lawsuit.

23 A That's correct.

24 Q And you had made it crystal clear, as best

1 you can speak the English language, to everyone in that
2 room, Mr. Rasnic and Mr. Jenne are my lawyers, they speak
3 for me, and this is the agreement that we've all reached and
4 I'm in agreement with; correct?

5 A Okay.

6 Q All right. Now, from the time you walked out
7 the door of that building in Richmond -- Let me stop for
8 just a second.

9 Do you have before you -- or may I have, Your
10 Honor, Exhibit Number 2.

11 Plaintiff's Exhibit 2, which is the order
12 that I'm now handing you, you've read that, Plaintiff's
13 Exhibit Number 2? That's the order dismissing the
14 individual defendants and taking the punitive damages out of
15 the case; correct?

16 A Yes, sir.

17 Q And you've told us -- well, let me back up;
18 I apologize. Your counsel has filed a motion asking the
19 Court to set that order aside, and my question to you now is
20 what is there about that order that is in violation of, or
21 different from -- maybe those are better words for you --
22 that is different from what you agreed to in Richmond,
23 Virginia on January 25th, 1994?

24 MR. HORWATT: Your Honor, that certainly is a

1 legal conclusion.

2 THE COURT: I'd sustain the objection to it.

3
4 BY MR. HODGES:

5 Q Let me just have that back. From the time
6 you walked out of the building, got in the car with
7 Mr. Rasnic and Mr. Jenne, until the telephone call around
8 noon or a little after noon Monday the 31st where you
9 exploded with Mr. Jenne --

10 A Yes, sir.

11 Q -- what conversation with Mr. Jenne, what
12 conversation with Mr. Rasnic -- it's not good to ask two
13 questions; when I say "Mr. Jenne," I mean Mr. Jenne and
14 Mr. Rasnic -- what conversation did you have with either of
15 those gentlemen, telling Mr. Rasnic or Mr. Jenne, "You do
16 not have authority to speak for me anymore"?

17 MR. HORWATT: I object to the question on
18 grounds of relevancy and materiality, and the basis
19 of the objection is --

20 THE COURT: Let me see what Counsel has to
21 say about it.

22 MR. HODGES: Yes, sir.

23 THE COURT: Do you think this is a proper
24 question?

1 MR. HODGES: Your Honor, I had understood,
2 one of the first leading questions by Counsel, or
3 what I felt to be a leading question, had been on
4 that very issue; that is, authority and
5 authorization directed to Mr. Rasnic and Mr. Jenne.
6 I thought I was just following up on that.

7 THE COURT: You mean after the order itself
8 had been entered, that afternoon?

9 MR. HODGES: I'm beginning, Your Honor, from
10 the -- what's different, perhaps, is my time frame
11 begins on the night of the 25th in Richmond.

12 THE COURT: But your question was directed
13 after the order had been signed, as I understood it.

14 MR. HODGES: It did cover that, and let me
15 rephrase my question. May I restate the question?

16 THE COURT: Sure.

17

18 BY MR. HODGES:

19 Q From the time you left Richmond on the night
20 of the 25th --

21 A Yes, sir.

22 Q -- until the night of the 30th, the last
23 communication or conversation you had with Mr. Jenne or
24 Mr. Rasnic, whether that was in person in Roanoke or over

1 the phone after you got back home, what conversation, if
2 any, did you have with Mr. Rasnic and/or Mr. Jenne saying,
3 "Gentlemen, you do not have the authority to speak for me or
4 to act for me in settling this case anymore"?

5 MR. HORWATT: I'm going to object to the
6 question. The basis of the objection is that under
7 Virginia law, before Counsel can take action, they
8 must have authority from their client, and they must
9 present their client with each and every element of
10 what is proposed to be a settlement agreement. And
11 what has happened here --

12 THE COURT: That wasn't his question,
13 Mr. Horwatt. The question was, did she tell these
14 two gentlemen they did not have the authority to act
15 for her anymore.

16 MR. HORWATT: And the reason for the
17 objection is that the question is an improper
18 question; it's an improper question because until
19 Counsel does present all of the elements and gets
20 authority --

21 THE COURT: Objection overruled.

22 MR. HORWATT: Very well, Your Honor.

23 THE WITNESS: Mr. Hodges, at this mediation
24 meeting --

1 THE COURT: That's not his question either.

2 The question is, up to that time, did you tell your
3 attorneys that they did not have the authority to
4 act for or to speak for you?

5 THE WITNESS: They were speaking for me only
6 at the mediation meeting. They told me not to
7 speak --

8 THE COURT: That's not the question. Did you
9 tell them they did not have the authority to speak
10 for you?

11 THE WITNESS: It was never asked of me.

12 THE COURT: Your answer is "No," then?

13 THE WITNESS: Right.

14

15 BY MR. HODGES:

16 Q Taking that same question, but I need to
17 expand the time; I've cut you off as of the night of the
18 30th, when you had your last conversation with either
19 Mr. Rasnic or Mr. Jenne. I now need to take you to the next
20 morning.

21 The first phone call you had with Mr. Jenne
22 occurred, you told us, at about 8:00 a.m., roughly?

23 A That's right.

24 Q I've understood, but maybe I'm wrong, that

1 that 8:00 a.m. telephone call was the last conversation you
2 had directly with either Mr. Rasnic or Mr. Jenne until you
3 were informed that the order had been entered?

4 A That's correct.

5 Q Am I right on that?

6 A That's correct.

7 Q Now, let's take then the morning
8 conversation, the 8:00 a.m. conversation. Did you tell
9 Mr. Jenne in that phone conversation on the morning of
10 January 31st that neither Mr. Rasnic or Mr. Jenne had the
11 authority to act or speak for you?

