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# Supreme Court of Virginia

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RECORD NO. 941615

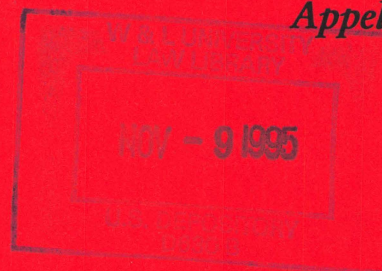
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**STEPHEN WAINGER,**

*Appellant,*

v.



**GLASSER AND GLASSER,**

*Appellee.*

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## JOINT APPENDIX

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VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

STEPHEN WAINGER,	:	
	:	
Complainant,	:	
	:	
v.	:	IN CHANCERY NO.
	:	
GLASSER AND GLASSER, a	:	
general partnership	:	
	:	
Respondent.	:	

SERVE:

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Norfolk, Virginia 23510

Michael A. Glasser, General Partner  
600 Dominion Tower  
999 Waterside Drive  
Norfolk, Virginia 23510

H. Seward Lawlor, General Partner  
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999 Waterside Drive  
Norfolk, Virginia 23510

Melvin R. Zimm, General Partner  
600 Dominion Tower  
999 Waterside Drive  
Norfolk, Virginia 23510

William H. Monroe, Jr., General Partner  
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999 Waterside Drive  
Norfolk, Virginia 23510



BILL OF COMPLAINT FOR  
DECLARATORY JUDGMENT AND OTHER RELIEF

Stephen Wainger ("Complainant") files this Bill of Complaint for Declaratory Judgment and Other Relief against Glasser & Glasser ("Respondent").

1. Complainant is a resident of the City of Norfolk.

2. Respondent is a Virginia general partnership, the general partners of which are, as of the filing of this action, Richard S. Glasser, Michael A. Glasser, H. Seward Lawlor, Melvin R. Zimm and William H. Monroe, Jr., with its principal place of business in the City of Norfolk.

3. From January 1, 1990 through January 21, 1992, Complainant was a general partner of Respondent.

4. The agreement governing Respondent is a certain "Partnership Agreement For The Law Firm of Glasser And Glasser," with an effective date of January 1, 1985 (copy attached as Exhibit A), as amended by a certain "Withdrawal Agreement of John T. Midgett From Partnership In The Law Firm Of Glasser And Glasser," dated September 27, 1990 (copy attached as Exhibit B with certain deletions made by Complainant for reasons of confidentiality (together, the "Partnership Agreement").

5. On November 14, 1991, Richard S. Glasser circulated to the then partners of Respondent a certain "Notice of Partner's Meeting" (copy attached as Exhibit C with certain deletions made by Complainant for reasons of confidentiality), together with a

proposed amended partnership agreement (copy attached as Exhibit D). The blacklined portions of Exhibit D reflect proposed changes to the Partnership Agreement and the handwritten notations reflect comments of Richard S. Glasser. Exhibit D-1, attached, reflects proposed modifications of Michael A. Glasser to Exhibit D.

6. The Partnership Agreement provided that it could be amended by a vote of the holders of at least two-thirds of the outstanding "Units of Participation," as defined in the Partnership Agreement.

7. At the time of the November 14, 1991 notice, there were 91 Units of Participation outstanding, 73 of which were held by Richard S. Glasser ( $48 \frac{2}{3}$ ) and Michael A. Glasser ( $24 \frac{1}{3}$ ) and six held by Complainant. Accordingly, Richard S. Glasser and Michael A. Glasser held 80% of the outstanding Units of Participation and their affirmative vote would permit the amendment of the Partnership Agreement to the form of Exhibit D.

8. Before circulating Exhibit D, Richard S. Glasser had expressed the desire to leave Respondent by seeking appointment as a judge of the United States District Court for the Eastern District of Virginia.

9. Richard S. Glasser would turn 50 within three weeks of his November 14, 1991 proposal to amend the Partnership Agreement to permit retirement from Respondent at age 50 instead of age 60 (see page 25 of Exhibit D) which would result in significant



financial benefit to Richard S. Glasser under Article IX, Item I and Article XII of the Partnership Agreement.

10. The Partnership Agreement, if amended in the form of Exhibit D, would have substantially and materially adversely affected the rights of Complainant in that

a. Richard S. Glasser also proposed an amendment to Article IX reinforcing the fact that certain uncollected fees relating to the Manville Trust and other asbestos cases were fully earned by the firm and would be payable to a partner "who retired from the practice of law" (e.g. Richard S. Glasser), but would not be payable to an expelled partner or a withdrawing partner who wished to continue practicing law (see Exhibit D at page 22) whereas under the Partnership Agreement a withdrawing partner who wished to continue the practice of law would be entitled to share in such fees; and

b. With Michael A. Glasser and Richard S. Glasser controlling 80% of the Units of Participation, and with the proposed changes to the Partnership Agreement in the form of Exhibit D, Michael A. Glasser and Richard S. Glasser could have expelled all other partners of Respondent without cause and because of the proposed changes to Article IX, no "expelled partner, who wished to continue the practice of law, would have retained his right to share in the undivided profits of Respondent with respect to uncollected fees relating to the Manville Trust as defined in Exhibit D, and other matters.

11. Faced with the certainty that Richard S. Glasser and Michael.A. Glasser would vote their Units of Participation to amend the Partnership Agreement in substantially the form of Exhibit D, Complainant decided to withdraw as a partner of Respondent and preserve his right to share in the undivided profits of Respondent with respect to fully earned uncollected fees from the Manville Trust and other asbestos cases.

12. By memorandum dated December 17, 1991 (copy attached as Exhibit E), Complainant confirmed his notification to Respondent that he would withdraw from Respondent effective January 31, 1992.

13. On January 21, 1992, Complainant prepared a proposed withdrawal agreement (copy attached as Exhibit F). By letter dated January 21, 1992 (copy attached as Exhibit G), Richard S. Glasser confirmed Complainant's withdrawal, effective January 21, 1992, and recognized certain "material differences" between Complainant and Respondent regarding Complainant's vested rights under the Partnership Agreement.

14. In pertinent part, Article IX of the Partnership Agreement entitled "Payment For Partner's Interest" provides:

The payment for a partner's interest in the partnership, calculated as of the date of his death, or the effective date of retirement, withdrawal or expulsion, will be on the following basis:

Item A. Any unpaid monthly draw, and additional compensation (as described in Paragraph 3 of Section B, Article IV).

Item B. His Capital Account.



Item C. His Undivided Profits Account, plus his share, if any, of any undivided profits of the firm with respect to uncollected fees which were fully earned by the firm prior to the date of his death or the effective date of his retirement, withdrawal or expulsion, but which fees are received by the firm subsequent to such date.

15. Despite the assurances in Exhibit G, Respondent has failed, or refuses, to pay Complainant

- a. his Item A "additional compensation"
- b. the remaining balance of his Item B "Capital Account"
- c. his Item C "undivided profits account"

16. Moreover, Respondent has refused to recognize its obligation to share with Complainant 6/91's of the "undivided profits of the firm with respect to uncollected fees which were fully earned by the firm prior to the effective date" of Complainant's withdrawal from Respondent.

17. Specifically, on information and belief, fully earned fees from settlements of approximately 1,110 asbestos cases now subject to the final, non-appealable, existing Consent Judgment Orders and settlements with the Manville Trust, described on page 22 of Exhibit D, approximate \$20,000,000. Respondent and the Newport News firm of Patten, Wornom & Watkins ("PW&W") have an "arrangement" to share fees between Respondent and PW&W in certain asbestos cases (1/3 of all Respondent's fees go to PW&W and 1/3 of all PW&W's fees go to Respondent). The total recovery against the Manville Trust is approximately \$62,000,000 of which approximately

\$47,000,000 is attributable to Respondent and approximately \$15,000,000 to PW&W. Attorney's fees of 1/3 of the total amount recovered are accordingly approximately \$15,666,666 attributable to Respondent (of which PW&W will receive 1/3 or approximately \$5,222,222) and approximately \$5,000,000 attributable to PW&W (of which Respondent will receive approximately \$1,666,666). Respondent's total fees from the final, non-appealable, existing Consent Judgment Orders and the settlements with the Manville Trust will approximate \$12,111,111. Under Article IX such fees have been "fully earned," as confirmed by Richard S. Glasser's language included on page 22 of Exhibit D, and Complainant is entitled to 6/91's of the undivided profits of Respondent with respect to those fees, when received by Respondent.

18. In addition to the uncollected fees relating to the Manville Trust, other final settlements were reached with other asbestos defendants by Respondent and PW&W and other co-counsel of Respondent while Complainant was a general partner of Respondent, but will not be paid by such defendants until 1992 or 1993 as provided in the various final settlement agreements. The amount of fully earned, but uncollected fees of Respondent with respect to these matters are unknown by Complainant, but, under the Partnership Agreement, Complainant is entitled to 6/91's of the undivided profits of Respondent with respect to such fees when all or any such fees are received by Respondent.

19. In addition, Respondent made what was essentially "bonus offer" to its attorneys to handle and work up case submitted to the Manville Trust for settlement. Of the asbestos cases settled by Respondent, Complainant handled approximately 11 client files. As shown on Exhibit H, attached, Complainant is entitled to receive 10% of Respondent's net (after deducting the share of PW&W) fees.

20. Respondent has refused to abide by the terms of the Partnership Agreement and the "bonus offer," described in paragraph 19.

Accordingly, Complainant asks that this Court (i) order Respondent to render Complainant an accounting to establish the amount of Complainant's capital account and undivided profit account (ii) grant Complainant judgment for any unpaid amount on his capital account and undivided profits account (iii) grant Complainant judgment for any amounts due him as additional compensation under Item A of Article XIX of the Partnership Agreement (iv) construe the Partnership Agreement and declare that Complainant is entitled to 6/91's of the undivided profits of Respondent with respect to uncollected fees resulting from the final, non-appealable, existing Consent Judgment Orders and final settlements with the Manville Trust and with other asbestos defendants and, in addition, the 10% bonus for the 110 asbestos



cases handled by Complainant (v) grant such further relief as equity requires and (vi) grant Complainant judgment for his costs.

  
Stephen Wainger



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boc.fts

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

GLASSER AND GLASSER,

Plaintiff,

v.

STEPHEN WAINGER,

SERVE: 7342 Ruthven Road  
Norfolk, VA 23505

Defendant.

At Law No. L 92-2021

MOTION FOR DECLARATORY JUDGMENT

Plaintiff Glasser and Glasser, a Virginia professional partnership, by counsel, for its Motion for Declaratory Judgment states:

Nature of the Action

1. This is an action seeking a declaratory judgment pursuant to Virginia Code § 8.01-184. Its purpose is to seek the adjudication of the withdrawal rights of Stephen Wainger, a partner in the law firm of Glasser and Glasser from January 1, 1990, until, at the latest, January 21, 1992.

2. A present actual controversy exists between the parties concerning the amount that Wainger is entitled to be paid as a withdrawing partner.

3. Each of the following Counts is stated in the alternative pursuant to Rule 1:4(k) of the Virginia Supreme Court.

### The Parties and Venue

4. Plaintiff Glasser and Glasser is a general partnership formed and existing under the laws of the Commonwealth of Virginia.

5. Defendant Stephen Wainger ("Wainger") is an individual who formerly practiced law with Glasser and Glasser as an associate and a partner in the firm.

6. On January 1, 1990, Wainger became a partner of Glasser and Glasser. Less than two years later, on December 12, 1991, Wainger voluntarily gave notice of his withdrawal from Glasser and Glasser.

7. Venue is appropriate in this Court because the cause of action arose in the City of Norfolk.

### Count I

8. Paragraphs 1-7 are incorporated herein by reference.

9. On or about December 20, 1984, the partners of Glasser and Glasser executed a partnership agreement ("the Partnership Agreement"). A copy of the Partnership Agreement is attached as Exhibit 1.

10. On January 1, 1990, Wainger became a partner of Glasser and Glasser subject to the terms of the Partnership Agreement. See Sworn Statement of John T. Midgett (Exhibit 2 at 3).

11. Prior to September 27, 1990, the Partnership Agreement was amended by agreement of all the partners. The amendments to the Partnership Agreement were memorialized in the Withdrawal Agreement of John T. Midgett ("Withdrawal Agreement"),



which Wainger executed on September 27, 1990. A copy of the Withdrawal Agreement is attached as Exhibit 3.

12. On December 12, 1991, Wainger gave notice of his intention to withdraw from Glasser and Glasser. It is not presently known when Wainger agreed to join the law firm of Huff, Poole and Mahoney, but Wainger voluntarily withdrew from Glasser and Glasser on January 21, 1992.

13. Article IX of the Partnership Agreement sets forth the exclusive basis for calculating a withdrawing partner's interest in the partnership. The withdrawing partner's interest, calculated as of the date of his withdrawal, is composed of:

Item A. Any unpaid monthly draw, and additional compensation (as described in Paragraph 3 of Section B, Article IV).

Item B. His Capital Account.

Item C. His Undivided Profits Account, plus his share, if any, of any undivided profits of the firm with respect to uncollected fees which were fully earned by the firm prior to the date of his death or the effective date of his retirement, withdrawal or expulsion, but which fees are received by the firm subsequent to such date.

Partnership Agreement at 21 (emphasis is in original).

14. The amount of Wainger's pro-rata monthly draw for January, 1992, figured as of January 21, 1992, was \$4,326.50, and was paid to Wainger on January 21, 1992.

15. The amount of Wainger's additional compensation (as described in Paragraph 3 of Section B, Article IV) earned as of January 21, 1992, was \$2,871.25 and was paid to Wainger on January 21, 1992.

16. Wainger's capital account, calculated as of January 21, 1992, was \$63,066.01.

17. The amount in Wainger's Undivided Profits Account, plus his share of profits of Glasser and Glasser in fees which were fully earned prior to January 21, 1992, before allocation of overhead, was \$8,717.17.

18. In 1990, Glasser and Glasser obtained judgments on behalf of certain clients against the Manville Corp. Asbestos Disease Compensation Fund ("the Manville Trust cases").

19. Glasser and Glasser is handling the Manville Trust cases on a contingent fee basis and, pursuant to a written agreement with each client, will not receive a fee unless and until the proceeds of any judgment or settlement are actually collected.

20. Glasser and Glasser has not made any recovery and has not received any fees in the Manville Trust cases, as these cases remain subject to ongoing litigation.

21. The uncollected fees for the Manville Trust cases were not fully earned by Glasser and Glasser prior to Wainger's voluntary withdrawal on or before January 21, 1992.

22. Nevertheless, Wainger is claiming the right to share in any fees that may be received in the future in these Manville Trust cases.

WHEREFORE, Glasser and Glasser asks the Court to enter an Order declaring that Wainger is entitled to no more than \$71,783.18, subject to credits for amounts hereafter paid to Wainger by Glasser and Glasser and/or owing to Glasser and Glasser by Wainger, and ruling that Wainger is not entitled to any fees that may be received in the Manville Trust cases or any other fees not fully earned by Glasser and Glasser on or prior to Wainger's voluntary withdrawal.

## Count II

23. Paragraphs 1-22 are incorporated herein by reference.

24. On September 27, 1990, Wainger executed the Withdrawal Agreement of John T. Midgett, a former partner of Glasser and Glasser. A copy of the Withdrawal Agreement is attached hereto as Exhibit 3.

25. The Withdrawal Agreement states that Wainger's annual maximum draw from the partnership for 1990 was \$72,000.00. See Withdrawal Agreement ¶ C. Wainger received from Glasser and Glasser more than his annual maximum draw for 1990, as stated in the Withdrawal Agreement.

26. The Withdrawal Agreement provides that each partner's maximum annual draw "shall be increased on an annual cumulative basis by an amount equal to one-half (1/2) of each partner's prior fiscal year fee production (as a direct result of business originated by such partner from non-firm clients)." Withdrawal Agreement ¶ B(1). Wainger received from Glasser and Glasser more than his annual maximum draw for 1991, as computed under the Withdrawal Agreement.

27. Glasser and Glasser has paid Wainger more than his agreed annual maximum draws for 1990 and 1991, for a total overpayment of \$188,580.10 (exclusive of overhead).

28. Wainger has no unpaid interest in the profits of Glasser and Glasser.

WHEREFORE, Glasser and Glasser asks this Court to enter an Order declaring that Glasser and Glasser is entitled to judgment against Wainger in such sum as Glasser and Glasser paid to Wainger in excess of the amounts it was legally obligated to pay and that Wainger has no unpaid interest in the profits of Glasser and Glasser.



### Count III

29. Paragraphs 1-29 are incorporated herein by reference.

30. Article IV, Section B, paragraph 2 of the Partnership Agreement imposes a cap on the maximum annual draw and share of the firm's net profits payable to certain specified partners. See Partnership Agreement at 8. Wainger agreed to this limitation upon earnings when he became a partner in 1990. See Withdrawal Agreement ¶¶ B(1) and C; see also Sworn Statement of John T. Midgett (Exhibit 2); Sworn Statement of Ronald F. Schmidt (Exhibit 4).

31. Prior to the formation of the Partnership in December 1984, Richard Glasser represented numerous plaintiffs in asbestos product liability litigation against the Manville Corporation. On August 26, 1982, the Manville Corporation filed a Voluntary Petition in Bankruptcy and, thereafter, Glasser's clients were enjoined from prosecuting any judgments or claims against the Manville Corporation. When the Partnership was formed in December 1984, Richard Glasser agreed that specified partners could share in any fees in pending and future asbestos product liability cases against the Manville Corporation if they were partners when such fees were fully earned and collected, up to the amount of each partner's then existing annual maximum draw. Cf. Sworn Statement of John T. Midgett (Exhibit 2). Sworn Statement of Ronald F. Schmidt (Exhibit 4).

32. Even if the fees in each Manville Trust case were fully earned when judgment was entered in 1990, as Wainger apparently contends, Wainger's share of these fees would be subject to his annual maximum draw and share of the firm's net profits for 1990, as set forth in the Partnership Agreement, as amended.

33. Wainger actually received \$239,335.12 of the firm's 1990 net profits.

WHEREFORE, Glasser and Glasser asks this Court for entry of an Order declaring that, even if fees from the Manville Trust cases were fully earned in 1990, the cap on Wainger's 1990 annual maximum draw and share of the firm's profits limits the extent of Wainger's entitlement to these fees, if and when received, and any other uncollected fees that Glasser and Glasser fully earned (before allocation of overhead) as of the date of Wainger's voluntary withdrawal.

GLASSER AND GLASSER

By   
Of Counsel

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Counsel

T:\KRM\GLASSER\MotDeclaJdg

VIRGINIA: CIRCUIT COURT FOR THE CITY OF NORFOLK

STEPHEN WAINGER,	)	
	)	
Complainant,	)	
	)	CHANCERY NO. C92-1166
v.	)	
	)	
GLASSER AND GLASSER,	)	
A General Partnership,	)	
	)	
Respondent.	)	

**ANSWER AND CROSS-BILL OF GLASSER AND GLASSER**

Glasser and Glasser, by counsel, for its Answer and Cross-bill to Complainant Stephen Wainger's (hereinafter "Wainger") Bill of Complaint for Declaratory Judgment and Other Relief (hereinafter "Bill for declaratory Relief") states as follows:

**ANSWER**

1. Glasser and Glasser admits the allegations in Paragraph 1.
2. Glasser and Glasser admits the allegations in Paragraph 2.
3. Glasser and Glasser admits that Wainger became a partner of Glasser and Glasser on January 1, 1990, pursuant to the terms and conditions of the Partnership Agreement for the Law Firm of Glasser and Glasser, signed on December 20, 1984,<sup>1</sup> as subsequently amended by the Withdrawal Agreement of John T. Midgett from Partnership in the Law Firm of Glasser and Glasser, dated September 27, 1990.<sup>2</sup> Glasser and Glasser

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<sup>1</sup> A copy of said Agreement was previously filed herein as Exhibit A to Wainger's Bill for Declaratory Judgment.

<sup>2</sup> A copy of this Agreement was previously filed as Exhibit B to Wainger's Bill for Declaratory Judgment.



denies that Wainger continued to perform his duties and to fulfill his fiduciary obligations to the partnership of Glasser and Glasser up to and including January 21, 1992. On December 12, 1991, Wainger orally advised the partners of Glasser and Glasser of his intention to withdraw voluntarily from the partnership and further advised the partners that he had agreed to join the law firm of Huff, Poole & Mahoney, P.C. On January 13, 1992, the law firm of Huff, Poole & Mahoney, P.C., publicly announced, in the *Virginian Pilot*, that Wainger and another attorney ". . . have become members of the firm" (see copy of announcement, attached hereto as Exhibit 1).

4. Glasser and Glasser admits that the agreement which governed the relationship between Wainger and Glasser and Glasser from January 1, 1990 until at least December 12, 1991 (the date of Wainger's oral notification of his intention to withdraw voluntarily) was the Partnership Agreement for the Law Firm of Glasser and Glasser, as subsequently amended by the Withdrawal Agreement of John T. Midgett from Partnership in the Law Firm of Glasser and Glasser, dated September 27, 1990. Glasser and Glasser denies all remaining allegations.

5. Glasser and Glasser admits that, on November 14, 1991, Richard S. Glasser circulated to the then partners of Glasser and Glasser the "Notice of Partners' Meeting," together with a proposed amended partnership agreement (attached as Exhibit D to Wainger's Bill for Declaratory Judgment), which proposed amended partnership agreement was never approved nor executed by any partner. Glasser and Glasser admits that Exhibit D-1 attached to Wainger's Bill of Complaint reflects proposed modifications of Michael A. Glasser to Exhibit D (except as to any hand-written notations), which proposed modifications were never accepted. Glasser and Glasser denies all remaining allegations.

6. Glasser and Glasser denies the allegations in Paragraph 6 of the Bill of Complaint. Article XVIII of the Partnership Agreement, in its entirety, signed December 20, 1984, sets forth the procedure by which the Partnership Agreement may be amended.

7. Glasser and Glasser denies the allegations in Paragraph 7 (see Paragraph 6, above).

8. Glasser and Glasser denies the allegations in Paragraph 8. At the time the documents designated as Exhibit D to Wainger's Bill for Declaratory Judgment were circulated among the then partners of Glasser and Glasser, Richard S. Glasser was no longer seeking nor being considered for any judicial appointment.

9. Glasser and Glasser admits the allegations in Paragraph 9 relating to the age of Richard S. Glasser. The remaining allegations in Paragraph 9 which are not expressly admitted are denied and it is affirmatively alleged that the documents which comprise Exhibit D to Wainger's Bill for Declaratory Judgment were neither approved nor executed by any partner of Glasser and Glasser.

10. Glasser and Glasser denies the allegations in Paragraph 10.

11. Glasser and Glasser denies the allegations in Paragraph 11.

12. Glasser and Glasser admits it received a copy of the document designated as Exhibit E to Wainger's Bill for Declaratory Judgment on December 17, 1991, but denies the existence of any agreement that Wainger's withdrawal would or could be effective January 31, 1992.

13. Glasser and Glasser is without sufficient information to form a belief as to the truth of the allegations in Paragraph 13 concerning Wainger's alleged preparation of a proposed Withdrawal Agreement on January 21, 1992, and, therefore, Glasser and Glasser denies same and calls for strict proof thereof. Glasser and Glasser denies the remaining

allegations in Paragraph 13 to the extent that they are inconsistent with the document designated as Exhibit G to Wainger's Bill for Declaratory Judgment and further denies any inference from the allegations contained in Paragraph 13 that Wainger had fulfilled his duties as a partner to Glasser and Glasser up to and including January 21, 1992, as required by the Partnership Agreement, as amended.

14. Glasser and Glasser denies the allegations in Paragraph 14 to the extent they are inconsistent with the documents designated as Exhibits A and B to Wainger's Bill for Declaratory Judgment.

15. Glasser and Glasser denies the allegations in Paragraph 15.

16. Glasser and Glasser denies the allegations in Paragraph 16 and specifically denies that the alleged obligation exists.

17. Glasser and Glasser denies the allegations in Paragraph 17.

18. Glasser and Glasser denies the allegations in Paragraph 18.

19. Glasser and Glasser denies the allegations in Paragraph 19 that Wainger is entitled to any portion of any "bonus offer" which is alleged to be owing to Wainger. (See Sworn Statement of John T. Midgett, dated April 8, 1992 [attached hereto as Exhibit 2]; Sworn Statement of Ronald F. Schmidt, dated April 8, 1992 [attached hereto as Exhibit 3]; Sworn Statement of Stewart P. Oast, dated April 13, 1992 [attached hereto as Exhibit 4]; and Sworn Statement of Melanie C. Eyre, dated April 13, 1992 [attached hereto as Exhibit 5], copies of which have been provided previously to counsel for Wainger).

20. Glasser and Glasser denies the allegations in Paragraph 20.

21. Glasser and Glasser denies the allegations hereinabove not expressly admitted.



22. Wainger's claims for equitable relief are barred by the doctrine of unclean hands as a result of, among other things, his breach of fiduciary duty owed to Glasser and Glasser.

23. The legal work Wainger performed as a partner in connection with the cases for which he claims fees in this action was de minimis.

WHEREFORE, having fully answered, Glasser and Glasser asks that this action be dismissed and that it be awarded appropriate costs and fees.

### CROSS-BILL

Glasser and Glasser, for its cross-bill pursuant to Rule 2:13, states:

#### Nature of Cross-bill

1. This cross-bill is in the nature of a declaratory judgment action pursuant to Virginia Code § 8.01-184. Its purpose is to seek the adjudication of the withdrawal rights of Stephen Wainger, a partner in the law firm of Glasser and Glasser from January 1, 1990, until, at the latest, January 21, 1992.

2. A present actual controversy exists between the parties concerning the amount that Wainger is entitled to be paid as a withdrawing partner.

3. Each of the following Counts is stated in the alternative pursuant to Rule 1:4(k) of the Virginia Supreme Court.

#### The Parties and Venue

4. Plaintiff Glasser and Glasser is a general partnership formed and existing under the laws of the Commonwealth of Virginia.



5. Defendant Stephen Wainger ("Wainger") is an individual who formerly practiced law with Glasser and Glasser as an associate and a partner in the firm.

6. On January 1, 1990, Wainger became a partner of Glasser and Glasser. Less than two years later, on December 12, 1991, Wainger voluntarily gave notice of his withdrawal from Glasser and Glasser.

7. Venue is appropriate in this Court because the cause of action arose in the City of Norfolk.

### Count I

8. Paragraphs 1-7 are incorporated herein by reference.

9. On or about December 20, 1984, the partners of Glasser and Glasser executed a partnership agreement ("the Partnership Agreement"). A copy of the Partnership Agreement is attached to Wainger's Bill of Complaint as Exhibit A.

10. On January 1, 1990, Wainger became a partner of Glasser and Glasser subject to the terms of the Partnership Agreement.

11. Prior to September 27, 1990, the Partnership Agreement was amended by agreement of all the partners. The amendments to the Partnership Agreement were memorialized in the Withdrawal Agreement of John T. Midgett ("Withdrawal Agreement"), which Wainger executed on September 27, 1990. A copy of the Withdrawal Agreement is attached to Wainger's Bill of Complaint as Exhibit B.

12. On December 12, 1991, Wainger gave notice of his intention to withdraw from Glasser and Glasser. It is not presently known when Wainger agreed to join the law firm of Huff, Poole and Mahoney, but Wainger voluntarily withdrew from Glasser and Glasser on January 21, 1992.

13. Article IX of the Partnership Agreement sets forth the exclusive basis for calculating a withdrawing partner's interest in the partnership. The withdrawing partner's interest, calculated as of the date of his withdrawal, is composed of:

Item A. Any unpaid monthly draw, and additional compensation (as described in Paragraph 3 of Section B, Article IV).

Item B. His Capital Account.

Item C. His Undivided Profits Account, plus his share, if any, of any undivided profits of the firm with respect to uncollected fees which were fully earned by the firm prior to the date of his death or the effective date of his retirement, withdrawal or expulsion, but which fees are received by the firm subsequent to such date.

Partnership Agreement at 21 (emphasis is in original).

14. The amount of Wainger's pro-rata monthly draw for January, 1992, figured as of January 21, 1992, was \$4,326.50, and was paid to Wainger on January 21, 1992.

15. The amount of Wainger's additional compensation (as described in Paragraph 3 of Section B, Article IV) earned as of January 21, 1992, was \$2,871.25 and was paid to Wainger on January 21, 1992.

16. Wainger's capital account, calculated as of January 21, 1992, was \$63,066.01.

17. The amount in Wainger's Undivided Profits Account, plus his share of profits of Glasser and Glasser in fees which were fully earned prior to January 21, 1992, before allocation of overhead, was \$8,717.17.

18. In 1990, Glasser and Glasser obtained judgments on behalf of certain clients against the Manville Corp. Asbestos Disease Compensation Fund ("the Manville Trust cases").

19. Glasser and Glasser is handling the Manville Trust cases on a contingent fee basis and, pursuant to a written agreement with each client, will not receive a fee unless and until the proceeds of any judgment or settlement are actually collected.

20. Glasser and Glasser has not made any recovery and has not received any fees in the Manville Trust cases, as these cases remain subject to ongoing litigation.

21. The uncollected fees for the Manville Trust cases were not fully earned by Glasser and Glasser prior to Wainger's voluntary withdrawal on or before January 21, 1992.

22. Nevertheless, Wainger is claiming the right to share in any fees that may be received in the future in these Manville Trust cases.

WHEREFORE, Glasser and Glasser asks the Court to enter an Order declaring that Wainger is entitled to no more than \$71,783.18, subject to credits for amounts hereafter paid to Wainger by Glasser and Glasser and/or owing to Glasser and Glasser by Wainger, and ruling that Wainger is not entitled to any fees that may be received in the Manville Trust cases or any other fees not fully earned by Glasser and Glasser on or prior to Wainger's voluntary withdrawal.

## Count II

23. Paragraphs 1-22 are incorporated herein by reference.

24. On September 27, 1990, Wainger executed the Withdrawal Agreement of John T. Midgett, a former partner of Glasser and Glasser.

25. The Withdrawal Agreement states that Wainger's annual maximum draw from the partnership for 1990 was \$72,000.00. See Withdrawal Agreement ¶ C. Wainger received from Glasser and Glasser more than his annual maximum draw for 1990, as stated in the Withdrawal Agreement.



26. The Withdrawal Agreement provides that each partner's maximum annual draw "shall be increased on an annual cumulative basis by an amount equal to one-half (1/2) of each partner's prior fiscal year fee production (as a direct result of business originated by such partner from non-firm clients)." Withdrawal Agreement ¶ B(1). Wainger received from Glasser and Glasser more than his annual maximum draw for 1991, as computed under the Withdrawal Agreement.

27. Glasser and Glasser has paid Wainger more than his agreed annual maximum draws for 1990 and 1991, for a total overpayment of \$188,580.10 (exclusive of overhead).

28. Wainger has no unpaid interest in the profits of Glasser and Glasser.

WHEREFORE, Glasser and Glasser asks this Court to enter an Order declaring that Glasser and Glasser is entitled to judgment against Wainger in such sum as Glasser and Glasser paid to Wainger in excess of the amounts it was legally obligated to pay and that Wainger has no unpaid interest in the profits of Glasser and Glasser.

### Count III

29. Paragraphs 1-28 are incorporated herein by reference.

30. Article IV, Section B, paragraph 2 of the Partnership Agreement imposes a cap on the maximum annual draw and share of the firm's net profits payable to certain specified partners. See Partnership Agreement at 8. Wainger agreed to this limitation upon earnings when he became a partner in 1990.

31. Prior to the formation of the Partnership in December 1984, Richard Glasser represented numerous plaintiffs in asbestos product liability litigation against the Manville Corporation. On August 26, 1982, the Manville Corporation filed a Voluntary Petition in Bankruptcy and, thereafter, Glasser's clients were enjoined from prosecuting any judgments




or claims against the Manville Corporation. When the Partnership was formed in December 1984, Richard Glasser agreed that specified partners could share in any fees in pending and future asbestos product liability cases against the Manville Corporation if they were partners when such fees were fully earned and collected, up to the amount of each partner's then existing annual maximum draw.

32. Even if the fees in each Manville Trust case were fully earned when judgment was entered in 1990, as Wainger apparently contends, Wainger's share of these fees would be subject to his annual maximum draw and share of the firm's net profits for 1990, as set forth in the Partnership Agreement, as amended.

33. Wainger actually received \$239,335.12 of the firm's 1990 net profits.

WHEREFORE, Glasser and Glasser asks this Court for entry of an Order declaring that, even if fees from the Manville Trust cases were fully earned in 1990, the cap on Wainger's 1990 annual maximum draw and share of the firm's profits limits the extent of Wainger's entitlement to these fees, if and when received, and any other uncollected fees that Glasser and Glasser fully earned (before allocation of overhead) as of the date of Wainger's voluntary withdrawal.

GLASSER AND GLASSER

By: 

Gregory N. Stillman  
Benjamin V. Madison  
K. Reed Mayo  
HUNTON & WILLIAMS  
Post Office Box 3889  
Norfolk, Virginia 23514  
(804) 625-5501  
Counsel

## CERTIFICATE OF SERVICE

I hereby certify that on this \_\_\_\_\_ day of July, 1992, a true copy of the foregoing

ANSWER AND CROSS-BILL OF GLASSER AND GLASSER was hand-delivered to:

**-Donald H. Clark, Esquire  
Clark & Stant, P.C.  
900 Sovran Bank Building  
One Columbus Center  
Virginia Beach, VA 23462**

Chaitin G.J. / m2

T:\Glasser\AnswerCr.Bil

THE LAW FIRM  
OF

*Huff Poole  
& Mahoney PC*

TAKES PLEASURE IN ANNOUNCING THAT

STEPHEN WAINGER

KEVIN B. RACK

HAVE BECOME MEMBERS OF THE FIRM  
AND THAT

MICHELLE ReDAVID RACK

THE HONORABLE ROBERT F. McDONNELL

GREGORY R. McCRACKEN

HAVE BECOME ASSOCIATED WITH THE FIRM

JANUARY 1992

HUFF, POOLE & MAHONEY BUILDING  
4705 COLUMBUS STREET  
VIRGINIA BEACH, VIRGINIA 23462

TELEPHONE 804/499-1841  
PENINSULA 804/877-9730  
FACSIMILE 804/499-1246  
REAL ESTATE FAX 499-5593

**CONFIDENTIAL**

SWORN STATEMENT OF JOHN T. MIDGETT

Norfolk, Virginia

April 8, 1992

Appearances:

HUNTON & WILLIAMS

By: GREGORY N. STILLMAN, ESQUIRE  
Counsel for Glasser & Glasser

Also present:

Richard S. Glasser, Esquire  
Michael A. Glasser, Esquire  
Ronald F. Schmidt, Esquire



Sworn statement of JOHN T. MIDGETT, given before Kathryne Pope Martin, RPR, a Notary Public for the Commonwealth of Virginia at large, commencing at 1:10 p.m. on April 8, 1992, at the law offices of Glasser & Glasser, 600 Dominion Bank Tower, Norfolk, Virginia.

- - - - -

JOHN T. MIDGETT was sworn and stated as follows:

BY MR. STILLMAN:

Q. Would you state your full name.

A. Yes. It is John Thomas Midgett.

Q. And where do you currently reside?

A. In the City of Virginia Beach, Virginia.

Q. And where do you currently work?

A. I am a partner with the law firm of Crenshaw, Ware & Martin in Norfolk, Virginia.

Q. Prior to that, were you a partner with Glasser and Glasser?

A. Yes.

Q. During what time?

A. I began as a partner on January 1, 1985, and continued as such until my withdrawal from the firm on September 30, 1990.

Q. I'm going to show you a document that we have marked as Schmidt Exhibit No. 1, and ask you to

1 identify it for me.

2 A. This appears to be a copy of the partnership  
3 agreement for the law firm of Glasser and Glasser.

4 Q. Are you a signatory to that document?

5 A. Yes, I am.

6 Q. Now, was that the partnership agreement  
7 under which you operated when you were a partner at  
8 Glasser and Glasser?

9 A. Yes, with some later revisions to clarify  
10 certain points.

11 Q. During the time that you were a partner with  
12 Glasser and Glasser, was Steve Wainger employed by the  
13 firm?

14 A. Yes, he was.

15 Q. In what capacity?

16 A. Steve began with us initially as an  
17 associate and was later made a partner.

18 Q. Do you recall when he was made a partner?

19 A. I believe he was made a partner effective  
20 January 1, 1990.

21 Q. And would he have been subject to the  
22 partnership agreement that we have identified as Schmidt  
23 Exhibit No. 1?

24 A. It was the understanding of all concerned  
25 that he would be subject to this agreement, even though

1 his signature does not appear on the copy that you have  
2 shown me.

3 Q. Now, during the time that Mr. Wainger was a  
4 partner, did you have any management responsibilities with  
5 the firm?

6 A. Yes, I did.

7 Q. What were those?

8 A. My position with the firm was managing  
9 partner. My primary responsibilities in that capacity  
10 were to oversee the books, the accounting process, the  
11 processing of fees and expenses, and the general financial  
12 management of the firm.

13 (Ronald F. Schmidt left the room)

14 BY MR. STILLMAN:

15 Q. Were you familiar with Mr. Wainger's  
16 compensation arrangement with the law firm?

17 A. Yes, I was.

18 Q. During the tenure that -- the time, rather,  
19 that Mr. Wainger was with the firm as a partner, was his  
20 income subjected to any kind of cap?

21 A. Yes.

22 Q. Could you explain to me how that worked.

23 A. The cap was a financial figure which was set  
24 in the partnership agreement above which no earnings could  
25 rise. One of the modifications that I referred to earlier

1 dealt with the ability to raise that cap or ceiling by  
2 bringing in additional income to the firm and having a  
3 portion of that added to the cap to raise the amount of  
4 earning potential.

5 Q. Now, during the time that you were employed  
6 as a partner with Glasser and Glasser, was Mr. Wainger  
7 always subjected to that cap?

8 A. Yes.

9 Q. Were you subjected to that cap?

10 A. Yes.

11 Q. Were all of the partners subjected to that  
12 cap?

13 A. No.

14 Q. Who was that not --

15 A. Michael Glasser and Richard Glasser were the  
16 only partners exempted from the cap requirement.

17 Q. Now, during your tenure with the firm were  
18 you familiar with litigation that the firm had ongoing  
19 against Johns-Manville?

20 A. Yes.

21 Q. Are you familiar with certain judgments that  
22 the firm obtained on behalf of clients against the  
23 Johns-Manville Corporation?

24 A. Yes.

25 Q. To your knowledge, while you were employed



1 by Glasser and Glasser, indeed, to the extent you know  
2 today, were any of those judgments ever collected?

3 A. To my knowledge, they were never collected  
4 during my time as a partner with Glasser and Glasser, and  
5 I have no information as to whether they have been  
6 collected to this date.

7 Q. Do you know why they weren't collected when  
8 you were a partner?

9 A. There were several reasons that I was aware  
10 of. First, there was a stay or injunction placed by Judge  
11 Weinstein on the payment of those funds, and there has  
12 been a lack of funds on behalf of the Manville Trust with  
13 which to pay all of the claims that were presented to the  
14 trust. There may be other reasons, as well, that I'm not  
15 aware of.

16 Q. Are you aware of any appeal that's currently  
17 ongoing that will affect the payment -- could affect the  
18 payment of those judgments?

19 A. I have a recollection that there was an  
20 appeal filed that has stayed the collection of the  
21 judgments.

22 Q. Now, during your tenure as a partner and  
23 managing partner of Glasser and Glasser, did the firm  
24 carry on its books as receivables any judgment -- any  
25 judgments that had not been paid or billed?

1           A.       No. In my experience, the accounting system  
2 we employed was a cash-basis accounting system. That  
3 accounts receivable consisted only of matters for which we  
4 billed on an hourly basis or a flat fee or on a contract  
5 amount for which services had been fully performed and  
6 bills rendered. Those were the only accounts receivables  
7 that we carried.

8                   Any matter that we handled on a contingency  
9 basis, such as a personal injury action, or collection of  
10 accounts due to government entities or to other creditors,  
11 we never, during my tenure as a partner, carried on the  
12 books as an account receivable.

13           Q.       So during your tenure as a partner at  
14 Glasser and Glasser, then, none of the judgments obtained  
15 against the Johns-Manville trust were carried as a  
16 receivable?

17           A.       No.

18           Q.       And, indeed, would you characterize any of  
19 the potential fees that the firm might receive as a result  
20 of those judgments to have been fully earned?

21           A.       No.

22           Q.       Now, when you left Glasser and Glasser, did  
23 you, in fact, negotiate a separation agreement with the  
24 firm?

25           A.       I did.

1 Q. Did you, in fact, have any position with  
2 respect to your entitlement to participate in any fees  
3 earned as a result of those Johns-Manville judgments?

4 A. It was always my understanding, and my  
5 position, that I had no such entitlement to any fee that  
6 was not fully earned at the time of my departure.

7 Q. Was there any discussion in your separation  
8 agreement with the firm about your entitlement to  
9 participate in those judgments?

10 A. Yes, there was.

11 Q. Why was that the case, if, in fact, it was  
12 your understanding that you had no ability to participate  
13 in those in the first place?

14 A. Well, as with many legal documents, we  
15 clarify items over which there are no dispute to make sure  
16 that there is an accurate record that reflects the full  
17 agreement. I felt that that did not take away any right  
18 that I presently held, and, therefore, agreeing to such a  
19 statement was the legal equivalent of agreeing to the  
20 color of the carpet that was in the office, that it never  
21 changed the fact, but it was a memorial of what our  
22 understanding was.

23 Q. So you were not of the view that you were  
24 waiving anything?

25 A. Oh, I would not have waived anything to



1       which I felt I was entitled.

2               Q.       Who prepared that agreement?

3               A.       That agreement was prepared -- and I assume  
4       that you're speaking of the withdrawal agreement?

5               Q.       Yes.

6               A.       -- was prepared following a negotiation with  
7       the entire partners. It was prepared primarily by Seward  
8       Lawlor, and there were minor revisions made after further  
9       negotiation with me directly.

10              Q.       Has Mr. Wainger contacted you recently about  
11      your separation agreement with Glasser and Glasser?

12              A.       Yes.

13              Q.       What did he ask you about that agreement?

14              A.       He made several inquiries regarding the  
15      terms of my agreement to determine the extent of monies or  
16      types of items to which I felt I was entitled. I believe  
17      he made specific reference during the time to Manville  
18      cases.

19              Q.       And what did you tell Mr. Wainger, if  
20      anything?

21              A.       My comments to him were that I recited my  
22      understanding, that if the money was not in, then we did  
23      not treat it as a fee or an account receivable, that we  
24      had always treated our fees on a cash basis, calendar  
25      year, and that to do otherwise would have opened us up to



1       tremendous income tax responsibility without the cash to  
2       pay them.

3               Q.       Now, when you were with Glasser and Glasser,  
4       did you participate in a meeting with all of the lawyers  
5       in the firm about shared responsibility for prosecuting  
6       and finalizing judgments against the Manville Trust?

7               A.       Yes.

8               Q.       Let me show you a document that we  
9       previously marked as Schmidt Exhibit No. 2, and ask you if  
10      you can identify that document?

11              A.       This appears to be the presentation that was  
12      prepared by Seward Lawlor to describe the compensation  
13      basis for undertaking this extraordinary duty to pursue  
14      compensation on behalf of our clients or potential  
15      clients.

16              Q.       Now, with respect, first of all, to the  
17      partners in the law firm, at the time that this meeting  
18      was held, was there ever any understanding that a  
19      partner's participation in finalizing and collecting  
20      Manville Trust judgments would affect his cap in any way?

21              A.       No.

22              Q.       So was it your understanding then that with  
23      respect to partners that the cap would remain in full  
24      force and effect, and notwithstanding anything that a  
25      partner might do to collect and effectuate a judgment

1 against Johns-Manville?

2 A. It was my understanding that the  
3 Johns-Manville fees and the bonus percentage was ten  
4 percent of the fee collected, that that would not raise  
5 the cap, although other compensation earned by the  
6 individual and brought forth to the partnership would  
7 raise the cap. This was distinctly carved out of the  
8 exception that would raise your earning capacity.

9 Q. Now, at the time of this meeting, was Mr.  
10 Wainger a partner or associate?

11 A. I believe that at the time of the meeting he  
12 was an associate.

13 Q. Look at the last page of the document, if  
14 you would, and on that last page, Mr. Lawlor has written  
15 that the attorney must be with office at settlement. Was  
16 that consistent with your recollection of the terms  
17 outlined to the associates?

18 A. Yes.

19 Q. So, in other words, for the attorneys to  
20 participate in this arrangement financially, it was your  
21 understanding that that associate would have to be  
22 employed by Glasser and Glasser at the time the settlement  
23 was, in fact, closed and consummated?

24 A. Yes.

25 Q. During the time while you were employed by

1 Glasser and Glasser, were any of these judgments ever  
2 closed or consummated?

3 A. Not to my knowledge.

4 Q. And so to your knowledge, at the time -- by  
5 the time that you left Glasser and Glasser, were any of  
6 the fees, potential fees, to be earned as a result of  
7 these judgments considered fully earned in your view?

8 A. I did not consider them fully earned.

9 MR. STILLMAN: Off the record.

10 (Discussion off the record)

11 MR. STILLMAN: Back on the record.

12 BY MR. STILLMAN:

13 Q. To your knowledge, Mr. Midgett, were any of  
14 these fees ever reflected on the books of Glasser and  
15 Glasser as a receivable of any kind?

16 A. No.

17 Q. And was that consistent with the firm's  
18 treatment of how it dealt with anticipated fees?

19 A. That was consistent with our longstanding  
20 accounting practices.

21 Q. So you weren't treating the Manville Trust  
22 judgments any differently than you would any other  
23 judgment, whether it be on behalf or against a railroad or  
24 any other client?

25 A. That's correct.

1 Q. Let me ask you this question, Mr. Midget:  
2 You know when the Manville judgments were entered?

3 A. It is my recollection that the judgments  
4 were entered between June and July of 1990, which was  
5 approximately two months prior to the scheduled trial  
6 date....

7 Q. Now, during 1990 was Mr. Wainger subject to  
8 the cap that we talked about earlier?

9 A. Yes.

10 Q. And there had been no separate agreement  
11 that would in any way avoid his income being capped?

12 A. No. I believe that not only was there an  
13 agreement that he would be subject to the cap, but each of  
14 his monthly distributions reflected the cap situation that  
15 his annual income, as reflected on his K-1 schedule, would  
16 have reflected the cap situation, and I am not aware of  
17 any objection made to those disbursements under that  
18 scenario.

19 MR. STILLMAN: Thank you very much.

20

21 (Whereupon, the proceedings were concluded)

22

23

24

25



1  
2  
3 John T. Midgett

4 JOHN T. MIDGETT

5  
6  
7  
8  
9 State of Virginia, to wit:

10  
11  
12  
13  
14  
15 Subscribed and sworn to before me at

16 Norfolk, Virginia this 10<sup>th</sup> day of April, 1992.

17  
18  
19  
20 Kathryn P. Martin

21 NOTARY PUBLIC

22  
23  
24 August 31, 1993

25 MY COMMISSION EXPIRES

42

1 COMMONWEALTH OF VIRGINIA AT LARGE, to wit:

2 I, Kathryne Pope Martin, RPR, a Notary  
3 Public for the Commonwealth of Virginia at large, of  
4 qualification in the Circuit Court of the City of  
5 Portsmouth, Virginia, and whose commission expires August  
6 31, 1993, do hereby certify that the within named witness,  
7 JOHN T. MIDGETT, appeared before me, at, Norfolk,  
8 Virginia, as hereinbefore set forth, and after being first  
9 duly sworn by me, thereupon stated upon his oath; that his  
10 statement was recorded in Stenotype by me and reduced to  
11 computer printout under my direction; and that the  
12 foregoing constitutes a true, accurate, and complete  
13 transcript of such statement.

14 I further certify that I am not related to  
15 nor otherwise associated with any counsel or party to this  
16 proceeding, nor otherwise interested in the event thereof.

17 Given under my hand and notarial seal this  
18 9th day of April, 1992, at Norfolk, Virginia.

19  
20  
21  
22 Kathryne P. Martin

23 Notary Public  
24  
25

**CONFIDENTIAL**

SWORN STATEMENT OF RONALD F. SCHMIDT

Norfolk, Virginia

April 8, 1992

Appearances:

HUNTON & WILLIAMS

By: GREGORY N. STILLMAN, ESQUIRE  
Counsel for Glasser & Glasser

Also present:

Richard S. Glasser, Esquire  
Michael A. Glasser, Esquire  
John T. Midgett, Esquire

1 Sworn statement of RONALD F. SCHMIDT, given  
2 before Kathryne Pope Martin, RPR, a Notary Public for the  
3 Commonwealth of Virginia at large, commencing at 12:45  
4 p.m. on April 8, 1992, at the law offices of Glasser &  
5 Glasser, 600 Dominion Bank Tower, Norfolk, Virginia.

6 - - - - -

7 RONALD F. SCHMIDT was sworn and stated as  
8 follows:

9 BY MR. STILLMAN:

10 Q. Mr. Schmidt, would you state your full  
11 name.

12 A. Ronald Frederick Schmidt.

13 Q. Where do you currently reside?

14 A. In the City of Virginia Beach.

15 Q. How are you presently employed?

16 A. I'm an attorney in solo practice.

17 Q. Prior to your employment in solo practice,  
18 how were you employed?

19 A. I was employed at the law firm of Glasser  
20 and Glasser in Norfolk.

21 Q. And were you ever a partner in that firm?

22 A. Yes, I was.

23 Q. During what years?

24 A. From January 1st, 1985, to June 30th, 1990.

25



1 (Schmidt Exhibit No. 1 was marked  
2 for identification)

3 BY MR. STILLMAN:

4 Q. I placed in front of you a copy of a  
5 document that we marked as Schmidt Exhibit No. 1. Can you  
6 identify that for me?

7 A. That is a copy of the partnership  
8 agreement.

9 Q. Was that the agreement that governed your  
10 partnership rights during the tenure that you were a  
11 partner in Glasser and Glasser?

12 A. Yes, it was. There were some amendments of  
13 inconsequential nature a couple years afterwards, but,  
14 yes.

15 Q. All right. Now, are you a signatory to that  
16 document?

17 A. Yes.

18 Q. During the time that you were a partner at  
19 Glasser and Glasser, was Steve Wainger a partner?

20 A. During the last several years, yes.

21 Q. Now, did Mr. Wainger sign this document?

22 A. No, he didn't.

23 Q. Now, since he had -- did not sign the  
24 document, why is it that you say that he was a partner  
25 operating pursuant to this agreement?