12 MR. HORWATT: I again object.

13 THE COURT: The ruling is the same.

14 THE WITNESS: I'm sorry --

15 THE COURT: The question, did you tell them
16 that they do not have the authority to act for you?

17 THE WITNESS: It was never asked of me.

18 THE COURT: So your answer is "no"; is that
19 correct?

20 THE WITNESS: Okay, yes. "No."

21
22 BY MR. HODGES:

23 Q In your earlier testimony when your counsel
24 was asking you some questions, you said you had received a

1 telephone call -- excuse me; we're going to Sunday evening.
2 Let me help you with the context.

3 Sunday evening about 7:00 p.m. your
4 attorneys, Mr. Rasnic and Mr. Jenne, received a telephone
5 call from defense counsel to come down to meet in
6 Mr. Jenne's room. In your earlier testimony you said, "I
7 asked to stay; they said no." We never heard who "they"
8 were.

9 A Mr. Jenne said, "No, you have to leave."

10 Q So the "they" did not include Mr. Miller or
11 myself?

12 A No.

13 Q Your counsel has introduced as an exhibit,
14 and I don't remember the number offhand, an agreement or
15 retainer agreement between yourself and Mr. Rasnic?

16 A That's correct.

17 Q Was there another agreement between yourself
18 and Mr. Jenne and/or Mr. Jenne's law firm that's not been
19 introduced here as an exhibit?

20 A I don't have it in my possession if they did.

21 Q Let's start first, do you know, was there
22 one?

23 A I don't have it in my possession. I don't
24 know.

1 Q So the answer is you don't know?

2 A I don't know.

3 MR. HODGES: May I have one moment, Your
4 Honor.

5 THE COURT: All right.

6 MR. HODGES: If I could have the two pieces
7 of paper I handed you, so we don't get them
8 confused. Thank you.

9 I have no further questions, Your Honor.

10 THE COURT: All right. Mr. Horwatt?

11 MR. HODGES: Excuse me, Counsel. My earlier
12 reference to Defense Exhibit 1 really should have
13 been to Defense Exhibit A, and I apologize to the
14 Court and Counsel.

15 THE COURT: I think I said Exhibit A at the
16 time.

17 MR. HODGES: I think you may have corrected
18 me. Thank you.

19

20 REDIRECT EXAMINATION

21

22 BY MR. HORWATT:

23 Q Before you left on January 31st, would you
24 tell the Court whether or not Mr. Jenne or Mr. Rasnic or

1 both ever sat down with you and went over each and every
2 condition of the proposed settlement?

3 A You said the 31st, but I think you probably
4 mean the 30th.

5 Q The 30th.

6 A No, sir, they did not.

7 Q At any time on the 30th did Mr. Rasnic or
8 Mr. Jenne ever discuss with you Defendant's Exhibit A?

9 A No, sir. I was told that that was -- could
10 never be brought up in any sort of litigation or anything.

11 Q Who told you that?

12 A The lady at the mediation center, that none
13 of that could ever be used.

14 Q Now, could you tell me whether or not the
15 decision to speak in the session, the mediation session, was
16 at your insistence or your attorney's insistence?

17 A I was told prior to going into the meeting by
18 Roger Jenne and Tom Rasnic, "You will not say anything."

19 Q When Mr. Jenne and Mr. Rasnic went through
20 the terms of settlement, at any time between the January
21 25th mediation session and the court hearing on January
22 31st, did they ever discuss this with you in terms of how it
23 fit into a total settlement?

24 A No. They only talked about nonsuiting the

1 partners, and in my office they drew up an agreement that
2 said "without prejudice to the individual partners." And I
3 assumed that had already been filed prior to the 31st.

4 Q So you understood that there was going to be
5 a nonsuit without prejudice with respect to the partners in
6 the law firm, as distinguished from a nonsuit with
7 prejudice?

8 A Yes, sir. That was drawn up in my office
9 while they were there.

10 Q Who was there?

11 A Roger Jenne and Tom Rasnic.

12 Q And what did they tell you the consequences
13 were, if any, that would flow from the entry of the nonsuit
14 without prejudice with respect to these partners?

15 A They indicated that a nonsuit without
16 prejudice meant that they could bring them back in the suit
17 at a later time if they needed to.

18 Q Did they discuss at all what conditions they
19 needed to bring back a lawsuit against those individual
20 partners?

21 A No.

22 Q Okay; fine. Did they tell you at the
23 mediation session that you were making an irrevocable
24 agreement to dismiss the individual defendants from the

1 case?

2 A No, they did not.

3 Q They didn't use those words?

4 A No.

5 Q Can you tell the Court whether you had an
6 agreement with Mr. Jenne, a retainer agreement with
7 Mr. Jenne?

8 A I don't believe I have an individual one. I
9 think it's with Roger Jenne and Tom Rasnic, all one and the
10 same.

11 MR. HORWATT: Can I see that exhibit, Your
12 Honor.

13

14 BY MR. HORWATT:

15 Q I show you Exhibit 3 and ask you, other than
16 the joint retainer agreement embodied in Exhibit 3, whether
17 you made any separate agreement with Mr. Jenne that you're
18 aware of.

19 A No, sir, I'm not aware of any.

20 Q Have you been advised about what the
21 potential tax consequences could be if the notes came back
22 to you or if the stock came back to you?

23 MR. MILLER: Your Honor, I would have to
24 object to this. This has got to be hearsay on her

1 part.

2 THE COURT: I think there's already some
3 testimony to the effect that's been a problem and
4 that she didn't want to agree to taking the stock
5 back, so I think that's all you need to do.

6 MR. HORWATT: Very well, Your Honor.

7 May I have the Court's indulgence one
8 moment?

9 THE COURT: Sure.

10 MR. HORWATT: To be introduced as
11 Exhibit 10.

12
13 BY MR. HORWATT:

14 Q I want to show you Exhibit 10 and ask you if
15 you recognize that document.

16 MR. MILLER: If Your Honor please, I'm going
17 to have to object to this document before we get
18 into any questions on it.

19 THE COURT: I think this goes into the same
20 things. She's indicated she was not in agreement
21 with that because of the possible tax consequences.

22 MR. HORWATT: The reason that I'm introducing
23 this is there isn't any question, I think, that the
24 Court is clear that she didn't agree to this.

1 What may not be absolutely clear to the Court
2 is how important this whole issue was in terms of
3 whether any action was taken that in any way
4 affected the transaction. And my purpose for
5 introducing this is this is a letter from their tax
6 expert, after the suit was filed, saying, Watch out,
7 there could be explosive results from this lawsuit
8 from a tax point of view.

9 And as I understand the issues in this case,
10 there is a dispute about whether or not there's
11 really a pretext for getting out of the agreement
12 because she decided she really didn't like the
13 amount of money involved, or whether there's really
14 a serious issue about the conditions of this.

15 THE COURT: Regardless, still, she's not
16 agreeable to it. She's testified she never did
17 agree to it. I think that's all you need, so far as
18 that aspect is concerned, so I would refuse this.
19 You can note your exception to that.

20 MR. HORWATT: Thank you, Your Honor.

21 THE COURT: Any other questions?

22 MR. HORWATT: One moment.

23 Your Honor, that's all.

24 THE COURT: You may step down, ma'am.

1
2 (The witness stepped down.)
3

4 THE COURT: Your next witness?

5 MR. HORWATT: I would like Barry Whitaker,
6 Your Honor.

7 THE COURT: Evidently this witness has walked
8 off somewhere. Can you call somebody else?

9 MR. HORWATT: Yes, Your Honor. Charles
10 Hunt.
11

12 CHARLES HUNT

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

17 DIRECT EXAMINATION
18

19 BY MR. HORWATT:

20 Q You are Charles Hunt?

21 A Yes, sir.

22 Q What relationship are you to the plaintiff in
23 this case?

24 A Brother.

1 Q Where do you live?

2 A In Rocky Mount, Virginia.

3 Q What do you do for a living?

4 A Previous to September I was a plant manager
5 at MW Manufacturers for 22 years, but at that point I
6 retired from there and I'm now currently a full-time beef
7 farmer.

8 THE COURT: Full-time what?

9 THE WITNESS: Beef cattle farmer.

10

11 BY MR. HORWATT:

12 Q And where do you do that?

13 A In Franklin County.

14 Q On January 31st, 1994, could you tell the
15 Court whether or not you received a call from your sister.

16 A Yes, sir, I did.

17 Q About what time did you receive that call?

18 A Probably between 8:00 and 8:30 that evening.

19 Q What if anything did she say to you?

20 MR. MILLER: Your Honor --

21 MR. HODGES: Your Honor, first off, I don't
22 understand the relevance, and I object on grounds of
23 relevance, and second because obviously it's the
24 night after the order was entered, since it was the

1 night of the 31st, and whatever the plaintiff had to
2 say to him --

3 MR. HORWATT: I misspoke. I meant the night
4 of the 30th. You still may have the objection, but
5 I meant the night of the 30th.

6 THE COURT: Go ahead.

7 MR. HODGES: Then the merits of my objection
8 would be that whatever Ms. Snyder-Falkinham had to
9 say to this gentleman had no relevance or no bearing
10 on whatever is going on between her then-attorneys
11 Mr. Rasnic and Mr. Jenne.

12 And as far as I'm concerned, it appears to be
13 some attempt to either bootstrap her testimony --
14 it's obviously hearsay, and I would object to it on
15 all three grounds.

16 MR. HORWATT: Your Honor, it's my
17 understanding that the secretaries and Mr. Jenne and
18 Mr. Rasnic will testify that it was clear on the
19 evening of January 30th that their client was elated
20 with the settlement, was pleased, was happy;
21 concluded there was a settlement; called people up,
22 said there was a settlement, and I'm offering this
23 evidence to show what her state of mind was.

24 THE COURT: It might be possible rebuttal

1 evidence, but I would sustain the objection at this
2 point.

3 MR. HORWATT: Thank you, Your Honor.

4 You may step down. We may call you later.

5

6 (The witness stepped down.)

7

8 THE COURT: You may or may not be called back
9 later.

10

11 BARRY E. WHITAKER

12 was called as a witness, and after having first been duly
13 sworn to tell the truth, the whole truth and nothing but the
14 truth, was examined and testified as follows:

15

16 DIRECT EXAMINATION

17

18 BY MR. HORWATT:

19 Q Would you tell the Court your name, please.

20 A Barry E. Whitaker.

21 Q Where do you live?

22 A 2751 Avenel Avenue, Roanoke.

23 Q For whom do you work?

24 A Central Fidelity Bank.

1 Q What position do you hold at Central Fidelity
2 Bank?

3 A I'm senior vice president and regional trust
4 manager. I manage the trust department.

5 Q In your capacity as regional trust manager,
6 what relationship do you have if any to the Peter C. Snyder
7 marital and residual trusts?

8 A We are cotrustees of the Peter C. Snyder
9 marital and residual trust. I am the officer in charge of
10 managing those trusts for the bank.