1           A.       Well, I believe that was the nature of the  
2       amendments that I mentioned.

3           Q.       All right. Now, you left Glasser and  
4       Glasser when?

5           A.       December 31st, 1990.

6           Q.       And at the time that you left, did you  
7       negotiate a satisfactory financial arrangement with the  
8       firm?

9           A.       Yes, I did.

10          Q.       Look, if you would, at Article 9 of the  
11       partnership agreement, which you should have there in  
12       front of you. Does Article 9 set forth what each partner  
13       is entitled to upon withdrawal from the firm?

14          A.       Yes, it does.

15          Q.       Look, if you would, at Item C. Item C  
16       provides that "His Undivided Profit Account, plus his  
17       share, if any, of any undivided profits of the firm with  
18       respect to uncollected fees which were fully earned by the  
19       firm prior to the date of his death or the effective date  
20       of his retirement, withdrawal or expulsion, but which fees  
21       are received by the firm subsequent to such date."

22                   Do you see that section?

23          A.       Yes.

24          Q.       What is your understanding about what was  
25       meant by fully earned?

1 A. Fully earned, to me, meant any money in  
2 hand, or any money in the nature of an account receivable.

3 Q. Now, were you familiar with a number of  
4 judgments that were obtained on behalf of clients by  
5 Glasser and Glasser against Johns-Manville?

6 A. Yes.

7 Q. Were you involved in those cases at all?

8 A. Yes, I worked on a number of those.

9 Q. When were those judgments obtained, over  
10 what period of time, generally?

11 A. In the 1991 time frame, I believe, or 1990  
12 time frame. Sorry.

13 MR. STILLMAN: Off the record.

14 (Discussion off the record)

15 MR. STILLMAN: Back on.

16 A. The original trial date was in September of  
17 1990, and the settlements were reached a couple months  
18 before that time.

19 BY MR. STILLMAN:

20 Q. Now, were any of those judgments ever paid?

21 A. Not to date, as far as I know.

22 Q. Why not?

23 A. Because the trust had not -- while they had  
24 been approved by the trust, the matter was under appeal,  
25 and is currently under appeal.

1 Q. By whom?

2 A. By individuals that were dissatisfied.

3 Q. You recall the nature of that  
4 dissatisfaction? Why were those judgments appealed,  
5 generally?

6 A. In part, it was thought to be a preference  
7 to certain claimants.

8 Q. Under the bankruptcy laws?

9 A. Yes.

10 Q. Now, while you were a partner with the firm,  
11 up to the time that you left, were any of those matters  
12 ever carried as receivables on the books of Glasser and  
13 Glasser?

14 A. Not to my knowledge.

15 Q. And was that consistent with the practice of  
16 Glasser and Glasser with respect to how to treat money  
17 judgments that had been obtained but not yet paid?

18 A. Yes.

19 Q. Did Mr. Wainger have any involvement in any  
20 of those cases?

21 A. Yes. He had primary responsibility for a  
22 number of them.

23 Q. And did he, in fact, negotiate any of the  
24 settlements?

25 A. I don't think he was directly involved in



1 the negotiations, no. That was done by Richard Glasser  
2 and Seward Lawlor.

3 Q. Now, to your knowledge, are those judgments  
4 still on appeal?

5 A. Yes.

6 Q. Now, while you were a partner in the firm of  
7 Glasser and Glasser, was your income, or the amount of  
8 income that was available for distribution to you, subject  
9 to any kind of a cap?

10 A. Yes, it was.

11 Q. Tell me how that was calculated, or how that  
12 cap operated?

13 A. That was a fixed amount which was different  
14 at one point for different partners, and that was the  
15 maximum amount of income you could receive in any given  
16 year. To the extent that you brought in income, that cap  
17 could be raised.

18 Q. But the cap was established at the beginning  
19 of the year?

20 A. Yes. The original cap was set forth, I  
21 believe, in the partnership agreement.

22 Q. Now, who was subject to that cap, do you  
23 recall?

24 A. All partners, except for Richard Glasser and  
25 Michael Glasser, were subject to the cap.

1 Q. So when you were here, Steve Wainger was  
2 subject to the cap?

3 A. Yes.

4 MR. STILLMAN: Off the record.

5 (Discussion off the record)

6 MR. STILLMAN: Back on the record.

7 BY MR. STILLMAN:

8 Q. At the time, Mr. Schmidt, of your withdrawal  
9 from the firm, did you have any understanding with respect  
10 to your right to participate in any fees earned from  
11 judgments collected against the Manville Trust?

12 A. It was my understanding I had absolutely no  
13 rights in that area.

14 Q. Why is that?

15 A. Because those were not fully earned at that  
16 point.

17 Q. And was it your understanding that the fees  
18 that were to be collected from those judgments, if any,  
19 were treated as receivables by Glasser and Glasser?

20 A. They were never receivables, because they  
21 were never certain that -- to be received, and the matter  
22 is still on appeal.

23 Q. And was the treatment of those potential  
24 fees identical to every other matter that was handled by  
25 Glasser and Glasser? Was that treated differently than

1 any other potential fee that the firm might receive?

2 A. No, no.

3 MR. STILLMAN: Off the record.

4 (Discussion off the record)

5 MR. STILLMAN: Back on the record.

6 BY MR. STILLMAN:

7 Q. Mr. Schmidt, do you recall a meeting with  
8 the firm Glasser and Glasser partners and associates  
9 regarding everyone's possible participation in the  
10 Manville Trust cases?

11 A. Yes, I do.

12 Q. What was the purpose of that meeting?

13 A. There had been an article in the newspaper  
14 regarding a deadline in, I believe, February, perhaps  
15 February 28th of 1989, and as a result of that we were  
16 getting a lot of calls. Plus Seward Lawlor had gone  
17 through the closed files to see whether there were any  
18 matters that might be suitable for filing with Manville.  
19 And so there was an enormous number of potential new  
20 clients in the asbestos section of the law firm. We  
21 couldn't handle it. So we needed the help of all of the  
22 partners and associates at that point.

23 Q. Just for the record, tell me who the  
24 asbestos section was?

25 A. Richard Glasser, Seward Lawlor and myself,

1 and Steve basically was a member of that section, although  
2 he had some outside other things he worked on.

3 Q. Now, at this meeting, was there any  
4 discussion between the partners and the associates about  
5 ways that the associates might participate financially in  
6 those settlements?

7 A. Yes, there were.

8 Q. Tell me about them, what you recall?

9 A. Well, according to the -- to what was  
10 discussed in the meeting, was that associates would get 10  
11 percent of the Manville fee if it were fully earned at the  
12 point in time when they left the -- if they were still  
13 with the law firm at the point in time when it was fully  
14 earned.

15 Q. What would happen if they were not with the  
16 law firm at the time that the fee was fully earned?

17 A. They wouldn't have any entitlement at all.

18 Q. Now, at that time was Mr. Wainger  
19 specifically assigned certain cases to work on?

20 A. At or about that time he was, yes.

21 Q. Do you know if he, in fact, worked on all of  
22 them?

23 A. As far as I know he did.

24 Q. Would you know one way or the other? Did  
25 you supervise his work, or did anyone supervise his work?



1           A.       I didn't supervise his work, but I would be  
2 present during conversations on occasion where he would be  
3 -- he and I would be talking with Seward Lawlor, trying  
4 to determine details of filing particular cases. I can't  
5 say I attended such meetings for all of his cases, but as  
6 far as I know he did.

7           Q.       Am I correct in assuming that as of the time  
8 that you left Glasser and Glasser anyway, none of the fees  
9 on any of those cases, any you worked on pertaining to the  
10 Manville litigation, were ever collected or fully earned?

11          A.       No, they haven't been, had not been.

12               MR. STILLMAN: Off the record.

13               (Discussion off the record)

14               MR. STILLMAN: Back on.

15 BY MR. STILLMAN:

16          Q.       Mr. Schmidt, I placed in front of you  
17 another document that we will mark in a moment as Schmidt  
18 Exhibit No. 2. Tell me if you can identify that.

19          A.       Yes. This was a handout that Seward Lawlor  
20 prepared and I believe gave to everybody at the time of  
21 the meeting.

22          Q.       Is this writing in Mr. Lawlor's handwriting?

23          A.       Yes, it is.

24          Q.       What does it purport to outline?

25          A.       The nature of the agreement regarding how

1 fees from the Manville -- any money received from Manville  
2 would be handled.

3 Q. Now, at the time of this meeting, Mr.  
4 Wainger was an associate, wasn't he?

5 A. That is correct, and I think he was made a  
6 partner shortly before I left in January of '90, or a year  
7 before I left.

8 Q. Turn to the last page of this document, if  
9 you would. And you'll notice that in the middle of the  
10 page it says, For associates, one, one-time deal; two,  
11 does not apply to... Can you read that?

12 A. Raising cap.

13 Q. Three, attorney must be with office at time  
14 of settlement. Do you know what was meant with respect to  
15 the words "at time of settlement"?

16 A. What I understood it to mean was when money  
17 actually changed hands and money was received.

18 Q. I read it incorrectly. Actually the  
19 document reads "attorney must be with office at  
20 settlement."

21 A. Yes.

22 Q. Does this document accurately portray the  
23 arrangement that was proposed by the partnership to the  
24 associates with respect to the handling of the Manville  
25 cases?

1 A. Yes, it does.

2 MR. STILLMAN: Off the record.

3 (Discussion off the record)

4 MR. STILLMAN: Back on the record.

5 (Schmidt Exhibit No. 2 was marked

6 for identification)

7 BY MR. STILLMAN:

8 Q. Mr. Schmidt, does this document also  
9 characterize the arrangement that Glasser and Glasser had  
10 among its partners with respect to how these cases would  
11 be managed and compensated for?

12 A. Well, it does, except my recollection is  
13 that as the partners, the ten percent was integrated with  
14 their percentage share of ownership. In other words, if  
15 someone owns six percent of the partnership, they would be  
16 entitled to four percent of the fee, is my memory. But  
17 associates it was a straight 10 percent.

18 MR. STILLMAN: All right. I don't have  
19 anything else.

20  
21 (Whereupon, the proceeding was concluded)  
22  
23  
24  
25




RONALD F. SCHMIDT

State of Virginia, to wit:

Subscribed and sworn to before me at

Norfolk, Virginia this 13<sup>th</sup> day of April, 1992.



NOTARY PUBLIC

October 31, 1995.

MY COMMISSION EXPIRES

57



1 COMMONWEALTH OF VIRGINIA AT LARGE, to wit:

2 I, Kathryne Pope Martin, RPR, a Notary  
3 Public for the Commonwealth of Virginia at large, of  
4 qualification in the Circuit Court of the City of  
5 Portsmouth, Virginia, and whose commission expires August  
6 31, 1993, do hereby certify that the within named witness,  
7 RONALD F. SCHMIDT, appeared before me at Norfolk,  
8 Virginia, as hereinbefore set forth, and after being first  
9 duly sworn by me, thereupon stated upon his oath; that his  
10 statement was recorded in Stenotype by me and reduced to  
11 computer printout under my direction; and that the  
12 foregoing constitutes a true, accurate, and complete  
13 transcript of such statement.

14 I further certify that I am not related to  
15 nor otherwise associated with any counsel or party to this  
16 proceeding, nor otherwise interested in the event thereof.

17 Given under my hand and notarial seal this  
18 9th day of April, 1992, at Norfolk, Virginia.

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22 Notary Public  
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ERRATA SHEET

<u>PAGE</u>	<u>LINE</u>	<u>CORRECTION</u>
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CONFIDENTIAL

SWORN STATEMENT OF STEWART P. OAST

Norfolk, Virginia

April 13, 1992

CONFIDENTIAL

Appearances:

HUNTON & WILLIAMS

By: GREGORY N. STILLMAN, ESQUIRE

Counsel for Glasser and Glasser

Also present: Richard S. Glasser, Esquire  
Michael A. Glasser, Esquire

ORIGINAL

60

## I N D E X

WITNESS	EXAMINATION BY	PAGE
STEWART P. OAST	Mr. Stillman	3

## EXHIBITS

NO.	DESCRIPTION	PAGE
1	5 handwritten sheets	7



1 Sworn statement of STEWART P. OAST, before  
2 Juanita M. Harris, RPR, a Notary Public for the  
3 Commonwealth of Virginia at large, commencing at 12:35  
4 p.m., on April 13, 1992, at the law offices of Glasser and  
5 Glasser, 6th floor, Dominion Tower, Norfolk, Virginia.

6 - - - - -

7 STEWART P. OAST, was duly sworn and stated  
8 as follows:

9  
10 BY MR. STILLMAN:

11 Q. Would you state your full name, please.

12 A. Stewart Penny Oast.

13 Q. Okay. Where do you currently reside?

14 A. Norfolk.

15 Q. Where are you employed?

16 A. Heilig, McKenry, Fraim & Lollar.

17 Q. Prior to your employment by Heilig, McKenry,  
18 Fraim & Lollar, where did you work?

19 A. Glasser and Glasser.

20 Q. During what periods of time?

21 A. December 15th of 1986 until August 28th. It  
22 was end of August of 1990.

23 Q. Okay. What was your area of practice when  
24 you were employed by Glasser and Glasser? What sort of  
25 work did you do?

1           A.       Primarily collections.

2           Q.       Were you at all employed in the plaintiffs'

3 asbestos representation?

4           A.       I did some work there, but very little.

5           Q.       Do you recall being asked to assist the firm

6 with the consummation of a number of judgments to be

7 obtained against Johns-Manville Corporation?

8           A.       Yes, I do.

9           Q.       During what time period were you asked to

10 work on those matters?

11          A.       I believe that it began in late -- very late

12 '87 and continued on through the time that I left.

13          Q.       Now, I think you told me a moment ago that

14 that was not your normal area of practice.

15          A.       It wasn't.

16          Q.       Why were you being asked to assist with the

17 Johns-Manville matters?

18          A.       The volume of it was so huge that they were

19 -- all of the attorneys in the office were being asked to

20 help.

21          Q.       So everyone was asked to participate?

22          A.       Yes.

23          Q.       And that was true whether they were

24 associates or partners?

25          A.       Yes.

1 Q. Let me place in front of you a document that  
2 we previously identified today in another deposition, but  
3 we'll remark again as Penny Oast Deposition Exhibit No.  
4 1.

5 A. Okay.

6 Q. You ever seen that before?

7 A. Yes. I have.

8 Q. What is it?

9 A. This is, in Seward's handwriting, his  
10 breakdown or description of, I guess the best way to put  
11 it would be some sort of profit-sharing or sharing in the  
12 moneys should they ever come in from the Manville  
13 settlement.

14 Q. Okay. Was this an opportunity offered to  
15 the associates --

16 A. Yes.

17 Q. -- in the firm?

18 A. It was. It was something that didn't  
19 ordinarily happen and was put together specifically for  
20 Manville.

21 Q. Okay. Was it done to encourage the  
22 associates to work on these matters, to your knowledge?

23 A. Yes, it was.

24 Q. Look at the last page of that exhibit, if  
25 you would. On the last page you will see the words "For

1 associates" there?

2 A. Uh-huh.

3 Q. And you'll see there are three numbered  
4 paragraphs: "No. 1, one time deal; No. 2, does not apply  
5 to raising cap; No. 3, attorney must be with office at  
6 settlement."

7 A. Uh-huh.

8 Q. Were those three conditions consistent with  
9 your understanding of the arrangement?

10 A. Yes.

11 Q. So it's your understanding then in order for  
12 you to receive this 10 percent of the fee on these matters  
13 that you were working on, you had to be physically  
14 employed by -- present and employed by Glasser and Glasser  
15 at the time the settlement was consummated?

16 A. Yes. Seward came into my office. I don't  
17 know whether it was the day after he had worked this out  
18 with Richard or a couple of days later, but Seward came  
19 into my office specifically to talk with me about this  
20 because we'd had a previous discussion about the -- just  
21 the level of work with Manville, and at that time he went  
22 over this with me, and it was in that discussion that he  
23 explained to me that what this meant was if you're in the  
24 office, with the office, employed by Glasser and Glasser  
25 at the time the money comes in, you will get a part of it.



1 Q. Okay. Now, at the time that you left  
2 Glasser and Glasser -- on what date?

3 A. I think it was August 28th of '90.

4 Q. Okay. As of August 28th, 1990, had any of  
5 the fees from those Johns-Manville matters been earned?

6 A. No.

7 Q. Paragraph two of the memorandum says, "Does  
8 not apply to raising cap." What does that refer to?

9 A. To tell you the truth, I am not real sure as  
10 to that. I think that had to do with the raising of the  
11 cap on the settlements, whether there was an increase in  
12 the amount of money that could come in.

13 Q. Okay. But you didn't have a specific  
14 conversation about that?

15 A. Not regarding that part of it, no. Most of  
16 my conversation with Seward was regarding No. 3 and then  
17 also No. 1, because this was an unusual arrangement.

18 Q. Okay. I have no further questions. Thank  
19 you.

20 A. Okay.

21 (Oast Exhibit No. 1 was marked for  
22 identification.)

23 (Whereupon, the statement was concluded at  
24 12:40 p.m.)

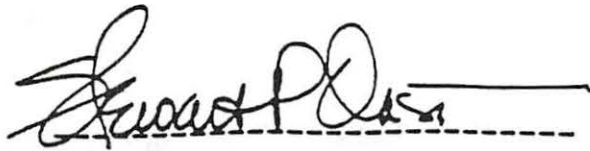
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ERRATA SHEET

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4 STEWART P. OAST

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9 State of Virginia, to wit:

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15 Subscribed and sworn to before me at  
16 this 14 day of April, 1992.

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21 NOTARY PUBLIC

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23 4-11-93  
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25 MY COMMISSION EXPIRES

1 COMMONWEALTH OF VIRGINIA AT LARGE, to wit:

2 I, Juanita M. Harris, RPR, a Notary Public  
3 for the Commonwealth of Virginia at large, of  
4 qualification in the Circuit Court of the City of Norfolk,  
5 Virginia, and whose commission expires April 30, 1994, do  
6 hereby certify that the within named witness, STEWART P.  
7 OAST, appeared before me, at, Norfolk, Virginia, as  
8 hereinbefore set forth, and after being first duly sworn  
9 by me, thereupon stated upon her oath; that her statement  
10 was recorded in Stenotype by me and reduced to computer  
11 printout under my direction; and that the foregoing  
12 constitutes a true, accurate, and complete transcript of  
13 such statement.

14 I further certify that I am not related to  
15 nor otherwise associated with any counsel or party to this  
16 proceeding, nor otherwise interested in the event thereof.

17 Given under my hand and notarial seal this  
18 14th day of April, 1992, at Norfolk, Virginia.

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21 Notary Public  
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8 SWORN STATEMENT OF MELANIE EYRE  
9

10 Norfolk, Virginia

11 April 13, 1992  
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15 **CONFIDENTIAL**  
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18 Appearances:

19 HUNTON & WILLIAMS

20 By: GREGORY N. STILLMAN, ESQUIRE

21 Counsel for Glasser and Glasser  
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23 Also present: Richard S. Glasser, Esquire  
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25 **CONFIDENTIAL**

**ORIGINAL**

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I N D E X

WITNESS	EXAMINATION BY	PAGE
MELANIE EYRE	Mr. Stillman	3

EXHIBITS

NO.	DESCRIPTION	PAGE
1	5 handwritten sheets	7

1 Sworn statement of MELANIE EYRE, taken  
2 before Juanita M. Harris, RPR, Notary Public for the  
3 Commonwealth of Virginia at large, commencing at 11:40  
4 a.m. on April 13, 1992, at the law offices of Glasser and  
5 Glasser, 6th floor, Dominion Tower, Norfolk, Virginia.

6 - - - - -

7 MELANIE EYRE, was duly sworn and stated, via  
8 telephone, as follows:

9  
10 BY MR. STILLMAN:

11 Q. Melanie, would you state your full name.

12 A. Melanie C. Eyre.

13 Q. Okay. Where are you presently employed,  
14 Melanie?

15 A. I'm employed at the law offices of Edward J.  
16 Walinsky in Falls Church, Virginia.

17 Q. Prior to working with Edward Walinsky, where  
18 did you work?

19 A. Glasser and Glasser in Norfolk.

20 Q. During what periods of time?

21 A. My employment began in August of '89 and  
22 terminated in November, early November of 1991.

23 Q. Could you describe your practice for me,  
24 briefly, while you were with Glasser and Glasser?

25 A. My practice at Glasser and Glasser

1 consisted, I would say 80 percent of plaintiff asbestos-  
2 related personal injury work as an associate. I did a  
3 very tiny percentage of criminal work for a short period  
4 of time, and I also did nonasbestos-related personal  
5 injury, from a plaintiff's perspective, and a little bit  
6 of insurance defense.

7 Q. Okay. During the time that you were  
8 employed by Glasser and Glasser as an associate do you  
9 recall discussing with any of the partners at Glasser and  
10 Glasser your desired participation in finalizing a number  
11 of judgments against Johns-Manville?

12 A. Yes.

13 Q. Do you have any recollection as to when that  
14 conversation or conversations would have occurred?  
15 Approximately.

16 A. I recollect that the conversations occurred  
17 at the beginning of the period in which we were filing  
18 numerous Manville cases. Let me think for a minute. I  
19 might be able to come up with a month when that was.

20 I really don't want to guess as to when it  
21 was, but if you look at the court records, that would  
22 reflect when we started filing Manville judgments. We did  
23 a number of them in a very short period of time. I would  
24 say that approximately a month to two months prior to that  
25 time we started discussing how we were going to go about



1 organizing those cases and filing those judgments. That's  
2 the period to which I refer.

3 Q. Were there a lot of them?

4 A. A lot of cases?

5 Q. Yes.

6 A. I recollect there were approximately 1,000  
7 cases.

8 Q. Is that why the firm was seeking the  
9 extraordinary participation of virtually everybody in the  
10 offices?

11 A. Yes. It was a huge job.

12 Q. Do you recall whether the partnership  
13 offered associates an unusual opportunity to participate  
14 in the earnings to be realized as a result of finalizing  
15 and collecting these Johns-Manville judgments?

16 A. Yes, I recollect that the partnership  
17 offered that we would be compensated 10 percent of the  
18 firm's fee for the cases which we individually managed.

19 Q. All right. And do you recall whether there  
20 was as a stipulation to receiving that compensation the  
21 understanding that you would have to be still employed  
22 with the firm at the time those fees were in fact  
23 received?

24 A. That was my understanding.

25 Q. Okay. So you had to be here on the date the

1 settlement was consummated and the check arrived in order  
2 for you to participate in that 10-percent fee arrangement?

3 A. Yes, it was my understanding you had to be  
4 employed by the firm at the time the money appeared.

5 Q. All right. Now, we've placed -- we've sent  
6 to you by a fax, because you're here on a telephone  
7 conference call, a document that I think you have in front  
8 of you. Do you have that in front of you?

9 A. Yes.

10 Q. For the record, I'm going to ask the court  
11 reporter when we finish to simply mark this as Eyre  
12 Deposition Exhibit No. 1, but let me ask you to tell me  
13 whether you've ever seen that document before.

14 A. I don't recollect receiving this document  
15 before.

16 Q. Now, turn, if you would, to the last page of  
17 the document, which I think you'll see says in the middle  
18 of the page: "For Associates, No. 1, one time deal; No.  
19 2, does not apply to raising cap; No. 3, attorney must be  
20 with office at settlement."

21 Do you see that?

22 A. Yes.

23 Q. All right. Are those arrangements down  
24 there for the associates consistent with your recollection  
25 of what occurred at the meeting wherein the participation

1 of the associates in collecting the Manville judgments was  
2 discussed?

3 A. This document is consistent with my  
4 understanding of the deal that was offered, yes. Again,  
5 I'm not sure if there were only associates at that  
6 meeting.

7 Q. Okay. So you're not certain as we speak  
8 today whether this arrangement was made available just to  
9 associates or associates and partners alike?

10 A. I'm not certain of that.

11 Q. Okay. But you know it was made available to  
12 associates?

13 A. Yes.

14 Q. Okay. I don't think I have anything else to  
15 ask you, Melanie. I appreciate it.

16 A. Okay.

17 Q. Thanks very much.

18 A. Thank you.

19 Q. What we're going to do, if it's all right  
20 with you, is to ask Juanita to perhaps Fed Ex to you a  
21 copy of this so that you can read it and sign it.

22 A. No problem. I'll be happy to do that.

23 MR. GLASSER: Or fax it, it's so short.

24 THE WITNESS: A fax will be fine, too.

25 (Discussion off the record)

1 (Eyre Exhibit No. 1 was marked for  
2 identification.)

3 (Whereupon, the statement was concluded at  
4 11:45 a.m.)



ERRATA SHEET

<u>PAGE</u>	<u>LINE</u>	<u>CORRECTION</u>
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1  
2  
3 M C Eyre  
4 MELANIE C. EYRE  
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6  
7  
8

9 State of Virginia, to wit:

10 At Large  
11  
12  
13  
14

15 Subscribed and sworn to before me at  
16 my jurisdiction this 14<sup>th</sup> day of April, 1992.  
17  
18  
19

20 Bernard Hiley  
21 NOTARY PUBLIC  
22  
23

24 6-19-92  
25 MY COMMISSION EXPIRES

1 COMMONWEALTH OF VIRGINIA AT LARGE, to wit:

2 I, Juanita M. Harris, RPR, a Notary Public  
3 for the Commonwealth of Virginia at large, of  
4 qualification in the Circuit Court of the City of Norfolk,  
5 Virginia, and whose commission expires April 30, 1994, do  
6 hereby certify that the within named witness, MELANIE C.  
7 EYRE, appeared before me, via telephone, as herainbefore  
8 set forth, and after being first duly sworn by me,  
9 thereupon stated upon her oath; that her statement was  
10 recorded in Stanotype by me and reduced to computer  
11 printout under my direction; and that the foregoing  
12 constitutes a true, accurate, and complete transcript of  
13 such statement.

14 I further certify that I am not related to  
15 nor otherwise associated with any counsel or party to this  
16 proceeding, nor otherwise interested in the event thereof.

17 Given under my hand and notarial seal this  
18 14th day of April, 1992, at Norfolk, Virginia.

19   
20 \_\_\_\_\_

21 Notary Public  
22  
23  
24  
25

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

GLASSER AND GLASSER,

Plaintiff,

v.

STEPHEN WAINGER,

Defendant.

:  
:  
:  
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:  
:  
:  
:  
:  
:

AT LAW NO.

L92-2021

ANSWER

Stephen Wainger ("Wainger") answers the Motion for Declaratory Judgment filed by Glasser and Glasser ("G&G"):

1. Wainger admits the allegations of paragraph 1.
2. Wainger admits the allegations of paragraph 2.
3. Paragraph 3 requires no response.
4. Wainger admits the allegations of paragraph 4.
5. Wainger admits the allegations of paragraph 5.
6. Wainger admits the allegations of paragraph 6.
7. Wainger admits the allegations of paragraph 7.

COUNT ONE

8. Wainger answers paragraph 8 as he answered paragraphs 1-7.

9. On information and belief, Wainger admits the allegations of paragraph 9.



10. With regard to paragraph 10, Wainger admits that he became a partner of G&G on January 1, 1990, and that, to his knowledge, the Partnership Agreement was the sole written partnership agreement of G&G. By so answering paragraph 10, Wainger does not admit any of the ex parte testimony in Exhibit 2. Further, he states affirmatively that certain substantive agreements reached between him and G&G, including, but not limited to, his units of participation, monthly draw, maximum draw, capital account, percentage of additional compensation, the amount of the cumulative non-firm business fee receipts previously generated by Wainger by which Wainger's maximum annual draw would be increased.

11. Wainger answers paragraph 11 by stating that on information and belief, in practice the Partnership Agreement was amended at times before September 27, 1990, but that not all amendments to the Partnership Agreement were memorialized in the Withdrawal Agreement. Wainger admits that Exhibit B is a copy of the Withdrawal Agreement.

12. Wainger admits the allegations of paragraph 12.

13. Wainger answers the allegations of paragraph 13 by stating that the Partnership Agreement speaks for itself.

14. On information and belief, Wainger admits the allegations of paragraph 14.

15. Wainger denies the allegations of paragraph 15. Wainger states affirmatively that G&G, since his withdrawal, has received

fees generated by Wainger from non-firm clients. He is entitled to a percentage of such fee receipts.

16. Wainger is without sufficient information to admit or deny the allegation of paragraph 16 and calls for strict proof.

17. Wainger denies the allegations of paragraph 17.

18. Wainger admits the allegations of paragraph 18.

19. Wainger answers paragraph 19 by stating that the written fee agreements speak for themselves.

20. Wainger answers the allegations of paragraph 20 by stating that, to his knowledge, G&G has not received any fees in the Manville Trust cases, but denies that the Manville Trust cases themselves remain subject to any ongoing litigation.

21. Wainger denies the allegations of paragraph 21 and affirmatively states that, as provided in the Partnership Agreement, fees for the Manville Trust cases have been fully earned by G&G and were fully earned by G&G before Wainger's voluntary withdrawal on January 21, 1992 and that Wainger's averment in this regard has been confirmed by Richard S. Glasser, a defendant in this matter and a partner of G&G.

22. Wainger answers the allegation of paragraph 22 by stating that, as a withdrawing partner of G&G, he has the right to share in the fees of the Manville Trust cases and in the fees of any other matters in which such fees were fully earned as of January 21, 1992 but not yet received by G&G.

ACCORDINGLY, Wainger asks the Court to enter an Order declaring his rights as a withdrawing partner of G&G, and awarding him judgment for his interest as a withdrawing partner of G&G subject to deductions for any amounts previously paid or afterwards paid by G&G to Wainger and including the adjudication that Wainger is entitled to his share of fees received by G&G in the Manville Trust cases and any other fees to which he may be entitled as a withdrawing partner of G&G.

COUNT TWO

23. Wainger answers paragraph 23 as he answered paragraphs 1-22.

24. Wainger admits the allegations of paragraph 24.

25. Wainger answers the first sentence of paragraph 25 by stating that the Withdrawal Agreement speaks for itself. Wainger denies that he received more compensation than he was entitled to from G&G.

26. Wainger answers the first sentence of paragraph 26 by stating the Withdrawal Agreement speaks for itself. With regard to the allegations of the second sentence of paragraph 26 Wainger denies he received more compensation than he was entitled to from G&G.

27. Wainger denies the allegation of paragraph 27.

28. Wainger denies the allegation of paragraph 28.

ACCORDINGLY, Wainger asks this Court to enter an order declaring that Wainger is entitled to judgment against G&G in all unpaid amounts to which he is entitled as a withdrawing partner of G&G.

### COUNT THREE

29. Wainger answers paragraph 29 as he answered paragraphs 1-28.

30. Wainger answers the allegations of paragraph 30 by stating that the Partnership Agreement and the Withdrawal Agreement speak for themselves.

31. Wainger answers the first sentence of paragraph 31 by stating that the partnership of G&G represented numerous plaintiffs in asbestos product liability litigation against the Manville Corporation. Wainger admits that the Manville Corporation filed a Voluntary Petition in Bankruptcy, on August 26, 1982. Wainger affirmatively states that thereafter G&G obtained judgments against the Manville Trust and that, following the entry of these judgments, the Manville Trust cases became subject to certain orders entered by Judge Weinstein of the United States District Court for the Eastern and Southern Districts of New York. Wainger has no knowledge of the allegation of the third sentence of paragraph 31 and states that the reference to a parol agreement of Richard Glasser is an attempt to vary the terms of the written documents and so objects to and denies the allegation.



32. Wainger answers the allegations of paragraph 32 by stating that, under the Partnership Agreement, the fees in each Manville Trust case were fully earned when judgment was entered in 1990, and denies the remainder of paragraph 32.

33. Wainger is without sufficient information to admit or deny the allegation of paragraph 33 and calls for strict proof. Wainger admits that his 1990 K-1 showed taxable compensation of \$239,335.12.

34. Wainger further denies any allegations in the Motion for Declaratory Judgment not expressly admitted.

ACCORDINGLY, Wainger asks this Court for the entry of an Order declaring his rights as a withdrawing partner of G&G and awarding him judgment against G&G for all unpaid amounts to which he is entitled as a withdrawing partner of G&G.

#### COUNTERCLAIM

Stephen Wainger files this Counterclaim against G&G.

1. Wainger is a resident of the City of Norfolk.
2. G&G is a Virginia general partnership, the general partners of which are, as of the filing of this action, Richard S. Glasser, Michael A. Glasser, H. Seward Lawlor, Melvin R. Zimm and William H. Monroe, Jr., with its principal place of business in the City of Norfolk.

3. From January 1, 1990 through January 21, 1992, Wainger was a general partner of G&G.

4. The agreement governing G&G is a certain "Partnership Agreement For The Law Firm of Glasser And Glasser," with an effective date of January 1, 1985 (copy attached as Exhibit A), as amended by a certain "Withdrawal Agreement of John T. Midgett From Partnership In The Law Firm Of Glasser And Glasser," dated September 27, 1990 (copy attached as Exhibit B with certain deletions made by Wainger for reasons of confidentiality (together, the "Partnership Agreement").

5. On November 14, 1991, Richard S. Glasser circulated to the then partners of G&G a certain "Notice of Partner's Meeting" (copy attached as Exhibit C with certain deletions made by Wainger for reasons of confidentiality), together with a proposed amended partnership agreement (copy attached as Exhibit D). The blacklined portions of Exhibit D reflect proposed changes to the Partnership Agreement and the handwritten notations reflect comments of Richard S. Glasser. Exhibit D-1, attached, reflects proposed modifications of Michael A. Glasser to Exhibit D.

6. The Partnership Agreement provided that it could be amended by a vote of the holders of at least two-thirds of the outstanding "Units of Participation," as defined in the Partnership Agreement.

7. At the time of the November 14, 1991 notice, there were 91 Units of Participation outstanding, 73 of which were held by Richard S. Glasser (48 2/3) and Michael A. Glasser (24 1/3) and six held by Wainger. Accordingly, Richard S. Glasser and Michael A.

Glasser held 80% of the outstanding Units of Participation and their affirmative vote would permit the amendment of the Partnership Agreement to the form of Exhibit D.

8. Before circulating Exhibit D, Richard S. Glasser had expressed the desire to leave G&G by seeking appointment as a judge of the United States District Court for the Eastern District of Virginia.

9. Richard S. Glasser would turn 50 within three weeks of his November 14, 1991 proposal to amend the Partnership Agreement to permit retirement from G&G at age 50 instead of age 60 (see page 25 of Exhibit D) which would result in significant financial benefit to Richard S. Glasser under Article IX, Item D, and Article XII of the Partnership Agreement.

10. The Partnership Agreement, if amended in the form of Exhibit D, would have substantially and materially adversely affected the rights of Wainger in that

a. Richard S. Glasser also proposed an amendment to Article IX reinforcing the fact that certain uncollected fees relating to the Manville Trust and other asbestos cases were fully earned by the firm and would be payable to a partner "who retires from the practice of law" (e.g. Richard S. Glasser), but would not be payable to an expelled partner or a withdrawing partner who wished to continue practicing law (see Exhibit D at page 22), whereas under the Partnership Agreement a withdrawing partner who

wished to continue the practice of law would be entitled to share in such fees; and

b. With Michael A. Glasser and Richard S. Glasser controlling 80% of the Units of Participation, and with the proposed changes to the Partnership Agreement in the form of Exhibit D, Michael A. Glasser and Richard S. Glasser could have expelled all other partners of G&G without cause and, because of the proposed changes to Article IX, no "expelled" partner, who wished to continue the practice of law, would have retained his right to share in the undivided profits of G&G with respect to uncollected fees relating to the Manville Trust, as defined in Exhibit D, and other matters.

11. Faced with the certainty that Richard S. Glasser and Michael A. Glasser would vote their Units of Participation to amend the Partnership Agreement in substantially the form of Exhibit D, Wainger decided to withdraw as a partner of G&G and preserve his right to share in the undivided profits of G&G with respect to fully earned uncollected fees from the Manville Trust and other asbestos cases.

12. By memorandum dated December 17, 1991 (copy attached as Exhibit E), Wainger confirmed his notification to G&G that he would withdraw from G&G effective January 31, 1992.

13. On January 21, 1992, Wainger prepared a proposed withdrawal agreement (copy attached as Exhibit F). By letter dated January 21, 1992 (copy attached as Exhibit G), Richard S.



Glasser confirmed Wainger's withdrawal, effective January 21, 1992, and recognized certain "material differences" between Wainger and G&G regarding Wainger's vested rights under the Partnership Agreement.

14. In pertinent part, Article IX of the Partnership Agreement entitled "Payment For Partner's Interest" provides:

The payment for a partner's interest in the partnership, calculated as of the date of his death, or the effective date of retirement, withdrawal or expulsion, will be on the following basis:

Item A. Any unpaid monthly draw, and additional compensation (as described in Paragraph 3 of Section B, Article IV).

Item B. His Capital Account.

Item C. His Undivided Profits Account, plus his share, if any, of any undivided profits of the firm with respect to uncollected fees which were fully earned by the firm prior to the date of his death or the effective date of his retirement, withdrawal or expulsion, but which fees are received by the firm subsequent to such date.

15. Despite the assurances in Exhibit G, G&G has failed, or refuses, to pay Wainger

- a. his Item A "additional compensation"
- b. the remaining balance of his Item B "Capital Account"
- c. his Item C "undivided profits account"

16. Moreover, G&G has refused to recognize its obligation to share with Wainger the "undivided profits of the firm with respect

to uncollected fees which were fully earned by the firm prior to the effective date" of Wainger's withdrawal from G&G.

17. Specifically, on information and belief, fully earned fees from settlements of approximately 1,110 asbestos cases now subject to the final, non-appealable, existing Consent Judgment Orders and settlements with the Manville Trust, described on page 22 of Exhibit D, approximate \$20,000,000. G&G and the Newport News firm of Patten, Wornom & Watkins ("PW&W") have an "arrangement" to share fees between G&G and PW&W in certain asbestos cases (1/3 of all G&G's fees go to PW&W and 1/3 of all PW&W's fees go to G&G). The total recovery against the Manville Trust is approximately \$62,000,000 of which approximately \$47,000,000 is attributable to G&G and approximately \$15,000,000 to PW&W. Attorney's fees of 1/3 of the total amount recovered are accordingly approximately \$15,666,666 attributable to G&G (of which PW&W will receive 1/3 or approximately \$5,222,222) and approximately \$5,000,000 attributable to PW&W (of which G&G will receive approximately \$1,666,666). G&G's total fees from the final, non-appealable, existing Consent Judgment Orders and the settlements with the Manville Trust will approximate \$12,111,111. Under Article IX such fees have been "fully earned," as confirmed by Richard S. Glasser's language included on page 22 of Exhibit D, and Wainger is entitled to his share of the undivided profits of G&G with respect to those fees, when received by G&G.

18. In addition to the uncollected fees relating to the Manville Trust, other final settlements were reached with other asbestos defendants by G&G and PW&W and other co-counsel of G&G while Wainger was a general partner of G&G, but will not be paid by such defendants until 1992 or 1993 as provided in the various final settlement agreements. The amount of fully earned, but uncollected fees of G&G with respect to these matters are unknown by Wainger, but, under the Partnership Agreement, Wainger is entitled to his share of the undivided profits of G&G with respect to such fees when all or any such fees are received by G&G.

19. In addition, G&G made what was essentially a "bonus offer" to its attorneys to handle and work up cases submitted to the Manville Trust for settlement. Of the asbestos cases settled by G&G, Wainger handled approximately 110 client files. As shown on Exhibit H, attached, Wainger is entitled to receive 10% of G&G's net (after deducting the share of PW&W) fees.

20. G&G has refused to abide by the terms of the Partnership Agreement and the "bonus offer," described in paragraph 19.

Accordingly, Wainger asks that this Court (i) order G&G to render Wainger an accounting to establish the amount of Wainger's capital account and undivided profits account (ii) grant Wainger judgment for any unpaid amount of his capital account and undivided profits account (iii) grant Wainger judgment for any amounts due him as additional compensation under Item A of Article XIX of the Partnership Agreement (iv) construe the Partnership Agreement and



declare that Wainger is entitled to his share of the undivided profits of G&G with respect to uncollected fees resulting from the final, non-appealable, existing Consent Judgment Orders and final settlements with the Manville Trust and with other asbestos defendants and, in addition, the 10% bonus for the 110 asbestos cases handled by Wainger (v) grant such further relief as equity requires and (vi) grant Wainger judgment for his costs.

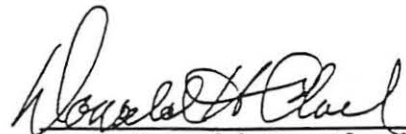
STEPHEN WAINGER

By   
Of Counsel

Donald H. Clark, Esquire  
VSB No. 004428  
CLARK & STANT, P.C.  
One Columbus Center, Suite 900  
Virginia Beach, Virginia 23462  
(804) 499-8800

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this pleading was mailed to Gregory N. Stillman, counsel for Glasser and Glasser, at Hunton & Williams, Post Office Box 3389, Norfolk, Virginia 23514, this 14 day of July, 1992.

  
Donald H. Clark

CLARK & STANT, P.C.  
ATTORNEYS  
VIRGINIA BEACH, VIRGINIA



VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

STEPHEN WAINGER,	:	
	:	
Complainant,	:	
	:	
v.	:	IN CHANCERY NO.
	:	
GLASSER AND GLASSER, a	:	C92-1166
general partnership	:	
	:	
Respondent.	:	

ANSWER TO CROSS-BILL

Stephen Wainger ("Wainger"), by counsel, answers the Cross-Bill of Glasser and Glasser as follows:

1. Wainger admits the allegations of paragraph 1.
2. Wainger admits the allegations of paragraph 2.
3. Paragraph 3 requires no response.
4. Wainger admits the allegations of paragraph 4.
5. Wainger admits the allegations of paragraph 5.
6. Wainger admits the allegations of paragraph 6.
7. Wainger admits the allegations of paragraph 7.

COUNT ONE

8. Wainger answers paragraph 8 as he answered paragraphs 1-7.
9. On information and belief, Wainger admits the allegations of paragraph 9.

10. With regard to paragraph 10, Wainger admits that he became a partner of G&G on January 1, 1990, and that, to his knowledge, the Partnership Agreement was the sole written partnership agreement of G&G. By so answering paragraph 10, Wainger does not admit any of the ex parte testimony in Exhibit 2. Further, he states affirmatively that certain substantive agreements reached between him and G&G, including, but not limited to, his units of participation, monthly draw, maximum draw, capital account, percentage of additional compensation, the amount of the cumulative non-firm business fee receipts previously generated by Wainger by which Wainger's maximum annual draw would be increased.

11. Wainger answers paragraph 11 by stating that on information and belief, in practice the Partnership Agreement was amended at times before September 27, 1990, but that not all amendments to the Partnership Agreement were memorialized in the Withdrawal Agreement. Wainger admits that Exhibit B is a copy of the Withdrawal Agreement.

12. Wainger admits the allegations of paragraph 12.

13. Wainger answers the allegations of paragraph 13 by stating that the Partnership Agreement speaks for itself.

14. On information and belief, Wainger admits the allegations of paragraph 14.

15. Wainger denies the allegations of paragraph 15. Wainger states affirmatively that G&G, since his withdrawal, has received fees generated by Wainger from non-firm clients. He is entitled to a percentage of such fee receipts.

16. Wainger is without sufficient information to admit or deny the allegation of paragraph 16 and calls for strict proof.

17. Wainger denies the allegations of paragraph 17.

18. Wainger admits the allegations of paragraph 18.

19. Wainger answers paragraph 19 by stating that the written fee agreements speak for themselves.

20. Wainger answers the allegations of paragraph 20 by stating that, to his knowledge, G&G has not received any fees in the Manville Trust cases, but denies that the Manville Trust cases themselves remain subject to any ongoing litigation.

21. Wainger denies the allegations of paragraph 21 and affirmatively states that, as provided in the Partnership Agreement, fees for the Manville Trust cases have been fully earned by G&G and were fully earned by G&G before Wainger's voluntary withdrawal on January 21, 1992 and that Wainger's averment in this regard has been confirmed by Richard S. Glasser, a defendant in this matter and a partner of G&G.

22. Wainger answers the allegation of paragraph 22 by stating that, as a withdrawing partner of G&G, he has the right to share in the fees of the Manville Trust cases and in the fees of any other matters in which such fees were fully earned as of January 21, 1992 but not yet received by G&G.

ACCORDINGLY, Wainger asks the Court to enter an Order declaring his rights as a withdrawing partner of G&G, and awarding him judgment for his interest as a withdrawing partner of G&G subject to deductions for any amounts previously paid or afterwards

paid by G&G to Wainger and including the adjudication that Wainger is entitled to his share of fees received by G&G in the Manville Trust cases and any other fees to which he may be entitled as a withdrawing partner of G&G.

COUNT TWO

23. Wainger answers paragraph 23 as he answered paragraphs 1-22.

24. Wainger admits the allegations of paragraph 24.

25. Wainger answers the first sentence of paragraph 25 by stating that the Withdrawal Agreement speaks for itself. Wainger denies that he received more compensation than he was entitled to from G&G.

26. Wainger answers the first sentence of paragraph 26 by stating the Withdrawal Agreement speaks for itself. With regard to the allegations of the second sentence of paragraph 26 Wainger denies he received more compensation than he was entitled to from G&G.

27. Wainger denies the allegation of paragraph 27.

28. Wainger denies the allegation of paragraph 28.

ACCORDINGLY, Wainger asks this Court to enter an order declaring that Wainger is entitled to judgment against G&G in all unpaid amounts to which he is entitled as a withdrawing partner of G&G.



COUNT THREE

29. Wainger answers paragraph 29 as he answered paragraphs 1-28.

30. Wainger answers the allegations of paragraph 30 by stating that the Partnership Agreement and the Withdrawal Agreement speak for themselves.

31. Wainger answers the first sentence of paragraph 31 by stating that the partnership of G&G represented numerous plaintiffs in asbestos product liability litigation against the Manville Corporation. Wainger admits that the Manville Corporation filed a Voluntary Petition in Bankruptcy, on August 26, 1982. Wainger affirmatively states that thereafter G&G obtained judgments against the Manville Trust and that, following the entry of these judgments, the Manville Trust cases became subject to certain orders entered by Judge Weinstein of the United States District Court for the Eastern and Southern Districts of New York. Wainger has no knowledge of the allegation of the third sentence of paragraph 31 and states that the reference to a parol agreement of Richard Glasser is an attempt to vary the terms of the written documents and so objects to and denies the allegation.

32. Wainger answers the allegations of paragraph 32 by stating that, under the Partnership Agreement, the fees in each Manville Trust case were fully earned when judgment was entered in 1990, and denies the remainder of paragraph 32.

33. Wainger is without sufficient information to admit or deny the allegation of paragraph 33 and calls for strict proof.

Wainger admits that his 1990 K-1 showed taxable compensation of \$239,335.12.

34. Wainger further denies any allegations in the Motion for Declaratory Judgment not expressly admitted.

ACCORDINGLY, Wainger asks this Court for the entry of an Order declaring his rights as a withdrawing partner of G&G and awarding him judgment against G&G for all unpaid amounts to which he is entitled as a withdrawing partner of G&G.

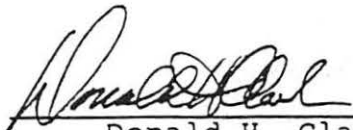
STEPHEN WAINGER

By   
Of Counsel

Donald H. Clark, Esquire  
VSB No. 004428  
CLARK & STANT, P.C.  
One Columbus Center, Suite 900  
Virginia Beach, Virginia 23462  
(804) 499-8800

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this pleading was mailed to Gregory N. Stillman, counsel for Glasser and Glasser, at Hunton & Williams, Post Office Box 3889, Norfolk, Virginia 23514, this 6 day of August, 1992.

  
Donald H. Clark

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF NORFOLK

GLASSER AND GLASSER,

Plaintiff,

v.

STEPHEN WAINGER,

Defendant.

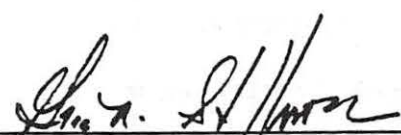
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At Law No. L92-2021

**GLASSER AND GLASSER'S MOTION  
FOR PARTIAL SUMMARY JUDGMENT**

Plaintiff Glasser and Glasser, by counsel, pursuant to Rule 3:18, hereby moves for partial summary judgment as to Mr. Wainger's claim to fees from "approximately 1,100 asbestos cases" as set forth in paragraph 17 of his Counterclaim. In support of this motion, Glasser and Glasser relies on the accompanying Memorandum.

GLASSER AND GLASSER

By:   
Of Counsel

Gregory N. Stillman  
Benjamin V. Madison  
K. Reed Mayo  
HUNTON & WILLIAMS  
Post Office Box 3889  
Norfolk, Virginia 23514  
(804) 625-5501  
Counsel

CERTIFICATE OF SERVICE

I hereby certify that on this 2d day of October, 1992, a true copy of the foregoing  
GLASSER AND GLASSER'S MOTION FOR PARTIAL SUMMARY JUDGMENT was  
hand-delivered to:

Donald H. Clark, Esquire  
Clark & Stant, P.C.  
900 Sovran Bank Building  
One Columbus Center  
Virginia Beach, VA 23462

\_\_\_\_\_

T:\Glasser\SJM.mct



1015  
VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

STEPHEN WAINGER,	:	
	:	
Complainant,	:	
	:	
v.	:	IN CHANCERY NO.
	:	
GLASSER AND GLASSER, a	:	C92-1166
general partnership	:	
	:	
Respondent.	:	

STEPHEN WAINGER'S MOTION  
FOR PARTIAL SUMMARY JUDGMENT

Complainant, Stephen Wainger, by counsel, pursuant to Rule 2:21, moves for Partial Summary Judgment on his claim for (i) the unpaid balance of his capital account pursuant to Item B of Article IX of the Partnership Agreement, (ii) his "additional compensation (as described in paragraph 3 of Section B, Article IV)," pursuant to Item A of Article IX of the Partnership Agreement and a declaration of his entitlement to his "additional compensation" for fees received by G&G hereafter and (iii) to certain uncollected fees of Glasser and Glasser which have been "fully earned," as defined in the Partnership Agreement of Glasser & Glasser. In support of this Motion, Wainger relies on the attached Memorandum.

STEPHEN WAINGER

By 

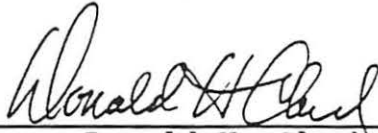
Of Counsel

STANT, P.C.  
TORREYS  
BEACH, VIRGINIA

Donald H. Clark, Esquire  
VSB No. 004428  
CLARK & STANT, P.C.  
One Columbus Center, Suite 900  
Virginia Beach, Virginia 23462  
(804) 499-8800

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this pleading was hand delivered to Gregory N. Stillman, counsel for Glasser and Glasser, at Hunton & Williams, Post Office Box 3889, Norfolk, Virginia 23514, this 16th day of October, 1992.

  
\_\_\_\_\_  
Donald H. Clark

94199001  
mps-j-ch.fts

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

GLASSER AND GLASSER,

Plaintiff,

v.

STEPHEN WAINGER,

Defendant.

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:

AT LAW NO.

L92-2021

STEPHEN WAINGER'S MOTION  
FOR PARTIAL SUMMARY JUDGMENT

Defendant, Stephen Wainger, by counsel, pursuant to Rule 3:18, moves for Partial Summary Judgment on his claim for (i) the unpaid balance of his capital account pursuant to Item B of Article IX of the Partnership Agreement, (ii) his "additional compensation (as described in paragraph 3 of Section B, Article IV)," pursuant to Item A of Article IX of the Partnership Agreement and a declaration of his entitlement to his "additional compensation" for fees received by G&G hereafter and (iii) to certain uncollected fees of Glasser and Glasser which have been "fully earned," as defined in the Partnership Agreement of Glasser & Glasser. In support of this Motion, Wainger relies on the attached Memorandum.

STEPHEN WAINGER

By


  
Of Counsel

STANT, P.C.  
ATTORNEYS  
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VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

GLASSER AND GLASSER,  
a general partnership,

Plaintiff,

v.

STEPHEN WAINGER,

Defendant.

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AT LAW NO. L92-2021 \_

STEPHEN WAINGER,

Complainant,

v.

GLASSER AND GLASSER,  
a general partnership,

Respondent.

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IN CHANCERY NO. C92-1166

MEMORANDUM IN SUPPORT OF MOTION FOR  
PARTIAL SUMMARY JUDGMENT OF STEPHEN WAINGER AND  
RESPONSE OF STEPHEN WAINGER TO MOTION FOR  
PARTIAL SUMMARY JUDGMENT OF GLASSER AND GLASSER

Stephen Wainger ("Wainger") files this Memorandum in Support of his Motion for Partial Summary Judgment in both actions captioned above and to respond to the Motion for Partial Summary Judgment filed by Glasser and Glasser ("G&G") in Law No. L92-2021.

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summary judgment for \$9,018.76, together with interest from March 27, 1992, and declare Wainger's entitlement to payment of 20% of all such fees received by G&G after March 27, 1992<sup>4</sup>.

C. WAINGER SHOULD BE GRANTED PARTIAL SUMMARY JUDGMENT ON HIS REQUEST THAT THIS COURT DECLARE HIS ENTITLEMENT TO THE "FULLY EARNED," BUT UNCOLLECTED FEES OF G&G.

Assuming that the partnership agreement of G&G consists of the January 1985 Agreement, as amended by the Midgett Withdrawal Agreement, G&G has set forth Item C of Article IX.

Wainger believes that this Court can construe the Partnership Agreement and enter summary judgment for him based solely on the language of Item C of Article IX and other language within the Partnership Agreement which will provide, within the four corners of the document, a construction of the phrase "fully earned."

The statements of G&G in its Motion that the contested fees have not yet been "fully earned" is based on G&G's description, set forth in its Memorandum, of what it claims to be the procedural status of various asbestos product liability cases involving the Manville Trust in which G&G has obtained final, non-appealable interest-bearing judgments.<sup>5</sup>

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<sup>4</sup>Again, Wainger has served discovery requests to verify the amount of such fees. G&G has refused to respond. Wainger reserves the right to verify the correctness of Mr. Lifland's schedule of these fees.

<sup>5</sup>Although the fees earned with respect to the Manville Trust cases make up, by far, the most significant portion of the uncollected fees to which Wainger is entitled, there are other

Of course, this Court has not reviewed any of the federal court orders in the Manville Trust cases and the legal effect of the orders must still be decided by this Court and not by the one-sided presentation of G&G. Moreover, G&G has refused to respond to Wainger's discovery request regarding the Manville Trust cases and other cases in which judgments have been obtained and settlements reached.

Regardless of the procedural status of the Manville Trust cases and other asbestos product liability cases and any other cases in which settlements have been reached or judgments obtained, Wainger's entitlement to the fees in respect of these cases must be determined under the language of the Partnership Agreement. The sole issue presented is the construction of the language of the Partnership Agreement to determine whether such fees have been "fully earned" by G&G.

G&G wishes to force the construction of the phrase "fully earned" to mean that the fees must have, in fact, been collected by G&G. A simple reading of the pertinent provision of the Partnership Agreement shows the absurdity of this position. The language in question is contained in Item C of Article IX. A withdrawing partner of G&G is entitled to:

Item C. His Undivided Profits Account, plus his share, if any, of any undivided profits of the firm with respect to uncollected fees which were fully earned by the firm prior to ... the

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asbestos product liability cases in which judgments or settlements have been obtained but not yet collected. These fees with respect to these cases have also been "fully earned" by G&G.

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VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF NORFOLK

GLASSER AND GLASSER,

Plaintiff,

v.

STEPHEN WAINGER,

Defendant.

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At Law No. L92-2021

**AFFIDAVIT OF RICHARD S. GLASSER IN  
SUPPORT OF MOTION FOR PARTIAL SUMMARY JUDGMENT**

Upon being duly sworn, Richard S. Glasser, for his affidavit on behalf of Glasser and Glasser, states as follows:

1. I am a partner in the law firm of Glasser and Glasser. I have been a partner in the firm since 1967. During that time, the firm has represented and presently does represent both plaintiffs and defendants. It has handled and presently does handle cases on both a contingent fee and hourly fee basis.

2. Since 1976, Glasser and Glasser has represented plaintiffs against asbestos manufacturers, including The Manville Corporation ("Manville"). The 1982 Manville bankruptcy filing enjoined all asbestos disease claimants from proceeding against Manville. See Amended Memorandum, Order and Final Judgment at 67-69 (hereinafter "Class Action order") (Exhibit A). Nevertheless, in the ensuing years the number of Manville claimants represented by Glasser and Glasser increased.



3. In 1988, Manville's Second Revised Plan of Reorganization ("the Plan") was approved, establishing the Manville Corp. Asbestos Disease Compensation Fund ("the Trust"). See Class Action Order at 69-76. The Trust was funded as the sole entity to pay all uncompensated asbestos claimants on behalf of Manville. Id. By the end of 1989, however, it was apparent that the Trust was inadequately funded to provide compensation for the increasing number of claimants nationwide. Id. at 76-86.

4. In early 1990, Glasser and Glasser, together with Patten, Wornom & Watkins (collectively "G&G"), filed suit on behalf of over 1,000 claimants against the Trust in the United States District Court for the Eastern District of Virginia ("the Manville cases"). The court set a consolidated trial of the Manville cases for September 11, 1990. Each claimant has a contingency fee agreement containing language identical to, or substantially identical to, the following:

It is understood and agreed that this employment is upon a contingent fee basis, and, if no recovery is made, I will not be indebted to my said attorneys for any sums whatsoever as attorney fees, although I will be indebted to my said attorneys for all unpaid costs incurred.

See Manville Limited Power of Attorney and Agreement Form (Exhibit B).

5. Negotiations soon began between the Trust and G&G that resulted in quantifying the amount of damages to which each of the G&G asbestos claimants was entitled. See Glasser Letters Confirming Settlements (redacted) (Exhibit C). Beginning June 8, 1990, and continuing through July 1990, those claims were reduced to judgments. Significantly, the Trust did not agree to pay the judgments. Id. Indeed, it was understood that the Trust would resist payment of any judgment or any attempt to execute on the assets

of the Trust.

6. Beginning on July 9, 1990, before G&G could execute on the Manville judgments, the Honorable Jack B. Weinstein, sitting as a judge in the United States District Court for the Southern District of New York (the jurisdiction in which Manville's bankruptcy proceeding was filed), orally entered the first of a consecutive series of Orders prohibiting the Trust from paying any settlement or judgment. See August 6, 1990 Order (Exhibit D); Class Action Order at 97-100. These Orders also specifically enjoined any claimant from executing or trying to enforce payment on a judgment against the Trust's assets. See August 6, 1990 Order; Class Action Order at 97-100.

7. Within a week of the entry of Judge Weinstein's first Order, G&G worked with additional counsel in Washington, D.C., and New York to file a Petition for a Writ of Mandamus and a Notice of Appeal on behalf of its clients in the United States Court of Appeals for the Second Circuit. These filings contested Judge Weinstein's authority to enter the stay Order. Although the Second Circuit dismissed the mandamus action, G&G's appeal is still pending.

8. After entry of Judge Weinstein's first stay order, the Trust initiated a proceeding in his court seeking a determination that the Trust was insolvent and, as such, constituted a limited fund entity for the purposes of Rule 23(b)(1)(B) of the Federal Rules of Civil Procedure. See Class Action Order at 105-08. On November 3, 1990, a Special Master appointed by Judge Weinstein reported that the Trust was insolvent. Id.

9. In November 1990, the Trust filed a limited fund class action (*Findley v. Blinken*, No. 90-3973, S.D.N.Y.) seeking to restructure both its assets and the claim resolution procedures established in Manville's Second Revised Plan of Reorganization.

Immediately prior to this filing, G&G culminated extensive negotiations by entering into a written agreement with the Trust dated November 16, 1990. See Agreement By The Manville Trust/Fund To Pay The Virginia Judgment Creditors (Exhibit E). The terms of the agreement specified:

- a. That the parties recognized that the judgments entered in favor of G&G's asbestos clients had "no agreed payment schedule and no limitation of any post-judgment enforcement right or remedy."
- b. That any payment by the Trust was contingent upon:
  - i. Certification of the national class action lawsuit;
  - ii. Approval of the settlement of the national class action lawsuit; and
  - iii. Payment of a special dividend by Manville to the Trust.
- c. That, in the "event of default" as defined in the Agreement, the Virginia Judgment Creditors represented by G&G could "seek to execute" on the assets of the Trust.
- d. That, if the national class action was not settled by December 31, 1991, or, if settled, was "vacated, modified or reversed by subsequent final order," then the G&G claimants could terminate the Agreement and pursue their legal rights and remedies to collect their judgments (including their rights in the pending appeal in the Second Circuit questioning Judge Weinstein's authority to prohibit payment of settlements and judgments and to enjoin execution against Trust assets).

Id.

10. In May and June 1991, Judge Weinstein issued lengthy opinions certifying the national class action as proper under Rule 23 and approving the settlement of the class action. See Class Action Order. In response, both asbestos disease claimants and non-




Manville asbestos manufacturers appealed Judge Weinstein's rulings. See Indices to Appellate Briefs (Exhibit F). Approximately twelve appeals were noted. They questioned virtually every aspect of Judge Weinstein's orders, including the court's jurisdiction, the certification of the class, the adequacy of the class representatives and class counsel, and the fairness of the class action settlement. Id.

11. On February 24, 1992, the Second Circuit heard oral argument on the various appeals filed in the Manville Trust case. To date, the Second Circuit has not ruled. One can only guess when a decision will be rendered and how the various issues will be resolved. Because of the complexity of the novel issues presented, one can safely assume that, regardless of when or how the Second Circuit rules, additional proceedings will likely be required before any final, non-appealable determination will be made. These proceedings may take the form of either full or partial remand to the district court, rehearing *en banc* before the Second Circuit, and/or a petition for *certiorari* to the United States Supreme Court.

12. In this litigation, I understand that Mr. Wainger is relying on a schedule attached to a K-1 form provided to him on or about March 27, 1992. To the best of my knowledge and belief, formed after consulting with the bookkeeping department of this firm, that schedule reflects only fees for hourly work performed before January 21, 1992, and contingent fees where the proceeds of the settlements had been received by Glasser and Glasser or its co-counsel prior to the close of business on January 21, 1992.



  
Richard S. Glasser

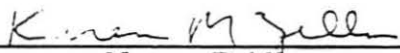
STATE OF VIRGINIA

CITY OF NORFOLK

Upon being sworn, Mr. Richard S. Glasser acknowledged before me the foregoing instrument and affirmed that the statements therein are true to the best of his knowledge.

Dated this 28<sup>th</sup> day of October, 1992.

My commission expires the 31<sup>st</sup> day of October, 1992

  
Notary Public

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MANVILLE LIMITED POWER OF ATTORNEY AND AGREEMENT

We, \_\_\_\_\_ and \_\_\_\_\_, have made, constituted and appointed, and by these presents do make, constitute and appoint GLASSER AND GLASSER, Attorneys at Law, our true and lawful attorneys for us and in our name, place and stead to institute suit or compromise our claims for damages which we have against Johns Manville and its affiliated companies and/or the Manville Personal Injury Settlement Trust for injuries to and/or the death of \_\_\_\_\_ as a result of asbestos-related disease, and to do, execute and perform all and every other act or acts, thing or things in law needful and necessary to be done in and about the premises as fully, largely and amply to all intents and purposes as we might or could do if acting personally.

We agree to pay the necessary costs and all other necessary and proper expenses which are incurred by our attorneys in the prosecution of our aforesaid claim. We hereby ratify and confirm all lawful acts previously done by our said attorneys in virtue hereof.

As compensation for their services, we agree to pay our said attorneys, from the proceeds of recovery, a fee of thirty-three and one third percent (33 1/3%) of the gross recovery either by way of compromise settlement before or after the institution of suit.

It is understood and agreed that this employment is upon a contingent fee basis, and, if no recovery is made, we will not be indebted to our said attorneys for any sums whatsoever as attorney fees, although we will be indebted to our said attorneys for all unpaid costs incurred. It is further agreed that, in addition to the attorneys fees as set forth herein, all unpaid costs incurred shall be deducted from any recovery.

WITNESS the following signatures and seals this \_\_\_\_\_ day of \_\_\_\_\_.

( ser and Glasser

Suite 400  
125 St Paul Boulevard  
Norfolk, Virginia 23510

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

STEPHEN WAINGER,

Plaintiff,

V.

GLASSER &amp; GLASSER,

Defendant.

GLASSER & GLASSER,

Plaintiff,

V.

STEPHEN WAINGER,

Defendant.

CHANCERY NO. C92-1166

AT LAW NO. L92-2021

Norfolk, Virginia

November 6, 1992

Before:           The Honorable JOHN E. CLARKSON, Judge

Appearances:

CLARK &amp; STANT

By: DONALD H. CLARK, ESQUIRE  
Counsel for Stephen Wainger

HUNTON &amp; WILLIAMS

By: GREGORY N. STILLMAN, ESQUIRE  
K. REED MAYO, ESQUIRE  
Counsel for Glasser & Glasser

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1 essentially working. He's expected to go out and do all  
2 of the work necessary to collect and close and effectuate  
3 these judgments, and, once again, we can get into a  
4 dispute about how much work there is to be done, but  
5 that's not legally or logically relevant. The fact  
6 remains that theoretically that's exactly the  
7 interpretation that the Court is being asked to adopt in  
8 this case. For all of those reasons we submit to the  
9 Court that the interpretation Mr. Wainger is asking you to  
10 adopt cannot logically or legally be the correct  
11 interpretation.

12 Another argument Mr. Wainger has offered to  
13 the Court is that Glasser & Glasser is entitled to a fee  
14 because under Virginia law it now has an attorney's lien.  
15 That's simply not true. The fact of the matter is that a  
16 lien does nothing more than secure an existing right, so  
17 this argument begs the entire question of whether these  
18 fees have been fully earned or not. If they have been  
19 fully earned, I would agree, they have an attorney's  
20 lien. If they have not been fully earned, the lien  
21 statute does not create a right where no right previously  
22 existed, and so the argument in essence begs the  
23 question.

24 Another argument that Mr. Wainger makes, and  
25 here, once again, I'm going to ask you to turn to the

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1 Glasser & Glasser doesn't receive those contingent fees,  
2 then Wainger is not entitled to share in that. I can  
3 stand out here and make a pretty good argument he would be  
4 entitled to it, but I don't think in good conscience and  
5 good faith that you would be persuaded, that I could do it  
6 or you would be persuaded that you ought to enter judgment  
7 in the amount of \$720,000 for Steve Wainger, and Richard  
8 Glasser and the rest of the fellows get nothing.

9 THE COURT: I've already decided that.

10 MR. CLARK: Good. Now, let's look -- let's  
11 focus back for a minute on the language that I showed you  
12 earlier of this article nine, and specifically item C, and  
13 let's read it carefully because Mr. Stillman says let's  
14 stay within the four corners of this document for purposes  
15 of this hearing today, and let's try to stay within the  
16 four corners, even though both of us have wandered outside  
17 from time to time. I agree that you have to give a  
18 document as clear -- the clear meaning that it evidences.  
19 You have to attribute that to those words, but look at the  
20 words. "His undivided profits account, plus his share, if  
21 any, of any undivided profits of the firm with respect to  
22 uncollected fees", and the important word there is  
23 uncollected fees. They're not collected. He gets his  
24 share of undivided profits of the firm with respect to  
25 uncollected fees, and you get into the magic words "which

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1 or owed to the firm for services completed or for  
2 settlements made prior to January 1, 1985. Now, obviously  
3 they got together and agreed that this list of cases, we  
4 reserve the rights to those fees. No problem there with  
5 that at all, but some of those fees were contingent fees.  
6 Some of them had been earned or fully earned, that is, a  
7 judgment taken or a final settlement executed or made if  
8 it was oral, but the fees had not yet been received, and  
9 yet they take and treat those the same way that we say you  
10 should treat paragraph C, they're fully earned but they're  
11 not collected, they're not received. So what they've  
12 done -- again, we're still within the four corners of this  
13 instrument. It's just an indication that seems to me to  
14 support the article C, provision C, words in its plain  
15 meaning.

16 To Mr. Glasser's credit, so there would be  
17 no dispute, he listed them. There is where they treated  
18 those fees just exactly the way we think that this article  
19 C requires the Manville Trust fees be treated. Let's look  
20 at that for a minute. I've already made my argument, but  
21 let's go back and let's look and be sure that I haven't  
22 misstated it. What I'm showing you now, and again this is  
23 part of the pleadings, and it's supported by affidavit,  
24 and it's a part of the Glasser & Glasser 1985 partnership  
25 agreement. What you need to do is read down at the

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1                   Now I'm going to go outside the partnership  
2 agreement. I told you that for purposes of the real main  
3 thrust of the argument that we would limit ourselves to  
4 the four corners of the partnership agreement, and with  
5 this one exception we've done so. What I'm about to show  
6 you is a portion of the proposed amendment that Richard  
7 Glasser made to the partnership agreement. Remember, I  
8 told you he was thinking about the federal judgeship, that  
9 he came in and made a proposal. This is what he  
10 proposed. I think you remember this would be article  
11 nine, and you've got the A, no change there that I can  
12 see, B, capital account. So then we get down to item C.  
13 The first phrase of that, there is not much change. Then  
14 he says, it is expressly agreed that any fees hereafter  
15 collected by the firm on the existing consent judgment  
16 orders and so forth and so on shall be deemed to be  
17 uncollected fees that are fully earned by the firm when  
18 computing the undivided profits account of any partner who  
19 dies, retires from the practice of law or becomes disabled  
20 and so on.

21                   Now, with the exception of recognizing that  
22 the Manville judgments are in this category of fully  
23 earned but uncollected, with that exception, here comes  
24 the change. Everything else is the same. However, it is  
25 further agreed that any partner who withdraws voluntarily

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1 from the firm and continues to practice law or whose  
2 conduct results in his expulsion from the firm, in  
3 accordance with the provisions of article 14, shall not be  
4 entitled to share any uncollected fees resulting from the  
5 consent judgments or settlements with the Manville Trust  
6 that are not paid to said partner prior to his voluntary  
7 withdrawal or expulsion from the firm. That's the  
8 change.

9 THE COURT: Proposed change?

10 MR. CLARK: Thank you. That's what gave Mr.  
11 Wainger a hard time. That's what caused the breakup of --  
12 insofar as it's a breakup, the withdrawal of Mr. Wainger,  
13 anyhow. It's unfortunate, but there it is. I think that  
14 any fair reading of that, and I recognize Mr. Glasser in  
15 this instance is -- doesn't represent all of the  
16 partnership. There has been no agreement by the other  
17 partners as to this, but Richard Glasser is certainly a  
18 man of some repute, and when he speaks, people listen, and  
19 he's not in the habit, I'm sure, of going around and  
20 making statements that he can't back up, but, in any  
21 event, that's what happened here, and I think it's very  
22 clear, again, given a fair reading of this, that all that  
23 does is reaffirm what we think to be true anyhow, that is,  
24 what we think the clear meaning of those -- that sentence  
25 is in item C, but I suppose if I were Richard Glasser,

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1 were considering going on the bench and considering  
2 retiring, that -- and I had \$6,000,000.00 coming to me, I  
3 want to be awfully certain that some partner over there  
4 doesn't try to make the interpretation that they're now  
5 making, that is, that those fees weren't fully earned,  
6 because if some partner took that position and Richard  
7 Glasser went on the bench and those fees weren't fully  
8 earned, then he would be out of luck, and I have a great  
9 deal of respect for Mr. Glasser, particularly when one  
10 thinks how much time he's put into these asbestos cases.  
11 To think that he would not have recognized his own  
12 mortality and that that paragraph C in its unchanged form  
13 didn't fully anticipate the fact that Richard or Michael  
14 or any other partner out there might die, might become  
15 disabled, might retire, and by so doing divest themselves  
16 of any interest in the Manville fees, no, sir, judge, no  
17 way that was going to happen.

18 So I think, in sum and substance, if you  
19 attribute to these words what they -- the clear meaning on  
20 their face, you can reach no conclusion other than the one  
21 that we urge.

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1 regarding the fee splitting, it's only to preclude two  
2 attorneys in the future from getting together and saying,  
3 hey, we represent you, I'm referring this case to you, we  
4 represent this client over here, and the client doesn't  
5 know who in the world is representing the client, let  
6 alone who has the responsibility. That's what that  
7 disciplinary rule is designed to clarify, not to preclude  
8 one partner from valuing his interest in a partnership  
9 where the partnership -- or the partnership valuing that  
10 interest. The Court ought to ignore that.

11 Finally, and this is our conclusion, Steve  
12 Wainger doesn't seek any windfall in this case. He's not  
13 trying to get something that doesn't belong to him. He  
14 seeks only his rights as set forth in the clear and  
15 unambiguous language of the partnership agreement. He  
16 feels he is entitled to be compensated by the partnership  
17 for the work that he did while he was there, that's all,  
18 in accordance with the terms of that partnership  
19 agreement. So what we would ask you to do is give us  
20 summary judgment for our capital account of \$63,000,  
21 together with interest from January 21, '92. We would ask  
22 you to give us judgment, partial summary judgment for  
23 \$9,018.76, which is a portion of the additional  
24 compensation, the item A, additional compensation,  
25 together with interest from March 27, 1992, and that was

1 the date that the accountant determined what it was, and a  
2 declaration that Mr. Wainger is entitled to his additional  
3 compensation for all fees received by G&G since March 27,  
4 1992. I didn't read that correctly, all fees, meaning  
5 those fees to which he's entitled to 20 percent for  
6 originating.

7 Finally, we seek partial summary judgment on  
8 his request that you declare he is entitled to 6.6 percent  
9 of the uncollected fees of G&G which were fully earned up  
10 through the date of his withdrawal, and I prepared an  
11  
12  
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15  
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17 \* \* \*

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

STEPHEN WAINGER,	)	
	)	
Complainant,	)	
	)	
v.	)	CHANCERY NO. C92-1166
	)	
GLASSER AND GLASSER,	)	
A General Partnership,	)	
	)	
Respondent.	)	
	)	
GLASSER AND GLASSER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	AT LAW NO. L92-2021
	)	
STEPHEN WAINGER,	)	
	)	
Defendant.	)	

**WAINGER'S BRIEF IN SUPPORT OF HIS MOTION FOR PARTIAL  
SUMMARY JUDGMENT AND IN OPPOSITION TO  
GLASSER AND GLASSER'S MOTION FOR PARTIAL SUMMARY JUDGMENT**

**BACKGROUND**

These two cases involving a law firm partnership dispute presently pend before the Court.

In the First, Wainger v. Glasser, et al., a Chancery Action, Wainger seeks (among other things) not only a Declaratory Judgment of his rights, but also asks for Equity's relief in the form of an *in personam* judgment which directs his "entitlement" to share in certain legal fees (whatever the amount thereof may be) when those fees are actually collected and to the unpaid balance (admitted to be due) with Interest thereon in reimbursement of his Capital Account. A copy of



the Law Firm's Partnership Agreement dated December 20, 1984 becoming effective January 1, 1985 is attached as Exhibit 1, see page 6).<sup>1</sup>

In the Second, Glasser, et al. v. Wainger, a Law Action, Glasser, et al. seeks both a Declaratory and a Monetary Judgment (attached as Exhibit 2.)

Both of these cases arise from Wainger's employment, first as an Associate (Employee) and subsequently as a Member (Partner) of the Glasser Law Firm.

The Parties are seasoned, experienced attorneys.

Wainger received his B.A. Degree from Tulane University in 1967, his J.D. Degree from the University of Richmond Law School in 1970, is a member of both the Virginia and District of Columbia Bars, served as a Trial Attorney in the U.S. Department of Justice in Washington, D.C. from 1970 to 1974 (first in the Criminal Division and then in the Drug Enforcement Administration), entered private practice in Washington, D.C. for a short time in 1974 before being appointed in 1975 Assistant United States Attorney for the Eastern District of Virginia to handle criminal and civil litigation in the Norfolk Division; in 1978 he associated with the Norfolk Firm of Seawell, McCoy, Dalton, Hughes, Gore & Timms (later Seawell, Dalton, Hughes & Timms) as a Trial Attorney, becoming a Partner therein until that Firm's dissolution in 1987.

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<sup>1</sup> All exhibits herein are to be incorporated into Wainger's brief by reference as though fully set forth.

**WAINGER'S FINANCIAL  
ARRANGEMENTS WITH THE GLASSER FIRM**

In May 1987, Wainger became an Associate (Employee) at the Glasser Law Firm with the terms of his employment being ultimately formalized in a meticulous Employment Agreement dated and effective from June 23, 1987 (attached as Exhibit 3). Under that Agreement Wainger was paid:

1. \$100,000 per year (i.e., \$8,333.33 per month)  
(Page 2, ¶16).
2. 20% of the gross fees which were generated or produced by Wainger's clients (see Page 4, ¶12).
3. Other employment benefits (not material here).

During the six remaining months of 1987, Wainger's clients generated gross fees (to the Glasser Firm) of approximately \$20,600. Thus, for 1987, his compensation was the \$8,333.33 monthly salary plus 20% of those gross fees (approximately \$4,120) or a six month aggregate approximating \$54,120.

In 1988, Wainger remained on an \$8,333.33 monthly salary (i.e., \$100,000 per year) but in addition, he generated approximately \$218,000 gross fees to the Glasser Firm from his own clients. Twenty percent (20%) thereof approximates \$43,600 which when added to his \$100,000 annual salary totaled a personal annual compensation of \$143,600.00 under the Employment Agreement.

In 1989, Wainger continued on the \$8,333.33 monthly (\$100,000 annual) salary and generated approximately \$96,000 in gross fees to the Law Firm from his own Clients. Consequently, his 1989 compensation approximated \$119,200 under the Employment Agreement (i.e., \$100,000 plus 20% of \$96,000 or \$19,200 = \$119,200).

Therefore, in his 2½ years as an Associate or Employee under the June 23, 1987 Employment Agreement, Wainger earned and was paid:

1987	-	\$ 54,120.00	(for 6 months)
1988	-	\$143,600.00	(for 12 months)
1989	-	<u>\$119,200.00</u>	(for 12 months)
TOTAL:		\$316,920.00	

Similarly, in his 2½ years as an Associate or Employee, Wainger billed and collected fees from his clients to the Glasser Firm as follows:

1987	-	\$ 20,600
1988	-	\$218,000
1989	-	<u>\$119,200</u>
Total		\$334,600

Thus, Wainger originated more income for the Firm from his own clients than he received in total annual compensation.

Glasser, et al., is a well-known, experienced and reputable law firm with many respected and representative clients. In addition to its general practice, the Firm are specialists in the representation of personal injury (and death) claimants against various producers of asbestos and asbestos products. There are approximately 15 different

asbestos product producers, such as Johns-Manville, Owens-Illinois, Fibreboard, Garlock, Owens-Corning Fiberglas, Eagle-Picher, Raybestos, etc. However, the dispute *sub judice* primarily concerns 1,087 final judgments against Johns-Manville.

The Firm has and still represents thousands of clients, (i.e., asbestos claimants) throughout Virginia, Ohio, Mississippi, Texas and probably elsewhere. Thus the Firm is generally acknowledged as experts or leaders in this facet of litigation.

The Firm's clients are generally represented on a one-third (1/3) (sometimes 40% to 50%) contingency contract which, of course, compensates the Firm with the "right" to one-third of any amount collected on a recovery. The dollar value of that "right" (to compensation or fee) necessarily depends on the total amount (of dollars) ultimately collected, but the underlying "right" remains a fixed percentage. An analysis of Glasser's contingent fee contracts ensues at Pages 54, 66-68, hereinafter.

The Glasser Firm (in Norfolk) has a business arrangement with the Patten, Wornom & Watkins Law Firm (in Newport News) under which the "right" to certain legal fees is to be shared. Thus, these two law firms have created their own method of compensation for the mutual assistance, cooperation, referrals, etc., they exchange by working together in certain asbestos cases. In its simplest terms, that method provides



that Glasser, et al., has a "right" to one-third (1/3) of whatever fees Patten, et al., derives from its asbestos clients and similarly, Patten, et al., has a "right" to one-third (1/3) of whatever fees Glasser, et al., derives from its asbestos clients.

Towards the end of the 1989 Calendar Year (and 2½ years as an Employee [Associate] under the June 23, 1987 Employment Agreement), Wainger was approached with a Partnership Offer by Richard Glasser, the Senior Member of the Glasser Firm. Their discussion acknowledged not only the sizeable volume of legal work Wainger was performing for the Firm and its clients, but also recognized the volume of work and gross fees Wainger was generating for the Firm from his own clients. Thus, the offer was increased from 5 to 6 Units out of a total of 103 Units of total Partnership Participation in Partnership Profit. (See Richard Glasser's handwritten notes attached as Exhibit 4.) Wainger would be required to pay (buy in) \$12,000 as an Additional Contribution-To-Capital but that would be deducted (in increments) from Distribution of Profits to the Partners all as provided under Article III, Section B of the Glasser Law Firm's Partnership Agreement (see Exhibit 1, pages 5-6). As a Partner, Wainger would no longer be on the Salary (\$8,333.33 per month or \$100,000 per year and 20% of gross fees generated from his own Clients, as provided in his June 23, 1987 Employment Agreement) but of course would receive his allocation (6/103rds) of Cash Received as Partnership Profits

and also would receive 20% of gross fees generated from his own clients. Additionally, the Firm would make an annual contribution for Wainger's benefit in the Firm's Self-Employment Program (SEP) for retirement. However, there would be an annually adjusted, but cumulative monetary Limit or "Cap" on the cash monetary compensation (exclusive of the 20% derived from his own clients and of the SEP contribution) Wainger would be entitled to per year as his 6/103rds of the Partnership Profits. In any event, Wainger would be entitled to a "Draw" of \$6,000 per month (i.e., \$72,000 per year) as an "Advance" or "Draw," against his Total Share (6/103) of Cash Profits (whatever the Limit or Cap thereon) plus the additional 20% of the gross fees generated from his own clients. (See Exhibit 4 - Richard Glasser's Example given to Wainger.)

Therefore, Wainger became a Partner in the Glasser Firm as of January 1, 1990, but no written amendment of the Partnership Agreement was ever undertaken or made, as envisioned in Article VIII. Addition of Partners (Exhibit 1, pages 19, 20). Pursuant to Article III. Capital of the Firm, Section B. Additional Contributions to Capital, (Exhibit 1, pages 5-6) Wainger actually bought-in and paid the following dollar amounts as Contributions To Capital during the 1990 year:

Date	Distribution for Capital of Profit	Withheld Contribution	Amount Received	Paid In To Cap. Account	Total Pd. In To Cap.Acct.
05/31/90	13,172.31	2,500.00	10,672.31	2,500.00	2,500.00
06/29/90	12,977.28	3,500.00	9,477.28	3,500.00	6,000.00
07/31/90	31,521.54	3,000.00	28,521.54	3,000.00	9,000.00
09/28/90	20,418.52	3,000.00	17,418.52	3,000.00	12,000.00
12/28/90	Via Wainger's Personal Check per Request of Management Committee Under Article III, Section B of the Partnership Agreement (Exhibit 1, pages 5-6)			13,186.81	25,186.81
(Copies of Checks attached as Exhibit 5)					

Consequently, in 1990 (his first year as a Partner), Wainger paid the Glasser Firm \$25,186.81 in Capital, reduced his monthly "Draw" from \$8,333.33 to \$6,000.00 (i.e., his annual Guarantee from \$100,000 plus 20% of fees generated from his own Clients to an annual "Draw" of \$72,000 plus 20% of gross fees generated from his own clients) in exchange for 6/103rds of the Glasser Firm's Net Profits -- subject only to the annually adjusted "Limit" or "Cap" exclusive of his 20% feature and the SEP contribution. His 1990 "Limit" or "Cap" for cash received (attached as Exhibit 6) had been estimated at \$220,000 but actually ultimated at \$239,000, being determined by adding cumulatively one-half of the gross fees produced from his own clients in each of his 2½ years as an Associate plus his \$72,000 Partner's Draw. (See Exhibit 6.)

The following table covers Wainger's "Cap" or "Limit" in accordance with Richard Glasser's explanation and handwritten



notes (Exhibit 4) (and as reflected in the Partnership Tax Returns and Wainger's K-1 and communication with the Firm's accountant during his tenure at the Glasser Firm:

A	B	C	D	E	F
Year	From Own Clients	One-Half of B	Cumulative Total of Gross Fees for Next Year's Cap	Draw	Cash Limit or Cap
1987	20,600	10,300	10,300		Employee
1988	218,000	109,000	119,300		Employee
1989	96,000	48,000	167,300		Employee
1990	162,000	81,000	248,300	72,000	= 239,300
1991	104,919	52,459	300,759	72,000	= 320,300
1992	71,788	35,394	336,153	72,000	= 372,759
1993				72,000	= 408,153

(N.B. -- See, however, Richard Glasser's March 5, 1992 letter to Errol Lifland at Goodman & Co., CPAs (attached as Exhibit 7), wherein Richard Glasser sets Wainger's 1991 Limit [Cap] at \$317,214.14.)

Although Glasser's \$317,214.14 figure (for 1991) is essentially \$3,000 less than Wainger's calculation of \$320,300 as shown in the foregoing table, Richard Glasser's letter (Exhibit 7) is an effective admission that Wainger's 1991 "Cap" was determined by adding cumulatively one-half of the Gross Fees Earned From Wainger's Own Clients in 1987, 1988, 1989, 1990 plus Wainger's "Draw" of \$72,000. Glasser admits that Total to be \$317,214.14.

If Wainger's 1991 "Cap" had been computed by starting with one-half of Gross Fees Earned From Wainger's Clients in 1990 (his first year as a Partner), that 1991 basis would have been \$81,000 (one-half of 1990 fees from Wainger's own



clients) plus the \$72,000 "Draw" for or a 1991 "Cap" of only \$153,000 which is \$164,214.14 less than Richard Glasser admits the 1991 "Cap" to be! Consequently, Richard Glasser's March 5, 1992 letter and admission of a \$317,214.14 "Cap" for 1991 (written two months after Wainger's termination via Richard Glasser's letter on January 21, 1992, attached as Exhibit 8) defeats Count II of Glasser's Motion for Declaratory Judgment (Exhibit 2) in its entirety. This admission, emanating from the Firm's Senior Partner is, of course, evidence against the Glasser Partnership as provided in the Virginia Uniform Partnership Act, Va. Code § 50-11 (attached as Exhibit 9) as follows:

Admissions and representations. -- An admission or representation made by any partner concerning partnership affairs within the scope of his authority as conferred by this chapter is evidence against the partnership.

Any suggestion or argument that in order to become a Partner beginning in 1990, Wainger invested \$25,186 of his own money as Capital in the Firm, agreed to a reduction of \$47,200 in Personal Income from 1989 (and a reduction of \$71,600 from his 1988 Income), and agreed to an annual "Cap" or "Limit" of \$72,000 on his Personal Income, fails to satisfy the tests of logic, of common sense, of credibility and of Richard Glasser's letter of March 5, 1992 (attached as Exhibit 7). Indeed, it is inconceivable to think of any more illogical and misleading arguments or claims that Glasser can assert herein.

Reasonable minds cannot differ on the absurdity of Glasser's allegation that Wainger's income for 1990 -- his first year as a partner -- was limited to \$72,000 (a guaranteed loss of income of \$28,000 for Wainger just to become a partner!) Mr. Stillman candidly admitted to the Court that Wainger's 1990 income was not limited to \$72,000.

Transcript, Pages 66-67 (attached as Exhibit 10):

Mr. Stillman: ..."[w]e had an agreement that we would pay in excess of what the cap, in fact, applied to, but we're not agreeing to that if, in fact, there are going to be allegations made for a windfall such as the windfall Mr. Wainger is seeking to account for here." (Emphasis added.)

Even under Glasser's theory of the case, it cannot unilaterally and retroactively change the agreement which Mr. Stillman acknowledged and admitted in response to Wainger's Request for Admission No. 40 as follows:

40. Admit that Glasser did not advise Wainger that he had been overpaid as a partner until after he had withdrawn as a partner.

RESPONSE: As Mr. Wainger did not attempt to unilaterally change the terms of the Partnership Agreement until the effective date of his withdrawal, Glasser and Glasser admits that it had no reason to advise him that he had been overpaid as a partner until that time.

Moreover, the following table (which is based on information in Glasser's 1990 [attached as Exhibit 11], 1991 [attached as Exhibit 12] and 1992 [attached as Exhibit 13] Income Tax Returns) clearly reveal the fallacy of Glasser's

argument that Wainger was subject to a \$72,000 "Cap" or "Limit" on his annual income.

<u>TABLE OF WAINGER'S EARNINGS AS A PARTNER</u>			
	<u>1990</u>	<u>1991</u>	<u>1992</u> (only 21 days)
Capital Acct. Begin. Year	0	52,782	104,283
Capital Contributed	12,271	13,187	0
Ordinary Income	300,917	192,336	7,773
Interest	4,815	3,336	68
Gross Income	305,732	195,672	7,841
Less:			
Charitable Contributions		1,292	
Sec. #179 - Depreciation		706	
Retirement (S.E.P.)	30,000	22,402	633
Misc.	1,552	148	12
Net Income	274,180	171,124	7,196
Withdrawals	233,669	132,810	48,415
Bal. Transferred to Cap. A/C	40,511	38,314	0
Capital Acct. - End of Year	52,782	104,283	63,064

Therefore, from Glasser's own Income Tax Returns, it is obvious that in 2 years and 21 days, Wainger, as a partner, earned the following:

Gross Income	\$509,245
Net Income	452,500
Retirement Fund Contribution	53,035
Cash Withdrawals	414,894
Remaining Capital Investment Acct.	63,064

Glasser's current argument (that Wainger was under a "Cap" of \$72,000 per year) is simply incredulous!



Even the Withdrawal Agreement of John T. Midgett dated September 28, 1990 and attached as Exhibit 14 contradicts Glasser's claim and supports Wainger's position and confirms Richard Glasser's notes of partnership offer (Exhibit 4) as follows:

\$72,000	-	Base (Exhibit 4), Paragraph C, P. 2, Midgett Withdrawal Agreement
\$148,000	-	Annual cumulative increase of 1/2 of partner's prior fiscal year fee production (see Exhibit 4 for Richard Glasser's example of Wainger's cumulative increase of prior fees as of December, 1989 at Paragraph B.1, Page 1.)
<u>\$220,000</u>	-	Projected 1990 cap as of November, 1989

During Wainger's association with Glasser through 1991, he received Gross Income of approximately \$509,000 while himself generating approximately \$624,000 in fees to Glasser from his own clients. In addition, Wainger devoted considerable time and effort to Firm clients and business.

The "Limit" or "Cap" certainly was no guarantee or assurance that Wainger would actually earn or receive that amount. Its "Cumulative" or "Growth" aspect operated as an inducement and incentive for Wainger to attract and develop more clients and thus expand the Firm's total revenue and the 20% of gross fees generated from his own clients.

Wainger served as a Partner in the Glasser Firm under the foregoing business arrangement from January 1, 1990 until January 21, 1992.



**WITHDRAWAL AGREEMENT BETWEEN  
JOHN T. MIDGETT AND THE GLASSER FIRM**

Although he had never signed the Partnership Agreement of January 1, 1985 (See Exhibit 1), which predated his affiliation with the Glasser Firm, he knew that document as explained by Richard Glasser (See Glasser's notes at Exhibit 4 and Exhibit 6) applied to his Partnership Status. He did sign the Firm's Withdrawal Agreement with John T. Midgett dated September 28, 1990 (See Exhibit 14). However, that was an Agreement between Midgett and the Glasser Firm. Its Introductory Clauses or Preambles were not incorporated into the substantive agreement itself and do not constitute any agreement or amendment of the basic Glasser Partnership Agreement amongst the remaining Partners themselves. The sole operative provisions of that Agreement relate to and are between Midgett and the Glasser Firm (as further evidenced by the Title... "Withdrawal Agreement of John T. Midgett From Partnership In The Law Firm of Glasser and Glasser.") Indeed the active, operative, substantive Agreement begins on Page 2 (Exhibit 14) as follows:

"NOW THEREFORE, in consideration of the mutual agreements and covenants contained herein, John T. Midgett and Glasser and Glasser hereby agree as follows:"

No operative agreements between the remaining partners themselves are included!

While it is quite common for contracts to contain introductory recitals or "whereas clauses" or preambles, a

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The specific "uncollected fees" here involved, emanate primarily from a series of 1,087 cases/claims that the Glasser and Patten Firms prosecuted against Johns Manville, an asbestos producer. After Wainger became a Partner (but prior to his Withdrawal), those cases/claims had eventuated in final, nonappealable consent judgments (i.e., no trials were held) entered in the United States District Court For The Eastern District of Virginia in June and July 1990. They are summarized (aggregated) from letters to Glasser and Patten from the Manville Trust with 1/3 Fee calculations applied (even though many Client Agreements may provide a 40% Fee) as follows:

FINAL JUDGMENTS			CONTINGENT FEES		
Firm	Number	Total Amount	Total Fees	Glasser's	Patten's
Glasser	827	\$47,175,486	\$15,725,162	\$10,550,108	\$5,175,054
Patten	260	\$15,670,130	\$ 5,223,377	\$ 1,741,125	\$3,482,252
TOTALS	1,087	\$62,845,616	\$20,948,539	\$12,291,233	\$8,657,306

(See letters dated December 18, 1990 from Manville Personal Injury Settlement Trust to Richard Glasser and to Robert R. Hatten respectively, attached as Exhibit 24.)

On approximately January 21, 1994, Judge Weinstein lifted his stay of payments when Glasser agreed to reduce its clients' judgments by \$14 million.

The Second Circuit Court of Appeals January 11, 1994 decision, In Re: Johns-Manville Corporation, et al., is attached as Exhibit 25. Chief Judge Newman notes at pages 4,

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10% BONUS FOR MANVILLE CLAIMS

In 1982 in the United States District Court For The Southern District of New York, Bankruptcy Division, Johns-Manville filed for Chapter XI Reorganization, seeking relief and protection from thousands of known and unknown asbestos-product claims, settlements and judgments. Notwithstanding that Reorganization Proceeding, the number of Manville

claimants represented by Glasser continued to increase. (See Paragraph 2, Richard Glasser's Affidavit In Support of Motion For Partial Summary Judgment attached as Exhibit 46.) In fact, there were many clients with very questionable claims whose files had been previously "warehoused" or simply placed in an inactive status.

As a part of the Manville Chapter XI Reorganization proceeding, a separate entity known as The Manville Fund/Trust was established (the details thereof being inconsequential to the Issues *sub judice*) and thereafter all personal injury (or death) claimants became relegated to that Fund/Trust.

The Glasser Firm astutely perceived the legal importance of converting all clients' claims into *bona fide* judgments. To accomplish those judgments, every Glasser file, (including those of questionable merits which had been warehoused) had to be fully reviewed, prepared as a claim, (or upon the client's instruction, closed as a "No-Claim") and turned over to Richard Glasser and Seward Lawlor. They then negotiated a dollar-amount settlement with The Manville Fund/ Trust and upon agreement, a final, nonappealable consent judgment in each case was entered in the United States District Court For The Eastern District of Virginia. It is the totality of these and other claims/judgments that aggregate 1,087 judgments for \$62,845,616 [compromised in January, 1994 for approximately \$49,000,000] and concomitant contingent fees as tabulated on page 27 hereinbefore and under Exhibit 24 hereto.



In order to achieve those settlements and consent judgments quickly and promptly, the Glasser Firm extended a "one-time deal" or "offer" to all attorneys in the office. Seward Lawlor's handwritten outline of that "offer" is attached as Exhibit 47. Its essential terms and requirements were:

1. The participating attorney would have full responsibility and accountability for the file/claim.
2. The attorney would perform full claim preparation, including client contact and management, medical exams and reports, file analysis, statistics, etc.
3. The participating attorney would be paid 10% of Glasser's fee.
4. This "one-time" deal would not affect or apply to any cumulative increase in the annual "Limit" or "Cap."
5. Attorney must be with office at time of settlement.

Wainger was a participating attorney in the foregoing "offer" and actually prepared 110 cases in which final non-appealable consent judgments were entered. (Those cases are listed in the attached Exhibit 48.) The client's "Right" to a recovery thus became a "vested" Right (as defined by Richard Glasser in his argument on January 7, 1993 in the United

States District Court For The Eastern District of New York).  
(See Transcript, page 12, Line 17; page 21, Line 2; page 27,  
Line 13; page 28, Line 22; page 29 Line 2; and page 32, Line  
18, all included in Exhibit 35.)

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PARTNERSHIP AGREEMENT FOR  
THE LAW FIRM OF  
GLASSER AND GLASSER

ARTICLE I. GENERAL PROVISIONS

Section A. Recitals

1. The partnership of Glasser and Glasser was formed on January 1, 1967, by Bernard Glasser, Stuart D. Glasser and Richard S. Glasser. Prior to January 1, 1967, and since 1932, Bernard Glasser had practiced law as a sole practitioner along with various associates. On January 1, 1980, Michael A. Glasser was admitted as a partner. On December 31, 1982, Bernard Glasser withdrew as a partner of Glasser and Glasser, and Stuart D. Glasser, Richard S. Glasser and Michael A. Glasser were the remaining partners after December 31, 1982, who continued the practice of law as a partnership under the name of Glasser and Glasser.

2. Effective as of December 31, 1984, Stuart D. Glasser will withdraw as a partner of Glasser and Glasser but will continue to be employed by the firm as Counsel.

3. The effective date of this partnership agreement is the 1st day of January, 1985. The firm shall be a continuation of the firm of Glasser and Glasser and shall continue to use the same name.

4. All of the firm's accounting, banking, financial and tax records and books (except those directly related to client's funds) for all times prior to January 1, 1985, shall be the sole, exclusive and confidential property of Stuart D. Glasser, Richard S. Glasser and Michael A. Glasser.

Section B. Parties, Name, Purpose, Location and Term

1. Richard S. Glasser, Michael A. Glasser, Ronald F. Schmidt, J. James Basgier, Jr., H. Seward Laylor, Melvin

R. Zimm and John T. Midgett shall constitute the only partners of the law firm of Glasser and Glasser from and after January 1, 1985, and they agree to practice law together according to the terms of this Agreement.

2. The name of the firm shall continue as Glasser and Glasser; provided that if Richard S. Glasser and Michael A. Glasser withdraw, retire or cease for any reason to be an active partner in the firm, the name Glasser shall be dropped from and not be used by the firm.

3. The sole purpose of the partnership is to engage in the practice of law with such usual operations in the purchase, ownership and disposition of properties used in connection with the law practice of the firm, the maintenance of records, and the conduct of other business as is incidental to the practice of law. The practice of law should be conducted by the partnership in accordance with the Canons and Disciplinary Rules of the Code of Professional Responsibility as adopted by the American Bar Association and the Supreme Court of the Commonwealth of Virginia.

4. The location of the office of the firm shall be at 504 Plaza One, Norfolk, Virginia, 23510, and/or in such other place or places in the Commonwealth of Virginia as the Management Committee shall determine.

5. The partnership shall continue from the effective date of this document until dissolved in accordance with the terms hereof.

#### ARTICLE II. DEFINITION OF TERMS

For the purposes of this document, each of the following terms shall have the following meanings:

1. The terms "firm" or "partnership", interchangeable terms in this document, shall include the firm now organized



and the same continuing firm, however named, notwithstanding changes in personnel by addition of new partners or termination of the membership of any partners.

2. The term "partners" shall (unless expressly qualified) include all partners individually, whose membership has not been terminated.

3. The terms "this document" or "this agreement", interchangeable terms herein, shall include the Articles of Partnership as set forth herein, as the same may be amended as provided herein. The term "provisions of this document" includes the terms and provisions hereof and of all such amendments.

4. The phrase "termination of all interest in the partnership" means, when applied to any partner, the end of (i) his membership; (ii) his units of participation and all rights under his units of participation; and (iii) his rights in the capital of the firm; but shall not involve an elimination or cancellation of any rights expressly provided in this document to receive payments in cash or property yet to be paid to him as an incident of the termination of interests mentioned in (i), (ii) or (iii) of this paragraph.

5. The term "retired partner" means one whose interest in his Units of Participation is suspended, and hence he has no right to participate in the voting of partners, or in sharing the net profits and losses; however, he shall be eligible to receive any retirement bonuses or other payments in accordance with the terms of this document, and neither his membership nor his rights in the capital of the firm shall be terminated.

6. The term "withdrawal" of a partner means the termination by his voluntary act of all his interest in the partnership.

7. The term "expulsion" of a partner means action by the firm effecting termination of all his interest in the partnership.