11 Q I'd like to ask you if you recognize Exhibits
12 6 and 9.

13 A I recognize Exhibit 6 for sure. Are they the
14 same thing?

15 Q You will have to --

16 THE COURT: I think you can tell him there's
17 some slight difference.

18 MR. HORWATT: There is a difference.

19 THE WITNESS: I don't remember seeing the
20 one, Exhibit 9.

21
22 BY MR. HORWATT:

23 Q All right. Now, when did you see Exhibit 6?

24 A Let's see. You all were going to start court

1 on Monday morning, and I was out of the country, came back
2 in Monday evening, so I received it Tuesday, Wednesday,
3 somewhere along in there. It was Faxed to me.

4 Q All right. Now, would you tell the Court
5 what your role as cotrustee is of this trust, and your
6 relationship to the other cotrustee, Ms. Snyder-Falkinham.

7 THE COURT: Well, does this have to do with
8 the release --

9 MR. HORWATT: What it has to do with, Your
10 Honor, is that one of the material conditions of the
11 settlement that was tendered, the proposed
12 settlement, the purported settlement --

13 THE COURT: Was Central Fidelity's agreement
14 to this.

15 MR. HORWATT: Yes.

16 THE COURT: And what's your question?

17

18 BY MR. HORWATT:

19 Q Did you ever authorize Ms. Snyder-Falkinham
20 to sign --

21 A No, sir.

22 Q Did you have a relationship with her with
23 regard to how decisions were made with respect to the
24 signing of legal documents?

1 A Yeah. Basically when there's some type of
2 legal document involved with the trust, we would review it,
3 we would have legal counsel review it, and then we would
4 make a recommendation to any cotrustee.

5 THE COURT: Was that ever done?

6 THE WITNESS: No, sir. We didn't know we
7 would be involved. We had this Faxed to us --

8 THE COURT: So it wasn't done.

9
10 BY MR. HORWATT:

11 Q Was there a time ever in your serving as
12 cotrustee that Ms. Snyder-Falkinham ever bound the trust
13 before you reviewed it and approved it?

14 A No, sir.

15 MR. HODGES: Objection, Your Honor;
16 irrelevant.

17 THE COURT: I don't think it has anything to
18 do with this, I agree. He has said he didn't see
19 this and didn't approve it, so I would accept that.

20 MR. HORWATT: Very well, Your Honor.

21 No further questions.

22 THE COURT: Do you have any questions?

23 MR. HODGES: No, sir.

24 THE COURT: You're free to go on back to

1 Roanoke.

2
3 (The witness stepped down.)

4
5 THE COURT: Your next witness?

6 MR. HORWATT: Is Mr. Anthony.

7 THE COURT: Does this have to do again with
8 the tax consequences? Again, I understand
9 thoroughly that her position is she did not agree to
10 that aspect of it, and that there are some
11 consequences, possible tax consequences, that could
12 be serious.

13 MR. HORWATT: Your Honor, the other reason
14 for introducing him is there were discussions with
15 Mr. Jenne and Mr. Rasnic both on the morning of the
16 30th --

17 THE COURT: Well, I've understood that.
18 There's already evidence to that effect, and that he
19 expressed some doubts about it.

20 MR. HORWATT: And he was never told the
21 orders were being entered.

22 MR. MILLER: I don't know what the relevance
23 is.

24 THE COURT: I don't think it would make any

1 difference whether he was told or not.

2 MR. MILLER: If anything, Judge, if it's
3 admissible at all, it would only be on rebuttal.

4 THE COURT: Again, I just don't see the point
5 of it. If there's something you feel you need to
6 put on so far as the record is concerned, we'll go
7 ahead and do it.

8 MR. HORWATT: I feel I do, Your Honor.

9 THE COURT: All right. Go ahead.

10
11 DIRECT EXAMINATION

12
13 BY MR. HORWATT:

14 Q You are Mr. Joseph Anthony?

15 A Yes, sir.

16 MR. HODGES: Excuse me, Your Honor. An
17 oath?

18
19 JOSEPH ANTHONY

20 was called as a witness, and after having first been duly
21 sworn to tell the truth, the whole truth and nothing but the
22 truth, was examined and testified as follows:

23
24 THE COURT: I think you can go directly to

1 the point you're concerned with.

2

3 BY MR. HORWATT:

4 Q I'd like to ask you whether the issue of the
5 note and stock held by Mr. Stockburger came to the forefront
6 early in the litigation.

7 A Yes, it did.

8 Q How did it come up?

9 A After this lawsuit was filed, I got a phone
10 call from Bruce Stockburger.

11 THE COURT: Again, rather than go through a
12 whole lot of details about this, I think you can
13 just ask him the question as to whether or not --

14

15 BY MR. HORWATT:

16 Q All right. Would you tell the Court whether
17 you had a concern about any change in the status of the
18 transaction in connection with the trust and the note?

19 A Yes. I had been advised by other
20 professionals, and I also had a problem with it.

21 MR. MILLER: Your Honor, I've got to object
22 to Mr. Anthony being advised by other professionals,
23 of whom we --

24 THE COURT: I'll disregard that.

1
2 BY MR. HORWATT:

3 Q You are a tax attorney?

4 A That is correct.

5 Q Did you form an opinion with regard to the
6 implications of any change in the status of that
7 transaction?

8 A Yes, I did.

9 Q And what was the opinion and advice that you
10 gave about that?

11 A I gave the advice that any transaction now
12 which touched upon that December 1990 transaction would
13 jeopardize that transaction.