8. The term "permanent disability" of a partner means that disability which justifies the requisite vote of the Units of Participation of the partners, in their discretion, to terminate on that account all said permanently disabled partner's interest in the partnership.

9. The term "net income" or "net profits", interchangeable terms in this document, mean the gross "income" as that term is defined for federal income tax purposes, less such deductions from the "gross" as are permitted for federal income tax purposes.

10. The "fiscal year" of the firm shall commence on January 1st and end on December 31st of each year.

11. "Firm Client(s)" means and includes all of those clients listed or referred to in Paragraph 3 of Article XIII of this document, and all other clients, except a client who, upon initially contacting or communicating with any representative or employee of the firm, specifically requests the services of a certain partner, other than Richard S. Glasser, Michael A. Glasser or Stuart D. Glasser, without any suggestion or recommendation of an associate attorney or firm employee.

### ARTICLE III. CAPITAL OF THE FIRM

#### Section A. Original Capital Contributed By Partners

Each partner shall have a Capital Account. The original capital contributions of the respective partners hereunder are shown on Exhibit A attached hereto. It reflects cash contributed and property, the title of which is owned by the firm at the current agreed market value. The firm

agrees to repay to each partner, at the time and as herein provided, the aggregate amount he has thus contributed as original capital, plus interest thereon at the rate of twelve percent (12%) per annum on all unpaid balances. The original capital contributions shall be repaid in full prior to the repayment of any additional capital contributions. It is agreed that the firm shall repay all original capital contributions, ratably, on or before December 31, 1985, plus interest as aforesaid from January 1, 1985. It is agreed and understood by all partners that no value or amount is included in the original capital contributions of Richard S. Glasser and Michael A. Glasser for the library owned by the firm as of December 31, 1984, and that, therefore, Richard S. Glasser and Michael A. Glasser shall have and retain all right, title and ownership interest (including depreciation, and sale and insurance proceeds) in and to all books (and all replacements thereof) which were owned by the firm prior to January 1, 1985. Richard S. Glasser and Michael A. Glasser agree to allow the firm to use, without rent or charge, such books so long as they are partners of the firm; the firm agrees to bear all risks of loss and destruction of such books. In the event of the termination or dissolution of the firm, then Richard S. Glasser and Michael A. Glasser, or the survivor of them, shall have an option for thirty days to purchase, at its fair market value, any additions (not replacements) made to the library at the expense of the firm.

#### Section B. Additional Contributions to Capital

The Management Committee may, from time to time, in its sole and absolute discretion, withhold from distribution to partners and transfer, ratably, from their respective undivided profits accounts, and credit to each partner's



capital account, as additional contributions to capital, such amounts as the Management Committee, in its sole and absolute discretion deems to be desirable or necessary. Interest shall be paid by the firm on all unreimbursed balances of all these additional contributions to capital at the rate of twelve percent (12%) per annum until fully repaid. In addition thereto, the partners may be required at such times and in such amounts as determined by the Management Committee, to make additional contributions to capital of the firm, from their own personal funds, all of which shall be made ratably in proportion to their units of participation. Additional contributions to capital shall be repaid to the partners, ratably, in reimbursement of their contributions to capital at such times and in such amounts as determined, in the sole and absolute discretion of the Management Committee; provided, however, all interest owing on any capital contribution shall be paid before any reimbursement of contributions to capital, and reimbursements of contributions to capital shall be made for the oldest contributions first.

#### Section C. Reserves

Out of the amounts contributed as additional contributions to capital, the Management Committee, in its sole and absolute discretion, may, from time to time, set aside and/or retain in a reserve fund and/or special account such amounts which it deems to be desirable or necessary, for the future six months, for capital expenditures, bonuses, and/or any other anticipated obligations, expenses, and/or commitments or contingencies of the firm. The aforesaid reserves may be kept, in such amounts, in the firm's operating checking account, or in a special or reserve account, or in



certificates issued by any bank, savings and loan, or by the United States of America, opened by or in the name of the firm, as determined by and in the sole and absolute discretion of the Management Committee.

ARTICLE IV. PROFITS AND LOSSES OF THE FIRM;  
PARTICIPATION OF PARTNERS THEREIN; DRAWINGS;  
ADDITIONAL COMPENSATION; BONUSES; FEES EARNED  
PRIOR TO JANUARY 1, 1985

Section A. Units of Participation in Profits and Losses  
Held by the Respective Partners

1. Except as otherwise expressly provided in this document, participation of partners in net profits and losses shall be on the basis of the "Units of Participation" held by each partner, which shall be as follows:

Richard S. Glasser - 48  $\frac{2}{3}$  Units of Participation

Michael A. Glasser - 24  $\frac{1}{3}$  Units of Participation

Ronald F. Schmidt - 6 Units of Participation

J. James Basgier, Jr. - 5 Units of Participation

H. Seward Lawlor - 6 Units of Participation

Melvin R. Zimm - 5 Units of Participation

John T. Midgett - 5 Units of Participation

Upon termination of all interest in the partnership as to any partner, his units of participation and all rights thereunder shall expire. No amendment of this document shall be required therefor. Otherwise, no change in the aggregate number of units held by partners or in the number held by any partner shall be effected, except by an appropriate amendment of this document. The number of Units of Participation which each partner has may be changed from time to time by a two-thirds ( $\frac{2}{3}$ ) vote of all Units of Participation, each unit representing one vote.

Section B. Undivided Profits Account

1. The firm shall carry on its books an undivided profits account for each partner to which profits and losses will be added or deducted at the end of each quarter commencing March 31, 1985. His share of profits and losses will be computed as set forth herein. To the extent that the net income and prospective needs and obligations of the firm permit, as determined by and in the sole and absolute discretion of the Management Committee, at the end of each calendar month each partner shall be paid the following monthly draw, which shall thereupon be charged to his undivided profits account.

Richard S. Glasser - \$7,500.00

Michael A. Glasser - \$5,000.00

Ronald F. Schmidt - \$2,500.00

H. Seward Lawlor - \$2,500.00

J. James Basgier, Jr. - \$2,083.33

Melvin R. Zimm - \$2,083.33

John T. Midgett - \$2,083.33

In the event that the Management Committee determines, in its sole and absolute discretion, that the net income and prospective needs and obligations of the firm do not make it desirable to distribute the above monthly draws, in full, the Management Committee may reduce, ratably, among the above partners, or eliminate, such monthly draws, from time to time, in its sole and absolute discretion.

2. After the aforementioned monthly draws have been paid to the above-named partners for the current month and all preceding months of the current fiscal year (unpaid monthly draws of the aforementioned partners shall be cumulative during a fiscal year but shall not be cumulative or carried over to any succeeding fiscal year), then, to the extent the

net income and prospective needs and obligations of the firm permit, as determined by and in the sole and absolute discretion of the Management Committee, net profits will be shared on the basis of "Units of Participation" as set forth in Section A of Article IV. Each partner will be allowed a certain number of Units of Participation. A fraction will be formed. The numerator of this fraction shall be the number of units owned by one partner and the denominator shall be the total number of units owned by all partners. All losses, and all profits over and above the monthly draw provisions specifically set forth above, will be multiplied by each partner's fraction in order to determine each partner's share thereof, except that the maximum annual draws and respective shares of the firm's net profits for each of the following partners (exclusive of any additional compensation or bonus) shall not exceed the following amounts:

<u>Partner</u>	<u>Maximum Draw for Fiscal Year</u>
Ronald F. Schmidt	\$72,000.00
H. Seward Lawlor	72,000.00
J. James Basgier, Jr.	60,000.00
Melvin R. Zimm	60,000.00
John T. Midgett	60,000.00

3. Notwithstanding the aforementioned maximum annual draw limitations, Ronald F. Schmidt (19%), H. Seward Lawlor (19%), J. James Basgier, Jr. (20%), Melvin R. Zimm (20%) and John T. Midgett (20%) shall be entitled to additional compensation which shall be added to such partner's undivided profits account in an amount equal to the percentage set forth in this paragraph following their name, respectively, of the fees which are received and fully earned by the firm, as a direct result of business from a client, not a Firm Client, originated by such partner, provided that the Management

Committee does not determine, in its sole discretion, that such business was unprofitable to the firm, taking into consideration the amount of time spent on such business by all partners, associates, paralegals, and secretaries and other overhead and expenses of the firm, as determined by the Management Committee to be allocable to such business. The Management Committee may, under such circumstances, reduce or eliminate such bonus in its sole discretion. The aforesaid additional compensation shall be payable monthly on the last day of each month or as soon thereafter as is practicable. It is understood and agreed that no such additional compensation will be paid to any of the aforesaid partners in connection with business or fees from past, present or future Firm Clients, except that H. Seward Lawlor shall be entitled to additional compensation of 19% of fees received by the firm on the asbestos cases from Port Allegany, Pennsylvania, yet to be tried (Barber, et al), unless they are determined by the Management Committee to be unprofitable to the firm.

4. At the close of each fiscal year there shall be credited to the undivided profits account of each partner his share of the net profits computed as provided in this Article IV, less the amount of his additional contributions to capital of the firm. Any reimbursements of capital contributions to him shall be so credited and all other debits and credits between the partner and the firm to date shall be included in the calculation.

5. If at the end of the fiscal year, after crediting to the undivided profits accounts of the partners the participation of each such partner in the net profits, there remains a deficit in his undivided profits account, he shall be required to pay the amount of that deficit to the firm.



6. If at the end of each fiscal year the maximum draws for the fiscal year (as set forth in Paragraph 2, Section A of this Article) have been paid in full to Ronald F. Schmidt, H. Seward Lawlor, J. James Basgier, Jr., Melvin R. Zimm and John T. Midgett, and if there are net profits remaining after paying or setting aside for paying all expenses of the year, over and above the aggregate of all stipulated monthly drawings provided for in Paragraph 1 of Section B of this Article, additional compensation, and additional contributions to capital (transferred and/or made as provided for in Section B of Article III), and reserves, the Management Committee, in its sole and absolute discretion, may award, but shall not be obligated to award, bonus(es) out of such remaining net profits to and among such partner(s) as it shall select, in such amount(s) as it, the Management Committee, shall determine, in their sole and absolute discretion, for meritorious and extraordinary service to the firm.

7. If at the end of the fiscal year there are net profits for distribution over and above the aggregate of all the stipulated monthly drawings, additional compensation, bonuses, and additional contributions to capital, then the portion of such net profits not transferred to or retained in the firm's reserve fund or special account, as provided for in Section C of Article III, shall be applied first to payments to those partners who have received in their monthly drawings less than their ratable share of net profits based upon their respective Units of Participation; and thereafter the balance of net profits shall be distributed ratably to all partners in proportion to their respective Units of Participation, not exceeding their respective maximum draw for such fiscal year.

Section C. Fees Earned Prior to January 1, 1985

It is stipulated and agreed that certain fees and commissions have been earned prior to January 1, 1985, but

not received as of the date of this Agreement, and that all fees relative to the cases and/or matters (listed on Schedule B attached hereto) shall be owned, divided and distributed upon receipt, forthwith, in full, exclusively among Stuart D. Glasser, Richard S. Glasser and Michael A. Glasser, in such portions as they alone shall agree upon, without any charge or reduction of Richard S. Glasser's and/or Michael A. Glasser's draws or share of the firm's profits (provided for in Article IV of this document); it being expressly acknowledged and agreed that no other partner has any interest whatsoever in said fees or commissions.

#### ARTICLE V. DUTIES OF PARTNERS

##### Section A. Devotion Primarily to Professional Services

Each partner shall devote his best efforts to serving professionally the firm and its clients. Subject to any exceptions consented to by the Management Committee, each partner shall devote all of his normal business time to such services.

##### Section B. Charging for Professional Services

1. Each partner shall charge reasonably for all professional services rendered by him, following generally the policies of the firm as to fees charged, as determined by the Management Committee. No partner shall perform any substantial professional services without charge unless he obtains prior approval of the Management Committee.

2. Each partner will follow the rules, decisions and policies of the firm adopted by the Management Committee relating to fees on services rendered by the firm. With respect to substantial services to be rendered by the firm, each partner will submit to the Management Committee a

recommendation of each fee unless, due to some emergency, in the judgment of the partner, time does not permit this to be done in advance, in which case he then will promptly report to the Management Committee every charge made by him. Each partner will report to the responsible partner in charge of the billing of any client when he has rendered any services for such a client, monthly or upon the completion of the same, whichever is sooner, recommending to the responsible partner what charges for such services seem to him appropriate.

3. No salaries, commissions, fees or gratuities (gift with a value of more than \$25.00) shall be accepted, directly or indirectly, by any partner personally (or by a member of a partner's immediate family) from any client or prospective client of the firm, unless with the express consent in advance of the Management Committee. The fair value of any such item received and retained by the partner shall be treated for accounting purposes as compensation to the firm and shall be charged against such partner as an advance on the next maturing installment or installments of his undivided profits account. The Management Committee may agree, however, to any exception to any provision of this paragraph.

#### Section C. Professional Obligations

1. At firm expense, each partner will maintain memberships in the Virginia State Bar and the Norfolk-Portsmouth Bar Association. The firm, at the discretion of the Management Committee, may pay the expense of a partner's or partners' membership dues in other bar associations as it deems desirable.

2. At firm expense, each partner will maintain fully effective his license and privilege to practice law in

the State of Virginia and in the courts and administrative bodies before which he shall have occasion to practice.

3. Each partner will at all times comply with all of the provisions of the Canons of Professional Ethics as adopted by the American Bar Association and the Virginia State Bar and with the statutes, rules and regulations covering all professional services that he shall render.

#### Section D. Duty to Report Errors and Omissions.

1. Each partner shall report, immediately, to members of the Management Committee all errors or omissions with respect to professional services rendered by him, as soon as he has knowledge of them, or of the possibility of a claim against him or the firm.

2. Notwithstanding coverage on a firm insurance policy, each partner shall be responsible for reimbursement to the firm, for the deductible amount on any firm insurance policy, for each loss or claim paid by the firm, which is caused by such partner's error or omission.

### ARTICLE VI. MEETINGS AND VOTING OF PARTNERS

#### Section A. Meetings of Partners; Voting at Such Meetings

1. A meeting of partners shall be held at any time on call of the Management Committee, or at any time jointly signed by any three partners, specifying the hour and purposes of the meeting. The call by the Management Committee may be written or oral and need not be made any period of time in advance of the meeting, nor need it specify the purposes of the meeting; except, however, that in those instances where written notice for at least a specified period of time is required by any provision of these Articles, every call or notice of such meeting shall comply with such requirement.



2. At each meeting of partners each partner shall have one vote for each unit of participation (a fractional unit shall have a corresponding fractional vote) held by him, as specified in Section A of Article IV of this document; a quorum for any issue at any meeting shall exist if partners holding a majority of such units are present in person or voting by proxy on written instruction. Any partner may vote on any matter if not present, by general or specific proxy to a partner present or by specific instructions in writing.

3. A partner shall not vote, however, and the number of outstanding units shall be deemed to be reduced by the number he holds, when such partner has given a notice of withdrawal from the firm and the partnership meeting is voting on a proposal to terminate the firm and liquidate its affairs. The person whose notice of withdrawal is pending shall not vote and the percentage of votes for termination and liquidation shall be determined as though that partner's units of participation did not exist.

4. Excepting only as provided in paragraph 3 of this Section A of Article VI of this document, no partner shall be disqualified from voting on any issue, notwithstanding any interest he may have therein which differs from the interest of the firm or the other partners.

Section B. Percentage of Votes Required for Certain  
Partnership Decisions; Requirement of Recommendation  
of the Management Committee in Advance of Certain  
Partnership Decisions

1. As provided by this document, it may be determined by partnership vote that one presently a partner (i) is

under permanent disability; (ii) should be expelled from the firm; (iii) should be permitted to retire or to attain retirement by gradual steps, or (iv) that one not a partner presently be added as a partner. As to each such issue (except for the readmission of Stuart D. Glasser as a partner), it is required that for so determining that issue in the affirmative, affirmative votes shall be cast by partners holding at least two-thirds of the outstanding Units of Participation that can be voted on that issue. An affirmative recommendation of the Management Committee in advance is required (except for the readmission of Stuart D. Glasser as a partner) before a vote of the partners on the addition of a new partner.

2. As provided by Article XV of this document, decision may be made that the firm be terminated and its affairs liquidated (i) at any meeting held for the specific purpose of determining whether this shall be done, (ii) on the written recommendation of the Management Committee, or (iii) at the written request of any three partners stating the purpose of the meeting and giving at least five days' notice. For determining this issue in the affirmative (subject to the provisions of Paragraph 3 of Section A of this Article) votes in the affirmative of partners holding a majority of the outstanding Units of Participation that can be voted on that issue, shall be required.

3. These Articles of Partnership may be amended, except where such amendment is expressly prohibited by the provisions of this document, upon affirmative votes of partners holding at least two-thirds of the outstanding units of participation that can be voted on that issue provided that the proposed amendment and the affirmative recommendation of the Management Committee with reference

thereto are attached to the written notice of the meeting at which the proposed amendment is to be considered.

4. A majority of the Units of Participation may determine any other issue at a partnership meeting, subject to prior approval by the Management Committee, or referral by the Management Committee, of an issue to the partners for decision.

#### ARTICLE VII. MANAGEMENT

##### Section A. Authority and Membership of the Management Committee

1. Subject to the express terms of this document, which as to certain specific matters provides that decisions of the firm shall be determined by the vote of Units of Participation, the complete and sole management of the firm is hereby vested in the Management Committee, including but not limited to the approval of overhead expenses, assignment of work to partners and associate attorneys, personnel and office procedures, fees charged to clients, amounts of reserves, additional contributions to capital, rules and regulations for employees, vacations, sick leave, accounting procedures and records, files, handling of copying and telephone expenses, charitable contributions, membership in clubs and entertainment, reimbursements, drawings, bonuses, additional compensation, travel, purchase and sale of supplies and equipment, hiring and dismissal of employees, banking, investments, insurance and reserve and/or special accounts.

2. Any part or parts of the power, right, and authority vested in the Management Committee may, at any time and from time to time, be delegated by it to a subcommittee of one or more partners chosen by it. Such authority may be



delegated with power in the subcommittee only to recommend to the Management Committee what action should be taken, or with power to act. In the latter event, action of the subcommittee shall be the action of the Management Committee. Any delegation of power or authority may be terminated by the Management Committee at any time.

3. The Management Committee may from time to time cause a set of the rules and policies of the firm to be distributed in an office manual to all partners, associated attorneys and employees of the firm.

4. The Management Committee shall consist of three partners. No one of them shall be retired (though he may be participating in gradual steps toward retirement) or the subject of pending action for expulsion.

5. The Management Committee, from the effective date of this instrument, shall consist of Richard S. Glasser, Michael A. Glasser, and John T. Midgett, who shall be the original members of the Management Committee. Each of the three shall serve respectively until his tenure is terminated by death, resignation, disqualification, or a determination by vote of the partners that his term shall expire, except notwithstanding anything to the contrary contained herein, the said Richard S. Glasser and Michael A. Glasser shall each continue, permanently, to be members of the Management Committee so long as either of them remains a partner of the firm, and the number of members of the Management Committee shall not be increased to more than three (3) members without their affirmative written vote and consent. JW

6. The tenure of each member of the Management Committee, other than that of Richard S. Glasser and Michael A. Glasser, shall be subject to termination without cause, by a vote of a majority of the Units of Participation.



Section B. Functioning of the Management Committee and  
Its Subcommittees

1. Members of the Management Committee shall make every reasonable effort to keep each other advised of all pending problems, prospective decisions, and actions taken. Action of the Management Committee shall be by majority vote of its three (3) members. It shall not be necessary that any notice be given of the time or place or decision or of the matter to be decided. Any decision of the Management Committee may be reversed by any subsequent action of the Committee.

2. Though the Committee has no obligation so to do, it may refer any matter to a meeting of the partners for decision.

Section C. Membership in Subcommittees of the Management  
Committee

The Management Committee shall decide what subcommittees there shall be from time to time, how many members (one or more) there shall be of each subcommittee, who the members shall be, and what the subcommittee's functions and authority shall be. The Management Committee may at any time modify or revise any authorized decision of any subcommittee. Any partner, or any employee, may be a member of any subcommittee.

ARTICLE VIII. ADDITION OF PARTNERS

The Management Committee may, from time to time, (i) propose that additional partners be invited to join the partnership, and (ii) may propose the units of participation and the undivided profits accounts for each, or (iii) propose an amendment to the Articles of Partnership, specifically

providing for any undivided profits account, and other provisions. In each such instance:

1. There shall be given to each partner a notice of at least five (5) days before a meeting for all partners at which each partner shall be entitled to discuss the proposal fully.

2. At that meeting the partners may by their affirmative votes (as provided for in paragraph 1 of Section B of Article VI) determine that the invitation shall be extended as proposed by the Management Committee or with such revisions as are determined upon.

3. If the invitation is accepted, the new partner and prior partners holding at least two-thirds of the Units of Participation entitled to vote at the meeting referred to in paragraphs 1 and 2 of this Section B, shall join in executing an amendment to these Articles of Partnership providing for the change in the partnership thus effected.

4. Notwithstanding anything to the contrary contained in this document or amendments of this document, it is agreed by all partners, present and future, that Stuart D. Glasser may be readmitted as a partner of the firm, at any time, upon the invitation of Richard S. Glasser and Michael A. Glasser, or the survivor of them, acting alone, and without any further agreement or consent of the other partners, upon five days written notice to the other partners. The said Richard S. Glasser and/or Michael A. Glasser may transfer and/or assign to the said Stuart D. Glasser all, or any part, of their Units of Participation or interests in the firm on the sixth day after aforesaid notice, and upon the sixth day after the date of said notice the said Stuart D. Glasser shall be a partner of the firm. This paragraph shall not be subject to amendment or modification without the express written consent of Richard S. Glasser and Michael A. Glasser, or the survivor of them. In the

event that Stuart D. Glasser is readmitted as a partner, it shall have no effect on the number of Units of Participation held by the partners other than Richard S. Glasser and Michael A. Glasser.

#### ARTICLE IX. PAYMENT FOR PARTNER'S INTEREST

The payment for a partner's interest in the partnership, calculated as of the date of his death, or the effective date of retirement, withdrawal or expulsion, will be on the following basis:

Item A. Any unpaid monthly draw, and additional compensation (as described in Paragraph 3 of Section B, Article IV).

Item B. His Capital Account.

Item C. His Undivided Profits Account, plus his share, if any, of any undivided profits of the firm with respect to uncollected fees which were fully earned by the firm prior to the date of his death or the effective date of his retirement, withdrawal or expulsion, but which fees are received by the firm subsequent to such date.

Item D. Death or Retirement.

For the number of months set forth after the number years of the partner's association with the firm, a partner, or his specifically designated payee, or if none, his personal representative, shall receive one-fourth (1/4) of his share of such net profits based upon the number of Units of Participation which he had in the firm relative to the firm's total number of Units of Participation as of the date of his death or effective date of his retirement. A partner's years with the firm as an associate shall count.

All payments under Item D shall be out of profits of the partnership, shall be considered a distribution of partnership earnings and shall not be includable in the shares of net profits of the other partners. Until all



distributions are made under Item D, and for purposes of this distribution only, it shall be deemed that no change in Units of Participation have occurred, regardless of whether the firm in fact re-arranges old, or issues new Units of Participation during the period of distribution. From the date of death or the effective date of retirement, withdrawal or expulsion, that partner's Units of Participation shall have no voting rights; however, the right to arbitrate shall remain.

<u>Number of Years of Deceased or Retired Partner's Associ- ation with the Firm</u>	<u>Number of Months of Death or Retirement Benefits</u>
5 years but less than 10 years	12 months
10 years but less than 15 years	24 months
15 years but less than 20 years	36 months
20 years or more	48 months

In the event of the death or retirement of a partner following his temporary disability, the firm shall receive a credit for any payments made to such partner after the effective date of his temporary disability. In addition, as to Richard S. Glasser, only, the firm shall obtain and purchase, at the firm's expense, a term life insurance policy, with waiver of premium in the event of his disability, on the life of Richard S. Glasser in the amount of \$500,000.00 and maintain the same in full force and effect, continuously, for a period of five years. The beneficiary of said life insurance policy shall be such person or persons selected by Richard S. Glasser, or if he fails to select anyone, the beneficiary of said policy shall be his estate. Notwithstanding



anything to the contrary in this document, in the event of the termination of the firm, permanent disability of Richard S. Glasser or the end of said five year period, the ownership of said term life insurance policy shall be assigned, without charge, to Richard S. Glasser or to any other person or persons selected by him. This provision is not subject to amendment without the express written consent of Richard S. Glasser.

#### ARTICLE X. EFFECT OF DEATH

Death of a partner shall not terminate the partnership nor the deceased partner's estate's interest in the partnership. The partnership, and the deceased partner's estate's (or named beneficiary's) interests shall continue until terminated as herein provided.

#### ARTICLE XI. DISABILITY

1. Any disability, physical or mental, will be considered temporary when two-thirds (2/3) of the other Units of Participation decide that, effective on any reasonable date, a partner was not able to adequately attend to partnership affairs.

2. For three (3) months following temporary disability, such partner will be paid seventy-five percent (75%) of his draw and of his share of net profits and losses; for the next three (3) months, fifty percent (50%) of his draw and of his share of net profits and losses; for the next three (3) months, twenty-five percent (25%) of net profits and losses; return to practice during such nine (9) month period will restore the partner to such extent as a majority of the remaining Units of Participation decide.

3. Such disability will become "permanent disability" (a) when his personal physician so advises the firm, (b) whenever two-thirds (2/3) of the other Units of Participation so conclude, or (c) after nine (9) months of temporary disability, whichever occurs first. The determination that a partner is permanently disabled shall terminate all of his interest in the firm and his Units of Participation, and after such determination he shall no longer be a partner.

4. Once permanent disability is determined, the partner shall receive the same benefits as though he had retired on the date temporary disability began, the firm receiving a credit for payments made to him since that date.

## ARTICLE XII. RETIREMENT

### Full Retirement.

1. Retirement shall only be permissible, but not required, by a partner who has reached his 60th birthday and who intends to terminate the practice of law in the community. If this is his intention, he may do so with two months notice. He will be paid as to Items A, B, C and D under Article IX.

2. Should a majority of other Units of Participation decide to terminate the partnership, they may do so within the two month period, in which case the retirement notice shall have no effect.

3. Should the retired partner, once retired, resume the active practice of law, all payments otherwise due but not paid, need not be paid and responsibility to do so will terminate.

### Transitional Retirement.

4. Transitional Retirement may be elected at any time by a partner after reaching his 60th birthday. In such

event, and provided his interest in the firm is not meanwhile terminated by death, permanent disability, withdrawal, expulsion or dissolution, his Units of Participation shall be reduced and paid for (approximately) equally each year thereafter for ten years, until reduced to zero at the end of the tenth year. During this time, his duties shall be gradually reduced. His draw will likewise be reduced by the firm.

#### ARTICLE XIII. WITHDRAWAL

1. Any partner may withdraw with thirty (30) days notice to the other partners. He shall be paid only as to Items A, B and C. At the end of the expiration of the thirty-day period, or sooner if agreed upon, the withdrawal shall be effective.

2. He may take only the files of any client originated by him and willing to leave the firm; and, in the sole and absolute discretion of the Management Committee, he may take the files of those other clients who are willing to leave the firm. If any firm client, or client originated by any other partner or associate, prefers his representation for any reason, but contrary to the decision of the Management Committee, the withdrawing partner will pay to the firm, monthly, commencing on the date thirty (30) days after the effective date of his withdrawal and continuing on the same date of each and every month thereafter, one hundred percent (100%) of any fee(s) earned and/or received by him, or by any other firm of which he is a member or with which he is associated, from such client, directly or indirectly, for a twelve (12) month period following his withdrawal, whether actually paid or not; it being stipulated and agreed that such payments are liquidated damages to the firm caused by such partner's withdrawal. Such withdrawing partner will

disclose such information and make such accounting as the firm may request from time to time to verify the accuracy of such required payments. Notwithstanding anything to the contrary in this document, it is stipulated and agreed that upon the withdrawal of Richard S. Glasser and/or Michael A. Glasser that they, or either of them, may take the files of "Firm Clients", and related escrow funds and accounts, in addition to the files of any other clients to which they, or either of them, may be entitled; this stipulation is not subject to amendment or modification without the express written consent of Richard S. Glasser and Michael A. Glasser, or the survivor of them.

3. It is stipulated and agreed by all partners, including any future partners to this Agreement, that all files, matters and cases, and all fees earned or to be earned in the future relating to the "Firm Clients" listed on Schedule C, attached hereto, are owned by the firm, exclusively, and no withdrawing, expelled, disabled or retired partner except Richard S. Glasser and Michael A. Glasser (and Stuart D. Glasser in the event that he has been readmitted as a partner) shall keep, record, photocopy, reproduce or preserve any of the records and/or files of such "Firm Clients", it being stipulated and agreed for purposes of this agreement that all such "Firm Clients" were originated for the firm by Bernard Glasser, Stuart D. Glasser, Richard S. Glasser and/or Michael A. Glasser.

4. Each withdrawing partner receiving any file shall immediately reimburse the firm for any advances which it may have made on behalf of the client.

5. Should the firm decide, by a two-thirds (2/3) vote of the Units (excluding the Units of the withdrawing



partner) within thirty (30) days after notice of withdrawal, to dissolve the partnership, they may do so, in which case the dissolution decision shall take precedence over the withdrawal notice, which latter notice shall have no effect.

#### ARTICLE XIV. EXPULSION OF A PARTNER

1. A partner shall be expelled for cause when it has been determined, by vote of partners in accordance with the provisions of Article VI of this document, that any of the following reasons for his expulsion exist:

(a) Disbarment, suspension or other major disciplinary action of any duly constituted authority.

(b) Professional misconduct or violation of the canons of professional ethics, if such misconduct continues after its desistance has been requested by the Management Committee.

(c) Action that injures the professional standing of the firm, if such action continues after its desistance has been requested by the Management Committee.

(d) Insolvency or bankruptcy or assignment of assets for the benefit of creditors by a partner.

(e) Breach of any provision of this Partnership Agreement, which all other partners expressly agree is a major provision, if, after the breach has been specified as a prospective ground for expulsion by written notice given by the Management Committee, the same breach continues or occurs again.

(f) Any other reason which the other partners unanimously agree warrants expulsion, including, but not limited to, withholding of fees owing to the partnership.

## 2. Effects of Expulsion for Cause.

Upon a determination that a partner be expelled for cause, he shall thereby be so expelled, forthwith, and shall have no right or interest thereafter in the firm or any of its assets, clients, files or records, or affairs. He shall have no further professional duties to the firm or any of its clients and shall not be privileged to serve any of them thereafter. He shall immediately remove himself and his personal effects from the firm offices. Upon any such expulsion, the expelled partner shall be obligated not to accept employments for professional services from any who have been clients of the firm during the last three years preceding the determination of expulsion, the obligation not to accept such employments being a continuing one for a term of the next ensuing three years. From the time of the expulsion, the expelled partner shall have no participation whatever in the income or losses of the firm or any distribution or drawings from the net income. Realizing that the existence of any such cause for expulsion may bring disgrace on the firm and damage the firm in amounts and ways that cannot be calculated or become liquidated in amount, each partner agrees that the firm shall succeed to all of the rights of the expelled partner as hereinabove set forth and shall retain all sums unpaid by it to the expelled partner, whether accrued or not at that time; further, that the receipt and retention by the firm of all such rights and sums shall satisfy and discharge the damages of the firm, being retained as and thereby determined to be liquidated damages; however, no other existing indebtedness or deficit of the expelled partner to the firm shall be discharged.

## 3. Expulsion Without Determining Any Cause Therefor.

A partner shall be expelled immediately, when on recommendation of the Management Committee, it is determined

by a vote of the partners as provided in Article VI that he shall be expelled without determination of any cause therefor. This method of expulsion may be employed, notwithstanding the fact that grounds may exist for expulsion for cause of said partner.

4. Effects of Expulsion Without Determining any Cause Therefor.

Upon such expulsion without determining a cause therefore, the partner so expelled shall have no right or interest thereafter in the firm or any of its assets, clients, files, records, or affairs. He shall have no further professional duties to the firm or any of its clients and shall not be privileged to serve any of them thereafter. He shall immediately remove himself and his personal effects from the firm offices. Except as otherwise provided in this paragraph, a partner so expelled shall be entitled to the same rights, the same payments by, and be subject to the same duties to the continuing firm as if he were then voluntarily withdrawing from the firm.

ARTICLE XV. TERMINATION BY VOLUNTARY DISSOLUTION

1. The firm may terminate the partnership effective on such date as it chooses. The effective date shall become the "date of termination." Those individuals exercising the majority vote may choose to re-establish the firm business following such termination using the same name (excluding from that name only those who do not remain) and continue to rent the premises and retain firm assets except for personally owned items which may be removed by those not remaining. However, payment must then be made to each partner excluded,



as though he were deceased or retired; that is, he will be paid Items A, B, C and D under Article IX.

2. If instead a majority does not choose to so re-establish the firm, then the firm will liquidate. After payment of debts (or reserves for them are set aside), assets will be divided according to the Units of Participation.

3. During liquidation, decisions as to how this be accomplished shall be made by a majority of the Units of Participation. All rights to withdraw, to expell a member, to retire, and all rights to disability and death benefits shall be extinguished as of the "date of termination", except that Richard S. Glasser, or any person(s) designated by him, shall be assigned, without charge, the life insurance policy mentioned herein.

4. All partners will attempt to complete all work before the termination date so that matters can be billed and collected.

5. From the date of termination, there shall be no further business transacted for the terminated firm. Offices may be maintained by a re-established firm or by the firm in liquidation, as the case may be.

6. As soon as practicable, the firm will assign all pending matters including the files, to one or another of the partners, who most nearly may be considered a client of that partner, except that, notwithstanding anything to the contrary in this document, all files, cases, pending and closed, related to Firm Clients, and related escrow funds and accounts, shall be assigned to Richard S. Glasser and Michael A. Glasser, or the survivor of them (and/or to Stuart D. Glasser if he has been readmitted as a partner), in addition to those files of other clients to which they are entitled. While any client may choose with whom he



prefers to be represented, should it be with a partner to whom he was not assigned, either by agreement or by arbitration, the latter partner shall pay, monthly on the first day of each month after date of termination, 100% of all fees earned from that client for a twelve month period following the date of termination to the partner or partners to whom the client was assigned. This will be true whether the client actually pays the earned fees or not. No partner shall collect receivables outstanding on the date of termination; rather the firm in liquidation will receive and account for the same. The personal savings and checking accounts of each partner and all client files, etc., of all partners, shall be revealed to the arbitrator if any question of propriety arises.

7. Each partner receiving any file, except for asbestos case files, shall immediately reimburse the firm for any advances which it may have made on behalf of that client. Such repaid amounts shall be received by the firm in liquidation and accounted for accordingly.

8. Regarding any file (except for all asbestos cases and files and all other Firm Client cases and files which shall be assigned to Richard S. Glasser and/or Michael A. Glasser without charge against or reduction of their distribution rights upon termination or dissolution) which has substantial value, the firm will establish a value as of the date of termination. This may be applicable to probate matters, negligence cases, corporate affairs, and workmen's compensation cases. The value will be based upon such factors as time expended upon it in the past, the time likely to be spent upon it in the future and the potential fees to be earned. Such value shall become an asset of the firm. When such a file is eventually assigned to a partner,

such value will be treated as a partial distribution of his share of assets represented by his Units of Participation. It is not contemplated that all files must be so valued; only those which the firm believes have a substantial value because of its potential fee producing likelihood. To the extent that files assigned to a partner exceed his proportionate share as evidenced by his Units of Participation, he shall pay such excess to the liquidating firm upon final determination of the amount. The firm will then make such distribution of cash or other assets to those parties not receiving their proportionate share, in order to accomplish an approximate distribution according to the Units of Participation.

9. Notwithstanding anything to the contrary contained herein, after the date of termination Richard S. Glasser and Michael A. Glasser, or the survivor of them (and Stuart D. Glasser if he has been readmitted as a partner) shall have an option to assume and be assigned the lease for the firm's office; and Richard S. Glasser and Michael A. Glasser, or the survivor of them (and Stuart D. Glasser if he has been readmitted as a partner) shall also have a right of first refusal to purchase from the firm any and all of its equipment, supplies, furniture and fixtures, at the same cash price offered in writing by any other financially responsible person which offer a majority of the other partners desire to accept.

10. The right of arbitration shall remain throughout liquidation until all matters are resolved or until one year after the date of termination, whichever occurs first. No partner shall be estopped from arbitration on any point by reason of his vote on any matter during liquidation. Efforts to compromise on some matters should not affect the overall effort to liquidate fairly. A later controversy, in point

of time, may give a partner cause to revoke his earlier vote as the only means to effect a fair liquidation as to his interests. The right to begin an Arbitration shall cease within one year of the date of termination.

#### ARTICLE XVI. RESTRICTIONS

No partner shall, on behalf of the partnership or in the name of the firm, without the written consent of a majority of the Management Committee:

1. Make, execute, deliver, endorse or guarantee any note, contract, commercial paper, nor agree to answer for, nor indemnify against any act, debts, default, or misconduct of any person or partner.
2. Assign, transfer, mortgage, pledge, compromise, or release interest in, or claims or accounts of the partnership except by full payment; or arbitrate, or consent to the arbitration of any of its disputes or controversies.
3. Make, execute and deliver any assignments for the benefit of creditors, or any bond, confession of judgment, security agreement, indemnity bond, surety bond, or contract to sell its property, or any other contract similar to any of the foregoing.
4. Hire, lease, purchase, or sell or mortgage any real estate, or interest therein, or enter into any contract for such purpose.
5. Hire, or agree to hire, any person or persons, or discharge any person or persons who shall have been hired.
6. Engage in any dealing or transactions with any person or persons, partnerships or corporations who any of the partners have previously in writing requested him not to trust, deal with, or transact business with.



7. Make any claims or representations with reference to the income tax effect of this partnership agreement,

8. Become a candidate for public office without express consent of the remaining partners.

9. Make or contract to make any purchase of any goods or services of any nature whatsoever in excess of a total of \$100.00.

#### ARTICLE XVII. LEGAL EFFECT OF THE PROVISIONS; ARBITRATION

##### Section A. Law of State of Virginia Controlling

All provisions of this document shall be construed, shall be given effect and shall be enforced according to the laws of the State of Virginia; except that this document controls, as the rights of partners and management of the partnership, where this document conflicts with the laws of Virginia.

##### Section B. Those Bound by Provisions

Each of the partners executes this document with the understanding and agreement that each has hereby bound and obligated himself, his estate, and any and all claiming by, through or under him.

##### Section C. Rights of Partners Not Assignable; Not to be Pledged

No partner and no one acting by authority of or for a partner may pledge, hypothecate, or in any manner transfer his interest in the partnership, or his interest in any of its assets, receivables, records, documents, files, or clientele, all such rights and interests of each partner being personal to him and non-transferable and non-assignable, except that it is agreed that Richard S. Glasser and Michael



A. Glasser may transfer and assign, to each other, or to Stuart D. Glasser, any or all of their units, rights, or interest, at any time. Upon such transfer or assignment, Richard S. Glasser or Michael A. Glasser shall give written notice thereof to the other partners.

Section D. Finality of Decisions Within the Firm; Effect of Diverse or Adverse Interest Personally of any Partner

Every final decision of the firm on any matter affecting any party herein or anyone claiming by, through or under any party, by vote of the partners or by decision of the Management Committee, when in accordance with the terms and provisions of this document, shall be binding and conclusive. Except where it is expressly provided in this document that one shall not be permitted to vote as to any such decision, there shall be no disqualification of anyone from voting who shall be entitled to vote according to the terms and provisions of this document, notwithstanding any adverse or divergent interest that he may personally have in the decision; and the decision shall, nevertheless, be binding and final notwithstanding any such adverse or divergent interest held by anyone so voting. It is understood that individual partners and that members of the Management Committee will doubtless have divergent and may have adverse, or arguably adverse, personal interests from one another on some matters that are to be determined according to the provisions of this document and have diverse or adverse interests personally from those of some party affected by the decision; all this is agreed to and waived as a disqualification. Nonetheless, anyone entitled to such a vote on any such matter may recuse himself from voting and thereupon the decision shall be made on the computation of votes to the same effect as if the one so recusing himself had as to that matter, no right to vote;

and if the vote is by the partners, as if he held no units of participation.

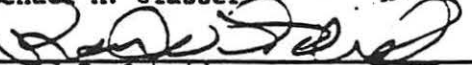
#### ARTICLE XVIII. AMENDMENTS


Except where stated to the contrary in this document, an amendment hereto may alter, revise, delete or add to any provision or provisions of this agreement. No amendment to this instrument shall be adopted or become effective unless and until it (i) has been voted in accordance with the provisions of paragraph 3 of Section B of Article VI of this document; and (ii) has been executed and attached to this document as a part of same.

WITNESS the following signatures and seals this  
20th day of December, 1984.

  
Richard S. Glasser (SEAL)

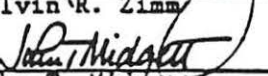
  
Michael A. Glasser (SEAL)

  
Ronald F. Schmidt (SEAL)

  
J. James Baglier, Jr. (SEAL)

  
H. Seward Laylor (SEAL)

  
Melvin R. Zimm (SEAL)

  
John T. Midgett (SEAL)

SCHEDULE AORIGINAL CAPITAL CONTRIBUTIONS

<u>Item/Description</u>	<u>Stipulated Fair Market Value</u>	
1983 Ford Thunderbird	\$8,350.00	
Canon photocopier	6,000.00	
ITT Telephone System (installed)	4,000.00	
(6) ITT Telephones (not installed)	480.00	
NEC Personal Computer (with software)	900.00	
NEC Printer	800.00	
Motorola Mobile Telephone	1,200.00	
Carpeting	3,000.00	
Equipment:		
(2) IBM 95 Electronic Typewriters @ 2,000.00 ea.		
(4) AB Dick Magna II Typewriters @ 1,000.00 ea.		
(1) IBM Mag A Typewriter @ 1,000.00 ea.		
(1) IBM Mag II Typewriter @ 1,000.00 ea.		
(4) Dictaphone Thoughtmasters @ 500.00 ea.		
(3) Dictaphone Transcribers @ 350.00 ea.		
(5) Dictaphone Portables @ 200.00 ea.		
(8) Canon Calculators @ 40.00 ea.		
(2) IBM Selectric II Typewriters @ 400.00 ea.		
(3) Checkwriters @ 33.33 ea.		
19" RCA Portable Color TV @ 300.00 ea.		
RCA VHS videocassette recorder @ 300.00 ea.		
Refrigerator @ 100.00 ea.		
(19) File Cabinets (approx.) @ 200.00 ea.		
Total Equipment:	\$19,770.00	19,770.00
Prepaid automobile insurance policy		450.00
Prepaid business liability insurance policy		200.00
Prepaid malpractice insurance policy		8,300.00
Workmen's compensation insurance policy		330.00
Office Furniture		8,100.00
Office Supplies		<u>2,000.00</u>
TOTAL:		\$63,880.00*

\* \* \* \*

It is agreed that these stipulated values shall not affect or change the firm's tax basis of these assets or the capital accounts of Richard S. Glasser and/or Michael A. Glasser. These figures being for the purpose of this Agreement only.

\*The above amount is contributed by Richard S. Glasser (\$42,586.67) and Michael A. Glasser (\$21,293.33).

SCHEDULE BFEES EARNED PRIOR TO JANUARY 1, 1985

(a) Estate of Harry B. Gilbert, (b) Estate of Jean Lavine, (c) Estate of Steve Kelemen, (d) Estate of Helen Walker, (e) Estate of William Root, (f) VNB v. B & T Enterprises & Baker, VNB v. B. Baker and Drake Pilot, VNB v. Morris Goodman, VNB v. Hillegas, VNB v. R. Horton, VNB v. Aronoff, VNB v. Rosenstock, VNB v. Stauffer, Sovran Bank v. Rice, all cases, matters, and/or files related to Virginia National Bank or Sovran Bank, N.A., in which judgment was entered in favor of such Bank prior to January 1, 1985, (g) Baltimore Hydraulics, Inc. v. Best Repair Co., Inc., (h) Fidelity and Casualty of New York v. John Maxey, (i) Leonore K. Gilbert, (j) Equipment Leasing Co. v. L. Kershner, et al, (k) Doughtie v. Lavenstein, (l) Smith v. PC & PPG, provided, however, that H. Seward Lawlor shall be entitled to 25% of such fee whenever received, (m) Albright v. Eagle-Picher Industries, Inc. and Owens-Corning Fiberglas Corporation, (n) Richard Taylor v. Eagle-Picher Industries, Inc. and Fibreboard Corporation, (o) Elizabeth Mann v. Fibreboard Corporation, (p) Max Isenhower, Jr., personal injury matter, (q) any and all other fees or commissions earned by or owed to the firm for services completed and for settlements made prior to January 1, 1985.



SCHEDULE CFIRM CLIENTS

(a) State Education Assistance Authority, (b) Virginia Educational Loan Authority, and any other department or agency of the Commonwealth of Virginia, (c) all asbestos cases and files except the Port Allegany cases which were originated by H. Seward Lawlor and those other asbestos cases which the Management Committee determines are not firm clients (all new asbestos cases arising, in whole or in part, out of exposure at workplaces at which past or present firm asbestos clients have worked shall be firm clients, and all new asbestos clients and cases referred by a past, present or future firm client shall be firm clients), (d) Atlantic Permanent Federal Savings and Loan Association, (e) Standard Federal Savings and Loan Association, (f) Lone Star Cement Inc. and Lone Star Industries, Inc., (g) Burton Lumber Corporation, (h) Kinnach Ford, Inc., (i) Middle Atlantic Leasing Corp., (j) Edward C. Johnston, Sr., (k) Mid-Atlantic Coca-Cola Bottling Company, (l) Medical Funding Services, Inc., (m) Goldberg Co., Inc., (n) Electrical Suppliers, Inc., (o) United Press International, (p) Execu-Charge Visa, (q) Associates Financial Services of America, Inc., (r) Essex Industrial Loan Co., (s) Finance America, (t) General Electric Supply Co., (u) Lawyers Title Insurance Corporation, (v) Dillard Paper Co., (w) Fairfax Building Supply Co., (x) Fleet Industrial Loan Co., (y) Credico, (z) Charles H. McCoy, Jr., Inc., (aa) Swift Garages, Inc., (ab) Towne Distributors, Inc., (ac) LTD Associates, (ad) United Peninsula Investment Corp., (ae) Dilip Desai, (af) Sovran Bank, (ag) Sovran Equity Mortgage Corp., (ah) Cameron Brown Co., (ai) Union Capital, (aj) Allergy Associates, Ltd., and any and all subsidiaries, affiliates, partnerships, or successors of any of the aforementioned clients.

THIS EMPLOYMENT AGREEMENT dated this 13<sup>ed</sup> day of June, 1987, by and between GLASSER AND GLASSER, a partnership duly organized and existing under the laws of the State of Virginia (hereinafter Employer) and STEPHEN WAINGER, an Attorney at Law licensed or to be licensed to practice in the State of Virginia (hereinafter Employee).

WITNESSETH:

WHEREAS, Employer is engaged in the profession of law, furnishing legal and related advisory services to numerous individuals, corporations, and governmental agencies and departments, and;

WHEREAS, Employer desire to engage the service of Employee as an Attorney at Law to assist Employer in the rendering of legal services as aforesaid.

NOW, THEREFORE, it is agreed as follows:

1. Employer hereby employs Employee and Employee accepts employment by Employer upon the terms and conditions hereinafter set forth, terminating all prior employment agreements, if any.

2. The term of Employee's employment with Employer is not fixed, but shall commence (or has commenced) under this Agreement on the 15th day of May, 1987, and shall continue thereafter until terminated. Either party may terminate Employee's employment with Employer, with or without cause, by giving thirty (30) days written notice to the other party.

3. Employee agrees to devote his utmost knowledge and best skills to the performance of his duties as shall be entrusted to him from time to time by Employer.

4. Employee agrees to devote to Employer his entire time and endeavor and further agrees not to engage in any other gainful occupation without first obtaining the written consent of Employer. This clause shall not be construed to prevent Employee from trading in stocks, bonds, securities, real estate, commodities or other forms of investment, personally and for his own account and benefit.

5. Employee agrees to actively and industriously practice the profession of law exclusively as an Employee of and in the interest of Employer and to faithfully adhere to the ethical principals of the Virginia State Bar. Employee specifically agrees that any breach of this Agreement by him shall entitle Employer, at its option, to discharge Employee from employment without notice or severance allowance, including, but not by way of limitation, if any of the following events occur:

- (a) The withdrawal or suspension of Employee's license to practice law in the State of Virginia (or Employee's failure to attain said license within a reasonable time from date of employment, which shall be determined by Employer).



- (b) A finding or plea of guilt to a charge of professional misconduct by any professional organization or court of competent jurisdiction.
- (c) The withholding, conversion or defalcation by Employee of any funds or assets of Employer or of any client of Employer.
- (d) Employee's conviction of any felony or a misdemeanor involving moral turpitude.

6. (a) Subject to customary withholding and employment taxes, compensation shall be paid by Employer to Employee, for services rendered under this Agreement at the rate of \$8,333.33 per month, payable semi-monthly on the fifteenth and last day of each month (or at more frequent intervals at the option of Employer), during Employee's satisfactory performance of his responsibilities and duties under this Agreement.

(b) Employer, at its sole expense, shall provide Employee with one (1) parking space within reasonable proximity to Employer's place of business, with coverage under a policy of professional liability insurance in an amount in accordance with Employer's general office policy, subject to a deductible in an amount not greater than \$5,000.00 for which Employee shall be responsible, and membership dues in the Norfolk-Portsmouth Bar Association and Virginia State Bar.

(c) Employee, at his sole expense, shall be responsible for and pay all other expenses incurred in the course of his employment with Employer, including but not limited to: automobile transportation expenses, professional entertainment expenses, home telephone bill, education expenses for the purpose of maintaining or improving Employee's professional skills (other than those required by the Virginia State Bar for maintenance of the privilege to practice law in Virginia), club dues and expenses of membership in civic groups or social clubs, and all other items of reasonable and necessary expenses incurred by Employee. However, nothing in this paragraph shall prevent Employer, at its option, from paying or reimbursing Employee for any of the above enumerated expenses. Employer's payment or reimbursement to Employee of any of the above enumerated expenses shall not be construed as a waiver of the provisions of this paragraph for any such expenses subsequently incurred by Employee.

7. Employee, upon conclusion of each six months continuous employment with Employer, shall be entitled to five (5) working days paid vacation, with a maximum of ten (10) days per annum. Unused vacation time shall not be carried forward by Employee, nor may Employee elect compensation in lieu of said vacation time.

8. Employee shall be entitled to not more than six (6) working days sick leave, during any calendar year, for any bona fide illness of Employee, without reduction of his agreed upon compensation. Employee shall receive no compensation for additional sick leave over and above the six (6) days allowed herein. Sick leave shall not be cumulative (except as may be provided by Employer in its Office Policy and Procedure Manual) and the unused portion of



such leave shall not entitle Employee to additional compensation. Nothing contained herein shall prevent Employer from granting, at its option, additional sick leave, upon such terms and conditions as it may set contemporaneously with such grant or award.

9. This Agreement may be terminated, with or without cause, upon thirty (30) days written notice to the other party. No notice shall be required in the event Employee breaches this Agreement, including but not limited to the provisions contained in Paragraph 5 hereof. In the event of termination, Employee shall continue to render services to Employer up to the date of termination, if so requested by Employer. If Employer shall not request Employee to render services to Employer during the thirty (30) day notice period to date of termination, Employer shall pay, in advance, Employee's full salary for said thirty (30) day period, less customary withholding and employment taxes, unless said termination is for cause pursuant to Paragraph 5 hereof, in which event Employee shall not be entitled to compensation.

10. (a) Upon termination of Employee's employment with Employer, Employee agrees not to keep, record, photocopy, reproduce or preserve any and all records and/or files of Employer or of Employer's clients, or clients of any partner of the firm, including, but not limited to: Sovran Bank, N.A., Sovran Equity Mortgage Corporation, Associates Financial Services Corporation, General Electric Supply Company, Standard Federal Savings and Loan Association, Fleet Industrial Loan Company, Burton Lumber Company, Credico, Kinnach Ford, Inc., Towne Distributors, Inc., or the Commonwealth of Virginia and agencies or departments thereto including, but not limited to, the State Education Assistance Authority. All records and work products of Employee for and relating to clients of Employer shall belong to Employer.

(b) Upon termination of Employee's employment with Employer, Employer agrees not to keep, record, photocopy, reproduce or preserve any and all records and/or files of Employee or of Employee's clients. All records and work products of Employer for and relating to clients of Employee shall belong to Employee.

11. (a) The Employee agrees that, for a period of three (3) years subsequent to the termination of Employee's employment with Employer, he will not (either as a sole practitioner or as an employee or partner of another firm) represent or render legal services to or for any corporation, individual or governmental department or authority which was a client(s) of Employer at the time of his termination or which had been a client(s) of Employer. In the event of a breach by the Employee of any of the provisions of this paragraph, the Employer shall be entitled, at its option, to injunctive relief without bond and without notice. If, in violation of the provisions of this paragraph, the Employee does represent or furnish legal services to or for a client(s) or former client(s) of the Employer, the Employee agrees to pay to the Employer as liquidated damages an amount equal to 100% of the amount of total fees received by Employer from each such client(s) or former client(s) during the last twelve month period immediately preceding the termination of Employee's employment with Employer. Payment of this amount shall be made in three equal annual installments with the first payment due within thirty (30) days after the date Employee (or his/her future Employer) is engaged or retained to



perform services for such client(s) or former client(s) of Employer and the second and third installment shall be due on the same day of each and every year thereafter until fully paid.

(b) The Employer agrees that, for a period of three (3) years subsequent to the termination of Employee's employment with Employer, it will not represent or render legal services to or for any corporation, individual or government department or authority which was a client(s) of Employee at the time of his termination or which had been client(s) of Employee. In the event of a breach by the Employer of any of the provisions of this paragraph, the Employer does represent or furnish legal services to or for a client(s) or former client(s) of the Employee, the Employer agrees to pay to the Employee as liquidated damages an amount equal to 100% of the amount of total fees received by Employee from each such client(s) or former client(s) during the last twelve month period immediately preceding the termination of Employee's employment with Employer. Payment of this amount shall be made in three equal annual installments with the first payment due within thirty (30) days after the date Employer is engaged or retained to perform services for such client(s) or former client(s) of Employee and the second and third installment shall be due on the same day of each and every year thereafter until fully paid.

12. In addition to the compensation set forth in Paragraph 6 herein, Employee shall be entitled to, and receive from Employer as additional compensation, subject to the usual withholdings, twenty percent (20%) of all gross fees received by Employer which were generated or produced by Employee's clients. Such compensation shall be paid by Employer at least monthly or upon more frequent intervals at Employer's option. The term "Employee's client" shall be defined as and limited to any individual or group of individuals, partnership, corporation, business or professional entity who engaged the services of Employer or Employee solely by reason of the efforts of Employee, and not by referral or recommendation of any other firm Employee, except that such term shall specifically exclude any client for whom the Employer had rendered substantial legal services prior to or during Employee's term of employment, and shall also exclude any client with an asbestos-caused claim, except as may from time to time be agreed upon by Employer and Employee, pursuant to the provisions of paragraph 13.

Said additional compensation shall vest in Employee when such fee shall be received by the firm and shall be divested by termination by either party for any reason.

See Schedule A for additional terms and provisions incorporated herein.

13. Employer and Employee agree that when substantial work for an Employee's client has been performed by Employee while in the employment of Employer and Employee has voluntarily terminated the employment relationship, Employer shall be entitled to portion of the fees received by Employee from said client after termination of the employment relationship.

For all personal injury, property damage or other matter handled on

a contingency basis, Employee agrees to compensate Employer on the following basis:

- (a) For all fees billed, or settlement offers made (which offers are subsequently accepted) within ninety (90) days from date of termination, the net fee so received shall be divided seventy-five percent (75%) to Employer and twenty-five percent (25%) to Employee.
- (b) For fees billed or settlement offers made as aforesaid between 91 days and one (1) year from date of termination, the net fee received shall be divided equally between Employer and Employee (50% each).
- (c) For fees billed or settlement offers made between 1 year and 2 years from the date of termination, the net fees received shall be divided twenty-five percent (25%) to Employer and seventy-five percent (75%) to Employee.
- (d) For fees billed or settlement offers made as aforesaid after two (2) years from date of termination, all net fees received shall be the sole and exclusive property of Employee.

For all other matters, Employee agrees to compensate Employer as follows:

- (e) The net fee received by Employee shall be divided by the number of months the file or matter was handled by Employee. This fraction multiplied by the number of months said file or matter was handled by Employee while employed by Employer shall be the fee to be paid to Employer. However, in no event shall such fee to be paid to Employer exceed eighty (80%) of the net fee received by Employee.

Employer may waive its right and entitlement to any compensation as provided in this paragraph on a case-by case basis and a waiver of fee in one matter shall not be deemed a waiver of fee in all or any subsequent matters.

14. Any notice required or permitted to be given under this Agreement shall be sufficient if given in writing and mailed, by regular mail, postage prepaid, to the residence of Employee or to the principal place of business of Employer.

15. The waiver by either party of a breach of this Agreement, or any provision therein, shall not operate or be construed as a waiver of any subsequent breach by either party.

16. All fees and payments received for professional services rendered by Employee to clients together with all emoluments accruing to Employer by virtue of the employment shall be the property of the Employer. Employee hereby expressly agrees and covenants that the compensation and benefits



received by him under this Agreement shall satisfy and discharge in full all his claims upon Employer for compensation in respect of his professional services. Employer acknowledges that his service in the employment in no way confers upon him any ownership, interest in or personal claim upon any fees charged by Employer for his services, whether the same are collected during the employment or after the termination thereof, except as otherwise provided in Paragraph 12 herein, and he hereby disclaims and renounces any such interest or claim to ownership or fees charged by Employer, other than as provided in Paragraph 12 herein.

17. This Agreement contains the entire agreement of the parties and may not be changed orally. It may be modified only by written supplements hereto executed by both of the parties. Except as otherwise stated herein, the rights and benefits of the Employee under this Agreement are personal to him and shall not be subject, in whole or in part, to alienation, assignment or transfer. This Agreement shall be binding and inure to the benefit of the successor and assigns of Employer.

18. Masculine pronouns shall include the feminine gender or vice-versa, and singular shall include plural as the context of this Agreement may require.

19. This Agreement shall be construed in accordance with the laws of the Commonwealth of Virginia.

20. In the event any paragraph or provision thereof is deemed to be invalid or unenforceable by a court of competent jurisdiction, then such paragraph, or provision thereof shall be stricken and the remaining Agreement shall nevertheless remain in full force and effect.

IN WITNESS WHEREOF, Employer has caused these presents to be executed in its name and behalf by one of its managing partners, duly authorized, and Employee has set his hand this 23<sup>rd</sup> day of June, 1987, at Norfolk, Virginia.

EMPLOYER:  
GLASSER AND GLASSER, a Virginia  
General Partnership

By: John Midgell  
Managing Partner

EMPLOYEE:

Stephen Wainger  
Stephen Wainger

Schedule A

In addition to the terms of paragraph 12 herein, the parties agree that Employee shall be entitled to, and receive from Employer, as additional compensation, subject to the usual withholdings, as follows:

1. Employee shall receive fifty percent (50%) of all net fees, exclusive of costs and fees owed to Employee's former firm, (Seawell, Dalton, Hughes and Timms), collected from current employee clients and cases, which said cases are listed below:

- (a) Johnson v. Park
- (b) Pete Gillum v. Caterpillar
- (c) Shirley Grakowski v. Jordan
- (d) Smith v. Tootsie Roll (50% of fees generated by Employee only, as to fees generated by other lawyers of Employer, Employee shall be entitled to 20% of the gross fees)
- (e) Kenneth Block v. Mass. Port Authority
- (f) Howard Millstein - Real Estate
- (g) Fairview Orchards v. Universal Construction
- (h) Clyde Pitchford
- (i) Robert Verbyla
- (j) Robert Zairo - Real Estate
- (k) Loving v. Pilzer
- (l) Louis Armstrong - Personal Injury
- (m) Various Travelers Insurance Company defense cases
- (n) Various Virginia Mutual Insurance Company defense cases
- (o) Various Commercial Union Insurance Company defense cases
- (p) Bernie Love v. Camelia Food

In addition to the above, Employee shall be entitled to one hundred percent (100%) of the fee received from the following matters:

- (a) Jones Institute Venture
- (b) Charles Butler v. Dr. O'Connor



Glasser and Glasser  
Attorneys and Counsellors at Law

600 Dominion Tower  
999 Waterside Drive  
Norfolk, Virginia 23510-3300

(804) 625-6787

Writer's Direct Dial No.  
640-9380

March 5, 1992

Bernard Glasser  
1910-1983

Telecopier  
(804) 625-5959

Peninsula  
(804) 722-3110

B. Glasser  
A. Glasser  
d Lawlor  
Zimm  
I. Monroe, Jr.  
Kingsley  
E. Vaughn  
A. Leon  
and in D.C.

Mr. Errol Liflin  
Goodman & Company  
234 Monticello Avenue  
Norfolk, Virginia 23510

Re: Glasser and Glasser

Dear Errol:


This will confirm that, for the purpose of preparing our partnership's 1991 income tax return, the applicable maximum draws for partners other than Michael and me are as follows:

H. Seward Lawlor	\$902,075.58
Melvin R. Zimm	\$168,126.49
Stephen Wainger	\$317,214.14

I hope this information will allow you to conclude the preparation of our return in the immediate near future.

Very truly yours,

GLASSER AND GLASSER

  
Richard S. Glasser

RSG/mc/df

inger HAS 6 units Per Richard Glasser

WITHDRAWAL AGREEMENT OF JOHN T. MIDGETT  
FROM PARTNERSHIP IN THE  
LAW FIRM OF GLASSER AND GLASSER

THIS AGREEMENT made and dated this 27th day of September 1990 by and between John T. Midgett and the law firm of Glasser and Glasser;

- A. WHEREAS, the original law firm of Glasser and Glasser was formed January 1, 1967. The present law firm of Glasser and Glasser was formed pursuant to Partnership Agreement (hereinafter "Partnership Agreement," attached hereto as Exhibit "A" and incorporated herein by reference) dated December 20, 1984, with the following partners: Richard S. Glasser, Michael A. Glasser, Ronald F. Schmidt, H. Seward Lawlor, J. James Basgier, Jr., Melvin R. Zimm and John T. Midgett; and
- B. WHEREAS, said Partnership Agreement has been amended by agreement of all the partners from time to time, to include the following provisions:
  1. Each partner's maximum annual draw shall be increased on an annual cumulative basis by an amount equal to one-half ( $\frac{1}{2}$ ) of such partner's prior fiscal year fee production (as a direct result of business originated by such partner from non-firm clients). Bdy to 201
  2. Notwithstanding each partners maximum annual draw limitation as set forth pursuant to the Partnership Agreement, each partner shall be entitled to an amount equal to the firm's contribution to the Simplified Employment Pension Plan, or such other retirement or pension account as may be hereafter adopted and an amount equal to the firm's contribution to each partners individual health insurance premium.
  3. As permitted by Article XVII, Section C, in the event of the death of either Richard S. Glasser or Michael A. Glasser, the survivor shall have the exclusive option to purchase any or all of the deceased partner's interest in the law firm, including any or all of the deceased partner's units of participation (with all benefits accruing thereto, specifically including all entitlement to profits and to voting privileges). The purchase price for said interest shall be set forth in a separate Option to Purchase Agreement mutually agreed upon by Richard S. Glasser and Michael A. Glasser.



- C. WHEREAS, J. James Basgier, Jr., was expelled from the Partnership on October 31, 1986, Stephen Wainger joined the Partnership on January 1, 1990, with an initial annual maximum draw of \$72,000.00; and Ronald F. Schmidt was expelled from the Partnership on June 30, 1990; and
- D. WHEREAS, the current partners in the law firm of Glasser and Glasser are Richard S. Glasser, Michael A. Glasser, H. Seward Lawlor, Melvin R. Zimm, John T. Midgett and Stephen Wainger; and
- E. WHEREAS, John T. Midgett desires to withdraw, effective as of September 30, 1990, as a partner in the law firm of Glasser and Glasser; and
- F. WHEREAS, Richard S. Glasser, Michael A. Glasser, H. Seward Lawlor, Melvin R. Zimm and Stephen Wainger (hereinafter "Glasser and Glasser") desire to continue their relationship as partners in the law firm of Glasser and Glasser; and
- G. WHEREAS, the Partnership Agreement as originally signed contains provisions necessary for the implementation of the withdrawal of a partner from the law firm of Glasser and Glasser; and
- H. WHEREAS, John T. Midgett and Glasser and Glasser have negotiated and agreed upon the terms of the withdrawal of John T. Midgett from the law firm of Glasser and Glasser pursuant to said Partnership Agreement, as amended, and desire herewith to memorialize the mutual understanding of John T. Midgett and Glasser and Glasser;

NOW, THEREFORE, in consideration of the mutual agreements and covenants contained herein, John T. Midgett and Glasser and Glasser hereby agree as follows:

- 1. Glasser and Glasser hereby agrees to refund to John T. Midgett his capital account in the amount of \$ 12,371.00, pursuant to the Partnership Agreement, Article IX, Item B.
- 2. Glasser and Glasser hereby agrees to pay to John T. Midgett his September 1990 monthly draw and additional compensation on fees generated for the law firm of Glasser and Glasser by clients of John T. Midgett and received by September 30, 1990, in the amount of \$ 21,449.35, pursuant to the Partnership Agreement, Article IX, Item A.

JM JTM WJ G&G



3. Glasser and Glasser hereby agrees to pay as a referral fee to John T. Midgett, twenty percent (20%) of the fee received, if any, by Glasser and Glasser, in the case of Paul Johnston v. Manville Corporation Asbestos Disease Compensation Fund, after appropriate costs and co-counsel fees are deducted, pursuant to the Partnership Agreement, Article IV, Section B, Paragraph 3.
4. Glasser and Glasser hereby agrees to pay, pursuant to Partnership Agreement Article IX, Item C, to John T. Midgett after deduction of the partner's September 1990 monthly draws 6/91 of the net funds on Deposit on September 28, 1990 in Sovran account #21454263, Sovran Masternote #54-0806724-03 and Commerce Bank account #051404260 said account amounts to be verified by Goodman and Company, less any and all credits due to Glasser and Glasser as agreed herein; said payment to be no later than 30 days after the signing of this agreement.
5. Glasser and Glasser hereby agrees to pay to John T. Midgett 6/91 of the cost incurred as of September 30, 1990, in all of the cases currently pending and in which judgments have been entered against Manville Corporation Asbestos Disease Compensation Fund. It is agreed that the amount to be paid to John T. Midgett pursuant to this paragraph is \$10,432.30 said amount; to be paid no later than 30 days after the signing of this Agreement.
6. It is agreed by John T. Midgett and Glasser and Glasser that all amounts paid and/or distributed to John T. Midgett pursuant to this Withdrawal Agreement shall be reported by Glasser & Glasser as compensation and/or as a share of partnership profits on John T. Midgett's 1990 IRS Form K1 except for the amount refunded to John T. Midgett as his capital account pursuant to paragraph 1 above and any referral fee paid pursuant to paragraph 3 above. It is further agreed by John T. Midgett and Glasser and Glasser that no depreciation on any real and/or personal and/or business property shall be allocated to or inure to the benefit of John T. Midgett for John T. Midgett's 1990 State and/or Federal Income Tax purposes.
7. John T. Midgett hereby agrees that, except as agreed to in Paragraph 3 above and Paragraph 9, infra, John T. Midgett waives any and all interest he may have in the fees of any cases against Manville Corporation Asbestos Disease Compensation Fund and/or any and all other pending and/or future cases, or clients remaining with Glasser and Glasser of any nature whatsoever, settled and/or unsettled and/or any other fees earned and/or unearned as of September 30, 1990. It is agreed by John

JM JTM [Signature] G&G

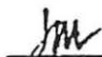



T. Midgett and Glasser and Glasser that the payments made pursuant to this Withdrawal Agreement are paid by Glasser and Glasser in complete and final settlement for all rights and interest of John T. Midgett in the law firm and/or cases and/or clients of Glasser and Glasser.

8. Glasser and Glasser hereby agrees to pay on or before April 15, 1991 to the John T. Midgett SEP Account, or such other qualified retirement account as the Management Committee shall, in its sole and absolute discretion, select, the appropriate percentage and/or amount due when said account is funded for 1990 by Glasser and Glasser; said percentage amount to be determined by and in the sole and absolute discretion of the Management Committee of Glasser and Glasser.
9. John T. Midgett hereby agrees to take and be responsible for all clients listed in Exhibit "B," attached hereto and incorporated herein by reference, pursuant to the Partnership Agreement, Article XIII, Paragraph 2. Glasser and Glasser hereby agrees to allow John T. Midgett to take said clients and their respective files provided, however, that, in the cases of clients who have incomplete and/or unfinished work, said clients have notified Glasser and Glasser they desire to leave Glasser and Glasser pursuant to the letter attached hereto as Exhibit "C." In the cases of those clients whose work has been completed and/or finished and for which only collection of costs and fees remains to be accomplished, John T. Midgett agrees to take said clients and their files and John T. Midgett agrees, pursuant to Paragraph 4 herein, to credit Glasser and Glasser for any advances which may have been made on behalf of these clients, including costs and/or uncollected fees as enumerated in Exhibit "B," attached hereto and incorporated herein by reference. The collection of said costs and fees are hereby irrevocably assigned by Glasser and Glasser to John T. Midgett for the benefit of John T. Midgett.



In cases where costs have been advanced by the client over and above those costs expended, Glasser and Glasser shall make a check payable to John T. Midgett as attorney for the specific client involved. John T. Midgett hereby agrees to deposit said costs in appropriate escrow accounts for the clients involved and hereby agrees to indemnify and hold harmless Glasser and Glasser for any loss of said advanced costs.

Any fees and/or costs paid to Glasser and Glasser which have been assigned to John T. Midgett herewith shall immediately be forwarded by first class mail to John T. Midgett upon receipt by Glasser and Glasser.

 JTM  G&G



10. Glasser and Glasser hereby agrees that, in cases not assigned to John T. Midgett pursuant to Paragraph 9 above, Glasser and Glasser shall distribute to John T. Midgett additional compensation received on fees generated for Glasser and Glasser by clients of John T. Midgett and billed prior to, but received after, September 30, 1990, pursuant to the Partnership Agreement, Article IV, Section B, Paragraph 3, assuming Glasser and Glasser does not undergo any collection activity to collect said fees and assuming the Management Committee of Glasser and Glasser determines the work was profitable pursuant to the Partnership Agreement, Article IV, Section B, Paragraph 3.
11. John T. Midgett hereby agrees to be bound by all of the terms of the Partnership Agreement, including, but not limited to, Article XIII, Paragraph 2, with respect to all firm clients and/or clients originated by any other partner or associate of Glasser and Glasser, including but not limited to clients listed in Exhibit "D," attached hereto and incorporated herein by reference.
12. John T. Midgett hereby agrees to indemnify and hold harmless Glasser and Glasser for any of his acts and or omissions which occurred during his associateship and/or partnership with Glasser and Glasser which result in Glasser and Glasser suffering any loss, damage, or expense, including but not limited to attorneys' fees subject to a credit if any for any amount paid by an insurance company on behalf of Glasser and Glasser. Glasser and Glasser hereby agrees to indemnify and hold harmless John T. Midgett for any acts and/or omissions of all other partners and/or associates which occurred from January 1, 1985 until September 30, 1990, which result in John T. Midgett suffering any loss, damage or expense including but not limited to attorney fees subject to a credit if any for any amount paid by an insurance company on behalf of John T. Midgett.
13. Glasser and Glasser shall retain all closed files of clients that John T. Midgett originated for Glasser and Glasser. Glasser and Glasser shall retain copies of all files for clients John T. Midgett is taking, pursuant to Paragraph 9 herein. Said closed files shall be maintained in an area readily accessible to John T. Midgett and John T. Midgett may check out those files at his convenience during regular business hours as the need arises. John T. Midgett hereby agrees to return any file so checked out as provided above as soon as possible.

 JTM  G&G

14. John T. Midgett and Glasser and Glasser hereby agree to execute any other additional document(s) necessary for the consummation of any part of this Withdrawal Agreement.
15. This Withdrawal Agreement of John T. Midgett from Partnership in the Law Firm of Glasser and Glasser represents the entire agreement between John T. Midgett and Glasser and Glasser and any statements, promises or inducements made by the parties hereto which are not contained herein shall not be valid and binding.
16. If any part of this Withdrawal Agreement of John T. Midgett from Partnership in the Law Firm of Glasser and Glasser and/or the original Partnership Agreement of Glasser and Glasser is deemed invalid, unenforceable or in conflict with Virginia law, only that portion of the clause or paragraph in question shall be voided or deleted, and all remaining portions of the clause or paragraph in question shall be in full force and effect and all other provisions in this Withdrawal Agreement of John T. Midgett from Partnership in the Law Firm of Glasser and Glasser shall be binding with full force and effect.
17. John T. Midgett hereby agrees that all financial records of Glasser and Glasser shall be turned over to Glasser and Glasser by John T. Midgett except copies of the records which relate to the Partnership draws and additional compensation received by John T. Midgett. Glasser and Glasser shall make said financial records available to John T. Midgett in the event John T. Midgett needs said records for income tax purposes.
18. September 30, 1990 shall be the effective date of this agreement and as of October 1, 1990 the partners of Glasser and Glasser and their units of participation shall be Richard S. Glasser (40%), Michael A. Glasser (25%), H. Seward Lawlor (6), Melvin R. Zimm (6) and Stephen Wainger (6), who shall continue to operate as a partnership under the Partnership Agreement as amended.

 JTM  G&G



WITNESS the following signatures to this agreement dated September 28, 1990.

September 27, 1990  
Date

John T. Midgett  
John T. Midgett, Withdrawing Partner

BY GLASSER AND GLASSER

September 28, 1990  
Date

Richard S. Glasser, Partner  
By Richard S. Glasser, Partner

Sept. 27, 1990  
Date

Michael A. Glasser, Partner  
By Michael A. Glasser, Partner

9/27/90  
Date

H. Seward Lawlor, Partner  
By H. Seward Lawlor, Partner

9-27-90  
Date

Melvin R. Zimm, Partner  
By Melvin R. Zimm, Partner

9-27-90  
Date

Stephen Wainger, Partner  
By Stephen Wainger, Partner

JM JTM MT G&G



UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

BERNADINE FINDLEY,  
et. al.,

Plaintiffs

-vs-

DONALD BLINKEN, et. al.,

Defendants

DOCKET NO.: CV-90-3973  
Brooklyn, New York  
January 7, 1993  
10:00 a.m.

TRANSCRIPT OF CIVIL CAUSE FOR MOTION

BEFORE THE HONORABLE JACK B. WEINSTEIN  
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

For the Plaintiff:

RICHARD S. GLASSER, ESQ.  
ROBERT HATTEN, ESQ.  
Glasser and Glasser  
600 Dominion Tower  
999 Waterside Drive  
Norfolk, VA 23510-3300

MICHAEL SCHOEMAN, ESQ.  
Schoeman Marsh & Updike  
60 East 42nd Street  
New York, NY 10165

For the Defendant:

DAVID T. AUSTERN, ESQ.  
Manville Personal Injury  
Settlement Trust  
1825 Eye Street NW, Suite 300  
Washington, DC 20006-1202

Audio Operator:

Roseann Guzzi

PROCEEDINGS RECORDED BY ELECTRONIC SOUND RECORDING  
TRANSCRIPT PRODUCED BY TRANSCRIPTION SERVICE

PARSLEY ASSOCIATES INC.

328 Flatbush Avenue, Suite 251  
Brooklyn, NY 11238



1 THE COURT: Iliu Insulbuck is mentioned. Is he  
2 represented here?

3 MR. AUSTERN: Mr. Insulbuck has told me, Your  
4 Honor, that he will not be here today.

5 THE COURT: Okay. He's not submitted anything on  
6 this?

7 MR. AUSTERN: No, Your Honor.

8 (Pause in proceedings)

9 THE COURT: All right, I understand. I've read it  
10 thoroughly.

11 MR. GLASSER: Thank you.

12 THE COURT: Mark it please, at this hearing.

13 MR. GLASSER: Thank you, Your Honor. There are,  
14 briefly, five points that I want to cover with the Court, and  
15 to name them, and I'll try to cover them in this order,  
16 number one, that the class action settlement that was vacated  
17 by the Second Circuit didn't change or impair the vested  
18 judgment and contract rights that the Virginia judgment  
19 creditors have established and fairly negotiated with the  
20 trust.

21 Number two, the Virginia judgment creditors have  
22 complied with the claims resolution procedures of the second  
23 amended and restated plan of reorganization, and there will  
24 be no evidence to the contrary. Number three, the Virginia  
25 judgment creditors truly are unique and we will explain why



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1 A They were certainly aware of it.

2 Q Now, the Virginia judgment creditors are unique for at  
3 least three reasons. Number one, they have consent judgment  
4 orders that are final and non appealable. In addition, they  
5 have a contractual agreement setting forth a triggering  
6 of their first payment within ten days of the receipt of the  
7 special dividend, which, in fact, was received ten days ago.  
8 And thirdly, they are assured by their freely negotiated  
9 binding contract with the trust that they will be the first  
10 of the claimants to be paid. Am I correct?

11 A Let me answer that question this way. We have consent  
12 judgments with other people, not very many beyond the  
13 Virginia judgment creditors, but there are a few other  
14 consent judgments that exist. We have no agreement with  
15 anybody to pay based on a triggering event, such as the  
16 receipt of the first dividend. All other payment agreements  
17 are based on a date. There is no triggering agreement. And  
18 I forgot the third one.

19 Q We have the assurances of payments that will be first.

20 A The agreement does say that no one will be paid before  
21 the Virginia judgment creditors.

22 Q And I take it if the Virginia judgment creditors,  
23 because of these three things, are unique, that to the extent  
24 that any precedent will arise should His Honor agree to lift  
25 the stay concerning the Virginia judgment creditors, there is

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1 Q Mr. Austern, does the trust intend to abrogate its  
2 agreement with the Virginia judgment creditors?

3 A No.

4 Q If Judge Weinstein should amend or partially lift the  
5 order to show cause as it relates to the trust's ability to  
6 pay the Virginia judgment creditors, would the trust be  
7 willing to voluntarily pay the first installment, as agreed,  
8 in the amount of \$25 million?

9 A I don't know. I have not discussed with the trustees  
10 the question of whether we would appeal such an issue. I  
11 have not also analyzed whether we would have the right to,  
12 as the one who sought the original show cause order. We are  
13 not interested in abrogating the agreement. To us, the  
14 question is not if they get paid. It's when they get paid.  
15 And I don't know what my clients would want to do.

16 Q But to restate my question, is there any other legal  
17 impediment that the trust could rely upon to refuse to honor  
18 its agreement other than Judge Weinstein's order to show  
19 cause?

20 A I do not at this time know of any other legal  
21 impediment.

22 Q And under the terms of the agreement, specifically,  
23 paragraph nine, was it the agreed duty and responsibility of  
24 the Manville Trust, in good faith, to oppose any attempts to  
25 challenge the validity or enforceability of the agreement of



1 November 16, 1990, except any challenge which may be made to  
2 the agreement by the Virginia judgment creditors?

3 A That's correct.

4 Q And lastly, to the best of your knowledge, have the  
5 Virginia judgment creditors complied with their portion,  
6 their responsibilities, pursuant to the agreement with the  
7 trust dated November 16, 1990?

8 A Yes.

9 MR. GLASSER: I would like to thank Mr. Austern and  
10 thank His Honor for allowing me to present that evidence in  
11 that fashion. And now, I'd like to very briefly review the  
12 five points that I forecasted, and I think an evidential  
13 foundation has been laid. Mr. Hatten's affidavit hopefully  
14 will supplement that. The first point, Your Honor, is we  
15 feel that the class action did not impair or change or affect  
16 the rights of the Virginia judgment creditors. They are  
17 liquidated claims.

18 If it was -- if we felt that their claims were  
19 going to be impaired by voluntarily agreeing and cooperating  
20 to enter into the class action, I use the word forebear, but  
21 to work with the Court and to work with counsel, if we  
22 thought that was going to interfere with their vested rights,  
23 we would not have been authorized by our clients to so  
24 participate.

25 The class action that was attempted was a vehicle

1 to resolve unliquidated claims. There are 180,000 of them.  
2 It was not to change the vested contract rights that we dealt  
3 with. In Your Honor's opinion of June 26, 1991, the Court  
4 discussed the legal realities, and these were the same  
5 realities that the Virginia judgment creditors relied upon in  
6 their willingness to enter into the agreement, to forebear,  
7 to work with the Court and to work with the trust.

8 Specifically, it was and remains our opinion we  
9 agree with Your Honor that judgments properly rendered in  
10 state and federal court should be afforded the full faith and  
11 credit of the constitution, and these without question were  
12 properly rendered individual judgments in courts that had  
13 jurisdiction over that subject matter. They were rendered  
14 prior to the initial injunctions by the Court. They were  
15 rendered prior to the inception of the class action.

16 Number two, again, concurring with Your Honor's  
17 decision of June 26, 1991, we agree as the Court stated that  
18 as a matter of contract law, courts will respect freely  
19 negotiated binding agreements between the trust and the  
20 claimants. And Mr. Austern has been kind enough and candid  
21 enough to acknowledge. He participated, so it's firsthand  
22 knowledge on his part. It is also the representation of Mr.  
23 Hatten and myself for the roles that we played. It was  
24 certainly our feelings, our intentions, that these were  
25 freely negotiated, hard fought, but certainly binding.

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1 Circuit saying that in a class action as filed you cannot  
2 disregard the FIFO procedures under a confirmed plan, and the  
3 situation that we, in fact, in the real world, dealt with,  
4 where the trust had the authority to use its discretion in  
5 the processing of FIFO claims to reach settlements, and we  
6 think that that's a very important distinction, that we have  
7 complied with the plan as it was envisioned.

8 But just to -- point by point, we have fully  
9 complied. It's self serving, but we feel we have been  
10 diligent. We have cooperated. We timely exited to the tort  
11 system. We obtained lawful judgments with courts that had  
12 proper jurisdiction. We reached a valid and binding freely  
13 negotiated agreement. We have complied with the agreement.  
14 The trust is aware and recognizes its obligation to pay 1,087  
15 individual Virginia judgment creditors. The trust is  
16 financially able to pay. The triggering event has occurred.  
17 The success or failure of the proposed class action or any  
18 other class action cannot change the vested rights of the  
19 Virginia judgment creditors.

20 And I'm going to skip to our third point. The  
21 Virginia judgment creditors are unique. There is no  
22 precedent that is going to be set here by denying these  
23 people their contractual entitlement. They are liquidated  
24 claims, and the class action and 180,000 of the existing  
25 claims are unliquidated. There are, as Mr. Austern has

1 indicated, not many claims that have valid, final, non  
2 appealable judgments. There are no claims that have an  
3 agreement that sets a trigger date to the first special  
4 dividend which has been paid.

5           There are no agreements which indicate that by  
6 contract the trust agrees you will be the first paid, we will  
7 not pay anyone else until you're paid. So there are no other  
8 claimants of equal standing in a class action context, and  
9 I'm drifting from the point. We are a special class unto  
10 ourselves. We are entitled to separate and different  
11 treatment, and without the bargain that we have agreed. Two  
12 things. Number one, we set a precedent and a bad precedent.  
13 How should anyone deal with the trust now if the trust is not  
14 going to be in a position to honor the arrangements?

15           If we look even philosophically as to where this is  
16 going to give it a chance to work, the trust must be in a  
17 position to honor its agreements. It will make them wisely.  
18 They will be fairly negotiated. It's certainly aware of the  
19 number of claimants and its overall responsibility, but it  
20 must be allowed to honor the bona fide deals that it has made  
21 in the past. The Court, in issuing your show cause order and  
22 your memoranda, was aware that there are certain exceptions  
23 that were important. I briefly touched on the hardship and  
24 the exigent care.

25           I respectfully submit to the Court that the

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**AMENDED PARTNERSHIP AGREEMENT FOR  
THE LAW FIRM OF GLASSER AND GLASSER**

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AMENDED PARTNERSHIP AGREEMENT FOR  
THE LAW FIRM OF  
GLASSER AND GLASSER

ARTICLE I. GENERAL PROVISIONS

Section A. Recitals

1. The partnership of Glasser and Glasser was formed on January 1, 1967, by Bernard Glasser, Stuart D. Glasser and Richard S. Glasser. Prior to January 1, 1967, and since 1932, Bernard Glasser had practiced law as a sole practitioner along with various associates. On January 1, 1980, Michael A. Glasser was admitted as a partner. On December 31, 1982, Bernard Glasser withdrew as a partner of Glasser and Glasser, and Stuart D. Glasser, Richard S. Glasser and Michael A. Glasser were the remaining partners after ~~as of~~ December 31, 1982, who continued the practice of law as a partnership under the name of Glasser and Glasser.

2. Effective as of December 31, 1984, Stuart D. Glasser ~~will withdraw~~  
~~withdrew~~ as a partner of Glasser and Glasser, ~~subject to the provisions hereinafter~~  
~~set forth for his reinstatement as a partner~~ but will continue to be employed by the  
firm as Counsel.

3. ~~Effective as of January 1, 1985, a new Partnership Agreement, dated~~  
~~December 20, 1984, was entered into~~ <sup>by and between</sup> Richard S. Glasser, Michael A. Glasser,  
Ronald F. Schmidt, J. James Basgier, Jr., H. Seward Lawlor, Melvin R. Zimm and  
John T. Midgett, as partners in the continuation of the firm of Glasser and Glasser.  
~~Subsequent thereto, J. James Basgier, Jr., John T. Midgett and Ronald F. Schmidt~~  
~~ceased to be partners and left the firm, and Stephen Wainger became a partner.~~  
~~Effective the 1st day of January, 1992, William H. Monroe, Jr., shall become a~~  
~~partner.~~



~~4. The effective date of this Amended Partnership Agreement is the 1st day of January, 1992. The firm shall be a continuation of the firm of Glasser and Glasser and shall continue to practice law using the same name.~~

*Amended Partnership Agreement*  
*amends and supersedes the Partnership Agreement executed on December 28, 1984.*

~~3. The effective date of this partnership agreement is the 1st day of January, 1985. The firm shall be a continuation of the firm of Glasser and Glasser and shall continue to use the same name.~~

5. All of the firm's accounting, banking, financial and tax records and books (except those directly related to <sup>an individual partner's</sup> clients' funds) for all times prior to January 1, 1985, shall be the sole, exclusive and confidential property of Stuart D. Glasser, Richard S. Glasser and Michael A. Glasser.

Section B. Parties, Name, Purpose, Location and Term

1. Richard S. Glasser, Michael A. Glasser, Ronald F. Schmidt, J. James Basgier, Jr., H. Seward Lawlor, Melvin R. Zimm, and John T. Midgett, ~~Stephen Wanger and William H. Monroe, Jr.~~ shall constitute the only partners of the law firm of Glasser and Glasser from and after January 1, ~~1992~~, 1985, and they agree to practice law together according to the terms of this Amended Partnership Agreement.

*due to*  
*amended*  
2. The name of the firm shall continue as Glasser and Glasser provided that, if Richard S. Glasser and Michael A. Glasser withdraw, retire or cease for any reason to be active partners in the firm, the name Glasser shall be dropped from and not be used by the firm.

3. The sole purpose of the partnership is to engage in the practice of law with such usual operations in ~~as~~ the purchase, ownership and disposition of properties used in connection with the law practice of the firm, the maintenance of records and the conduct of other business as is incidental to the practice of law.

The practice of law should be conducted by the partnership in accordance with the Canons and Disciplinary Rules of the Code of Professional Responsibility as adopted by the American Bar Association and the Supreme Court of the Commonwealth of Virginia.

4. The location of the office of the firm shall be at ~~504 Plaza One, Norfolk, Virginia, 23510, 600 Dominion Tower, 999 Waterside Drive, Norfolk, Virginia 23510,~~ and/or in such other place or places in the Commonwealth of Virginia as the Management Committee ~~hereafter~~ shall determine.

5. The partnership shall continue from the effective date of this document until dissolved in accordance with the terms hereof.

## ARTICLE II. DEFINITION OF TERMS

For the purposes of this document, each of the following terms shall have the following meanings:

A. The terms "firm" or "partnership", interchangeable terms in this document, shall include the firm now organized and the same continuing firm, however named, notwithstanding changes in personnel by addition of new partners or termination of the membership of any partner(s).

B. The term "partners" shall (unless expressly qualified) include all partners individually, whose membership has not been terminated.

C. The terms "this document" or "this Agreement", interchangeable terms herein, shall include the Articles of Partnership as set forth herein, as the same may be amended as provided herein. The term "provisions of this document" includes the terms and provisions hereof and of all such amendments.



D. The phrase "termination of all interest in the partnership" means, when applied to any partner, the end of (a) his membership; (b) his units of participation and all rights under his units of participation; and (c) his rights in the capital of the firm; but shall not involve an elimination or cancellation of any rights expressly provided in this document to receive payments in cash or property yet to be paid to him as an incident of the termination of interests mentioned in (a), (b) or (c) of this paragraph.

E. The term "retired partner" means one whose interest in his units of participation is suspended and hence he has no right to participate in the voting of partners or in sharing the net profits and losses; however, he shall be eligible to receive any retirement bonuses or other payments in accordance with the terms of this document and neither his membership nor his rights in the capital of the firm shall be terminated.

F. The term "withdrawal" of a partner means the termination by his voluntary act of all his interest in the partnership.

G. The term "expulsion" of a partner means action by the firm effecting the termination of all his interest in the partnership.

H. The term "permanent disability" of a partner means that disability which justifies the requisite vote of the units of participation of the partners, in their discretion, to terminate on that account all said permanently disabled partner's interest in the partnership.

I. The terms "net income" or "net profits", interchangeable terms in this document, mean the gross "income" as that term is defined for federal income tax purposes, less such deductions from the "gross" as are permitted for federal income tax purposes.

J. The "fiscal year" of the firm shall commence on January 1st and end on December 31st of each year.

K. "Firm Client(s)" means and includes all of those clients listed or referred to in Paragraph C of Article XIII of this document and all other clients, except a client who, upon initially contacting or communicating with any representative or employee of the firm, specifically requests the services of a certain partner, other than Richard S. Glasser, ~~or~~ Michael A. Glasser ~~for~~ Stuart D. Glasser, without any suggestion or recommendation of any associate attorney or firm employee.

### ARTICLE III. CAPITAL OF THE FIRM

#### Section A. Capital Contributed By Partners

*ABC to be work as ownership of property*

Each partner shall have a Capital Account. The original capital contributions of the respective partners hereunder are shown on Exhibit A, attached hereto ~~and incorporated herein by reference~~. It reflects cash contributed and property, the title of which is owned by the firm, at the current agreed market value. The firm agrees to repay to each partner, ~~at the time and~~ as herein provided, the aggregate amount he has thus contributed as original capital, ~~plus interest thereon at the rate of twelve percent (12%) per annum on all unpaid balances~~. The original capital contributions shall be repaid in full prior to the repayment of any additional capital contributions. It is agreed that the firm shall ~~assess or~~ repay all original capital contributions, ratably, on or before December 31, 1985, plus interest as aforesaid from January 1, 1985 ~~in the same proportion as the partners' own units of participation except however, it is agreed that where any partner's(s) capital account(s) is/are in excess of said partner's(s) ownership of units of participation, said partner(s) may request the Management Committee to repay such excess to said~~



J. The "fiscal year" of the firm shall commence on January 1st and end on December 31st of each year.

K. "Firm Client(s)" means and includes all of those clients listed or referred to in Paragraph C of Article XIII of this document and all other clients, except a client who, upon initially contacting or communicating with any representative or employee of the firm, specifically requests the services of a certain partner, other than Richard S. Glasser, ~~or~~ Michael A. Glasser ~~for~~ Stuart D. Glasser, without any suggestion or recommendation of any associate attorney or firm employee.

### ARTICLE III. CAPITAL OF THE FIRM

#### Section A. ~~Original~~ Capital Contributed By Partners

~~Each~~ Each partner shall have a Capital Account. The original capital contributions of the respective partners hereunder are shown on Exhibit A, attached hereto ~~and incorporated herein by reference.~~ It reflects cash contributed and property, the title of which is owned by the firm, at the current agreed market value. The firm agrees to repay to each partner, ~~at the time and~~ as herein provided, the aggregate amount he has thus contributed as original capital, ~~plus interest thereon at the rate of twelve percent (12%) per annum on all unpaid balances. The original capital contributions shall be repaid in full prior to the repayment of any additional capital contributions. It is agreed that the firm shall assess or repay all original capital contributions, ratably, on or before December 31, 1985, plus interest as aforesaid from January 1, 1985 in the same proportion as the partners' own units of participation except, however, it is agreed that, where any partner's(s) capital account(s) is/are in excess of said partner's(s) ownership of units of participation, said partner(s) may request the Management Committee to repay such excess to said~~

~~partner(s) and such request(s) shall not be unreasonably denied, provided sufficient funds are available to the firm to make such repayment(s).~~

2 It is agreed and understood by all partners that no value or amount is included in the original capital contributions of Richard S. Glasser and Michael A. Glasser for the library of the firm owned by the firm as of December 31, 1984, and that, therefore, Richard S. Glasser and Michael A. Glasser shall have and retain all right, title and ownership interest (including depreciation and sale and insurance proceeds) in and to all books (and all replacements thereof) which were owned by the firm prior to January 1, 1985. Richard S. Glasser and Michael A. Glasser agree to allow the firm to use, without rent or charge, such books so long as they are partners of the firm; the firm agrees to bear all risks of loss and destruction of such books. In the event of the termination or dissolution of the firm, then Richard S. Glasser and Michael A. Glasser, or the survivor of them, shall have an option for thirty (30) days to purchase, at its fair market value, any additions (not replacements) made to the library at the expense of the firm.

#### Section B. Additional Contributions to Capital

The Management Committee may, from time to time, in its sole and absolute discretion, withhold from distribution to partners and transfer, ratably, from their respective undivided profits accounts, and credit to each partners' capital account as additional contributions to capital, such amounts as the Management Committee, in its sole and absolute discretion, deems to be desirable or necessary. ~~Interest shall be paid by the firm on all unreimbursed balances of all these additional contributions to capital at the rate of twelve percent (12%) per annum until fully repaid.~~ In addition thereto, the partners may be required, at such times and in such amounts as determined by the Management Committee, to make additional



contributions to capital of the firm from their own personal funds, all of which shall be made ratably in proportion to their units of participation. Additional contributions to capital shall be repaid to the partners, ratably, in reimbursement of their contributions to capital, at such times and in such amounts as determined in the sole and absolute discretion of the Management Committee; ~~provided, however, all interest owing on any capital contribution shall be paid before any reimbursement of contributions to capital, and reimbursement of contributions to capital shall be made for the oldest contributions first.~~

#### Section C. Reserves

Out of the amounts contributed as additional contributions to capital, the Management Committee, in its sole and absolute discretion, may, from time to time, set aside and/or retain in a reserve fund and/or special account such amounts which it deems to be desirable or necessary for the future six (6) months for capital expenditures, bonuses and/or any other anticipated obligations, expenses and/or commitments or contingencies of the firm. The aforesaid reserves may be kept, in such amounts, in the firm's operating checking account or in a special or reserve account or in certificates issued by any bank, savings and loan or by the United States of America, opened by or in the name of the firm, as determined by and in the sole and absolute discretion of the Management Committee.

#### ARTICLE IV. PROFITS AND LOSSES OF THE FIRM; PARTICIPATION OF PARTNERS THEREIN; ~~DRAWINGS~~ *draws* ADDITIONAL COMPENSATION; BONUSES; FEES EARNED PRIOR TO JANUARY 1, 1985

##### Section A. Units of Participation in ~~Profits~~ ~~and Losses Held by the Respective Partners~~ *in Profits and Losses*

Except as otherwise expressly provided in this document, participation of partners in net profits and losses shall be on the basis of the "units of participation"

contributions to capital of the firm from their own personal funds, all of which shall be made ratably in proportion to their units of participation. Additional contributions to capital shall be repaid to the partners, ratably, in reimbursement of their contributions to capital, at such times and in such amounts as determined in the sole and absolute discretion of the Management Committee; ~~provided, however, all interest owing on any capital contribution shall be paid before any reimbursement of contributions to capital, and reimbursement of contributions to capital shall be made for the oldest contributions first.~~

#### Section C. Reserves

Out of the amounts contributed as additional contributions to capital, the Management Committee, in its sole and absolute discretion, may, from time to time, set aside and/or retain in a reserve fund and/or special account such amounts which it deems to be desirable or necessary for the future six (6) months for capital expenditures, bonuses and/or any other anticipated obligations, expenses and/or commitments or contingencies of the firm. The aforesaid reserves may be kept, in such amounts, in the firm's operating checking account or in a special or reserve account or in certificates issued by any bank, savings and loan or by the United States of America, opened by or in the name of the firm, as determined by and in the sole and absolute discretion of the Management Committee.

#### ARTICLE IV. PROFITS AND LOSSES OF THE FIRM; PARTICIPATION OF PARTNERS THEREIN; PARTNERS'; MONTHLY DRAWS; ADDITIONAL COMPENSATION; BONUSES; FEES EARNED PRIOR TO JANUARY 1, 1985

##### Section A. Units of Participation Held by the Respective Partners in Profits and Losses

Except as otherwise expressly provided in this document, participation of partners in net profits and losses shall be on the basis of the "units of participation"



held by each partner, which shall be as follows:

Richard S. Glasser:	48 $\frac{2}{3}$	Units of Participation
Michael A. Glasser:	24 $\frac{1}{3}$	Units of Participation
Ronald F. Schmidt:	6	Units of Participation
J. James Basgier, Jr.:	5	Units of Participation
H. Seward Lawlor:	6	Units of Participation
Melvin R. Zimm:	5 $\frac{1}{2}$	Units of Participation
John T. Midgett:	5	Units of Participation
Stephen Wainger:	6	Units of Participation
William H. Monroe, Jr.:	5	Units of Participation

Upon termination of all interest in the partnership as to any partner, his units of participation and all rights thereunder shall expire. No amendment of this document shall be required therefor. Otherwise, no change in the aggregate number of units held by partners or in the number held by any partner shall be effected, except by an appropriate amendment of this document. The number of units of participation which each partner has may be changed from time to time by a two-thirds ( $\frac{2}{3}$ ) vote of all units of participation, each unit representing one (1) vote.

#### Section B. Undivided Profits Account

1. The firm shall carry on its books an undivided profits account for each partner to which profits and losses will be added or deducted at the end of each quarter commencing March 31, 1985 ~~1992~~. His share of profits and losses will be computed as set forth herein. To the extent that the net income and prospective needs and obligations of the firm permit, as determined by and in the sole and absolute discretion of the Management Committee, at the end of each calendar month, each partner shall be paid the following monthly draw, which shall thereupon be charged to his undivided profits account:

Richard S. Glasser:	\$ 7,500.00	10,000.00
Michael A. Glasser:	\$ 5,000.00	7,500.00
Ronald F. Schmidt:	\$ 2,500.00	
H. Seward Lawlor:	\$ 2,500.00	5,000.00
J. James Basgier, Jr.:	\$ 2,083.33	

Melvin R. Zimm:	\$ 2,083.33	5,000.00
John T. Midgett:	\$ 2,083.33	
Stephen Wanger:	\$ 5,000	
William H. Monroe, Jr.:	\$ 4,000	

In the event that the Management Committee determines, in its sole and absolute discretion, that the net income and prospective needs and obligations of the firm do not make it desirable to distribute the above monthly draws in full, the Management Committee may reduce, ratably among the above partners, or eliminate such monthly draws, from time to time, in its sole and absolute discretion.