14 MR. HORWATT: Thank you.

15 THE COURT: All right. Any cross?

16
17 CROSS EXAMINATION

18
19 BY MR. MILLER:

20 Q When did you give that opinion, Mr. Anthony?

21 A I gave that opinion to Mr. Jenne on Sunday
22 night and again on Monday morning.

23 Q Did you do any research before you gave that
24 opinion?

1 A Yes, sir, I did.

2 Q And when did you do the research?

3 A I did the research and reviewed the notes of
4 my conversation with Mr. Stockburger right after the suit
5 was filed on that, also.

6 Q And you keep mentioning a conversation with
7 Mr. Stockburger. Wasn't Mr. Stockburger at the time the
8 suit was filed concerned the language used in the suit
9 papers would mess up the 1990 transaction?

10 A He was concerned about any activity that
11 would upset that December '90 tax transaction.

12 Q And specifically he was concerned about the
13 language in the suit papers, wasn't he, sir?

14 A No, sir. Not that he mentioned.

15 Q Not that he mentioned?

16 A Oh, when you say -- that was what prompted
17 his phone call.

18 Q The language in the suit papers, wasn't it,
19 sir?

20 A No, sir, I could not say. I couldn't answer
21 that with a straight yes or no. I think that was what
22 prompted his calling, because he did say that was what was
23 prompting his call.

24 Q What research did you do on January 30 into

1 this problem?

2 A I looked back at the memorandums prepared by
3 Brown, Edwards, the CPA firm who designed it at that time;
4 then I went back and looked at the tax returns as the
5 position it was taken on the return, and then I researched
6 in Prentice-Hall regarding the activity.

7 Q This is all on Sunday, January 30, 1994?

8 A No, sir, this was on Monday morning.

9 Q How long did this research take you?

10 A Oh, probably about an hour to an hour and a
11 half.

12 Q Going through Prentice-Hall; any other tax
13 service you went through? Did you go through CCH?

14 A No, sir.

15 Q What specific problem did you come up with in
16 regard to this?

17 A It's hard to define a specific problem. It
18 is -- I had the same opinion that Brown, Edwards and Bruce
19 Stockburger did, that any activity which affected that
20 December 1990 transaction would -- could cause problems for
21 Georgia Anne Snyder-Falkinham.

22 Q You're not telling this Court here today,
23 Mr. Anthony, that payment or the marking of this note issued
24 by Mr. Stockburger dated December 15, 1990 paid by

1 Ms. Snyder-Falkinham at this time would mess up that
2 transaction, are you?

3 A Yes, I am. I would say that that would have
4 a great potential for the Service using that as a criteria
5 for upsetting that transaction, yes, sir.

6 Q When Ms. Snyder-Falkinham is receiving money
7 and the note is being marked paid, that would mess up the
8 transaction?

9 A The existence of two notes from Bruce
10 Stockburger back to her to purchase approximately 15 percent
11 back in December 1990, that was a part of that transaction.
12 The continuation of the payment of that would not upset that
13 transaction, but if you settle that transaction some other
14 way, yes, sir, the Service will most definitely use that
15 against you.

16 Q Now, Mr. Anthony, this note being marked paid
17 is merely the satisfaction of a debt, is it not?

18 A No, it's not the satisfaction of a debt.
19 Well, one could say it is a satisfaction, but it does create
20 income tax consequences to her in its relieving of a debt.

21 Q Well, she's receiving money for it, isn't
22 she?

23 A No, sir.

24 THE COURT: I think we argued the merits of

1 that, and we're not going to be able to decide that
2 today, regardless. I think the most we can get from
3 this witness is he feels there's a problem, a tax
4 problem, and so advised them.

6 CROSS EXAMINATION

8 BY MR HODGES:

9 Q I don't know that the record reflects what
10 Sunday night and Monday morning you're talking about.

11 A January the 30th.

12 Q 1994?

13 A Yes, sir.

14 Q And the Monday then was the morning of
15 January 31st, 1994?

16 A That's correct.

17 Q Well, prior to January 30, 1994, there had
18 been testimony by way of depositions, specifically
19 Mr. Mehler, with regard to his, Mr. Mehler's, opinion that
20 there could -- not would, could, C-O-U-L-D, could -- be
21 tax consequences to the plaintiff, Georgia Anne
22 Snyder-Falkinham, with regard to the disposition of the note
23 and the stock; correct?

24 A I don't know that. If you're telling me

1 that, I'll assume that's true, if you want me to.

2 Q Did you read Mr. Mehler's deposition
3 transcript?

4 A I can't say that I did.

5 Q Can you say that you did not?

6 A I can't say that I did not, either.

7 Q All right, sir.

8 A I don't recall, if that's what you're asking
9 me. I don't recall reading his testimony regarding anything
10 you're talking about.

11 Q Isn't it accurate, Mr. Anthony, to state
12 under oath as you sit in that witness chair today that there
13 had been conversations of which you were a party, either
14 with Mr. Mehler, Mr. Jenne, Mr. Rasnic, or Ms. Georgia Anne
15 Snyder-Falkinham well before January 30, 1994 as to
16 potential tax consequences that could arise from the \$25,000
17 note and/or the stock?

18 A I would think there was.

19 Q It came as absolutely no surprise to you to
20 have that question addressed to you by Ms. Snyder-Falkinham
21 and by Mr. Jenne on the night of January 30, 1994, did it?

22 A Yes.

23 MR. HORWATT: Excuse me.

24 Go ahead. I was going to lodge an objection.

1 THE COURT: I don't think we're accomplishing
2 anything by this at all.

3 MR. HODGES: May I have just one moment,
4 Your Honor.

5
6 BY MR. HODGES:

7 Q How long have you been serving as counsel for
8 Ms. Snyder-Falkinham, sir?

9 A Since 1991.

10 Q You were identified a little earlier today,
11 outside of your presence, I think, as their counsel, and I
12 don't know who "their" is, but do you represent anyone other
13 than Ms. Snyder-Falkinham, in the sense of having a
14 relationship with Ms. Snyder-Falkinham?