2. After the aforementioned monthly draws have been paid to the above-named partners for the current month and all preceding months of the current fiscal year (unpaid monthly draws of the aforementioned partners shall be cumulative during a fiscal year, but shall not be cumulative or carried over to any succeeding fiscal year) then, to the extent the net income and prospective needs and obligations of the firm permit, as determined by and in the sole and absolute discretion of the Management Committee, net profits will be shared on the basis of "units of participation" as set forth in Section A of Article IV. Each partner will be allowed a certain number of units of participation. A fraction will be formed. The numerator of this fraction shall be number of units owned by <sup>such individual</sup> ~~one~~ partner and the denominator shall be the total number of units owned by all partners. All losses, and all profits over and above the monthly draw provisions specifically set forth above, will be multiplied by each partner's fraction in order to determine each partner's share thereof, except that the maximum annual draws and respective shares of the firm's net profits for each of the following partners (exclusive of any additional compensation or bonus) shall not exceed the following amounts:



Partner

Maximum Draw for Fiscal Year ~~1992~~ 1991

Ronald F. Schmidt	\$72,000.00	
H. Seward Lawlor	\$72,000.00	\$
J. James Basgier, Jr.	\$60,000.00	
Melvin R. Zimm	\$60,000.00	\$
John T. Midgett	\$60,000.00	
Stephen Wainger		\$
William H. Monroe, Jr.		\$

3. Notwithstanding the aforementioned maximum annual draw limitations, Ronald F. Schmidt (19%), H. Seward Lawlor (19% ~~20%~~), J. James Basgier (20%), Melvin R. Zimm (20%) and John T. Midgett (20%), ~~Stephen Wainger (20%) and William H. Monroe, Jr. (20%)~~ shall be entitled to additional compensation which shall be added to such partner's undivided profits account in an amount equal to the percentage, set forth in this paragraph following their name, respectively, ~~his~~ ~~respective name~~, of the fees which are received and fully earned by the firm as a direct result of business from a client (not a Firm Client) originated by such partner, provided that the Management Committee does not determine, in its sole ~~and~~ ~~absolute~~ discretion, that such business was unprofitable to the firm, taking into consideration the amount of time spent on such business by all partners, associates, paralegals and secretaries and all other overhead and expenses of the firm, as determined by the Management Committee to be allocable to such business. The Management Committee may, under such circumstances, reduce or eliminate such ~~additional compensation~~ ~~from such partner's undivided profits account~~ ~~be~~ in its sole ~~and absolute~~ discretion. The aforesaid additional compensation shall be payable monthly on the last day of each month or as soon thereafter as is practicable. It is understood and agreed that no such additional compensation will be paid to any of the aforesaid partners in connection with business or fees from past, present or future Firm Clients, ~~except that H. Seward Lawlor shall be entitled to additional compensation of 19% of fees received by the firm on the asbestos~~

cases from Port Allegany, Pennsylvania, yet to be tried (*Barber, et al.*), unless they are determined by the Management Committee to be unprofitable to the firm.

4. Each partner's maximum draw, as set forth in Paragraph 2, above, shall be increased on an annual <sup>cumulative</sup> basis by an amount equal to one-half (1/2) of such partner's prior fiscal year fee production (as a direct result of business originated by such partner from non-Firm Clients).

5. <sup>allowable compensation</sup> In addition to the above maximum draw, Each partner's maximum draw for the current fiscal year shall automatically be increased by an amount equal to the firm's contribution to said partner's Simplified Employee Pension Plan (hereafter "SEP") or such other retirement or pension account as may hereafter be adopted and an amount equal to the firm's contribution for such partner's individual health insurance premium.

6. At the close of each fiscal year, there shall be credited to the undivided profits account of each partner his share of the net profits, computed as provided in this Article IV, less the amount of his additional contributions to capital of the firm. Any reimbursements of capital contributions to him shall be so credited and all other debits and credits between the partner and the firm to date shall be included in the calculation.

7. If, at the end of the fiscal year, after crediting to the undivided profits accounts of the partners the participation of each such partner in the net profits, there remains a deficit in his undivided profits account, he shall be required to pay the amount of that deficit to the firm.

8. If, at the end of each fiscal year, the maximum draws for the fiscal year (as set forth in Paragraph 2, Section B, of this Article) have been paid in full to Ronald F. Schmidt, H. Seward Lawlor, J. James Basgier, Jr., Melvin R. Zimm and



~~John T. Midgett, Stephen Wanger and William H. Monroe, Jr.~~ and if there are net profits remaining after paying or setting aside for paying all expenses of the year over and above the aggregate of all stipulated monthly drawings provided for in Paragraph 1 of Section B of this Article, additional compensation, and additional contributions to capital (transferred and/or made as provided for in Section B of Article III) and reserves, the Management Committee, in its sole and absolute discretion, may award, but shall not be obligated to award, bonus(es) out of such remaining net profits to and among such partner(s) as it shall select, in such amount(s) as it, the Management Committee, shall determine, in its sole and absolute discretion, for meritorious and extraordinary service to the firm.

9. If, at the end of the fiscal year, there are net profits for distribution over and above the aggregate of all stipulated monthly drawings, additional compensation, bonuses and additional contributions to capital, then the portion of such net profits not transferred to or retained in the firm's reserve fund or special account, as provided for in Section C of Article III, shall be applied first to payments to those partners who have received in their monthly drawings less than their ratable share of net profits based upon their respective units of participation; and thereafter the balance of net profits shall be distributed ratably to all partners in proportion to their respective units of participation, not exceeding their respective maximum draw for such fiscal year.

#### Section C. Fees Earned Prior to January 1, 1985

It is stipulated and agreed that certain fees and commissions have been earned prior to January 1, 1985, but not received as of the date of this Agreement, and that all fees relative to the cases and/or matters (listed on Schedule B attached hereto ~~and incorporated herein by reference~~) shall be owned, divided and distributed upon

receipt, forthwith, in full, exclusively among Stuart D. Glasser, Richard S. Glasser and Michael A. Glasser, in such portions as they alone shall agree upon, without any charge or reduction of Richard S. Glasser's and/or Michael A. Glasser's draws or shares of the firm's profits (provided for in Article IV of this document), it being expressly acknowledged and agreed that no other partner has any interest whatsoever in said fees or commissions.

## ARTICLE V. DUTIES OF PARTNERS

### Section A. Devotion Primarily to Professional Services

Each partner shall devote his best efforts to serving professionally the firm and its clients. Subject to any exceptions consented to by the Management Committee, each partner shall devote all of his normal business time to such services.

### Section B. Charging for Professional Services

1. Each partner shall charge reasonably for all professional services rendered by him, following generally the policies of the firm as to fees charged, as determined by the Management Committee. No partner shall perform any substantial professional services without charge unless he obtains prior approval of the Management Committee.

2. Each partner will follow the rules, decisions and policies of the firm adopted by the Management Committee, ~~inter alia~~ relating to fees on services rendered by the firm. With respect to substantial services to be rendered by the firm, each partner will submit to the Management Committee a recommendation for each fee unless, due to some emergency, in the judgment of the partner, time does not permit this to be done in advance, in which case he then will promptly report to the Management Committee every charge made by him. Each partner will report to the responsible partner in charge of the billing of any client when he has

ISL language  
in board  
minutes



services for such a client, monthly or upon the completion of the same, whichever is sooner, recommending to the responsible partner what charges for such services seem to him appropriate.

3. No salaries, commissions, fees or gratuities (gifts with values of more than \$25.00) shall be accepted, directly or indirectly, by any partner personally (or by a member of a partner's immediate family) from any client or prospective client of the firm, unless with the express consent in advance of the Management Committee. The fair value of any such item received and retained by the partner shall be treated for accounting purposes as compensation to the firm and shall be charged against such partner as an advance on the next maturing installment or installments of his undivided profits account. The Management Committee may agree, however, to any exception to any provision of this paragraph.

#### Section C. Professional Obligations

1. At firm expense, each partner will maintain memberships in the Virginia State Bar and the Norfolk-Portsmouth Bar Association. The firm, at the discretion of the Management Committee, may pay the expense of a partner's (or partners') membership dues in other bar associations as it deems desirable.

2. At firm expense, each partner will maintain fully effective his license and privilege to practice law in the State of Virginia and in the courts and administrative bodies before which he shall have occasion to practice.

3. Each partner will at all times comply with all of the provisions of the Canons of Professional Ethics as adopted by the American Bar Association and the Virginia State Bar and with the statutes, rules and regulations covering all professional services that he shall render.

#### Section D. Duty to Report Errors and Omissions

1. Each partner immediately shall report to members of the Management Committee all errors or omissions with respect to professional services rendered by him as soon as he has knowledge of the same or of the possibility of a claim against him or the firm.

2. Notwithstanding coverage on a firm insurance policy, each partner shall be responsible for reimbursement to the firm for the deductible amount on any firm insurance policy for each loss or claim paid by the firm which is caused by such partner's error or omission, ~~unless the Management Committee in its sole and absolute discretion decides to waive said reimbursement~~.

### ARTICLE VI. MEETINGS AND VOTING OF PARTNERS

#### Section A. Meetings of Partners: Voting at Such Meetings

1. A meeting of partners shall be held at any time on call of the Management Committee or at any time ~~set forth in a notice~~ jointly signed by any three partners, specifying the hour and purpose(s) of the meeting. The call by the Management Committee may be written or oral and need not be made any period of time in advance of the meeting, nor need it specify the purpose(s) of the meeting, except, however, that, in those instances where written notice for at least a specified period of time is required by any provision of these Articles, every call or notice of such meeting shall comply with such requirement.

2. At each meeting of partners, each partner shall have one (1) vote for each unit of participation (a fractional unit shall have a corresponding fractional vote) held by him as specified in Section A of Article IV of this document; a quorum for any issue at any meeting shall exist if partners holding a majority of such



units are present in person or voting by proxy on written instruction. Any partner may vote on any matter, if not present, by general or specific proxy ~~and/or by power of attorney directed~~ to a partner present, or by specific instructions in writing.

3. A partner shall not vote, however, and the number of outstanding units of participation shall be deemed to be reduced by the number of units he holds, when such partner has given a notice of withdrawal from the firm and the partnership meeting is voting on a proposal to terminate the firm and liquidate its affairs. The person whose notice of withdrawal is pending shall not vote and the percentage of votes for termination and liquidation shall be determined as though that ~~said~~ partner's units of participation did not exist.

4. Excepting only as provided in Paragraph 3 of this Section A of Article VI of this document, no partner shall be disqualified from voting on any issue, notwithstanding any interest he may have therein which differs from the interest of the firm or of the other partners.

Section B. Percentage of Votes Required for Certain  
Partnership Decisions; Requirement of Recommendation of the  
Management Committee in Advance of Certain Partnership Decisions.

1. As provided by this document, it may be determined by partnership vote that one presently a partner (a) is under permanent disability; (b) should be expelled from the firm; (c) should be permitted to retire or to attain retirement by gradual steps; or (d) that one not presently a partner may be added as a partner. As to each such issue (except for the readmission of Stuart D. Glasser as a partner), it is required that for so determining that issue in the affirmative, affirmative votes shall be cast by partners holding at least two-thirds ( $\frac{2}{3}$ ) of the outstanding units of participation that can be voted on that issue. An affirmative recommendation of the Management Committee in advance is required (except for the readmission of

Stuart D. Glasser as a partner) before a vote of the partners on the addition of a new partner.

2. As provided by Article XV of this document, ~~the~~ decision may be made that the firm be terminated and its affairs liquidated (a) at any meeting held for the specific purpose of determining whether this shall be done, (b) on the written recommendation of the Management Committee; or (c) at the written request of any three (3) partners stating the purpose of the meeting and giving at least five (5) days' notice. For determining this issue in the affirmative (subject to the provisions of Paragraph 3 of Section A of this Article), votes in the affirmative of partners holding a majority of the outstanding units of participation that can be voted on that issue shall be required.

3. These ~~Amended~~ Articles of Partnership may be ~~further~~ amended, except where such amendment is expressly prohibited by the provisions of this document, upon affirmative votes of partners holding at least two-thirds (2/3) of the outstanding units of participation that can be voted on that issue, provided that the proposed amendment and the affirmative recommendation of the Management Committee with reference thereto are attached to the written notice of the meeting at which the proposed amendment is to be considered.

4. A majority of the units of participation may determine any other issue at a partnership meeting, subject to prior approval by the Management Committee, or referral by the Management Committee, of an issue to the partners for decision.

## ARTICLE VII. MANAGEMENT

### Section A. Authority and Membership of the Management Committee

1. Subject to the express terms of this document which, as to certain specific matters, provides that decisions of the firm shall be determined by the vote of units



of participation, the complete and sole management of the firm is hereby vested in the Management Committee, including, but not limited to, the approval of ~~the location or relocation of the firm's office(s)~~ overhead expenses, assignment of work to partners and associate attorneys, personnel and office procedures, fees charged to clients, amounts of reserves, additional contributions to capital, rules and regulations for employees, vacations, sick leave, accounting procedures and records, files, handling of copying and telephone expenses, charitable contributions, membership in clubs and entertainment expenses, reimbursements, drawings, bonuses, additional compensation, travel, purchase and sale of supplies and equipment, hiring and dismissal of employees, banking, investments, insurance and reserve and/or special accounts.

2. Any part or parts of the power, right and authority vested in the Management Committee may, at any time and from time to time, be delegated to it by a subcommittee of one or more partners chosen by it. Such authority may be delegated with power in the subcommittee only to recommend to the Management Committee what action should be taken or with power to act. In the latter event, action of the subcommittee shall be the action of the Management Committee. Any delegation of power or authority may be terminated by the Management Committee at any time.

3. The Management Committee may, from time to time, cause a set of the rules and policies of the firm to be distributed in an office manual to all partners, associated attorneys and employees of the firm.

4. The Management Committee shall consist of three (3) partners. No one of them shall be retired (although he may be participating in gradual steps toward retirement) or ~~be~~ the subject of pending action for expulsion.

5. The Management Committee, from the effective date of this instrument, shall consist of Richard S. Glasser, Michael A. Glasser and John T. Midgett ~~H~~ ~~Seward Lawlor~~, who shall be the original members of the Management Committee. Each of the three shall serve respectively until his tenure is terminated by death, resignation, disqualification or a determination by vote of the partners that his term shall expire, except, notwithstanding anything to the contrary contained herein, the said Richard S. Glasser and Michael A. Glasser shall each continue, permanently, to be members of the Management Committee so long as either of them remains a partner of the firm and the number of members of the Management Committee shall not be increased to more than three (3) members without their affirmative written vote and consent.

6. The tenure of each member of the Management Committee, other than that of Richard S. Glasser and Michael A. Glasser, shall be subject to termination without cause by a vote of a majority of the units of participation.

Section B. Functioning of the Management Committee and Its Subcommittees

1. Members of the Management Committee shall make every reasonable effort to keep each other advised of all pending problems, prospective decisions and actions taken. Action of the Management Committee shall be by majority vote of its three (3) members. It shall not be necessary that any notice be given of the time or place or decision or the matter to be decided. Any decision of the Management Committee may be reversed by any subsequent action of the ~~Management~~ Committee.

2. Although the Management Committee has no obligation so to do, it may refer any matter to a meeting of the partners for decision.



### Section C. Membership in Subcommittees of the Management Committee

The Management Committee shall decide what subcommittees there shall be, from time to time, how many members (one or more) shall be on each subcommittee, who the members shall be and what the subcommittee's functions and authority shall be. The Management Committee may, at any time, modify or revise any authorized decision of any subcommittee. Any partner or any employee may be a member of any subcommittee.

### ARTICLE VIII. ADDITION OF PARTNERS

The Management Committee may, from time to time, (a) propose that additional partners be invited to join the partnership and (b) may propose the units of participation and the undivided profits accounts for each or (c) propose an amendment ~~a further amendment~~ to these ~~Amended~~ Articles of Partnership, specifically providing for any undivided profits account and other provisions. In each such instance:

A. There shall be given to each partner a notice of at least five (5) days before a meeting for all partners at which each partner shall be entitled to discuss the proposal fully.

B. At that meeting, the partners may, by their affirmative votes (as provided for in Paragraph 1 of Section B of Article VI), determine that the invitation shall be extended as proposed by the Management Committee or with such revisions as are determined.

C. If the invitation is accepted, the new partner and prior partners holding at least two-thirds ( $\frac{2}{3}$ ) of the units of participation entitled to vote at the meeting referred to in Paragraphs A and B of this Article VIII shall join in executing ~~a new Partnership Agreement or a further~~ amendment to these ~~Amended~~ Articles of

Partnership providing for the change in the partnership thus effected.

D. Notwithstanding anything to the contrary contained in this document or ~~in further~~ amendments of ~~to~~ this document, it is agreed by all partners, present and future, that Stuart D. Glasser may be readmitted as a partner of the firm, at any time, upon the invitation of Richard S. Glasser and Michael A. Glasser, or the survivor of them, acting alone and without any further agreement or consent of the other partners, upon five (5) days written notice to the other partners. The said Richard S. Glasser and/or Michael A. Glasser may transfer and/or assign ~~to one another or~~ to the said Stuart D. Glasser all, or any part, of their units of participation or interests in the firm on the sixth day after aforesaid notice, ~~and upon the sixth day after the date of said notice~~ In the event Richard S. Glasser and Michael A. Glasser invite Stuart D. Glasser to rejoin the firm and so notify the partners, then the said Stuart D. Glasser shall be a partner of the firm and shall have all benefits and liabilities associated with the units of participation transferred or assigned to him by Richard S. Glasser and/or Michael A. Glasser. In the event that Stuart D. Glasser is readmitted as a partner, it shall have no effect on the number of units of participation held by the partners other than Richard S. Glasser and Michael A. Glasser. This paragraph shall not be subject to amendment or modification without the express written consent of Richard S. Glasser and Michael A. Glasser, or the survivor of them. No other units of participation can be transferred, assigned, sold or pledged by any other partner.

#### ARTICLE IX. PAYMENT FOR PARTNER'S INTEREST

The payment for a partner's interest in the partnership, calculated as of the date of his death or the effective date of his retirement, withdrawal or expulsion, will be on the following basis:



Item A. Any unpaid monthly draw and additional compensation (as described in Paragraph 3 of Section B, Article IV).

Item B. His capital account.

Item C. His undivided profits account, plus his share, if any, of any undivided profits of the firm with respect to uncollected fees which were <sup>N.P.</sup> fully earned by the firm prior to the date of the partner's death or the effective date of his retirement, withdrawal or expulsion, but which fees are received by the firm subsequent to such date. ~~It is expressly agreed that any fees hereafter collected by the firm on the existing Consent Judgment Orders and settlements with The Manville Corporation Asbestos Disease Compensation Fund or The Manville Personal Injury Settlement Trust (hereafter "The Manville Trust") shall be deemed to be uncollected fees that are fully earned by the firm when computing the undivided profits account of any partner who dies, retires from the practice of law or becomes disabled prior to the date said fees are received by the firm. However, it is further agreed that any partner who withdraws voluntarily from the firm and continues to practice law or whose conduct results in his expulsion from the firm, in accordance with the provisions of Article XIV of this document shall not be entitled to share any uncollected fees resulting from Consent Judgment Orders or settlements with The Manville Trust that are not paid to said partner prior to his voluntary withdrawal or expulsion from the firm.~~

Item D. Death or Retirement. For the number of months of death or retirement benefits designated for the number of years of the partner's association with the firm, a partner or his specifically designated payee(s) or, if none, his personal representative, shall receive one-fourth ( $\frac{1}{4}$ ) of his share of such net profits, based upon the number of units of participation which he had in the firm relative



to the firm's total number of units of participation as of the date of his death or the effective date of his retirement. A partner's years with the firm as an associate shall count.

All payments under Item D shall be out of profits of the partnership, shall be considered as a distribution of partnership earnings and shall not be includable in the shares of net profits of the other partners. Until all distributions are made under Item D, and for purposes of this distribution only, it shall be deemed that no change in units of participation have occurred, regardless of whether the firm in fact rearranges old or issues new units of participation during the period of distribution. From the date of death or the effective date of retirement, withdrawal or expulsion, that partner's units of participation shall have no voting rights; however, the right to arbitrate shall remain.

Number of Years of  
Deceased or Retired Partner's  
Association with the Firm

Number of Months of  
Death or Retirement Benefits

5 years, but less than 10 years  
10 years, but less than 15 years  
15 years, but less than 20 years  
20 years or more

12 Months  
24 Months  
36 Months  
48 Months

In the event of the death or retirement of a partner following his temporary disability, the firm shall receive a credit for any payments made to such partner after the effective date of his temporary disability. In addition, as to Richard S. Glasser only, the firm shall obtain and purchase, at the firm's expense, a term life insurance policy, with waiver of premium in the event of his disability, on the life of Richard S. Glasser in the amount of \$500,000.00, and maintain the same in full force and effect continuously for a period of five (5) years beginning on the effective date of this document. The beneficiary of said life insurance policy shall be such person

or persons selected by Richard S. Glasser or, if he fails to select anyone, the beneficiary of said policy shall be his estate. Notwithstanding anything to the contrary in this document, in the event of the termination of the firm, the permanent disability of Richard S. Glasser or the completion of the five (5) year period, the ownership of said term life insurance policy shall be assigned, without charge, to Richard S. Glasser or to any other person or persons selected by him. This provision is not subject to amendment without the express written consent of Richard S. Glasser.

#### ARTICLE X. EFFECT OF DEATH

Death of a partner shall not terminate the partnership nor the deceased partner's estate's interest in the partnership. The partnership, and the deceased partner's estate's (or named beneficiary's) interest shall continue until terminated as herein provided.

#### ARTICLE XI. DISABILITY

A. Any disability, physical or mental, will be considered temporary when two-thirds ( $\frac{2}{3}$ ) of the other units of participation decide that, effective on any reasonable date, a partner was not able to adequately attend to partnership affairs.

B. For first three (3) months following temporary disability, such partner will be paid seventy-five percent (75%) of his draw and of his share of net profits and losses; for the next three (3) months, fifty percent (50%) of his draw and of his share of net profits and losses; for the next three (3) months, twenty-five percent (25%) of net profits and losses. Return to practice during such nine (9) month period will restore the partner to such extent as a majority of the remaining units of participation decide.

C. Such disability will become "permanent disability" (a) when his ~~the~~ ~~partner's~~ personal physician so advises the firm, (b) whenever two-thirds (2/3) of the other units of participation so conclude or (c) after nine (9) months of temporary disability, whichever occurs first. The determination that a partner is permanently disabled shall terminate all of his interest in the firm ~~(except as set forth in Article IX herein)~~ and his units of participation and, after such determination, he shall no longer be a partner.

D. Once permanent disability is determined, the partner shall receive the same benefits as though he had retired on the date temporary disability began, the firm receiving a credit for payments made to him since that date.

## ARTICLE XII. RETIREMENT

### Section A. Full Retirement

1. Retirement shall only be permissible, but not required, by a partner who has reached his 60th ~~thirtieth~~ ~~(50th)~~ birthday and who intends to terminate his practice of law in the community. If this is his intention, he may do so with two (2) months notice ~~to the other partners~~. He will be paid as to Items A, B, C and D under Article IX.

2. Should a majority of the other units of participation decide to terminate the partnership, they may do so within the two (2) month notice period, in which case the retirement notice shall have no effect.

3. Should said partner, once retired, resume the active practice of law, all payments otherwise due, but not paid, need not be paid and responsibility to do so will terminate.



## Section B. Transitional Retirement

1. Transitional Retirement may be elected at any time by a partner after reaching his 60th ~~fiftieth (50th)~~ birthday. In such event, and provided his interest in the firm is not ~~meanwhile~~ terminated by ~~his~~ death, permanent disability, withdrawal, expulsion or dissolution of the firm, his units of participation will be reduced and paid for (approximately) equally each year thereafter for ten (10) years until reduced to zero (0) by the end of the tenth (10th) year. During this ten (10) year period, his duties shall be gradually reduced; his draw likewise will be reduced by the firm.

## ARTICLE XIII. WITHDRAWAL

A. Any partner may withdraw from the firm with thirty (30) days notice to the other partners. He shall be paid only as to Items A; ~~and B and C to the extent applicable, Item C, of Article IX.~~ At the end of the expiration of the thirty (30) day period, or sooner if so agreed, the withdrawal of said partner shall be effective.

B. The withdrawing partner may take only the files of any client originated by him and willing to leave the firm; and, in the sole and absolute discretion of the Management Committee, he may take the files of those other clients who are willing to leave the firm. If any firm client, or any client originated by any other partner or associate, prefers the representation of the withdrawing partner for any reason, but contrary to the decision of the Management Committee, the withdrawing partner will pay to the firm, monthly, commencing on the date thirty (30) days after the effective date of his withdrawal and continuing on the same date of each and every month thereafter, one hundred percent (100%) of any fee(s) earned and/or received by him, or by any other firm of which he is a member or with which he is associated, from such client, directly or indirectly, for a twelve (12) month period

following his withdrawal, whether actually paid or not; it being stipulated and agreed that such payments are liquidated damages to the firm caused by such partner's withdrawal. Such withdrawing partner will disclose such information and make such accounting as the firm may request from time to time to verify the accuracy of such required payments. Notwithstanding anything to the contrary in this document, it is stipulated and agreed that, upon the withdrawal of Richard S. Glasser and/or Michael A. Glasser, they, or either of them, may take the files of "Firm Clients" and related escrow funds and accounts, in addition to the files of any other clients to which they, or either of them, may be entitled; this stipulation is not subject to amendment or modification without the express written consent of Richard S. Glasser and Michael A. Glasser, or the survivor of them.

C. It is stipulated and agreed by all partners, including any future partners ~~to this Agreement~~, that all files, matters and cases and all fees earned or to be earned in the future relating to the "Firm Clients" listed on Schedule C, attached hereto ~~and incorporated herein by reference~~, are owned by the firm, exclusively, and no withdrawing, expelled, disabled or retired partner, except Richard S. Glasser and Michael A. Glasser (and Stuart D. Glasser, in the event he is readmitted as a partner) shall keep, record, photocopy, reproduce or preserve any of the records and/or files of such "Firm Clients", it being stipulated and agreed for purposes of this agreement that all such "Firm Clients" were originated for the firm by Bernard Glasser, Stuart D. Glasser, Richard S. Glasser and/or Michael A. Glasser.

D. Each withdrawing partner receiving any file shall immediately reimburse the firm for any advances which it may have made on behalf of the client.

E. Should the firm decide, by a two-thirds (2/3) majority vote of the units of participation (excluding the units of participation of the withdrawing partner) within



thirty (30) days after notice of withdrawal, to dissolve the partnership, it may do so, in which case the dissolution decision shall take precedence over the withdrawal notice, which latter notice shall have no effect.

#### ARTICLE XIV. EXPULSION OF A PARTNER

##### Section A. Reasons for Expulsion for Cause

A partner shall be expelled for cause when it has been determined, by vote of the partners in accordance with the provisions of Article VI of this document, that any of the following reasons for his expulsion exist:

(1) Disbarment, suspension or other major disciplinary action of any duly constituted authority.

(2) Professional misconduct or violation of the Canons of Professional Ethics, if such misconduct continues after its desistance has been requested by the Management Committee.

(3) Action that injures the professional standing of the firm, if such action continues after its desistance has been requested by the Management Committee.

(4) Insolvency or bankruptcy or assignment of assets for the benefit of creditors by a partner.

(5) Breach of any provision of this Amended Partnership Agreement which all other partners expressly agree is a major provision if, after the breach has been specified as a prospective ground for expulsion by written notice given by the Management Committee, the same breach continues or occurs again.

(6) Any other reason which the other partners unanimously agree warrants expulsion, including, but not limited to, withholding of fees owing to the partnership.



#### Section B. Effects of Expulsion for Cause

Upon a determination that a partner be expelled for cause, he shall thereby be so expelled, forthwith, and shall have no right or interest thereafter in the firm or any of its assets, clients, files, records or affairs. He shall have no further professional duties to the firm or any of its clients and shall not be privileged to serve any of them thereafter. He shall immediately remove himself and his personal effects from the firm offices. Upon any such expulsion, the expelled partner shall be obligated not to accept employments for professional services from any who have been clients of the firm during the last three (3) years preceding the determination of expulsion, the obligation not to accept such employments being a continuing one for a term of the next ensuing three (3) years. From the time of the expulsion, the expelled partner shall have no participation whatsoever in the income or losses of the firm or any distribution or drawings from the net income. Realizing that the existence of any such cause for expulsion may bring disgrace on the firm and damage the firm in amounts and ways that cannot be calculated or become liquid in amount, each partner agrees that the firm shall succeed to all of the rights of the expelled partner as hereinabove set forth and shall retain all sums unpaid by it to the expelled partner, whether accrued or not at that time; further, that the receipt and retention by the firm of all such rights and sums shall satisfy and discharge the damages of the firm, being retained as and thereby determined to be liquidated damages; however, no other existing indebtedness or deficit of the expelled partner to the firm shall be so discharged.

#### Section C. Expulsion Without Determining Any Cause Therefor

A partner shall be expelled immediately when, on recommendation of the Management Committee, it is determined by a vote of the partners, as provided in

Article VI, that he shall be expelled without determination of any cause therefor. This method of expulsion may be employed notwithstanding the fact that grounds may exist for expulsion for cause of said partner.

Section D. Effects of Expulsion Without Determining Any Cause Therefor

Upon expulsion without determining a cause therefor, the partner so expelled shall have no right or interest thereafter in the firm or any of its assets, clients, files, records or affairs. He shall have no further professional duties to the firm or any of its clients and shall not be privileged to serve them thereafter. He immediately shall remove himself and his personal effects from the firm offices. Except as otherwise provided in this paragraph, a partner so expelled shall be entitled to the same rights and the same payments by, and be subject to the same duties to, the continuing firm as if he were then voluntarily withdrawing from the firm.

ARTICLE XV. TERMINATION BY VOLUNTARY DISSOLUTION

A. The firm may terminate the partnership effective on such date as it chooses. The effective date shall become the "date of termination". Those individuals exercising the majority vote may choose to re-establish the firm business following such termination using the same name (excluding from that name only those who do not remain) and continue to rent the premises and retain firm assets except for personally owned items which may be removed by those not remaining. However, payment must then be made to each partner excluded as though he were deceased or retired; that is, he will be paid Items A, B, C and D under Article IX.

B. If, instead, a majority does not choose to so re-establish the firm, then the firm will liquidate. After payment of debts (or reserves for them are set aside), assets will be divided according to the units of participation.



C. During liquidation, decisions as to how this will be accomplished shall be made by a majority of the units of participation. All rights to withdraw, to expel a member, to retire and all rights to disability and death benefits shall be extinguished as of the "date of termination", except that Richard S. Glasser, or any person(s) designated by him, shall be assigned, without charge, the life insurance policy mentioned herein.

D. All partners will attempt to complete all work before the termination date ~~of termination~~ so that matters can be billed and collected.

E. From the date of termination, there shall be no further business transacted for the terminated firm. Offices may be maintained by a re-established firm or by the firm in liquidation, as the case may be.

F. As soon as practicable, the firm will assign all pending matters, including the files, to one or another of the partners, ~~who most nearly may be considered a client of that partner,~~ ~~based on a determination of which partner the client most nearly may be considered a client of,~~ except that, notwithstanding anything to the contrary in this document, all files and cases (pending and closed) related to Firm Clients, and ~~to said Firm Clients~~ related escrow funds and accounts, shall be assigned to Richard S. Glasser and Michael A. Glasser, or the survivor of them (and/or Stuart D. Glasser, if he has been readmitted as a partner), in addition to those files of other clients to which they are entitled. While any client may choose by whom he prefers to be represented, should it ~~such choice~~ be with a partner ~~other than the one~~ to whom he was not assigned, either by agreement or by arbitration, the later ~~chosen~~ partner shall pay, monthly on the first day of each month after the date of termination, one hundred percent (100%) of all fees earned from said client for a twelve (12) month period following the date of termination to the partner or



partners to whom the client was assigned. This will be true whether the client actually pays the earned fees or not. No partner shall collect receivables outstanding on the date of termination; rather, the firm in liquidation will receive and account for the same. The personal savings and checking accounts of each partner and all client files, etc., of all partners shall be revealed to the arbitrator if any question of propriety arises.

G. Each partner receiving any file, ~~except for asbestos case files~~, shall immediately reimburse the firm for any advances which it may have made on behalf of that client. Such repaid amounts shall be received by the firm in liquidation and accounted for accordingly.

H. Regarding any file (except for all asbestos cases and files and all other Firm Client cases and files which shall be assigned to Richard S. Glasser and/or Michael A. Glasser without charge against or reduction of their distribution rights upon termination or dissolution) which has substantial value, the firm will establish a value as of the date of termination. This may be applicable to probate matters, negligence cases, corporate affairs and worker's compensation cases. The value of such cases will be based upon such factors as time expended in the past, time likely to be spent in the future and the potential fees to be earned. Such value shall become an asset of the firm. When such a file is eventually assigned to a partner, such value will be treated as a partial distribution of his share of assets represented by his units of participation. It is not contemplated that all files must be so valued; rather, only those cases which the firm believes have a substantial value because of its their potential fee-producing likelihood will receive valuation. To the extent that files assigned to a partner exceed his proportionate share as evidenced by his units of participation, he shall pay such excess to the liquidating firm in liquidation upon

final determination of the ~~excess~~ amount. The firm then will make such distribution of cash or other assets to those parties not receiving their proportionate share in order to accomplish an approximate distribution according to the units of participation.

I. Notwithstanding anything to the contrary contained herein, after the date of termination, Richard S. Glasser and Michael A. Glasser, or the survivor of them (and/or Stuart D. Glasser, if he has been readmitted as a partner), shall have the option to assume and be assigned the lease for the firm's office; and Richard S. Glasser and Michael A. Glasser, or the survivor of them (and/or Stuart D. Glasser, if he has been readmitted as a partner), shall also have a right of first refusal to purchase from the firm any and all of its equipment, supplies, furniture and fixtures at the same cash price offered in writing by any other financially responsible person, which offer a majority of the other partners desire to accept.

J. The right of arbitration shall remain throughout liquidation until all matters are resolved or until one (1) year after the date of termination, whichever occurs first. No partner shall be estopped from arbitration on any point by reason of his vote on any matter during liquidation. Efforts to compromise on some matters should not affect the overall effort to liquidate fairly. A later controversy, in point of time, may give a partner cause to revoke his earlier vote as the only means to effect a fair liquidation as to his interests. The right to begin an arbitration shall cease within one (1) year of the date of termination.

#### ARTICLE XVI. RESTRICTIONS

No partner shall, on behalf of the partnership or in the name of the firm, without the written consent of a majority of the Management Committee:

A. Make, execute, deliver, endorse or guarantee any note, contract or commercial paper, nor agree to answer for, nor indemnify against, any act, debt, default or misconduct of any person or partner.

B. Assign, transfer, mortgage, pledge, compromise or release interest in, or claims or accounts of the partnership, except by full payment; or arbitrate or consent to the arbitration of any of its disputes or controversies.

C. Make, execute and deliver any assignments for the benefit of creditors or any bond, confession of judgment, security agreement, indemnity bond, surety bond or contract to sell its property, or any other contract similar to any of the foregoing.

D. Hire, lease, purchase, sell or mortgage any real estate, or interest therein, or enter into any contract for such purpose.

E. Hire or agree to hire any person or persons or discharge any person or persons who shall have been hired.

F. Engage in any dealings or transactions with any person or persons, partnerships or corporations which any of the partners previously have requested in writing not be trusted, dealt with or have business transacted with.

G. Make any claims or representations with reference to the income tax effect of this Amended Partnership Agreement.

H. Become a candidate for public office without the express consent of the remaining partners.

I. Make or contract to make any purchase of any goods or services of any nature whatsoever in excess of a total of \$100.00.



## ARTICLE XVII. LEGAL EFFECT OF THE PROVISIONS; ARBITRATION

### Section A. Law of the State of Virginia Controlling

All provisions of this document shall be construed, shall be given effect and shall be enforced according to the laws of the State of Virginia, except that this document controls as to the rights of partners and management of the partnership where this document conflicts with the laws of the State of Virginia.

### Section B. Those Bound by Provisions

Each of the partners executes this document with the understanding and agreement that each hereby has bound and obligated himself, his estate and any and all claiming by, through or under him.

### Section C. Rights of Partners Not Assignable; Not to be Pledged

No partner, and no one acting by authority of or for a partner, may pledge, hypothecate or in any manner transfer his interest in the partnership or his interest in any of its assets, receivables, records, documents, files or clientele, all such rights and interest of each partner being personal to him and non-transferrable and non-assignable, except that it is agreed that Richard S. Glasser and Michael A. Glasser may transfer and assign, to each other or to Stuart D. Glasser, any or all of their units of participation, rights or interest, at any time. Upon such transfer or assignment, Richard S. Glasser or Michael A. Glasser shall give written notice thereof to the other partners.

### Section D. Finality of Decisions Within the Firm; Effect of Diverse or Adverse Interest Personally of any Partner

Every final decision of the firm on any matter affecting any party herein or anyone claiming by, through or under any party, by vote of the partners or by decision of the Management Committee, when in accordance with the terms and

provisions of this document, shall be binding and conclusive. Except where it is expressly provided in this document that one shall not be permitted to vote as to any such decision, there shall be no disqualification of anyone from voting who shall be entitled to vote according to the terms and provisions of this document, notwithstanding any adverse or divergent interest that he personally may have in the decision; and the decision shall, nevertheless, be binding and final notwithstanding any such adverse or divergent interest held by anyone so voting. It is understood that individual partners and members of the Management Committee doubtless will have divergent and may have adverse or arguably adverse personal interests from one another on some matters that are to be determined according to the provisions of this document and will have diverse or adverse interests personally from those of some party affected by the decision; all this is agreed to and waived as a disqualification. Nonetheless, anyone entitled to such a vote on any such matter may recuse himself from voting and thereupon the decision shall be made on the computation of votes to the same effect as if the one so recusing himself had, as to that matter, no right to vote; and if the vote is by the partners, as if he held no units of participation.

#### ARTICLE XVIII. AMENDMENTS

Except where stated to the contrary in this document, an amendment hereto may alter, revise, delete or add to any provision or provisions of this ~~Amended~~ Partnership Agreement. No amendment to this instrument shall be adopted or become effective unless and until it (a) has been voted in accordance with the provisions of Paragraph 3 of Section B of Article VI of this document; and (b) has been executed and attached to this document as a part of same.

WITNESS the following signatures and seals this \_\_\_\_ day of \_\_\_\_\_,  
199\_\_.

\_\_\_\_\_(SEAL)  
Richard S. Glasser

\_\_\_\_\_(SEAL)  
Michael A. Glasser

\_\_\_\_\_(SEAL)  
H. Seward Lawlor

\_\_\_\_\_(SEAL)  
Melvin R. Zimm

\_\_\_\_\_(SEAL)  
Stephen Wainger

\_\_\_\_\_(SEAL)  
William H. Monroe, Jr.



0% OF FEE  
TO G+G

FOR ASSOCIATES

- 1) ONE TIME DEAL
- 2) DOES NOT APPLY TO  
RENTING COP

3) ATTY. MUST BE WITH OFFICE AT 5:45 PM

EXAMPLE

30,000 Settlement

X .333

---

10,000 GROSS  
FEE

$$WW = \frac{1}{3} = 3333.33$$

$$+ G = \frac{2}{3} = 6666.66$$

$$O\% = \cancel{\$} 666.66 \text{ PER CASE}$$



$$666.66 \times 50 =$$

\$33,333

11 Responsibility, for  
use — And Accountability

G + HSL will negotiate  
with Manville —

Statistics Preparation

using "NO" Files

11 File Prep. & Client Management

11 Case w/Client

Manville List

Amos, Charles A.  
Brown, William H., Jr.  
Burgess, George E.  
Burns, Robert L.  
Claud, Frank T.  
Coon, Walter F.  
Drake, Freddie L.  
Elliott, Israel T.  
Faulk, Leroy  
Forrest, Joseph  
Fortner, Herbert C.  
Franklin, Ishmael  
Gould, King P.  
Harper, Melvin L., Sr.  
Harrison, Matthew  
Hawkins, Aubrey P., Jr.  
Hill, Thomas J.  
Hitt, John D.  
House, Sherwood  
Jarashow, Harold H.  
Jones, Bernard  
Kennedy, Alvin  
Kiblinger, James  
Leston, Joseph M.  
Livingston, Donald Ray  
Lynch, George L.  
Mabrey, Dale H.  
Maloney, Randolph I.  
McClimon, John  
McCurry, Billy  
McNeil, James R.  
Mounie, Robert E., Sr.  
Nee, Patrick J., Sr.  
Ozmore, Ernest E.  
Paskal, Spiro  
Patrick, Junior B.  
Payson, Thomas G.  
Phillips, John David  
Phillips, Robert G.  
Pierce, Rodney  
Pierce, Roger H.  
Pilkington, Franklin Delano  
Powell, Stanley W., Jr.  
Preddy, Rudolph H.  
Price, Bruce Morris

Pritchett, William Thomas Jr.  
Raby, Eldridge W.  
Radford, Larry W.  
Raikes, Morris Meade  
Ratcliff, James  
Ratcliffe, James F.  
Reynolds, William E.  
Rhue, Jather D.  
Richardson, William Glen  
Riley, Roland E.  
Robertson, Jesse L.  
Robinson, Herbert Dennis  
Rogers, Russell G.  
Safley, James R., Sr.  
Savage, James Edward  
Seluga, Steve J.  
Sharbutt, Clifton  
Shipp, Arthur W.  
Slator, Lorne A.  
Smith, James Kiplinger  
Smith, James D.  
Smith, John L.  
Smith, John Jr.  
Smith, Albert Larry  
Smith, Kenneth  
Spruill, Rodney W.  
Stanley, William H., Jr.  
Stewart, William  
Sumerlin, William M.  
Summerlyn, John R., Jr.  
Suter, Andrew Carter, Jr.  
Sutton, Harold  
Sykes, Charles R., Jr.  
Taylor, Ronald  
Taylor, Earl C.  
Taylor, Robert T., Jr.  
Taylor, James  
Tennant, William B.  
Tucker, Lawrence A.  
Turner, John J.  
Turner, James W.  
Twine, Lonnie  
Upton, James G.  
Van Dyck, William T.  
Verhaagen, Hubrecht L.



### Manville List

Vickers, Maurice C.  
Volkers, Raymond Forrest  
Volzke, Billy Wayne  
Voshell, Joseph R.  
Wagner, Morris Talmadge  
Ward, John R.  
Ward, James C.  
Watkins, Stephen J.  
Watley, John Paul  
Watson, Franklin C., Sr.  
Whittaker, Thomas A.  
Willie, William H., Jr.  
Wilson, Caleb B.  
Wood, Glenn E.  
Woodward, Herbert H.  
Workman, Sammy Jerry  
Wright, Frederick W.  
Wright, Edward  
Wynn, Clarence  
Yow, John D., Sr.

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF NORFOLK

STEPHEN WAINGER,

Plaintiff,

v.

GLASSER AND GLASSER,

Defendant.

IN CHANCERY  
NO. C92-1166

GLASSER AND GLASSER,

Plaintiff,

v.

STEPHEN WAINGER,

Defendant.

AT LAW NO.  
L92-2021

EXCERPT OF  
TRANSCRIPT OF PROCEEDINGS

Norfolk, Virginia

May 3, 1993

Before: HONORABLE JOHN E. CLARKSON, JUDGE

Appearances:

STEPHEN WAINGER, pro se

HUNTON & WILLIAMS

By: GREGORY N. STILLMAN, ESQUIRE  
Counsel for the Defendant

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1 though they don't have it in hand. And when you talk  
2 about a recovery and arguments are made at this point  
3 after you get a judgment the client can terminate. Well,  
4 it is res judicata. A client cannot get another attorney  
5 to go and prosecute the suit. Final judgment is res  
6 judicata.

7                   Again, the same example with I believe it's  
8 Owens-Corning. Settlements were made before I left  
9 payable over several years. Now, is that to say that  
10 after the first payment, the analogy is the same, you get  
11 one payment and you're not entitled to the others? It  
12 just hasn't been received. Mr. Glasser gets that good  
13 settlement, he leaves the firm, is he not entitled to  
14 receive it even though it's not collected at that point?  
15 The partnership agreement provides for that. It says he's  
16 entitled to his share of uncollected fees which were fully  
17 earned, but which fees are reserved by -- received by the  
18 firm subsequent to such date.

19                   Now, if we go --

20                   THE COURT: Well, you say then that once you  
21 get judgment it's fully earned, there's nothing further to  
22 do?

23                   MR. WAINGER: That's exactly right. Merely  
24 ministerial acts for collection.

25                   THE COURT: You receive the money and suing

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1 they never interpreted that document to mean that they  
2 were entitled to participate in the Manville fees, and  
3 that those fees were fully earned. You've seen both of  
4 those. So the only withdrawing partner who has taken this  
5 position is Mr. Wainger. So if you really want to  
6 speculate about what the evidence is, we don't have to  
7 speculate very hard. You already have that proffered  
8 testimony in front of you, but, once again, I don't even  
9 think it's necessary for you to refer to it.

10 Now, Mr. Wainger has told you that item C,  
11 if it is interpreted the way Glasser and Glasser would  
12 have you interpret it, would mean -- would render that  
13 provision meaningless. That's simply not true. It makes  
14 perfect sense. If you go back and you read it, it says  
15 uncollected fees which were fully earned. You've got to  
16 read that whole phrase. You can't just read uncollected  
17 fees, obviously. You have to read uncollected fees which  
18 were fully earned.

19 Now, what does that refer to? First of all,  
20 it clearly refers to hourly rate cases. Obviously, if you  
21 work the hours and those hours have been appropriate, you  
22 are entitled to a fee even though you may not have  
23 collected it. Secondly, I think that in some cases it may  
24 refer to certain types of contingent fee cases. When, in  
25 fact, everything has been done, the issue of collection is

1 not at issue, I call you up on the telephone, you  
2 represent Nationwide Insurance Company and you agree to  
3 pay me \$10,000 to settle a case, and the check is in the  
4 mail. Clearly, that's an uncollected fee that has been  
5 fully earned. I don't think anybody is suggesting  
6 otherwise. But when you have a situation where it took a  
7 mere four months to get a consent judgment and here now  
8 more than two years later nobody has collected a dime  
9 because the parties are resisting any efforts on the part  
10 of the plaintiffs in this case to enforce those judgments,  
11 that is an entirely different ball game. And I'm  
12 satisfied that I have no problem reconciling item C with  
13 reality and a meaningful interpretation of how the real  
14 world works. And as I think you've pointed out with  
15 respect to both the earlier agreement written by Stuart  
16 Glasser and also the subsequent draft agreement which no  
17 one executed by -- that was drafted by Richard Glasser,  
18 those agreements support this position. They don't  
19 detract from it. In fact, they suggest that they wouldn't  
20 have been written if they had not interpreted that  
21 agreement in precisely the manner that the court  
22 interpreted in December of 1992.

23 Now, the issue of whether Mr. Wainger was  
24 overpaid or not once again has nothing to do with the  
25 court's order of December 30th. That's an entirely

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VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

STEPHEN WAINGER,

Complainant,

v.

GLASSER AND GLASSER, a  
general partnership

Respondent.

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:

IN CHANCERY NO.

C92-1166

ANSWERS AND RESPONSE OF STEPHEN WAINGER TO  
INTERROGATORIES AND REQUEST FOR PRODUCTION  
OF GLASSER AND GLASSER

Stephen Wainger ("Wainger") answers the Interrogatories and responds to the Request for Production of Glasser and Glasser ("G&G") as follows:

Instructions and Definition of Terms

(a) Whenever a request is made for the name or identity of a person, firm, association or corporation, the answer shall state, in addition to the full name of each such person, firm, association or corporation, his, her or its present business address and, if that be not know, the answer shall state his, her or its last known street address and the last known date he, she or it resided or was located there, and as to each person the answer shall also state such person's residence street address, occupation, present employer and title. If such person at one time

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2. State the terms of all agreements you had with respect to your rights and obligations as a partner in Glasser and Glasser. Additionally, with respect to each such agreement, state and/or identify the following:

- a. The date on which the parties entered into the agreement;
- b. The date the agreement took effect;
- c. The date the agreement was terminated;
- d. The terms and effective date of each amendment to the agreement;
- e. Whether the agreement was written, oral or both;
- f. All writings embodying in whole or in part the terms of the agreement; and
- g. Each person with personal knowledge of the facts set forth in your response to this interrogatory.

ANSWER:

(a)(b)(d)(e)(f) To Wainger's knowledge, in early 1989, Seward Lawlor, acting for G&G, made the offer to associates of G&G attached as Exhibit A. Wainger is entitled to the 10% bonus with respect to the cases listed on Exhibit B.

In late fall of 1989, Richard Glasser, Michael Glasser and Wainger began discussing Wainger's admission to partnership status. Either Michael Glasser or Richard Glasser prepared Exhibit C to explain certain financial terms of the partnership. In connection with his decision, Wainger reviewed the Partnership Agreement of G&G (attached to the Bill of Complaint as Exhibit A)

Wainger then spoke to John Midgett, Seward Lawlor and Melvin Zinn regarding the terms of the partnership as offered by Richard Glasser and Michael Glasser. After receiving Exhibit D from John Midgett, on November 30, 1989, he met with John Midgett and prepared Exhibit E.

On December 4, 1989, Wainger met with Richard Glasser and prepared Exhibit F and delivered Exhibit G to Richard Glasser.

On December 6, 1989, Wainger met with Midgett and prepared Exhibit H.

On December 18, 1989, Wainger met with Richard Glasser, Michael Glasser, Seward Lawlor and John Midgett and prepared Exhibit I.

On December 19, 1989, Wainger met with Richard Glasser, Michael Glasser, Seward Lawlor and John Midgett. He reviewed with them the figures shown on Exhibit J. After accepting the partnership offer on or about December 20, 1989, he prepared Exhibit J.

On the date of his acceptance of the partnership offer, the terms of his admission, effective January 1, 1990, were:

- (1) Wainger would receive 6 of the 97 units of participation;
- (2) his annual base salary would be \$72,000;
- (3) based on 50% of his cumulative non-firm business fee receipts since joining the firm in 1987 of

approximately \$167,000, his cap for 1990 would be approximately \$240,000;

(4) he would be entitled to a bonus of 20% of the non-firm fee receipts he generated, except that Wainger would continue to be entitled to 50% of the net fees of the cases listed on Schedule A to his Employment Agreement with G&G dated June 23, 1987; and

(5) his buy-in would be approximately \$12,000.

On January 1, 1990, to Wainger's best knowledge, the Partnership Agreement of December 20, 1984 was the only written partnership agreement of G&G.

Some time in the fall of 1990, Wainger met with John Midgett who had prepared Exhibit K showing in exact detail the G&G compensation system which specifically reflected Wainger's draw and cap.

On September 27, 1990, the Partnership Agreement of G&G dated December 20, 1984 was amended by the Withdrawal Agreement of John Midgett (attached to the Bill of Complaint as Exhibit D).

(c) On January 21, 1992, Wainger withdrew as partner of G&G. On that date, all rights of Wainger as a partner of, and all obligations of Wainger to G&G, except those rights and obligations set forth in the Partnership Agreement, as amended in the Withdrawal Agreement, which by their nature, survived Wainger's withdrawal.



(g) Wainger, all partners of G&G named as defendants in this action, Ronald F. Schmidt, John T. Midgett, Errol Lifland and Deborah Flora.

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VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

STEPHEN WAINGER,	)	
	)	
Complainant,	)	
	)	
v.	)	CHANCERY NO. C92-1166
	)	
GLASSER AND GLASSER,	)	
A General Partnership,	)	
	)	
Respondent.	)	

WAINGER'S AMENDED ANSWER TO  
GLASSER AND GLASSER'S CROSS BILL

Wainger amends his answer to Glasser and Glasser's Cross-Bill as follows:

1. ANSWER -- Paragraph 10 -- To delete the language, "and that, to his knowledge, the partnership agreement was the sole written partnership agreement of Glasser and Glasser" and substitute: "The written agreements governing complainant and respondent are the "Partnership Agreement for the Law Firm of Glasser and Glasser" with an effective date of January 1, 1985 (previously attached as Exhibit A) and the written notes of Richard S. Glasser confirming Wainger's partnership offer (attached as Exhibit 6 to Harry E. McCoy's Affidavit which is incorporated herein by reference), which Wainger accepted and together became the written partnership agreement." Wainger also incorporates herein by reference the Affidavits/ Expert Reports of Harry E. McCoy and H. Leon Hodges as though fully set forth in opposition to Glasser and Glasser's Cross-Bill.

2. Add to last paragraph at page 6: Grant Wainger interest at the rate of 12% per annum as provided in the January 1, 1985 written Partnership Agreement.

STEPHEN WAINGER

A handwritten signature of Stephen Wainger in cursive script, written over a horizontal line.

Stephen Wainger, Esq.  
BAR CODE #01337  
Huff, Poole & Mahoney, P.C.  
4705 Columbus Street, Suite 100  
Virginia Beach, VA 23462-6749  
(804) 552-6078

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Wainger's Amended Answer to Glasser and Glasser's Cross-Bill was mailed to Gregory N. Stillman, Esq., Hunton & Williams, P. O. Box 3889, Norfolk, VA 23514, this 29<sup>th</sup> day of October, 1993.

A handwritten signature of Stephen Wainger in cursive script, written over a horizontal line.



VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

GLASSER AND GLASSER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	AT LAW NO. L92-2021
	)	
STEPHEN WAINGER,	)	
	)	
Defendant.	)	

WAINGER'S AMENDED ANSWER  
AND AMENDED COUNTER-CLAIM

Wainger amends his Answer to Glasser and Glasser's Motion for Declaratory Judgment ("Motion") as follows:

1. ANSWER -- COUNT ONE - Paragraph 10 -- To delete "that the Partnership Agreement was the sole written partnership agreement" and substitute "that the written agreements governing plaintiff and defendant are the December 20, 1984 Partnership Agreement with an effective date of January 1, 1985 and the written notes of Richard S. Glasser confirming Wainger's partnership offer (attached as Exhibit 6 of Harry E. McCoy's Affidavit which is incorporated herein by reference) which Wainger accepted and together became the written partnership agreement."

2. ANSWER -- COUNT ONE - Paragraph 11 -- To deny that the December 20, 1984 Partnership Agreement was amended by the Withdrawal Agreement of John Midgett dated September 27, 1990. The Midgett withdrawal agreement is neither a part of the 1984 partnership agreement nor an amendment thereof. It is merely

an agreement by and between John T. Midgett and the law firm of Glasser and Glasser.

COUNTER-CLAIM

3. In addition to and for the same reasons as set forth supra, which are incorporated herein by reference as though fully set forth, Wainger amends his Counter-Claim in paragraph 4 by deleting lines 4 through 8 which state: "As amended by a certain withdrawal agreement of John T. Midgett from Partnership in the Law Firm of Glasser and Glasser, dated September 27, 1990 (copy attached as Exhibit B with certain deletions made by Wainger for reasons of confidentiality)" and add "as amended by Richard S. Glasser's written notes confirming Wainger's partnership offer (Exhibit 6 to the McCoy Affidavit which is incorporated herein by reference) which Wainger accepted and together became the written partnership agreement."

4. Add vii at page 13: Grant Wainger interest at the rate of 12% per annum as provided in the December 20, 1984 written Partnership Agreement.

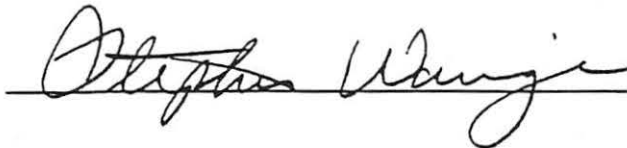
STEPHEN WAINGER

A handwritten signature in cursive script, reading "Stephen Wainger", is written over a horizontal line.

Stephen Wainger, Esq.  
BAR CODE #01337  
Huff, Poole & Mahoney, P.C.  
4705 Columbus Street, Suite 100  
Virginia Beach, VA 23462-6749  
(804) 552-6078

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Wainger's Amended Answer and Amended Counter-Claim was mailed to Gregory N. Stillman, Esq., Hunton & Williams, P. O. Box 3889, Norfolk, VA 23514, this 29<sup>th</sup> day of October, 1993.

A handwritten signature in cursive script, reading "Stephen Wainger", is written over a horizontal line.



1 VIRGINIA:

2 IN THE CIRCUIT COURT FOR THE CITY OF NORFOLK

3  
4 STEPHEN WAINGER, )

5 Plaintiff, )

6 v. )

IN CHANCERY

NO. C92-1166

7 GLASSER AND GLASSER, )

8 Defendant. )

9 - - - - - )  
10 GLASSER AND GLASSER, )

11 Plaintiff, )

12 v. )

IN CHANCERY

NO. L92-2021

13 STEPHEN WAINGER, )

14 Defendant. )

15  
16  
17  
18 BEFORE: THE HONORABLE JOHN E. CLARKSON

Norfolk, Virginia

19 November 22, 1993

20  
21 Appearances:

22 STEPHEN WAINGER, ESQUIRE, PRO SE

23 HUNTON & WILLIAMS

24 By: Gregory N. Stillman, Esquire

K. Reed Mayo, Esquire

Counsel for Glasser and Glasser

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ZAHN, HALL & ZAHN

Norfolk, Virginia (804) 627-6554

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1 MR. GLASSER: We'll select a file, Your  
2 Honor.

3 THE COURT: Select a file.

4 MR. WAINGER: One or two more.

5 Number 28, all documents and settlement  
6 agreements pertaining to settlements that were reached  
7 or judgments that were obtained with any defendant in  
8 any asbestos product liability litigation, including  
9 railroad defendants, prior to January 21, 1992 -- which  
10 is when I left -- in which any payments were to be made  
11 after January 21, 1992.

12 This gets back to the matter we discussed  
13 earlier when I advised the Court that there were what  
14 may be considered global settlements with certain  
15 asbestos defendants where it was agreed that for a  
16 group of cases they would be making settlement payments  
17 that would start at a subsequent time, but the deal was  
18 consummated prior to the time that I left.

19 THE COURT: This is all new to me, new  
20 way to practice law. I may not be understanding the  
21 issues.

22 Do you understand what he's talking about?

23 MR. MAYO: Judge, part of the problem may  
24 be this Court has already heard all these -- this  
25 motion before, once before, and has already ruled.

1 At the time, you'll recall the judge  
2 narrowed the scope of discovery available in this case  
3 because the Court was anxious to resolve, as we all  
4 are, the summary judgment issue regarding fully earned  
5 fees. This particular discovery goes beyond. This  
6 isn't asking about Manville, has no bearing on fully  
7 earned or anything of that nature.

8 Quite frankly, it would be burdensome and  
9 very difficult for this firm to put together. We would  
10 ask, as we asked before, and the judge allowed us to  
11 put this behind us, put this aside for the time being  
12 until the Court has ruled on the fully earned issues.  
13 And obviously at some point we're going to have to deal  
14 with these other issues of what other settlements might  
15 be out there.

16 The primary thing is for this Court to  
17 determine initially at what point a fee is earned in a  
18 contingent fee case. Once that is determined, we can  
19 obviously provide all the documentary evidence for  
20 files for which Mr. Wainger --

21 THE COURT: That's the issue of the case.

22 MR. WAINGER: That's my point. This is  
23 what I want to be able to present to you, Judge. To  
24 give me -- these are firm settlement agreements that  
25 may have involved fifty, a hundred or more clients.



1 They would reach an agreement say with Owens-Corning.  
2 The deal was we may have 100 or 150 or more cases set,  
3 you have the information on them, now for each  
4 asbestosis you're going to pay X, each mesothelioma X  
5 thousands of dollars to help your cash flow, and  
6 perhaps help us with others; you can make, instead of  
7 one payment which was traditional or had occurred, you  
8 can make payments every month or every two months  
9 starting at a certain point in the future.

10               Now, those are firm agreements and those  
11 are firm settlements and instead of -- and the payments  
12 are by agreement to come at a later time. The Court is  
13 entitled to see those. I am entitled to see them, to  
14 present that evidence to the Court for your  
15 consideration under my theory of the case. It's a  
16 two-party case. All they want to do is present their  
17 theory. I am entitled to present my theory. I cannot  
18 imagine how it would be burdensome. They are  
19 meticulous files for each asbestos defendant. I dare  
20 say they could pick out a settlement letter within five  
21 minutes after returning to the office.

22               THE COURT: When you say "a settlement  
23 letter," does each case have the same settlement letter  
24 or different?

25               MR. WAINGER: It is my understanding

1 there would probably be one letter confirming the  
2 settlement agreement and perhaps listing all of the  
3 cases involved.

4 THE COURT: Is that your understanding?  
5 This is new to me because we just never had any of this  
6 type of litigation when I was practicing law. I have  
7 never seen one of these.

8 MR. GLASSER: Your Honor, there have been  
9 agreements on an ongoing basis with varying defendants  
10 that are structured. Some of them have criteria that  
11 has to be satisfied so that the documentation is going  
12 to be presented. Some of them do provide matrices so  
13 that cases that will be resolved where a company wants  
14 to, in effect, settle its existing docket out to make  
15 arrangements for futures. Some of these plans were put  
16 into effect while Mr. Wainger was an associate.

17 The Court is aware much of the asbestos  
18 litigation has been resolved; the trials being earlier  
19 in the '80s.

20 I am standing, really, as the client, not  
21 the attorney. The problem is when Steve Wainger  
22 voluntarily left, business went on as it was the day  
23 before he became a partner and the day after he became  
24 a partner. When he voluntarily left, the firm  
25 continued to work for the benefit of its clients, as it

1 does today. The issue that we need the Court to  
2 resolve is what defines what is fully earned and what  
3 does not.

4 We have been working, and been working  
5 diligently, since Mr. Wainger left for many of the same  
6 people, against many of these same companies. That's  
7 the onerous part, because it's not a situation of  
8 looking into a file. It's a matter of trying to take a  
9 snapshot from an ongoing litigation.

10 The Manville example, as the Court knows,  
11 is now eleven years old. I checked with the Second  
12 Circuit this morning, it's not resolved. I can't tell  
13 the Court, I can't tell my clients, I can't tell Mr.  
14 Wainger when or if that's going to be. As to the  
15 future and the ongoing course of conduct we've had,  
16 they have varied.

17 THE COURT: You're still appearing in  
18 court on those matters?

19 MR. GLASSER: We're still appearing in  
20 court in Manville. We were in court in August, in  
21 September of 1993. I repeat, I called the Second  
22 Circuit last week, this morning, there is no decision  
23 on the issue whether we are going to be paid. We have  
24 compromised the value of those judgments under  
25 directions from Judge Weinstein. We do not have



1 answers. I have provided counsel and will provide the  
2 Court with the law bills that we have paid in order to  
3 have the assistance of counsel both in Washington and  
4 New York on the ongoing litigation. It's not a static  
5 process. It has been an ongoing process.

6 That's when Mr. Mayo talked in terms of  
7 it being onerous. It's not going into a file and  
8 picking out a letter with five minutes of work,  
9 otherwise there would be no reason for us to be in the  
10 office today. It's been an ongoing process and ongoing  
11 effort and one Mr. Wainger voluntarily left and left us  
12 with the work and the ongoing responsibility of those  
13 clients. If those fees were fully earned they would  
14 have been received by the firm and distributed. That's  
15 the basis we worked on the day before he became a  
16 partner, the day after he became a partner.

17 MR. MAYO: I think the answer is, Judge,  
18 it's a very complicated matter to track down every case  
19 in which a settlement was made prior to January 21 as  
20 opposed January 22 or January 25. It's a difficult  
21 process. It's time consuming and expensive.

22 For that reason we would ask the Court to  
23 make a decision. Certainly there are some cases where  
24 there were settlements that provided for payments,  
25 settlements made before Mr. Wainger left or payments

1 afterwards. We would be happy to stipulate to that.

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1 THE COURT: I'm just thinking aloud, I'm  
2 not sure, aren't we talking about what your contract  
3 was with the firm rather than what the contracts were  
4 with the Court or anything else?

5 MR. WAINGER: That's correct. It's the  
6 partnership agreement between me and the firm.

7 What I'm saying, Judge, is that this  
8 documentation is evidence I need to be able to present  
9 to you explaining why I am entitled to that share of  
10 fees. And it's information that they have that's  
11 readily available. And if I'm wrong, then you won't be  
12 persuaded by it. But if I'm right, and I think I am,  
13 you can see what is going on.

14 MR. MAYO: Judge, he has asked for and  
15 received today copies of other asbestos contingent fee  
16 agreements, so if that's what he's looking for --

17 MR. WAINGER: No. That is not what I'm  
18 looking for. I'm looking for the agreement between Mr.  
19 -- Glasser and Glasser and Owens-Corning Fiberglas, for  
20 example, that says we have 75 cases pending, 30 of them  
21 are mesothelioma, ten of them are asbestosis. On those  
22 cases they will be \$40,000 for the asbestosis, 50,000  
23 for meso, or cancer, or whatever it is. The payments  
24 on these cases will not be paid until 90 days or 120  
25 days or six months from the date of today, and payments



1 are to occur each month thereafter. That sort of  
2 arrangement or confirming letter of the settlement.  
3 And there are maintained books for each defendant.  
4 This would be information that would be easily  
5 retrievable.

6 THE COURT: There may be a thousand  
7 defendants.

8 MR. WAINGER: No, sir, there aren't.  
9 We're probably talking ten, fifteen, twenty, something  
10 like that. Not all of them had these global settlement  
11 agreements. And I think that a good faith -- I think  
12 they require a good faith looking by the -- by Glasser.  
13 And if they are not readily available for certain  
14 defendants, they should advise us. My guess is -- it's  
15 not a guess, my educated thought is that they will be  
16 able to readily obtain certain of them very quickly.  
17 And if there are others somehow buried, let them say it  
18 could take too long or what the burden would be. I do  
19 know that it's a very -- it's an office that keeps  
20 their fingers on these sort of documents. I would be  
21 surprised if they are not readily available.

22 THE COURT: Mr. Mayo?

23 MR. MAYO: Judge, we will be happy to  
24 enter into the stipulation there are such agreements.  
25 It's going to very difficult to pull those out of the

1 files, first to figure which files to pull them out of  
2 and go through that process. I would be perfectly  
3 happy to work out a stipulation that says there are  
4 such agreements.

5 MR. WAINGER: I would like to see them.  
6 It's a master file, Judge, not individual client boxes.

7 THE COURT: Is there one agreement from  
8 XYZ Asbestos Company?

9 MR. WAINGER: Yes, sir.

10 MR. GLASSER: There are agreements with  
11 various asbestos companies that come up in various  
12 files. And, of course, as new cases are filed,  
13 agreements are reached with regard to groups. Some of  
14 the arrangements that we have been operating under have  
15 been put into place before. There was a file --  
16 written agreement because we had trials coming up that  
17 needed to be resolved and there was a formulation as to  
18 how to compute. The companies, some of them wanting to  
19 be out of the litigation, but wanted to have some  
20 assurances if, in fact, they have come up with an  
21 agreed amount based upon historical figures that they  
22 don't find the quality of our case change in the  
23 future. So that there were medical criteria and  
24 product I. D. criteria with the understanding we could  
25 submit a given number of cases in a given period of

1 time. The theory again being you can't get these cases  
2 all to trial today. It would harm us both state-wise,  
3 if not nationally, to have to pay everything we owe  
4 today.

5 So those arrangements were worked out and  
6 operated over a course of time. But if I can jump back  
7 here, Your Honor, I've looked at this. This appears to  
8 be from the Second Circuit on August 12. There was a  
9 hearing in the Second Circuit on August 10. It was on  
10 an order that had been entered by Judge Weinstein on  
11 July 22, 1993 in New York. At that stage we had agreed  
12 with the trust to compromise the judgments that were  
13 entered in June and July, 1990.

14 Judge Weinstein, for the first time on  
15 July 22, removed the order that had enjoined us from  
16 executing on the assets of the trust and directed the  
17 trust to pay us. The 22nd I think the calendar  
18 revealed was Thursday. He said in order to give people  
19 time to object to this, and, of course, there was a  
20 scream that our beneficiaries of the trust were being  
21 paid a greater amount than was envisioned for the  
22 others, he would give them until Monday, July 26 to get  
23 the attention of the Second Circuit. And if the Second  
24 Circuit stayed the matter, no payment would be made.

25 The Second Circuit accepted the case by



1 the deadline. There was no hearing on July 26th.  
2 There was no payment. But there was hearing on  
3 August 10. And at the hearing on August 10 the Second  
4 Circuit case, I'm going to keep the stay in effect; I  
5 don't want it paid; I would like to see additional  
6 briefs or papers; and there was a subsequent hearing in  
7 the first part of September, I believe on September 8.  
8 Oral argument was made again that our people should be  
9 paid, that we had bonafide judgments, that Manville had  
10 never agreed to pay those judgments.

11 There was always a controversy there  
12 would be no holds barred on our post judgment  
13 enforcement remedies. But as Judge Clarke said, if the  
14 plaintiff and the defendant can agree to the value of  
15 more than a thousand cases pending in this court, then  
16 let's agree to it; don't hold my court up for a  
17 thousand cases; agree to those values and do what you  
18 have to do to see if you can collect them, but don't  
19 hold me up determining the value of the case if the two  
20 of you can agree to it.

21 It was with that in mind that we made --  
22 we liquidated the damages. Our insistence was the  
23 matter be entered in the form of a consent judgment  
24 before we ever were able to -- Mr. Wainger himself went  
25 to Judge Clarke on July 10 to ask for an order to say,

1 Judge, tell us we can get abstracts from the United  
2 States District Court so that we can file them in New  
3 York. We want to file them in other jurisdictions,  
4 there are no assets here.

5 That order that Steve requested on  
6 July 10 was preceded by an order entered July 9, the  
7 day before, by Judge Weinstein, forbidding any payment  
8 by the trust to any of the beneficiaries, and  
9 forbidding us from executing when that stay was finally  
10 lifted, three years later, on July 22, 1993.

11 The stay was then reimposed by the Second  
12 Circuit and remains in effect today. So the struggle,  
13 if you will, goes on. That's why I told the Court we  
14 were in court both on August and September and there  
15 has not been a decision as to whether or not the order  
16 of Judge Weinstein ordering payment is going to be  
17 affirmed, modified or reversed.

18 THE COURT: You're still litigating?

19 MR. GLASSER: We're still litigating. It  
20 is still ongoing. The reason, I concur with the Court,  
21 the things that binds the present and the past partners  
22 is I cannot tell a client today and respectfully I  
23 cannot tell Your Honor today what or when there's going  
24 to be payment on those judgments or how much there's  
25 going to be.

1 THE COURT: In other words, the Court has  
2 cut it down on occasion?

3 MR. GLASSER: The Court has cut it down  
4 because the Court felt, and there were all types of  
5 arguments the Court said we should look at. Number  
6 one, Judge Weinstein in June authored an opinion, June,  
7 1993, talking about a quasi bankruptcy. He said - do  
8 you understand if I take and put this trust into a  
9 quasi bankruptcy -- there had been allegations it was  
10 insolvent -- even in June of 1990 when you negotiated  
11 with it that your judgments will be reduced to only a  
12 liquidated amount along with what is presently in  
13 excess of 180,000 claims against the trust on which no  
14 value has been set? The trust also took the position  
15 that under New York trust law that one beneficiary  
16 can't take more from a trust than another.

17 Therefore, the trust law of New York  
18 would impose still an obstacle. The Court turned  
19 around and said the trust has accumulated funds. I  
20 want to get the money out. I want you all to  
21 compromise. We were supposed to be paid over three  
22 annual payments. The Court said, I want you to look  
23 for one payment of a discounted value and bring it back  
24 to me.

25 As a result of that hearing, and that was



1 in June, 1993, we met with the trust in Washington and  
2 renegotiated the argument that our counsel used in the  
3 Second Circuit, is more or less we allowed our pocket  
4 to be picked on behalf of these judgment creditors in  
5 order to end the expense and risk and time of this  
6 ongoing litigation.

7           It has always been our position that  
8 there were final judgments, but it's like entering a  
9 judgment, if you will, by agreement or by default in  
10 this court; that doesn't mean that it's over.  
11 Frequently, and specifically in this case, it meant,  
12 and the correspondence is there, the fight as to how to  
13 collect or if we collect was started. The only thing  
14 we knew is what John Doe's claim was worth because we  
15 knew this John Doe was really not different from the  
16 other important families; but on the Manville computer  
17 profile, if you will, there was a recognized value for  
18 his disease given his age, given his earnings, and they  
19 weren't going to spend months in Judge Clarke's court  
20 fighting and refighting and refighting the issue of  
21 liability and product identification. They accepted,  
22 we submitted the medicals and they said, we're willing  
23 to agree, to stipulate, that this case is worth  
24 \$30,000. That's what became the judgment. They also  
25 made it very clear there will be no restriction on us

1 with regard to any post judgment enforcement remedies  
2 and that there will be no limitations on any defense  
3 that they can raise. They knew they had no assets in  
4 the state of Virginia and the fight started before we  
5 had abstracts that we could domesticate. We were  
6 prepared to do so in New York and in Washington, in  
7 Denver. We spent \$15,000 as soon as we got the  
8 judgment, starting with five dollars apiece to order  
9 the triplicate certificates so that we could do these.

10 Steve Wainger was right there. He was  
11 well aware that fight started before the 30 day time  
12 frame on these judgments had even run and the clerk's  
13 office wouldn't even give us a certificate. So we had  
14 to get an order to say give us the certificate. These  
15 are consent judgment orders regardless of when they are  
16 entered; once they are entered, give us some abstracts  
17 so we can domesticate ourselves in another jurisdiction  
18 where their assets are or we think they are.

19 When Steve sought that from Judge Clarke  
20 on July 10, I will show the Court that order, we are  
21 already under the imposition of sanctions in New York,  
22 wherever the assets are, you cannot attach them. The  
23 trust, regardless of the basis, unless it's hardship or  
24 exigent care, can't pay them, our people have not been  
25 paid. That fight has been going on, and without

1 belaboring the point, I don't know much more today the  
2 fact that we have diligently filed it and we have led  
3 the charge in many of these instances. As that opinion  
4 refers to Texas and Virginia, there are only two states  
5 in the country that really have the judgments. It was  
6 both of those states that Judge Weinstein indicated  
7 finally, and I repeat, for the first time in the  
8 July 20 and by the order dated July 22 that he was  
9 reversing himself and directing the trust for the first  
10 time to pay us. And it was that decision that was  
11 immediately met and the fight goes on. And at this  
12 point we don't know the status in the Second Circuit.  
13 We don't know what the reaction will be. We ourselves  
14 may well be appellants if the order comes down stating  
15 our people still are not entitled to payment. The  
16 whole issue, if I were to go to any one of these  
17 clients today and say pay us, pay us, we're all  
18 through, I suspect that's a matter, Your Honor, we'd  
19 never be able to convince the first client of. And  
20 that's the nature of our contract. That was not the  
21 nature of the agreements we had between the partners at  
22 any time Steve Wainger was in that office.

23 MR. WAINGER: Judge, I think that that  
24 case and some of the competence of Mr. Glasser  
25 emphasized the significance what we're talking about.





VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

STEPHEN WAINGER,	)	
	)	
Complainant,	)	
	)	
v.	)	CHANCERY NO. C92-1166
	)	
GLASSER AND GLASSER,	)	
A General Partnership,	)	
	)	
Respondent.	)	
GLASSER AND GLASSER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	AT LAW NO. L92-2021
	)	
STEPHEN WAINGER,	)	
	)	
Defendant.	)	

WAINGER'S SUPPLEMENTAL ANSWERS  
TO GLASSER AND GLASSER'S INTERROGATORIES

NOW COMES complainant/defendant, Stephen Wainger, and answers the Interrogatories propounded by plaintiff/respondent as follows:

1. Set forth each fact that you contend supports your contention that fees from the Manville cases were "fully earned" at the time judgments were entered. For each such fact, state and/or identify the following:

ANSWER: The material facts that Wainger recalls at this time without the full benefit of discovery that supports his

contention that fees from the Manville cases were fully earned at the time the judgments were entered are:

- the fact that final, non-appealable consent judgments had been entered;
- The efforts made by partners of Glasser in consulting with attorneys in New York and elsewhere on the most effective way to execute on the judgments prior to Judge Weinstein's stay;
- The judgments were capable of being executed on and Glasser and Glasser attempted to have a New York Marshal serve appropriate documents which I believe had expired thus requiring additional orders, etc. By the time the new appropriate Orders and related documents were obtained from the Clerk's office and Judge Clark, the stay of Judge Weinstein may have become effective.
- Richard Glasser wrote certain asbestos clients on May 1, 1990 that:  
  
"Once a Judgment has been entered in your favor (whether by agreed settlement or jury verdict), we will take every possible step to enforce payment against the assets of The Manville Trust. Most of these assets are located in New York and we are already consulting with New York attorneys to investigate the very best way to proceed for collection...."
- If Glasser had initiated collection activities on the first consent judgments that were obtained,

those clients would probably have obtained the proceeds of recovery.

- After the consent judgments were obtained, Glasser's right to its contractual, contingent fee was fixed and vested in Glasser.
- Comments by Richard Glasser about the strong financial future of the firm based, in part, on the fees to be received from the Manville judgments.
- The statement during a meeting in approximately January, 1991, when Richard Glasser announced his interest in seeking a Federal Judgeship to the effect that the Manville fees had been earned and, therefore, Richard was entitled to his substantial share of those fees if he became a judge when the fees were received.
- The language in the 1984 written Partnership Agreement.
- The waiver of John Midgett to his share of Manville fees.
- The expulsion for cause of Ronald Schmidt at the time the Manville judgments were being negotiated, which nullified his rights to share in the Manville fees.



- Discussions with counsel.
- Richard Glasser's proposed amended partnership agreement.
- Glasser's reneging on its agreement to waive any conflict of interest issue pertaining to Wainger's employment at Huff, Poole & Mahoney, P.C.
- Glasser's falsely claiming that Wainger was overpaid by approximately \$188,000 to keep him from pursuing his claims.

a. Each person with personal knowledge of the fact.

ANSWER:

Richard Glasser  
 Michael Glasser  
 Seward Lawlor  
 Melvin Zimm  
 Stephen Wainger  
 Michael Schoeman  
 Mitchel Breit  
 Various other lawyers whom Richard Glasser consulted for advice on the enforcement of final judgments prior to Judge Weinstein's stay order in July, 1990.  
 Marianna Smith  
 David Austern  
 Robert Hatten  
 Donald Patten  
 John Midgett  
 Ronald Schmidt  
 Bill Monroe  
 Jean Basnight and other Federal District Court Clerk's Office Personnel  
 Errol Lifland, CPA  
 Leon Hodges, CPA

- b. All documents evidencing or tending to evidence the fact.

ANSWER:

Documents:

- Termination Agreement by and between Ronald F. Schmidt and the law firm of Glasser and Glasser
- Withdrawal Agreement of John T. Midgett from the Partnership in the Law Firm of Glasser and Glasser
- 1984 written Partnership Agreement of Glasser and Glasser
- Richard Glasser's Letter(s) to clients, an example of which is the May 1, 1990 letter to Louise Duke Whitt
- Richard Glasser's September 25, 1990 letter to the Honorable Marvin E. Frankel, Special Master.
- Memorandum from Seward Lawlor dated December 9, 1988
- Agreement by The Manville Trust/Fund to pay the Virginia Judgment Creditors (produced by Glasser and Glasser)
- Glasser and Glasser Settlement Summary dated 10/8/91
- Glasser and Glasser Partnership Tax Returns for the years 1990 to present
- Expert Affidavit of H. Leon Hodges
- Statement of Financial Accounting Concepts No. 5 issued by the Financial Accounting Standards Board
- Letter agreement between Richard Glasser and Wachtel, Lipton law firm in New York

2. Set forth each fact that supports your contention that the written partnership agreement was orally amended in November or December of 1990. For each such fact, state and/or identify the following:

a. Each person with personal knowledge of the fact.

ANSWER: Wainger alleges that the written 1984 Partnership Agreement is clear and unambiguous in its meaning that The Manville final, non-appealable consent judgment orders established in Glasser and Glasser vested rights to its fees when received.

Richard s. Glasser gathered his partners in his office in approximately January, 1991 (originally thought to be in November or December, 1990) to advise them of his interest in a Federal Court judgeship position.

During that meeting in which many topics were discussed, Seward Lawlor, in evaluating some of the pros and cons of Richard Glasser becoming a judge, stated something to the effect that the Manville fees were a done deal or already earned and Richard would, of course, be receiving his substantial share of the Manville fees when collected pursuant to the Partnership Agreement. This statement was accepted by those partners present without comment or dispute. Wainger considered such statements and the partners' reaction to be a confirmation of the written Partnership Agreement and an expression of the partners' interpretation of Article IX, Item C that a withdrawing partner is entitled to his share of



uncollected fees that are fully earned but received at a later time.

Wainger later learned in approximately January, 1992, from a legal analysis of another lawyer, that such a meeting and action could constitute an oral amendment to the written Partnership Agreement in the event that Glasser took the position that Article IX, Item C did not apply to the final, non-appealable consent judgment orders. Richard Glasser's pursuit of the Judgeship is also circumstantial evidence that he believed the Manville fees were fully earned, or he would have promptly prepared a written amendment to the written 1984 Partnership Agreement, similar in material respects to his proposed Amendment submitted almost one year later. A person as meticulous and intelligent as Richard Glasser would not have let a "loose end" remain if he felt his interest in approximately \$6,000,000 of fees could have been disputed. It was because Richard Glasser believed his right to the Manville fees had vested when the judgments were obtained that he did not feel the need to even clarify the issue. However, since that January, 1991 meeting, there was increasing friction and arguments between Richard Glasser and Seward Lawlor and Michael Glasser and Seward Lawlor. Wainger believes that Richard Glasser's proposed written Amendment to the 1989 Partnership Agreement was principally designed to protect Richard Glasser's interests in uncollected, fully earned fees from a legal contest (similar to the

present lawsuit) initiated by a remaining partner [i.e., Seward Lawlor] in the event Richard Glasser sought another Federal judgeship (which he did in 1993), retired, became disabled or died, and also to prevent Seward Lawlor, who had threatened to leave the firm, from sharing in the Manville fees if he withdrew and continued to practice law.

- b. All documents evidencing or tending to evidence the fact.

ANSWER: See the documents listed in 1.b., supra, which are incorporated herein by reference. Wainger reserves the right to supplement this and other interrogatory answers based on discovery responses of Glasser.

3. Identify each partner involved in orally amending the written partnership agreement in November or December of 1990. For each such partner, set forth everything the partner did or said in orally amending the written partnership agreement.

ANSWER: See Answer to No. 2, which is incorporated herein by reference.

4. State whether you ever mechanically recorded anything spoken by a partner in Glasser and Glasser without that partner's knowledge. If so, identify the results of the mechanical recording, including any audio/video tapes, transcripts, etc.

ANSWER: No.

5. Identify each person that you told (either orally or in writing) prior to June 24, 1992, that the written partnership agreement had been orally modified so that fees from the Manville cases were deemed to be "fully earned."

ANSWER: None; see answer to Interrogatory No. 2, which is incorporated herein by reference.

STEPHEN WAINGER

By Stephen Wainger

COMMONWEALTH OF VIRGINIA     )  
  ) TO-WIT:  
CITY OF VIRGINIA BEACH        )

This day, Stephen Wainger, Pro Se, appeared before me, the undersigned Notary Public, and stated that the foregoing Supplemental Answers to Interrogatories are true and correct to the best of his information and belief.

Given under my hand this 5th day of December, 1993.

Patricia A. Strong  
Notary Public

My Commission expires: 9-30-97



Stephen Wainger, Pro Se  
BAR CODE #01337  
Huff, Poole & Mahoney, P.C.  
4705 Columbus Street, Suite 100  
Virginia Beach, VA 23462-6749  
(804) 552-6078

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Supplemental Answers to Interrogatories was mailed to Gregory N. Stillman, Esq., Hunton & Williams, Crestar Bank Building, Norfolk, VA 23514 this 15<sup>th</sup> day of December, 1993.

By

A handwritten signature in cursive script, appearing to read "Stephen Wainger", is written over a horizontal line.

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

STEPHEN WAINGER,	)	
	)	
Complainant,	)	
	)	
v.	)	CHANCERY NO. C92-1166
	)	TRIAL BY JURY DEMANDED
GLASSER AND GLASSER,	)	
A General Partnership,	)	
	)	
Respondent.	)	

AMENDED BILL OF COMPLAINT FOR  
DECLARATORY JUDGMENT AND OTHER RELIEF

Stephen Wainger ("Complainant") files this Amended Bill of Complaint for Declaratory Judgment and Other Relief against Glasser and Glasser ("Respondent").

1. Complainant is a resident of the City of Norfolk.
2. Respondent ("Glasser") is a Virginia general partnership, the general partners of which are, as of the filing of this action, Richard S. Glasser, Michael A. Glasser, H. Seward Lawlor, Melvin R. Zimm and William H. Monroe, Jr., with its principal place of business in the City of Norfolk.

COUNT I

3. Wainger received his B.A. Degree from Tulane University in 1967, his J.D. Degree from the University of Richmond Law School in 1970, is a member of both the Virginia and District of Columbia Bars, served as a Trial Attorney in the

U.S. Department of Justice in Washington, D.C. from 1970 to 1974 (first in the Criminal Division and then in the Drug Enforcement Administration), entered private practice in Washington, D.C. for a short time in 1974 before being appointed in 1975 Assistant United States Attorney for the Eastern District of Virginia to handle criminal and civil litigation in the Norfolk Division; in 1978 he associated with the Norfolk firm of Seawell, McCoy, Dalton, Hughes, Gore & Timms (later Seawell, Dalton, Hughes & Timms) as a Trial Attorney, becoming a Partner therein until that firm's dissolution in 1987.

4. In May 1987, Wainger became an Associate (Employee) of Glasser with the terms of his employment being ultimately formalized in an Employment Agreement dated and effective from June 23, 1987 (attached as Exhibit 1 and incorporated herein by reference). Under that Agreement Wainger was paid:

- (1) \$100,000 per year (i.e., \$8,333.33 per month) (P. 2, ¶6).
- (2) 20% of the gross fees which were generated or produced by Wainger's clients (see P. 4, ¶12).
- (3) Other employment benefits (not material here).



5. During the six remaining months of 1987, Wainger's clients generated gross fees (to the Glasser Firm) of approximately \$20,600. Thus, for 1987, his compensation was the \$8,333.33 monthly salary plus 20% of those gross fees (approximately \$4,120) or a six month aggregate approximating \$54,120.

6. In 1988, Wainger remained on an \$8,333.33 monthly salary (i.e., \$100,000 per year) but in addition, he generated approximately \$218,000 gross fees to Respondent from his own clients. Twenty percent (20%) thereof approximates \$43,600 which when added to his \$100,000 annual salary totaled a personal annual compensation of \$143,600.00 under the Employment Agreement.

7. In 1989, Wainger continued on the \$8,333.33 monthly (\$100,000 annual) salary and generated approximately \$96,000 in gross fees to the Law Firm from his own Clients. Consequently, his 1989 compensation approximated \$119,200 under the Employment Agreement (i.e., \$100,000 plus 20% of \$96,000 or \$19,200 = \$119,200).

8. Therefore, in his 2½ years as an Associate or Employee under the June 23, 1987 Employment Agreement, Wainger earned and was paid:

1987	-	\$ 54,120.00	(for 6 months)
1988	-	\$143,600.00	(for 12 months)
1989	-	<u>\$119,200.00</u>	(for 12 months)
TOTAL:		\$316,920.00	

9. In addition to its general practice, the Glasser Firm specializes in the representation of personal injury (and death) claimants against various producers of asbestos and asbestos products. There are approximately 15 different asbestos product producers, such as Johns-Manville, Owens-Illinois, Fibreboard, Garlock, Owens-Corning Fiberglas, Eagle-Picher, Raybestos, etc. However, the dispute *sub judice* primarily concerns 1,087 final judgments against Johns-Manville and other cases that were settled before Wainger withdrew from Glasser.

10. Towards the end of the 1989 Calendar Year (and 2½ years as an Employee [Associate] under the June 23, 1987 Employment Agreement) Wainger was approached with a Partnership Offer by Richard Glasser, the Senior Member of the Respondent. Their discussion acknowledged not only the sizeable volume of legal work Wainger was performing for the Firm and its clients, but also recognized the volume of work and gross fees Wainger was generating for the Firm from his own clients. Thus, the offer was increased from 5 to 6 Units out of a total of 103 Units of total Partnership Participation in Partnership Profit. (See Richard Glasser's handwritten notes attached as Exhibit 2 and incorporated herein by reference.) Wainger would be required to pay (buy in) \$12,000 as an Additional Contribution-To-Capital but that would be deducted (in increments) from

Distribution of Profits to the Partners all as provided under Article III, Section B of the Glasser Law Firm's Partnership Agreement dated December 20, 1984, becoming effective January 1, 1985 (attached as Exhibit 3 and incorporated herein by reference).

11. As a Partner, Wainger would no longer be on the Salary (\$8,333.33 per month or \$100,000 per year and 20% of gross fees generated from his own Clients, as provided in his June 23, 1987 Employment Agreement) but of course would receive his allocation (6/103rds) of Cash Received as Partnership Profits and also would receive 20% of gross fees generated from his own clients. Additionally, the Firm would make an annual contribution for Wainger's benefit in the Firm's Self-Employment Program (SEP) for retirement. However, there would be an annually adjusted, but cumulative monetary Limit or "Cap" on the cash monetary compensation (exclusive of the 20% derived from his own clients and of the SEP contribution) Wainger would be entitled to per year as his 6/103rds of the Partnership Profits. In any event, Wainger would be entitled to a "Draw" of \$6,000 per month (i.e., \$72,000 per year) as an "Advance" or "Draw," against his Total Share (6/103) of Cash Profits (whatever the Limit or Cap thereon) plus the additional 20% of the gross fees generated from his own clients. (See Exhibit 2 - Richard Glasser's Example given to Wainger.)



12. Therefore, Wainger became a Partner in the Glasser Firm as of January 1, 1990, but no written amendment of the Partnership Agreement was ever undertaken or made, as envisioned in Article VIII. Addition of Partners (Exhibit 3, pp. 19, 20). Pursuant to Article III. Capital of the Firm, Section B. Additional Contributions to Capital, (Exhibit 3, pp. 5-6) Wainger actually bought-in and paid the following dollar amounts as Contributions To Capital during the 1990 year:

Date	Distribution of Profit	Withheld for Capital Contribution	Amount Received	Paid in To Cap. Account	Total Pd. In To Cap.Acct.
05/31/90	13,172.31	2,500.00	10,672.31	2,500.00	2,500.00
06/29/90	12,977.28	3,500.00	9,477.28	3,500.00	6,000.00
07/31/90	31,521.54	3,000.00	28,521.54	3,000.00	9,000.00
09/28/90	20,418.52	3,000.00	17,418.52	3,000.00	12,000.00
12/28/90	Via Wainger's Personal Check per Request of Management Committee Under Article III, Section B of the Partnership Agreement			13,186.81	25,186.81

13. Consequently, in 1990 (his first year as a Partner) Wainger paid the Glasser Firm \$25,186.81 in Capital, reduced his monthly "Draw" from \$8,333.33 to \$6,000.00 (i.e., his annual Guarantee from \$100,000 plus 20% of fees generated from his own Clients to an annual "Draw" of \$72,000 plus 20% of gross fees generated from his own clients) in exchange for 6/103rds of the Glasser Firm's Net Profits -- subject only to the annually adjusted "Limit" or "Cap" exclusive of his 20%

feature and the SEP contribution. His 1990 "Limit" or "Cap" for cash received (See Exhibit 2) had been estimated at \$220,000 but actually ultimated at \$239,000, being determined by adding cumulatively one-half of the gross fees produced from his own clients in each of his 2½ years as an Associate plus his \$72,000 Partner's Draw. (See Exhibit 2.)

14. The following Table covers Wainger's "Cap" or "Limit" in accordance with Richard Glasser's explanation and handwritten notes (Exhibit 2) during his tenure at the Glasser Firm:

A	B	C	D	E	F
Year	From Own Clients	One-Half of B	Cumulative Total of Gross Fees for Next Year's Cap	Draw	Cash Limit or Cap
1987	20,600	10,300	10,300		Employee
1988	218,000	109,000	119,300		Employee
1989	96,000	48,000	167,300		Employee
1990	162,000	81,000	248,300	72,000	= 239,300
1991	104,919	52,459	300,759	72,000	= 320,300
1992	71,788	35,394	336,153	72,000	= 372,759
1993				72,000	= 408,153

15. Richard Glasser's March 5, 1992 letter to Errol Lifland at Goodman & Co., CPAs, wherein Richard Glasser sets Wainger's 1991 Limit [Cap] at \$317,214.14 is attached as Exhibit 4 and is incorporated herein by reference.

16. Although Glasser's \$317,214.14 figure (for 1991) is essentially \$3,000 less than Wainger's calculation of \$320,300 as shown in the foregoing Table, Richard Glasser's letter (Exhibit 4) is an effective admission that Wainger's 1991 "Cap" was determined by adding cumulatively one-half of the Gross Fees Earned From Wainger's Own Clients in 1987, 1988, 1989, 1990 plus Wainger's "Draw" of \$72,000. Glasser admits that Total to be \$317,214.14.

17. Wainger served as a Partner in the Glasser Firm under the foregoing business arrangement from January 1, 1990 until January 21, 1992. Although he had never signed the Partnership Agreement of January 1, 1985, (See Exhibit 3), which predated his affiliation with the Glasser Firm, he knew that document as explained by Richard Glasser (See Glasser's notes -- Exhibit 2) applied to his Partnership Status. He did sign the Firm's Withdrawal Agreement with John T. Midgett dated September 28, 1990 (see attached as Exhibit 5 and incorporated herein by reference). However, that was an Agreement between Midgett and the Glasser Firm. Its Introductory Clauses or Preambles were not incorporated into the substantive agreement itself and do not constitute any agreement or amendment of the basic Glasser Partnership Agreement amongst the remaining Partners themselves. The sole operative provisions of that Agreement relate to and are between Midgett and the Glasser Firm (as further evidenced



by the Title.."Withdrawal Agreement of John T. Midgett From Partnership In The Law Firm of Glasser and Glasser.") Indeed the active, operative, substantive Agreement begins on Page 2 (Exhibit 5) as follows:

"NOW THEREFORE, in consideration of the mutual agreements and covenants contained herein, John T. Midgett and Glasser and Glasser hereby agree as follows:"

No operative agreements between the remaining partners themselves are included.

18. In Article IX of that Agreement, there are provisions defining the rights of retiring, withdrawing or expelled Partners (See Exhibit 3, p. 21), the relevant portions being:

ARTICLE IX. PAYMENT FOR PARTNER'S INTEREST

The payment for a partner's interest in the partnership, calculated as of the date of his....withdrawal...will be on the following basis:

Item A. Any unpaid monthly draw....

Item B. His Capital Account.

Item C. His Individual Profits Accounts, plus his share, if any, of any undivided profits of the firm with respect to uncollected fees which were fully earned by the firm prior to the effective date of his....withdrawal...but which fees are received by the firm subsequent to such date.

19. Glasser admits in paragraph 13 of its Motion for Declaratory Judgment:

"13. Article IX of the Partnership Agreement sets forth the exclusive basis for calculating a withdrawing partner's interest in the partnership."

(Attached as Exhibit 6 and incorporated herein by reference.)

20. There is no language in Article IX or elsewhere in the Partnership Agreement, or any written Amendment thereof, or in the preambles to the Midgett Withdrawal Agreement about any "Cap" or "Limit" on a Withdrawing Partner's share of Cash Received (or To Be Received) as Partnership Profits. Nor is there any reference in the Partnership Agreement or any written amendment thereof of the apparent oral modifications relating to fees to be derived from the Manville litigation as alleged in Count III, Paragraph 31 of Glasser's Motion for Declaratory Judgment (Exhibit 6, p. 6). However, there is no reference whatsoever either in the Partnership Agreement or in the preambles to the Midgett Withdrawal Agreement to the imposition of any "Cap" or "Limit" on the Payment For a Withdrawing Partner's Interest as Provided in Article IX of the Partnership Agreement.

21. These legal proceedings involve millions of dollars in judgments and millions of dollars in legal fees

arising out of the Manville judgments and many other settlements with various other asbestos manufacturers and suppliers and other cases in which fees were fully earned prior to January 22, 1992. Consequently, the import and meaning of the Midgett Withdrawal Agreement and any purported oral amendments to the basic Partnership Agreement (expressly Article IX thereof) must overcome a severe test of credibility. Logic, reason, common-sense and practical experience lead to a conclusion that capable, experienced attorneys (Glasser) who were so meticulous in their 39-page written Partnership Agreement of January 1, 1985 would never leave substantive amendments or revisions of that Agreement to "Oral Agreements" or "Withdrawal Agreements," particularly where millions of dollars in fees and personal income are concerned.

22. Although Wainger gave the Firm Notice of his voluntary withdrawal to be effective on January 31, 1992, his Partnership status was terminated on January 21, 1992. By that date, both the Firm and Wainger acknowledged a dispute concerning Wainger's "Rights" as a Withdrawing Partner, under Article IX of the Partnership Agreement. (See Exhibit 7, Glasser's January 21, 1992 letter to Wainger, 3rd paragraph.) (Exhibit 7 is attached and incorporated herein by reference.)

23. The Capital Account (Item B. of Article IX) expresses, amongst other things, in dollars the amounts that a



partner has had withheld and transferred from his earnings (in his Undivided Profits Account) and also the additional amounts he has contributed directly from his other sources. (Exhibit 3, pp. 5, 6 - Article III - Capital Of The Firm, Section B). The Partnership Agreement stipulates that the Capital Account (Investment or Principal) shall earn Interest or Income at the rate of 12% per annum until it is reimbursed to a Partner.

Exhibit 3, pp. 4, 5, 6:

Section A. Original Capital of The Firm  
(Relates to the Capital Contributions in 1985)

\* \* \* \*

Section B. Additional Contributions to Capital

The Management Committee may....withhold from distribution to partners and transfer...from their respective undivided profits accounts, and credit to each partner's capital account, as additional contributions to capital, such amounts as.... desirable or necessary. Interest shall be paid by the firm on all unreimbursed balances of all these additional contributions to capital at the rate of twelve percent (12%) per annum until fully repaid....

There can be no question therefore that the money represented in the Capital Account belongs to the individual partner -- not to the Firm.

24. Wainger has never been fully paid "Item B. His Capital Account" in which the December 31, 1991 - January 1, 1992 balance was \$104,283 (Wainger's 1992 K-1 is attached as Exhibit 8 and incorporated herein by reference). He was paid only \$41,217.45 via check and letter on January 21, 1992 as a

partial distribution from his Capital Account. In that letter of transmittal, Richard Glasser admits the Firm's responsibility to make prompt payment of any additional funds owing to Wainger from the Capital Account after necessary financial information became available. Specifically, Richard Glasser wrote:

"Your receipt and negotiation of this check will confirm your understanding and agreement that, once the necessary financial information is completed and available, the firm will promptly provide you with payment of any additional funds owing to you by virtue of your Capital Account; ...."

(See Exhibit 7, Glasser's January 21, 1992 - Letter to Wainger, paragraph 3.)

25. That admitted (but unverified) Capital Account Balance (\$63,065.55) was stated two months later by Glasser's Accountants in their letter of March 27, 1992 addressed to Michael Glasser (attached as Exhibit 9 and incorporated herein by reference).

26. By December 31, 1992, this balance was adjusted to \$63,064. (See Exhibit 8 - Wainger's Schedule K-1 from Glasser's 1992 Federal Tax Return.) Nevertheless, Glasser has never paid Wainger that admitted Capital Account (Item B) Balance of \$63,064.00, but has retained it as Operating Capital of the Firm.

27. Glasser's failure to pay the \$63,064 Capital Account Balance to Wainger was not the result of any financial

inability as reflected in Glasser's 1992 Partnership Income Tax Return (attached under seal as Exhibit 10 and incorporated herein by reference). Obviously, Glasser's payment of Wainger's \$63,064 Capital Account Balance as promised and envisioned in Richard Glasser's January 21, 1992 letter (Exhibit 7) would have produced only a negligible effect on the Firm's Total Distributable Profits and Amounts Distributable to the Individual Partners.

28. In a hearing before the United States District Court For the Eastern District of New York on January 7, 1993, David T. Austern, Esq., Counsel for the Manville Personal Injury Settlement Trust, testifying under interrogation by Richard Glasser as to the Virginia judgments from which Glasser's contingent fees will ultimately be paid, said:

Transcript, Page 27, Lines 13, 14:  
(Transcript attached as Exhibit 11 and incorporated herein by reference)

"...To us, the question is not if they get paid. It's when they get paid."

Richard Glasser had previously noted in that hearing that the Virginia claimants had...

Exhibit 11 - Transcript, Page 12, Lines 17-20:

"Mr. Glasser: ....the vested judgment and contract rights that the Virginia judgment creditors have established and fairly negotiated with the trust."

and



Exhibit 11 - Transcript, Page 21, Lines 2-4:

"Now the Virginia judgment creditors are unique for at least three reasons. Number one, they have consent judgment orders that are final and non-appealable."