15 A Yes, I do.

16 Q Who is that? What entities, or individuals?

17 A I represent the family.

18 Q Do you represent Michael?

19 A Yes, I do.

20 Q Did you file a lawsuit on his behalf?

21 A No, sir.

22 Q Do you represent Stacey, the daughter?

23 A Yes, sir.

24 Q Did you file a lawsuit on her behalf?

1 A No, sir.

2 Q Do you represent any of the Snyder companies;
3 that is, The Snyder Company, Snyder Associates, et cetera?

4 A I have represented The Snyder Company, Inc.
5 on occasions, yes, I have.

6 Q As of today?

7 A I'm sorry?

8 Q Do you represent them as of today?

9 A Yes, sir, I would assume I do, unless I
10 have --

11 Q Is it true you were on the telephone
12 conference call with Judge Jennings of last week scheduling
13 the hearing for today?

14 A Yes, sir.

15 Q Did you identify yourself as counsel at that
16 time?

17 A No, sir; I came in late. The hearing was
18 already moving on, and I was about five minutes late.

19 MR. HODGES: Thank you, sir. I don't have
20 any further questions.

21

22

23

24

REDIRECT EXAMINATION

BY MR. HORWATT:

Q Was there any discussion between you and Ms. Snyder-Falkinham on the 31st or any other time about a specific way in which Mr. Stockburger might alienate himself from the stock or might dispose of the note?

A That was never discussed, or again I was never asked to give any opinion regarding that. So if you're asking me if it surprised me to have that brought up that night, it did.

MR. HORWATT: May I have the Court's indulgence one moment.

THE COURT: Certainly.

MR. HORWATT: Your Honor, I have no further questions.

THE COURT: Can Mr. Anthony be excused, then?

MR. HORWATT: I think it would be best for him to return to the witness room.

THE COURT: If you wouldn't mind remaining, then.

(The witness stepped down.)

1 THE COURT: Your next witness?

2 MR. HORWATT: Yes; Richard Crabbs.

3 THE COURT: Would you raise your right hand,
4 please.

5

6 RICHARD CRABBS

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

10

11 DIRECT EXAMINATION

12

13 BY MR. HORWATT:

14 Q Would you state your full name for the
15 record, please.

16 A Richard C. Crabbs.

17 Q What is your profession?

18 A I'm a certified public accountant.

19 Q How long have you been a certified public
20 accountant?

21 A I've been an accountant since 1971, and I
22 passed the CPA exam in 1975.

23 Q Do you have your own accounting firm?

24 A Yes.

1 THE COURT: Does this go to the tax aspect?

2 MR. HORWATT: No. This will be somewhat
3 different; this is transactional. Do you want me to
4 proffer?

5 THE COURT: Yes. I can't visualize what he
6 could add to it.

7 MR. HORWATT: Mr. Crabbs had a conversation
8 with Mr. Jenne twice that evening, and in the second
9 conversation Mr. Jenne asked the question, "Does
10 this involve a lot of money," or words to that
11 effect, and Mr. Crabbs said, "It certainly does.
12 There are large tax losses; there are tax refunds,"
13 and Mr. Jenne then responded to Mr. Crabbs, "Well,
14 given the magnitude of this issue, we sure can't
15 decide this transaction now," or words to that
16 effect.

17 And so that obviously has a tremendous
18 bearing on whether or not there was an agreement;
19 whether or not Mr. Jenne had reason to think he had
20 authority or right to enter into a settlement;
21 whether he had a right to go into court and dismiss
22 the case.

23 And obviously in light of the issues here,
24 there is the issue of the dismissal of the partners

1 and there is the issue of the dismissal of the law
2 firm, and I think that conversation is highly
3 germane to that --

4 THE COURT: So far as the proffer is
5 concerned, do you all want to accept that proffer,
6 or do you want to put it on?

7 MR. MILLER: It's cumulative, and I think it
8 would be rebuttal. I'd like to kind of hear what
9 Mr. Jenne has to say on the issue first. Mr. Jenne
10 hasn't testified at this point.

11 THE COURT: I think it could be rebuttal; on
12 the other hand, though, it's really just
13 reemphasizing, as you've done so many times, the
14 fact that there was a tax problem and Mr. Jenne had
15 been advised of that, as well as Mr. Rasnic.

16 Go ahead, Mr. Horwatt. I don't think you're
17 accomplishing anything, but you can go ahead.

18 MR. HORWATT: Thank you.

19

20 BY MR. HORWATT:

21 Q How many conversations did you have with
22 Mr. Jenne on the 31st?

23 A I had two conversations with him.

24 Q Would you tell the Court the substance of the

1 second conversation that you had with Mr. Jenne.

2 First of all, what time was that?

3 A I believe it was a little bit after 9:00
4 o'clock that evening.

5 Q And Mr. Jenne knew that you were the personal
6 accountant for Ms. Snyder-Falkinham?

7 A I'm not totally certain of that.

8 Q All right. Would you tell the Court the
9 substance of the second conversation.

10 A The second conversation started out with, "I
11 have just talked with Joe Anthony and I again reiterate that
12 I'm not able to give you an answer to the question that you
13 asked me earlier about the tax impact, and Joe and I have
14 decided that there's not enough -- we would not have enough
15 time to even research the answer, since we were not privy to
16 the original transaction as it happened."

17 Q Now, what if anything did -- and I'd like to
18 correct for the record that I was referring to the 30th,
19 rather than the 31st -- what if anything did you say to --
20 what if anything did Mr. Jenne say to you after that?

21 A He asked me if I knew how large the dollars
22 were involved.

23 Q And what did you respond?

24 A I said that I didn't have the exact numbers,

1 but there were large tax losses created by that transaction,
2 and that they were used on her personal return to carry back
3 and carry forward, which also created large tax refunds.

4 Q And what if anything did he say?

5 A We ended the conversation with he agreed that
6 the dollars were so large in this case that there was no way
7 a decision could be made based on the knowledge we had on
8 hand.

9 MR. HORWATT: Thank you.

10 THE COURT: All right. Any cross?

11 MR. MILLER: If Your Honor please, I would
12 ask this witness -- I would rather defer cross until
13 after Mr. Jenne has testified, if I may, sir.

14 THE COURT: Well, I don't know about
15 deferring cross, but if you want to call him back,
16 of course you can call him back.

17 MR. MILLER: I reserve the right to call him
18 back after Mr. Jenne has testified.

19 THE COURT: You can do that. If you wouldn't
20 mind remaining again, we'll try to get to you as
21 soon as we can.

22

23 (The witness stepped down.)

24

1 THE COURT: Do you have any more witnesses,
2 Mr. Horwatt?

3 MR. HORWATT: The plaintiff will rest, Your
4 Honor.

5 THE COURT: Court will recess for five
6 minutes.

7
8 (A recess was taken.)
9

10 THE COURT: You can go ahead, Mr. Miller.
11 It's been more than five minutes; I assume
12 Mr. Hodges will get here.

13 MR. HODGES: Pardon me, Your Honor.

14 MR. MILLER: If Your Honor please, at this
15 point in time, we're in plaintiff's motion to vacate
16 and set aside two orders entered by this Court on
17 January 31 --

18 THE COURT: I assume you're making a motion
19 now?

20 MR. MILLER: Yes, sir.

21 -- January 31, 1994; let's take them one at a
22 time. I think with respect to the Exhibit 2 which
23 has been called "the order," the one that follows
24 the mediation session, the ADR session in Richmond

1 dismissing the individual partners, and the claim
2 for punitive damages, I think there's been no real
3 contest by plaintiff that her attorneys had the --
4 or did not have the authority to enter that order,
5 and she testified very clearly that she allowed her
6 attorneys to speak for her; that they had the
7 authority to speak for her, and that authority was
8 never revoked.

9 We further have -- we go to the Eggleston and
10 Crump case which we cited in our memorandum, and in
11 Eggleston and Crump, the Supreme Court of Virginia
12 at 150 Va. 414 has held that the parties seeking to
13 set aside an order must show by most satisfactory
14 evidence, which is clear and convincing evidence,
15 that her attorneys did not have the right to enter
16 an order or to dismiss a case or enter into a
17 settlement.

18 That's what she seeks to do today with
19 respect to both orders, and I would suggest to the
20 Court under that case and the Singer Sewing Machine
21 case and the Farrell case, that Mr. Rasnic and
22 Mr. Jenne were talking with the plaintiff; had the
23 authority to settle this case; they settled this
24 case; the order was entered.

1 Your Honor is very familiar with Mr. Rasnic
2 and Mr. Jenne from the hearings we've had in this
3 case and the conversations we've had.
4 Ms. Snyder-Falkinham has been around at every turn;
5 she's known exactly what has gone on in every move
6 of this case.

7 I would suggest to you that
8 Ms. Snyder-Falkinham has not borne the burden by
9 showing by clear and convincing evidence that
10 Messrs. Jenne and Rasnic did not have the authority
11 to execute either the order of January 31, 1994 or
12 the final order of January 31, 1994, and the
13 plaintiff's motion to vacate should be dismissed at
14 this time.

15 THE COURT: All right. And the second
16 order. Do you want to speak to the second order?

17 MR. MILLER: I thought I was speaking to both
18 of them, Your Honor; I apologize. I meant to
19 address both of them.

20 THE COURT: That's all you want to say about
21 the second order?

22 MR. MILLER: If Your Honor please,
23 Ms. Snyder-Falkinham never told Mr. Rasnic and
24 Mr. Jenne that they did not have the authority to

1 speak for her. She talked with them on a number of
2 occasions.

3 THE COURT: The evidence at this point
4 indicates they had the authority to settle under
5 what conditions, aside from the dollar amount?

6 MR. MILLER: They have indicated she was in
7 agreement with the dollar amount. She had no
8 problem with the dollar amount, executing the
9 release in the capacities that are shown in the
10 release, all six capacities; she had no problem with
11 discharging Stockburger, Gentry, Locke, Rakes &
12 Moore; Glenn, Glenn, Flippin, Feldmann & Darby, and
13 the only area of which there's any discussion -- if
14 we go to Exhibit 6, I believe, or Exhibit 9, I
15 forget which is which, there is no question but that
16 she agreed to everything.

17 The only thing she says in that release that
18 she did not agree to was marking the note for
19 \$25,000 satisfied. There's no mention in any of
20 those releases about that stock, that she's
21 concerned about it, not at all, not in any release.

22 We would suggest to the Court that the
23 release which has been passed around was nothing
24 more than a memorialization of the agreement entered

1 into between the parties on January 30, 1994, and
2 that the deal was cut. I mean, she admits her
3 lawyers tell her the deal was cut at that time. The
4 exhibits, Mr. Rasnic's letters which have been
5 identified as exhibits in this case --

6 THE COURT: What is your position? I
7 understand your logic and your reasoning on all of
8 it, and what you're saying, with the exception of
9 the \$25,000 note.

10 What is your position about what her position
11 is and your position is; that is, Mr. Rasnic and
12 Mr. Jenne, as it relates to that? Is that being a
13 part of the settlement?

14 MR. MILLER: Obviously from the letters which
15 are exhibits in this case -- and I think she's got
16 the two letters, I'll try to get the exhibit numbers
17 for you -- that she has identified from her
18 attorneys, that will tell you the \$25,000 was
19 included and they understood it was included and the
20 plaintiff understood it was included.

21 I was trying to get the latest letter, the
22 February 9 letter --

23 MR. HODGES: That's Number 5.

24 MR. MILLER: Exhibit Number 5, Judge.

1 THE COURT: I have it in front of me.

2 MR. MILLER: And in that letter they say the
3 whole case was settled and everything between the
4 parties was settled, Judge.

5 THE COURT: What is the part of the \$25,000?

6 MR. MILLER: I don't see it in there, Judge.

7 THE COURT: I don't either.

8 MR. MILLER: But Mr. Rasnic points out all
9 matters between the parties were settled.

10 THE COURT: You indicated to me earlier that
11 that wasn't a part of the pleadings in this case so
12 far as the motion for judgment was concerned. You
13 said it was referred to but not a portion of the
14 claim, if I understood you correctly.

15 MR. MILLER: She did not seek that \$25,000 in
16 the motion for judgment; no, sir, she did not.

17 THE COURT: Do I understand, then, your
18 position is that that is not a part of the
19 settlement as such?

20 MR. MILLER: Yes, sir, it is a part of the
21 settlement. It's our position she agreed.

22 THE COURT: Go ahead, Mr. Hodges.

23 MR. HODGES: Your Honor, I'll be very brief.
24 As the Court I'm sure recognizes -- well, first I

1 join in the motion on behalf of however many clients
2 I have.

3 THE COURT: Tell me what your position is
4 about this \$25,000 note.

5 MR. HODGES: Well, Your Honor, I took a
6 little bit of an arm's-length distance from the
7 \$25,000. When I met with these attorneys in that
8 first conference and the issue of the \$25,000 came
9 up and was discussed, I was speaking on behalf of my
10 then one client, the law firm.

11 When that question was addressed to me by
12 then-counsel Mr. Rasnic and Mr. Jenne, it was in
13 terms of, You will raise the subject of the \$25,000,
14 if you've got any question about it, with
15 Mr. Miller, because he represented Mr. Stockburger,
16 and the law firm does not want to try to insert
17 itself into or dictate to, either, Mr. Stockburger
18 what should be done about the 25,000.

19 I have -- to the extent a position needs to
20 be stated at this point, I have the understanding
21 that the \$25,000 was discussed with the plaintiff by
22 her attorneys, was reported back to at least this
23 counsel and Mr. Miller later; that it was accepted,
24 as part of the, quote, "deal," and I frankly did not

1 try to pursue it further.

2 Where we are today, as I view it, is that the
3 evidence that you've heard thus far still seems to
4 me, on balance, as the Court's looking at all of it,
5 even with regard to the \$25,000 -- is that \$25,000
6 was not material enough.

7 If there's any mental reservation on the part
8 of the plaintiff, such as in that Wells and Weston
9 case which we've submitted as part of our
10 memorandum, if there's any reservation on the
11 plaintiff's part in that regard, it's not the type
12 of reservation that rises to the level that there is
13 not a clear agreement under contract law.

14 So my bottom-line position is the final
15 order, as well as the order that benefitted twelve
16 of my clients and took them out, that is Exhibit
17 Number 2, both of those are appropriate orders.

18 They're absolutely consistent with the
19 discussions in settlement that was agreed to, and
20 whatever mental reservations that I understand
21 Ms. Snyder-Falkinham to be describing today about
22 her state of mind on that 25,000, particularly under
23 Wells and Weston does not rise to the level of,
24 quote, "upsetting," nor does it rise to the level of

1 clear and convincing evidence to justify setting
2 aside the final order.

3 Now, factually, Your Honor, and I understood
4 your question to be in part law and in part facts,
5 factually, I took some distance from it at the time
6 it was going on, but our legal position is that by
7 the time the evening came to a close and all
8 settlement discussions were over, it had been
9 addressed and resolved.

10 And I respectfully submit that even given the
11 evidence you've heard today, the law permits the
12 Court to reach that same conclusion that I'm asking
13 for, and that is to let stand the two orders because
14 there's not been a sufficient showing under the
15 burden of proof that's on the plaintiff, nor is
16 there a sufficient showing to justify the \$25,000 as
17 an element necessary to the entire agreement such
18 that it upsets the order.

19 Thank you.

20 THE COURT: I think it does, and for that
21 reason I would deny the motion. I think that is a
22 real crucial part of it.

23 Who's your first witness?

24 MR. MILLER: Roger Jenne, Your Honor.

1 MR. HODGES: Your Honor, may I seek
2 clarification while the witness is being brought?

3 THE COURT: Sure.

4 MR. HODGES: Can the order -- excuse me. Can
5 our motion be granted sustained as to Order Number
6 2; that is, the one regarding the individual
7 defendants?

8 THE COURT: Under these circumstances, I
9 don't think so.

10 MR. HODGES: All right, sir.

11 MR. HORWATT: Your Honor, just so the Court
12 knows, my client has a problem where she's got to
13 stand up.

14 THE COURT: She can come and go as she
15 likes.

16 MR. HORWATT: Thank you.

17
18 ROGER E. JENNE
19 was called as a witness, and after having first been duly
20 sworn to tell the truth, the whole truth and nothing but the
21 truth, was examined and testified as follows:
22
23
24