29. Just as Glasser's clients have vested judgments and contract rights, Glasser has a vested contract right to a one-third fee (and 40% to 50% in some cases) of whatever amount is ultimately paid on those judgments. In other words, Glasser's "right" to a fee has been quantified and has vested at one-third of the amount actually paid on those judgments. As Mr. Austern of The Manville Trust/Fund said in answer to Mr. Glasser's interrogation:

"...the question is not if they get paid.  
It's when they get paid."

This situation thus falls squarely within the "plain meaning" of the Partnership Agreement's language:

"...uncollected fees which were fully  
earned....but which are received  
subsequent(ly)..."

30. On November 14, 1991, Richard S. Glasser circulated to the then partners of Respondent a certain "Notice of Partners' Meeting" (copy attached as Exhibit 12 incorporated herein) together with a proposed amended Partnership Agreement (copy attached as Exhibit 13 and incorporated herein).

31. Richard Glasser's proposed Amendments in November 1991 (prior to Wainger's withdrawal, when Richard Glasser sought

a Federal Judgeship and/or contemplated Retirement) recognized that the Manville Fees were subject to the "uncollected..fully earned.., but not yet received" language of the basic Partnership Agreement. Obviously, that is the reason for his proposed modifications (changes) as found on Page 22 thereof. (See Exhibit 13, Page 22 as highlighted.)

32. In John T. Midgett's Withdrawal Agreement of September 27, 1990 (Exhibit 5), Glasser deemed it not only appropriate to pay Midgett the items delineated in Article IX, Items A, B, and C of the Partnership Agreement, but also deemed it necessary to pay Midgett an additional sum which was Midgett's proportionate share of "costs" which had previously been incurred in the judgments against the Manville Corporation Asbestos Disease Compensation Fund and to acquire Midgett's express waiver of any interest in the Manville judgment fees. This payment of "costs" was not required under the Partnership Agreement, but is provided in Paragraph 5 of the Withdrawal Agreement, as follows:

Exhibit 5, p. 3, Paragraph 5:

"5. Glasser and Glasser hereby agrees to pay to John T. Midgett 6/91 of the cost incurred as of September 30, 1990, in all of the cases currently pending and in which judgments have been entered against Manville Corporation Asbestos Disease Compensation Fund..."

33. This additional, voluntary, non-contractually required payment to Midgett also serves as "contract-consideration" for Midgett's express waiver which follows shortly thereafter, in Paragraph 7 of the Withdrawal Agreement, as follows:

Exhibit 5, p. 3, Paragraph 7.

"7. John T. Midgett hereby agrees that, ....John T. Midgett waives any and all interest he may have in the fees of any cases against Manville Corporation Asbestos Disease Compensation Fund....It is agreed by John T. Midgett and Glasser and Glasser that the payments made pursuant to this Withdrawal Agreement are paid by Glasser and Glasser in complete and final settlement for all rights and interest of John T. Midgett in the law firm and/or cases and/or clients of Glasser and Glasser." (Emphasis added.)

This payment of proportionate "costs incurred" and the express "waiver" are other obvious acknowledgements that either the withdrawing partner had a "right" to share in the Manville Fees or at least the Partnership Agreement language -- (uncollected ...fully earned..., but not yet received fees) -- is ambiguous and needed the clarification of a purchase by Glasser and an express waiver by Midgett.

34. Attached hereto as Exhibit 14 and incorporated herein by reference is the Affidavit and Opinion of H. Leon Hodges, Certified Public Accountant and a respected accounting expert in this and many other courts as well as throughout this community and State. It is his opinion that the contingent



Manville fees had (under Accounting Principles) become fixed (or vested) at one-third (or 40% to 50% as provided in the Retainer Agreement) and that the quantification in dollars was easily determinable, subject only to an appropriate Reserve to offset any contingency in the Actual Receipt thereof. Thus those quantified contingent fees were "Assets" even though the Cash had not been received just as Accounts Payable were "Liabilities" even though not paid. Consequently, in a true and proper Balance Sheet, the Glasser Firm should show all of its Assets and Liabilities, even on a Cash Basis of Accounting.

35. The Partnership Agreement provided that it could be amended by a vote of the holders of at least two-thirds of the outstanding "Units of Participation," as defined in the Partnership Agreement.

36. At the time of the November 14, 1991 notice, there were 91 Units of Participation outstanding, 73 of which were held by Richard S. Glasser (48-2/3) and Michael A. Glasser (24-1/3) and six held by Complainant. Accordingly, Richard S. Glasser and Michael A. Glasser held 80% of the outstanding Units of Participation and their affirmative vote would permit the amendment of the Partnership Agreement to the form of Exhibit 13.

37. Before circulating Exhibit 13, Richard S. Glasser had expressed the desire to leave Respondent by seeking appoint-

ment as a Judge of the United States District Court for the Eastern District of Virginia.

38. Richard S. Glasser would turn 50 within three weeks of his November 14, 1991 proposal to amend the Partnership Agreement to permit retirement from The Glasser Firm at age 50 instead of age 60 (see page 25 of Exhibit 13) which would result in significant financial benefit to Richard S. Glasser under Article IX, Item D, and Article XII of the Partnership Agreement.

39. The Partnership Agreement, if amended in the form of Exhibit 13, would have substantially and materially adversely affected the rights of Complainant in that:

a. Richard S. Glasser also proposed an amendment to Article IX reinforcing the fact that certain uncollected fees relating to The Manville Trust and other asbestos cases were fully earned by the firm and would be payable to a partner "who retires from the practice of law" (e.g., Richard S. Glasser), but would not be payable to an expelled partner or a withdrawing partner who wished to continue practicing law (see Exhibit 13 at page 22), whereas under the Partnership Agreement, a withdrawing partner who wished to continue the practice of law would be entitled to share in such fees; and,

b. With Michael A. Glasser and Richard S. Glasser controlling 80% of the Units of Participation, and with the proposed changes to the Partnership Agreement in the form of Exhibit 13, Michael A. Glasser and Richard S. Glasser could have expelled all other partners of Respondent without cause and, because of the proposed changes to Article IX, no "expelled" partner, who wished to continue the practice of law, would have retained his right to share in the undivided profits of Respondent with respect to uncollected fees relating to The Manville Trust, as defined in Exhibit 13, and other matters.

40. Faced with the certainty that Richard S. Glasser and Michael A. Glasser would vote their Units of Participation to amend the Partnership Agreement in substantially the form of Exhibit 13, Wainger decided to withdraw as a partner of Glasser and preserve his right to share in the undivided profits of Glasser with respect to fully earned uncollected fees from The Manville Trust and other asbestos cases.

41. By memorandum dated December 17, 1991 (copy attached as Exhibit 15 and incorporated herein by reference), Wainger confirmed his notification to Glasser that he would withdraw from Glasser effective January 31, 1992.

42. Fully earned fees from settlements of approximately 1,110 asbestos cases now subject to the final, non-appealable, existing Consent Judgment Orders and settlements



with The Manville Trust, described on page 22 of Exhibit 13, approximate \$20,000,000. Glasser and the Newport News firm of Patten, Wornom & Watkins ("PW&W") have an "arrangement" to share fees between Glasser and PW&W in certain asbestos cases (1/3 of all Glasser's fees go to PW&W and 1/3 of all PW&W's fees go to Glasser). The total recovery against The Manville Trust is approximately \$62,845,616 of which approximately \$47,175,486 is attributable to Glasser and approximately \$15,676,130 to PW&W. Attorney's fees of 1/3 of the total amount recovered are accordingly approximately \$15,725,162 attributable to Glasser (of which PW&W will receive 1/3 or approximately \$5,175,054) and approximately \$5,223,377 attributable to PW&W (of which Glasser will receive approximately \$1,741,125). Glasser's total fees from the final, non-appealable, existing Consent Judgment Orders and the settlements with The Manville Trust will approximate \$12,291,233. These statistics are based on attorney's fees of 33.3% (even though many of the contingent fee contracts are 40% or more) and are summarized as follows:

FINAL JUDGMENTS			CONTINGENT FEES		
Firm	Number	Total Amount	Total Fees	Glasser's	Patten's
Glasser	827	\$47,175,486	\$15,725,162	\$10,550,108	\$5,175,054
Patten	260	\$15,670,130	\$ 5,223,377	\$ 1,741,125	\$3,482,252
TOTALS	1,087	\$62,845,616	\$20,948,539	\$12,291,233	\$8,657,306

43. Under Article IX, such fees have been "fully earned," as confirmed by Richard S. Glasser's language included on page 22 of Exhibit 13, and Complainant is entitled to 6/91's of the undivided profits of Glasser with respect to those fees, when received by Glasser.

44. In addition to the uncollected fees relating to The Manville Trust, other final settlements were reached with other asbestos defendants by Glasser and PW&W and other co-counsel of Glasser while Wainger was a general partner of Glasser, but will not be paid by such defendants until after Wainger withdrew from Glasser as provided in the various final settlement agreements. The amount of fully earned, but uncollected fees of Glasser with respect to these matters are unknown by Wainger, but, under the Partnership Agreement, Wainger is entitled to 6/91's of the undivided profits of Glasser with respect to such fees when all or any such fees are received by Glasser.

45. Glasser astutely perceived the legal importance of converting all clients' claims into *bona fide* judgments. To accomplish those judgments, every Glasser file, (including those of questionable merits which had been warehoused) had to be fully reviewed, prepared as a claim, (or upon the client's instruction, closed as a "No-Claim") and turned over to Richard Glasser and Seward Lawlor. They then negotiated a dollar-amount

settlement with The Manville Fund/ Trust and upon agreement, a final, non-appealable consent judgment in each case was entered in the United States District Court For The Eastern District of Virginia. It is the totality of these and other claims/judgments that aggregate 1,087 judgments for \$62,845,616 and concomitant contingent fees as tabulated on page 20 hereinbefore and set forth in correspondence with the Manville Personal Injury Settlement Trust (attached as Exhibit 16 and incorporated herein by reference.)

46. In order to achieve those consent judgments quickly and promptly, the Glasser firm extended a "one-time deal" or "offer" to all attorneys in the office. Seward Lawlor's handwritten outline of that "offer" is attached as Exhibit 17 and incorporated herein by reference. Its essential terms and requirements were:

1. The participating attorney would have full responsibility and accountability for the file/claim.
2. The attorney would perform full claim preparation, including client contact and management, medical exams and reports, file analysis, statistics, etc.
3. The participating attorney would be paid 10% of Glasser's fee.



4. This "one-time" deal would not affect or apply to any cumulative increase in the annual "Limit" or "Cap."

5. Attorney must be with office at time of settlement.

47. Wainger was a participating attorney in the foregoing "offer" and actually prepared 110 cases in which final non-appealable consent judgments were entered. Those cases are listed as Exhibit 18 and incorporated herein by reference. The client's "right" to a recovery thus became a "vested" right (as defined by Richard Glasser in his argument on January 7, 1993 in the United States District Court For The Eastern District of New York). (See Transcript. pp. 12, Line 17, pp. 21, Line 2, pp. 27, Line 13, pp. 28 Line 22, pp. 29 Line 2, and pp. 32, Line 18, all attached as Exhibit 11.)

48. Just as the client's claim became a "vested right," so did the rate (percentage) of Glasser's contingent fee (1/3) become "vested." Thus, the client cannot now terminate Glasser and relegate Glasser's fee to a *quantum meruit* basis. Similarly, Wainger, having prepared 110 of those cases for entry of consent judgments, became "vested" in his "right" to 10% of whatever dollar amount of fees that Respondent receives.

49. As Equity acts *in personam*, an appropriate decree should provide Wainger's protection, no matter the dollar-amount actually and ultimately collected. The real Issue is the "Right" which Equity honors. Glasser has refused to abide by

the terms of the Partnership Agreement and the "bonus offer" described in the preceding paragraph.

## COUNT II

50. Paragraphs 1 through 49 are incorporated herein by reference as though fully set forth.

51. In approximately January, 1991, Richard S. Glasser announced at a meeting of his partners that he was considering leaving Glasser by seeking appointment as a Judge of the United States District Court for the Eastern District of Virginia. During that meeting, it was confirmed that he was entitled to his share of the Manville fees which he would get if the fees were received after he became a Judge. If Glasser takes the inconsistent position from that meeting that the Manville fees were not fully earned as of January, 1991, then Wainger alleges, in the alternative, that the written 1985 Glasser and Glasser Partnership Agreement was orally modified and/or amended to establish that the Manville Trust judgments were deemed to be "fully earned," even though the fees were uncollected. Complainant relied on this oral modification which was supported by valuable consideration in, among other ways, providing valuable services to Glasser in asbestos and other cases handled by the partnership and in developing and bringing new business to the partnership.

Accordingly, as to Count I and Count II, Complainant asks that this Court:

1. Order Respondent to render Complainant an accounting to establish the amount of Complainant's capital account and undivided profits account;
2. Grant Complainant judgment for any unpaid amount of his capital account and undivided profits account plus 12% interest from the date of Complainant's withdrawal;
3. Grant Complainant judgment for any amounts due him as additional compensation under Item A of Article IX of the Partnership Agreement;
4. Grant Complainant a Decree providing his "right" to his proportionate share in the net fees ultimately received from the 1087 Johns-Manville judgments when, as and if the Manville Trust/Fund pays those judgments.
  - a. Provide for a periodic Accounting of the judgments paid and fees received.
5. Grant Complainant a Decree providing his "right" to an additional 10% of Glasser's net fees ultimately received from the 110 Johns-Manville final judgments on those 110 claims Complainant prepared pursuant to



Glasser's special offer, when, as and if the Manville Trust/Fund pays those 110 final judgments.

- a. Provide for a periodic Accounting of the judgments paid and fees received.
6. Grant Complainant a Decree providing his "right" to his proportionate share in the net fees ultimately received after January 1, 1992 from all claims or cases (other than the 1087 Johns-Manville judgments) in which final settlements or final judgments were obtained prior to January 21, 1992 but which claims, settlements or judgments are paid in full or partially paid on an installment basis (and concomitant net fees accordingly received subsequent to January 21, 1992.)
  - a. Provide for a periodic Accounting of all such payments, installments or otherwise and of the net fees received thereon.
7. Order an audit of Respondent's financial records to verify or amend the admitted balance in Wainger's Capital Account prior to granting Wainger a judgment with 12% interest thereon from January 21, 1992 per the Partnership Agreement and Virginia Code.
8. Grant Complainant such other relief as may be equitable and just.

9. Grant Complainant his costs incurred in these proceedings and assess the expense of a reference and accounting against Respondent.
10. Grant Complainant judgment for his costs.

TRIAL BY JURY IS DEMANDED as this case will be rendered doubtful by conflicting evidence of the parties as more fully evidenced by Stephen Wainger's Affidavit dated January 12, 1993, which is attached as Exhibit 19 and incorporated herein by referenced.

STEPHEN WAINGER, *Pro Se*

By: *Stephen Wainger, Pro Se*

Stephen Wainger, Esq.  
BAR CODE #01337  
4705 Columbus Street, Suite 100  
Virginia Beach, VA 23462-6749  
(804) 552-6078

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Amended Bill of Complaint for Declaratory Judgment and Other Relief was hand-delivered to Gregory N. Stillman, Esq., Hunton & Williams, Crestar Bank Building, Norfolk, VA 23514, this 20<sup>th</sup> day of January, 1994.

*Stephen Wainger*

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

GLASSER AND GLASSER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	AT LAW NO. L92-2021
	)	
STEPHEN WAINGER,	)	
	)	
Defendant.	)	

AMENDED COUNTERCLAIM

Stephen Wainger ("Defendant") files this Amended Counterclaim against Glasser and Glasser ("Plaintiff").

1. Defendant is a resident of the City of Norfolk.
2. Plaintiff ("Glasser") is a Virginia general partnership, the general partners of which are, as of the filing of this action, Richard S. Glasser, Michael A. Glasser, H. Seward Lawlor, Melvin R. Zimm and William H. Monroe, Jr., with its principal place of business in the City of Norfolk.

COUNT I

3. Wainger received his B.A. Degree from Tulane University in 1967, his J.D. Degree from the University of Richmond Law School in 1970, is a member of both the Virginia and District of Columbia Bars, served as a Trial Attorney in the U.S. Department of Justice in Washington, D.C. from 1970 to 1974 (first in the Criminal Division and then in the Drug Enforcement



Administration), entered private practice in Washington, D.C. for a short time in 1974 before being appointed in 1975 Assistant United States Attorney for the Eastern District of Virginia to handle criminal and civil litigation in the Norfolk Division; in 1978 he associated with the Norfolk firm of Seawell, McCoy, Dalton, Hughes, Gore & Timms (later Seawell, Dalton, Hughes & Timms) as a Trial Attorney, becoming a Partner therein until that firm's dissolution in 1987.

4. In May 1987, Wainger became an Associate (Employee) of Glasser with the terms of his employment being ultimately formalized in an Employment Agreement dated and effective from June 23, 1987 (attached as Exhibit 1 and incorporated herein by reference). Under that Agreement Wainger was paid:

- (1) \$100,000 per year (i.e., \$8,333.33 per month) (P. 2, ¶6).
- (2) 20% of the gross fees which were generated or produced by Wainger's clients (see P. 4, ¶12).
- (3) Other employment benefits (not material here).

5. During the six remaining months of 1987, Wainger's clients generated gross fees (to the Glasser Firm) of approximately \$20,600. Thus, for 1987, his compensation was the

\$8,333.33 monthly salary plus 20% of those gross fees (approximately \$4,120) or a six month aggregate approximating \$54,120.

6. In 1988, Wainger remained on an \$8,333.33 monthly salary (i.e., \$100,000 per year) but in addition, he generated approximately \$218,000 gross fees to Plaintiff from his own clients. Twenty percent (20%) thereof approximates \$43,600 which when added to his \$100,000 annual salary totaled a personal annual compensation of \$143,600.00 under the Employment Agreement.

7. In 1989, Wainger continued on the \$8,333.33 monthly (\$100,000 annual) salary and generated approximately \$96,000 in gross fees to the Law Firm from his own Clients. Consequently, his 1989 compensation approximated \$119,200 under the Employment Agreement (i.e., \$100,000 plus 20% of \$96,000 or \$19,200 = \$119,200).

8. Therefore, in his 2½ years as an Associate or Employee under the June 23, 1987 Employment Agreement, Wainger earned and was paid:

1987	-	\$ 54,120.00	(for 6 months)
1988	-	\$143,600.00	(for 12 months)
1989	-	<u>\$119,200.00</u>	(for 12 months)
TOTAL:		\$316,920.00	

9. In addition to its general practice, the Glasser Firm specializes in the representation of personal injury (and death) claimants against various producers of asbestos and

asbestos products. There are approximately 15 different asbestos product producers, such as Johns-Manville, Owens-Illinois, Fibreboard, Garlock, Owens-Corning Fiberglas, Eagle-Picher, Raybestos, etc. However, the dispute sub judice primarily concerns 1,087 final judgments against Johns-Manville and other cases that were settled before Wainger withdrew from Glasser.

10. Towards the end of the 1989 Calendar Year (and 2½ years as an Employee [Associate] under the June 23, 1987 Employment Agreement) Wainger was approached with a Partnership Offer by Richard Glasser, the Senior Member of the Plaintiff. Their discussion acknowledged not only the sizeable volume of legal work Wainger was performing for the Firm and its clients, but also recognized the volume of work and gross fees Wainger was generating for the Firm from his own clients. Thus, the offer was increased from 5 to 6 Units out of a total of 103 Units of total Partnership Participation in Partnership Profit. (See Richard Glasser's handwritten notes attached as Exhibit 2 and incorporated herein by reference.) Wainger would be required to pay (buy in) \$12,000 as an Additional Contribution-To-Capital but that would be deducted (in increments) from Distribution of Profits to the Partners all as provided under Article III, Section B of the Glasser Law Firm's Partnership Agreement dated December 20, 1984, becoming effective January 1,



1985 (attached as Exhibit 3 and incorporated herein by reference).

11. As a Partner, Wainger would no longer be on the Salary (\$8,333.33 per month or \$100,000 per year and 20% of gross fees generated from his own Clients, as provided in his June 23, 1987 Employment Agreement) but of course would receive his allocation (6/103rds) of Cash Received as Partnership Profits and also would receive 20% of gross fees generated from his own clients. Additionally, the Firm would make an annual contribution for Wainger's benefit in the Firm's Self-Employment Program (SEP) for retirement. However, there would be an annually adjusted, but cumulative monetary Limit or "Cap" on the cash monetary compensation (exclusive of the 20% derived from his own clients and of the SEP contribution) Wainger would be entitled to per year as his 6/103rds of the Partnership Profits. In any event, Wainger would be entitled to a "Draw" of \$6,000 per month (i.e., \$72,000 per year) as an "Advance" or "Draw," against his Total Share (6/103) of Cash Profits (whatever the Limit or Cap thereon) plus the additional 20% of the gross fees generated from his own clients. (See Exhibit 2 - Richard Glasser's Example given to Wainger.)

12. Therefore, Wainger became a Partner in the Glasser Firm as of January 1, 1990, but no written amendment of the Partnership Agreement was ever undertaken or made, as

envisioned in Article VIII. Addition of Partners (Exhibit 3, pp. 19, 20). Pursuant to Article III. Capital of the Firm, Section B. Additional Contributions to Capital, (Exhibit 3, pp. 5-6) Wainger actually bought-in and paid the following dollar amounts as Contributions To Capital during the 1990 year:

Date	Distribution of Profit	Withheld for Capital Contribution	Amount Received	Paid in To Cap. Account	Total Pd. In To Cap.Acct.
05/31/90	13,172.31	2,500.00	10,672.31	2,500.00	2,500.00
06/29/90	12,977.28	3,500.00	9,477.28	3,500.00	6,000.00
07/31/90	31,521.54	3,000.00	28,521.54	3,000.00	9,000.00
09/28/90	20,418.52	3,000.00	17,418.52	3,000.00	12,000.00
12/28/90	Via Wainger's Personal Check per Request of Management Committee Under Article III, Section B of the Partnership Agreement			13,186.81	25,186.81

13. Consequently, in 1990 (his first year as a Partner) Wainger paid the Glasser Firm \$25,186.81 in Capital, reduced his monthly "Draw" from \$8,333.33 to \$6,000.00 (i.e., his annual Guarantee from \$100,000 plus 20% of fees generated from his own Clients to an annual "Draw" of \$72,000 plus 20% of gross fees generated from his own clients) in exchange for 6/103rds of the Glasser Firm's Net Profits -- subject only to the annually adjusted "Limit" or "Cap" exclusive of his 20% feature and the SEP contribution. His 1990 "Limit" or "Cap" for cash received (See Exhibit 2) had been estimated at \$220,000 but actually ultimated at \$239,000, being determined by adding

cumulatively one-half of the gross fees produced from his own clients in each of his 2½ years as an Associate plus his \$72,000 Partner's Draw. (See Exhibit 2.)

14. The following Table covers Wainger's "Cap" or "Limit" in accordance with Richard Glasser's explanation and handwritten notes (Exhibit 2) during his tenure at the Glasser Firm:

A	B	C	D	E	F
Year	From Own Clients	One-Half of B	Cumulative Total of Gross Fees for Next Year's Cap	Draw	Cash Limit or Cap
1987	20,600	10,300	10,300		Employee
1988	218,000	109,000	119,300		Employee
1989	96,000	48,000	167,300		Employee
1990	162,000	81,000	248,300	72,000	= 239,300
1991	104,919	52,459	300,759	72,000	= 320,300
1992	71,788	35,394	336,153	72,000	= 372,759
1993				72,000	= 408,153

15. Richard Glasser's March 5, 1992 letter to Errol Lifland at Goodman & Co., CPAs, wherein Richard Glasser sets Wainger's 1991 Limit [Cap] at \$317,214.14 is attached as Exhibit 4 and is incorporated herein by reference.

16. Although Glasser's \$317,214.14 figure (for 1991) is essentially \$3,000 less than Wainger's calculation of \$320,300 as shown in the foregoing Table, Richard Glasser's letter (Exhibit 4) is an effective admission that Wainger's 1991



"Cap" was determined by adding cumulatively one-half of the Gross Fees Earned From Wainger's Own Clients in 1987, 1988, 1989, 1990 plus Wainger's "Draw" of \$72,000. Glasser admits that Total to be \$317,214.14.

17. Wainger served as a Partner in the Glasser Firm under the foregoing business arrangement from January 1, 1990 until January 21, 1992. Although he had never signed the Partnership Agreement of January 1, 1985, (See Exhibit 3), which predated his affiliation with the Glasser Firm, he knew that document as explained by Richard Glasser (See Glasser's notes -- Exhibit 2) applied to his Partnership Status. He did sign the Firm's Withdrawal Agreement with John T. Midgett dated September 28, 1990 (see attached as Exhibit 5 and incorporated herein by reference). However, that was an Agreement between Midgett and the Glasser Firm. Its Introductory Clauses or Preambles were not incorporated into the substantive agreement itself and do not constitute any agreement or amendment of the basic Glasser Partnership Agreement amongst the remaining Partners themselves. The sole operative provisions of that Agreement relate to and are between Midgett and the Glasser Firm (as further evidenced by the Title.."Withdrawal Agreement of John T. Midgett From Partnership In The Law Firm of Glasser and Glasser.") Indeed the active, operative, substantive Agreement begins on Page 2 (Exhibit 5) as follows:

"NOW THEREFORE, in consideration of the mutual agreements and covenants contained herein, John T. Midgett and Glasser and Glasser hereby agree as follows:"

No operative agreements between the remaining partners themselves are included.

18. In Article IX of that Agreement, there are provisions defining the rights of retiring, withdrawing or expelled Partners (See Exhibit 3, p. 21), the relevant portions being:

ARTICLE IX. PAYMENT FOR PARTNER'S INTEREST

The payment for a partner's interest in the partnership, calculated as of the date of his....withdrawal...will be on the following basis:

Item A. Any unpaid monthly draw....

Item B. His Capital Account.

Item C. His Individual Profits Accounts, plus his share, if any, of any undivided profits of the firm with respect to uncollected fees which were fully earned by the firm prior to the effective date of his....withdrawal...but which fees are received by the firm subsequent to such date.

19. Glasser admits in paragraph 13 of its Motion for Declaratory Judgment:

"13. Article IX of the Partnership Agreement sets forth the exclusive basis for

calculating a withdrawing partner's interest  
in the partnership."

(Attached as Exhibit 6 and incorporated  
herein by reference.)

20. There is no language in Article IX or elsewhere in the Partnership Agreement, or any written Amendment thereof, or in the preambles to the Midgett Withdrawal Agreement about any "Cap" or "Limit" on a Withdrawing Partner's share of Cash Received (or To Be Received) as Partnership Profits. Nor is there any reference in the Partnership Agreement or any written amendment thereof of the apparent oral modifications relating to fees to be derived from the Manville litigation as alleged in Count III, Paragraph 31 of Glasser's Motion for Declaratory Judgment (Exhibit 6, p. 6). However, there is no reference whatsoever either in the Partnership Agreement or in the preambles to the Midgett Withdrawal Agreement to the imposition of any "Cap" or "Limit" on the Payment For a Withdrawing Partner's Interest as Provided in Article IX of the Partnership Agreement.

21. These legal proceedings involve millions of dollars in judgments and millions of dollars in legal fees arising out of the Manville judgments and many other settlements with various other asbestos manufacturers and suppliers and other cases in which fees were fully earned prior to January 22, 1992. Consequently, the import and meaning of the Midgett



Withdrawal Agreement and any purported oral amendments to the basic Partnership Agreement (expressly Article IX thereof) must overcome a severe test of credibility. Logic, reason, common-sense and practical experience lead to a conclusion that capable, experienced attorneys (Glasser) who were so meticulous in their 39-page written Partnership Agreement of January 1, 1985 would never leave substantive amendments or revisions of that Agreement to "Oral Agreements" or "Withdrawal Agreements," particularly where millions of dollars in fees and personal income are concerned.

22. Although Wainger gave the Firm Notice of his voluntary withdrawal to be effective on January 31, 1992, his Partnership status was terminated on January 21, 1992. By that date, both the Firm and Wainger acknowledged a dispute concerning Wainger's "Rights" as a Withdrawing Partner, under Article IX of the Partnership Agreement. (See Exhibit 7, Glasser's January 21, 1992 letter to Wainger, 3rd paragraph.) (Exhibit 7 is attached and incorporated herein by reference.)

23. The Capital Account (Item B. of Article IX) expresses, amongst other things, in dollars the amounts that a partner has had withheld and transferred from his earnings (in his Undivided Profits Account) and also the additional amounts he has contributed directly from his other sources. (Exhibit 3, pp. 5, 6 - Article III - Capital Of The Firm, Section B). The

Partnership Agreement stipulates that the Capital Account (Investment or Principal) shall earn Interest or Income at the rate of 12% per annum until it is reimbursed to a Partner.

Exhibit 3, pp. 4, 5, 6:

Section A. Original Capital of The Firm  
(Relates to the Capital Contributions in 1985)

\* \* \* \*

Section B. Additional Contributions to Capital

The Management Committee may....withhold from distribution to partners and transfer...from their respective undivided profits accounts, and credit to each partner's capital account, as additional contributions to capital, such amounts as.... desirable or necessary. Interest shall be paid by the firm on all unreimbursed balances of all these additional contributions to capital at the rate of twelve percent (12%) per annum until fully repaid....

There can be no question therefore that the money represented in the Capital Account belongs to the individual partner -- not to the Firm.

24. Wainger has never been fully paid "Item B. His Capital Account" in which the December 31, 1991 - January 1, 1992 balance was \$104,283 (Wainger's 1992 K-1 is attached as Exhibit 8 and incorporated herein by reference). He was paid only \$41,217.45 via check and letter on January 21, 1992 as a partial distribution from his Capital Account. In that letter of transmittal, Richard Glasser admits the Firm's responsibility to make prompt payment of any additional funds owing to Wainger

from the Capital Account after necessary financial information became available. Specifically, Richard Glasser wrote:

"Your receipt and negotiation of this check will confirm your understanding and agreement that, once the necessary financial information is completed and available, the firm will promptly provide you with payment of any additional funds owing to you by virtue of your Capital Account; ...."

(See Exhibit 7, Glasser's January 21, 1992 - Letter to Wainger, paragraph 3.)

25. That admitted (but unverified) Capital Account Balance (\$63,065.55) was stated two months later by Glasser's Accountants in their letter of March 27, 1992 addressed to Michael Glasser (attached as Exhibit 9 and incorporated herein by reference).

26. By December 31, 1992, this balance was adjusted to \$63,064. (See Exhibit 8 - Wainger's Schedule K-1 from Glasser's 1992 Federal Tax Return.) Nevertheless, Glasser has never paid Wainger that admitted Capital Account (Item B) Balance of \$63,064.00, but has retained it as Operating Capital of the Firm.

27. Glasser's failure to pay the \$63,064 Capital Account Balance to Wainger was not the result of any financial inability as reflected in Glasser's 1992 Partnership Income Tax Return (attached under seal as Exhibit 10 and incorporated herein by reference). Obviously, Glasser's payment of Wainger's



\$63,064 Capital Account Balance as promised and envisioned in Richard Glasser's January 21, 1992 letter (Exhibit 7) would have produced only a negligible effect on the Firm's Total Distributable Profits and Amounts Distributable to the Individual Partners.

28. In a hearing before the United States District Court For the Eastern District of New York on January 7, 1993, David T. Austern, Esq., Counsel for the Manville Personal Injury Settlement Trust, testifying under interrogation by Richard Glasser as to the Virginia judgments from which Glasser's contingent fees will ultimately be paid, said:

Transcript, Page 27, Lines 13, 14:  
(Transcript attached as Exhibit 11 and incorporated herein by reference)

"...To us, the question is not if they get paid. It's when they get paid."

Richard Glasser had previously noted in that hearing that the Virginia claimants had...

Exhibit 11 - Transcript, Page 12, Lines 17-20:

"Mr. Glasser: ....the vested judgment and contract rights that the Virginia judgment creditors have established and fairly negotiated with the trust."

and

Exhibit 11 - Transcript, Page 21, Lines 2-4:

"Now the Virginia judgment creditors are unique for at least three reasons. Number one, they have consent judgment orders that are final and non-appealable."

29. Just as Glasser's clients have vested judgments and contract rights, Glasser has a vested contract right to a one-third fee (and 40% to 50% in some cases) of whatever amount is ultimately paid on those judgments. In other words, Glasser's "right" to a fee has been quantified and has vested at one-third of the amount actually paid on those judgments. As Mr. Austern of The Manville Trust/Fund said in answer to Mr. Glasser's interrogation:

"...the question is not if they get paid.  
It's when they get paid."

This situation thus falls squarely within the "plain meaning" of the Partnership Agreement's language:

"...uncollected fees which were fully  
earned....but which are received  
subsequent(ly)..."

30. On November 14, 1991, Richard S. Glasser circulated to the then partners of Plaintiff a certain "Notice of Partners' Meeting" (copy attached as Exhibit 12 incorporated herein) together with a proposed amended Partnership Agreement (copy attached as Exhibit 13 and incorporated herein).

31. Richard Glasser's proposed Amendments in November 1991 (prior to Wainger's withdrawal, when Richard Glasser sought a Federal Judgeship and/or contemplated Retirement) recognized that the Manville Fees were subject to the "uncollected..fully earned.., but not yet received" language of the basic Partnership Agreement. Obviously, that is the reason for his

proposed modifications (changes) as found on Page 22 thereof.  
(See Exhibit 13, Page 22 as highlighted.)

32. In John T. Midgett's Withdrawal Agreement of September 27, 1990 (Exhibit 5), Glasser deemed it not only appropriate to pay Midgett the items delineated in Article IX, Items A, B, and C of the Partnership Agreement, but also deemed it necessary to pay Midgett an additional sum which was Midgett's proportionate share of "costs" which had previously been incurred in the judgments against the Manville Corporation Asbestos Disease Compensation Fund and to acquire Midgett's express waiver of any interest in the Manville judgment fees. This payment of "costs" was not required under the Partnership Agreement, but is provided in Paragraph 5 of the Withdrawal Agreement, as follows:

Exhibit 5, p. 3, Paragraph 5:

"5. Glasser and Glasser hereby agrees to pay to John T. Midgett 6/91 of the cost incurred as of September 30, 1990, in all of the cases currently pending and in which judgments have been entered against Manville Corporation Asbestos Disease Compensation Fund..."

33. This additional, voluntary, non-contractually required payment to Midgett also serves as "contract-consideration" for Midgett's express waiver which follows shortly thereafter, in Paragraph 7 of the Withdrawal Agreement, as follows:



Exhibit 5, p. 3, Paragraph 7.

"7. John T. Midgett hereby agrees that, ....John T. Midgett waives any and all interest he may have in the fees of any cases against Manville Corporation Asbestos Disease Compensation Fund....It is agreed by John T. Midgett and Glasser and Glasser that the payments made pursuant to this Withdrawal Agreement are paid by Glasser and Glasser in complete and final settlement for all rights and interest of John T. Midgett in the law firm and/or cases and/or clients of Glasser and Glasser." (Emphasis added.)

This payment of proportionate "costs incurred" and the express "waiver" are other obvious acknowledgements that either the withdrawing partner had a "right" to share in the Manville Fees or at least the Partnership Agreement language -- (uncollected ...fully earned..., but not yet received fees) -- is ambiguous and needed the clarification of a purchase by Glasser and an express waiver by Midgett.

34. Attached hereto as Exhibit 14 and incorporated herein by reference is the Affidavit and Opinion of H. Leon Hodges, Certified Public Accountant and a respected accounting expert in this and many other courts as well as throughout this community and State. It is his opinion that the contingent Manville fees had (under Accounting Principles) become fixed (or vested) at one-third (or 40% to 50% as provided in the Retainer Agreement) and that the quantification in dollars was easily determinable, subject only to an appropriate Reserve to offset any contingency in the Actual Receipt thereof. Thus those

quantified contingent fees were "Assets" even though the Cash had not been received just as Accounts Payable were "Liabilities" even though not paid. Consequently, in a true and proper Balance Sheet, the Glasser Firm should show all of its Assets and Liabilities, even on a Cash Basis of Accounting.

35. The Partnership Agreement provided that it could be amended by a vote of the holders of at least two-thirds of the outstanding "Units of Participation," as defined in the Partnership Agreement.

36. At the time of the November 14, 1991 notice, there were 91 Units of Participation outstanding, 73 of which were held by Richard S. Glasser ( $48\frac{2}{3}$ ) and Michael A. Glasser ( $24\frac{1}{3}$ ) and six held by Defendant. Accordingly, Richard S. Glasser and Michael A. Glasser held 80% of the outstanding Units of Participation and their affirmative vote would permit the amendment of the Partnership Agreement to the form of Exhibit 13.

37. Before circulating Exhibit 13, Richard S. Glasser had expressed the desire to leave Plaintiff by seeking appointment as a Judge of the United States District Court for the Eastern District of Virginia.

38. Richard S. Glasser would turn 50 within three weeks of his November 14, 1991 proposal to amend the Partnership Agreement to permit retirement from The Glasser Firm at age 50

instead of age 60 (see page 25 of Exhibit 13) which would result in significant financial benefit to Richard S. Glasser under Article IX, Item D, and Article XII of the Partnership Agreement.

39. The Partnership Agreement, if amended in the form of Exhibit 13, would have substantially and materially adversely affected the rights of Defendant in that:

a. Richard S. Glasser also proposed an amendment to Article IX reinforcing the fact that certain uncollected fees relating to The Manville Trust and other asbestos cases were fully earned by the firm and would be payable to a partner "who retires from the practice of law" (e.g., Richard S. Glasser), but would not be payable to an expelled partner or a withdrawing partner who wished to continue practicing law (see Exhibit 13 at page 22), whereas under the Partnership Agreement, a withdrawing partner who wished to continue the practice of law would be entitled to share in such fees; and,

b. With Michael A. Glasser and Richard S. Glasser controlling 80% of the Units of Participation, and with the proposed changes to the Partnership Agreement in the form of Exhibit 13, Michael A. Glasser and Richard S. Glasser could have expelled all other partners of Plaintiff without cause and, because of the proposed changes to Article IX, no "expelled"

partner, who wished to continue the practice of law, would have retained his right to share in the undivided profits of Plaintiff with respect to uncollected fees relating to The Manville Trust, as defined in Exhibit 13, and other matters.

40. Faced with the certainty that Richard S. Glasser and Michael A. Glasser would vote their Units of Participation to amend the Partnership Agreement in substantially the form of Exhibit 13, Wainger decided to withdraw as a partner of Glasser and preserve his right to share in the undivided profits of Glasser with respect to fully earned uncollected fees from The Manville Trust and other asbestos cases.

41. By memorandum dated December 17, 1991 (copy attached as Exhibit 15 and incorporated herein by reference), Wainger confirmed his notification to Glasser that he would withdraw from Glasser effective January 31, 1992.

42. Fully earned fees from settlements of approximately 1,110 asbestos cases now subject to the final, non-appealable, existing Consent Judgment Orders and settlements with The Manville Trust, described on page 22 of Exhibit 13, approximate \$20,000,000. Glasser and the Newport News firm of Patten, Wornom & Watkins ("PW&W") have an "arrangement" to share fees between Glasser and PW&W in certain asbestos cases (1/3 of all Glasser's fees go to PW&W and 1/3 of all PW&W's fees go to Glasser). The total recovery against The Manville Trust is



approximately \$62,845,616 of which approximately \$47,175,486 is attributable to Glasser and approximately \$15,676,130 to PW&W. Attorney's fees of 1/3 of the total amount recovered are accordingly approximately \$15,725,162 attributable to Glasser (of which PW&W will receive 1/3 or approximately \$5,175,054) and approximately \$5,223,377 attributable to PW&W (of which Glasser will receive approximately \$1,741,125). Glasser's total fees from the final, non-appealable, existing Consent Judgment Orders and the settlements with The Manville Trust will approximate \$12,291,233. These statistics are based on attorney's fees of 33.3% (even though many of the contingent fee contracts are 40% or more) and are summarized as follows:

FINAL JUDGMENTS			CONTINGENT FEES		
Firm	Number	Total Amount	Total Fees	Glasser's	Patten's
Glasser	827	\$47,175,486	\$15,725,162	\$10,550,108	\$5,175,054
Patten	260	\$15,670,130	\$ 5,223,377	\$ 1,741,125	\$3,482,252
TOTALS	1,087	\$62,845,616	\$20,948,539	\$12,291,233	\$8,657,306

43. Under Article IX, such fees have been "fully earned," as confirmed by Richard S. Glasser's language included on page 22 of Exhibit 13, and Defendant is entitled to 6/91's of the undivided profits of Glasser with respect to those fees, when received by Glasser.

44. In addition to the uncollected fees relating to The Manville Trust, other final settlements were reached with

other asbestos defendants by Glasser and PW&W and other co-counsel of Glasser while Wainger was a general partner of Glasser, but will not be paid by such defendants until after Wainger withdrew from Glasser as provided in the various final settlement agreements. The amount of fully earned, but uncollected fees of Glasser with respect to these matters are unknown by Wainger, but, under the Partnership Agreement, Wainger is entitled to 6/91's of the undivided profits of Glasser with respect to such fees when all or any such fees are received by Glasser.

45. Glasser astutely perceived the legal importance of converting all clients' claims into *bona fide* judgments. To accomplish those judgments, every Glasser file, (including those of questionable merits which had been warehoused) had to be fully reviewed, prepared as a claim, (or upon the client's instruction, closed as a "No-Claim") and turned over to Richard Glasser and Seward Lawlor. They then negotiated a dollar-amount settlement with The Manville Fund/ Trust and upon agreement, a final, non-appealable consent judgment in each case was entered in the United States District Court For The Eastern District of Virginia. It is the totality of these and other claims/judgments that aggregate 1,087 judgments for \$62,845,616 and concomitant contingent fees as tabulated on page 20 hereinbefore and set forth in correspondence with the Manville

Personal Injury Settlement Trust (attached as Exhibit 16 and incorporated herein by reference.)

46. In order to achieve those consent judgments quickly and promptly, the Glasser firm extended a "one-time deal" or "offer" to all attorneys in the office. Seward Lawlor's handwritten outline of that "offer" is attached as Exhibit 17 and incorporated herein by reference. Its essential terms and requirements were:

1. The participating attorney would have full responsibility and accountability for the file/claim.
2. The attorney would perform full claim preparation, including client contact and management, medical exams and reports, file analysis, statistics, etc.
3. The participating attorney would be paid 10% of Glasser's fee.
4. This "one-time" deal would not affect or apply to any cumulative increase in the annual "Limit" or "Cap."
5. Attorney must be with office at time of settlement.

47. Wainger was a participating attorney in the foregoing "offer" and actually prepared 110 cases in which final non-appealable consent judgments were entered. Those cases are listed as Exhibit 18 and incorporated herein by reference. The

client's "right" to a recovery thus became a "vested" right (as defined by Richard Glasser in his argument on January 7, 1993 in the United States District Court For The Eastern District of New York). (See Transcript. pp. 12, Line 17, pp. 21, Line 2, pp. 27, Line 13, pp. 28 Line 22, pp. 29 Line 2, and pp. 32, Line 18, all attached as Exhibit 11.)

48. Just as the client's claim became a "vested right," so did the rate (percentage) of Glasser's contingent fee (1/3) become "vested." Thus, the client cannot now terminate Glasser and relegate Glasser's fee to a *quantum meruit* basis. Similarly, Wainger, having prepared 110 of those cases for entry of consent judgments, became "vested" in his "right" to 10% of whatever dollar amount of fees that Plaintiff receives.

49. As Equity acts *in personam*, an appropriate decree should provide Wainger's protection, no matter the dollar-amount actually and ultimately collected. The real Issue is the "Right" which Equity honors. Glasser has refused to abide by the terms of the Partnership Agreement and the "bonus offer" described in the preceding paragraph.

## COUNT II

50. Paragraphs 1 through 49 are incorporated herein by reference as though fully set forth.



51. In approximately January, 1991, Richard S. Glasser announced at a meeting of his partners that he was considering leaving Glasser by seeking appointment as a Judge of the United States District Court for the Eastern District of Virginia. During that meeting, it was confirmed that he was entitled to his share of the Manville fees which he would get if the fees were received after he became a Judge. If Glasser takes the inconsistent position from that meeting that the Manville fees were not fully earned as of January, 1991, then Wainger alleges, in the alternative, that the written 1985 Glasser and Glasser Partnership Agreement was orally modified and/or amended to establish that the Manville Trust judgments were deemed to be "fully earned," even though the fees were uncollected. Defendant relied on this oral modification which was supported by valuable consideration in, among other ways, providing valuable services to Glasser in asbestos and other cases handled by the partnership and in developing and bringing new business to the partnership.

Accordingly, as to Count I and Count II, Defendant asks that this Court:

1. Order Plaintiff to render Defendant an accounting to establish the amount of Defendant's capital account and undivided profits account;

2. Grant Defendant judgment for any unpaid amount of his capital account and undivided profits account plus 12% interest from the date of Defendant's withdrawal;
3. Grant Defendant judgment for any amounts due him as additional compensation under Item A of Article IX of the Partnership Agreement;
4. Grant Defendant a Decree providing his "right" to his proportionate share in the net fees ultimately received from the 1087 Johns-Manville judgments when, as and if the Manville Trust/Fund pays those judgments.
  - a. Provide for a periodic Accounting of the judgments paid and fees received.
5. Grant Defendant a Decree providing his "right" to an additional 10% of Glasser's net fees ultimately received from the 110 Johns-Manville final judgments on those 110 claims Defendant prepared pursuant to Glasser's special offer, when, as and if the Manville Trust/Fund pays those 110 final judgments.
  - a. Provide for a periodic Accounting of the judgments paid and fees received.
6. Grant Defendant a Decree providing his "right" to his proportionate share in the net fees ultimately received after January 1, 1992 from all claims or

cases (other than the 1087 Johns-Manville judgments) in which final settlements or final judgments were obtained prior to January 21, 1992 but which claims, settlements or judgments are paid in full or partially paid on an installment basis (and concomitant net fees accordingly received subsequent to January 21, 1992.)

- a. Provide for a periodic Accounting of all such payments, installments or otherwise and of the net fees received thereon.
7. Order an audit of Plaintiff's financial records to verify or amend the admitted balance in Wainger's Capital Account prior to granting Wainger a judgment with 12% interest thereon from January 21, 1992 per the Partnership Agreement and Virginia Code.
8. Grant Defendant such other relief as may be equitable and just.
9. Grant Defendant his costs incurred in these proceedings and assess the expense of a reference and accounting against Plaintiff.
10. Grant Defendant judgment for his costs.

TRIAL BY JURY IS DEMANDED as this case will be rendered doubtful by conflicting evidence of the parties as more fully evidenced by Stephen Wainger's Affidavit dated January 12, 1993,

which is attached as Exhibit 19 and incorporated herein by referenced.

STEPHEN WAINGER, Pro Se

By: Stephen Wainger, Pro Se

Stephen Wainger, Esq.  
BAR CODE #01337  
4705 Columbus Street, Suite 100  
Virginia Beach, VA 23462-6749  
(804) 552-6078

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Amended Counterclaim was hand-delivered to Gregory N. Stillman, Esq., Hunton & Williams, Crestar Bank Building, Norfolk, VA 23514, this 20<sup>th</sup> day of January, 1994.

Stephen Wainger



VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

STEPHEN WAINGER,	)	
	)	
Complainant,	)	
	)	
v.	)	CHANCERY NO. C92-1166
	)	
GLASSER AND GLASSER,	)	
A General Partnership,	)	
	)	
Respondent.	)	
	)	
GLASSER AND GLASSER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	AT LAW NO. L92-2021
	)	
STEPHEN WAINGER,	)	
	)	
Defendant.	)	

WAINGER'S AMENDED ANSWERS TO  
GLASSER AND GLASSER'S INTERROGATORIES  
NOS. 1 AND 2 FILED ON JUNE 25, 1992

COMES NOW complainant, Stephen Wainger, and amends his Answers to Interrogatories Nos. 1 and 2, which were filed by Glasser and Glasser on June 25, 1992 and answered by Wainger and sent by U.S. Mail to opposing counsel on July 22, 1992, on April 9, 1993, and October 28, 1993, as follows:

1. With respect to each expert whom you expect to call as a witness at trial, and each expert who has been retained or specifically employed by you in anticipation of litigation or preparation for trial but who is not expected to be called as a witness, (including those with knowledge of customs or usages), state:

- a. The name and address of such witness and subject matter on which the expert is expected to testify or about which the expert was consulted;

- b. The substance of the facts and opinions to which the expert is expected to testify or about which he has been consulted;
- c. A summary of the grounds of each opinion.

ANSWER:

- (1) Harry E. McCoy, Esquire  
400 Century Drive  
Marco Island, FL 33937

Mr. McCoy will render an expert opinion as set forth in his Affidavit/Report previously provided to respondent.

- (2) H. Leon Hodges, C.P.A.  
301 Cedar Road  
Chesapeake, VA 23320

Mr. Hodges will render an expert opinion as set forth in his Affidavit/Report previously provided to respondent. Mr. Hodges will also testify and give his expert opinion on the results of his accounting of Glasser and Glasser's financial and other records which he has reviewed and which establish that Wainger's capital account, as of January 21, 1992, exceeds the capital account which Glasser attributed to be due Wainger in the amount of \$63,065.55. See Goodman and Company's letter to Michael Glasser dated March 27, 1992. The total amount of Wainger's capital account has not yet been determined by Mr. Hodges and this interrogatory answer will be supplemented when Mr. Hodges' accounting is complete.

Wainger incorporates the Affidavits/Expert Reports of H. Leon Hodges and Harry E. McCoy as though fully set forth herein.

2. State the terms of all agreements you had with respect to your rights and obligations as a partner in Glasser and Glasser. Additionally, with respect to each such agreement, state and/or identify the following:

- a. The date on which the parties entered into the agreement;
- b. The date the agreement took effect;
- c. The date the agreement was terminated;
- d. The terms and effective date of each amendment to the agreement;
- e. Whether the agreement was written, oral, or both;
- f. All writings embodying in whole or in part the terms of the agreement; and
- g. Each person with personal knowledge of the facts set forth in your response to this interrogatory.

ANSWER:

(a) (b) (d) (e) (f) To Wainger's knowledge, in early 1989, Seward Lawlor, acting for Glasser and Glasser, made the offer to associates of Glasser and Glasser attached as Exhibit A. Wainger is entitled to the 10% bonus with respect to the cases listed on Exhibit B.

In late fall of 1989, Richard Glasser, Michael Glasser and Wainger began discussing Wainger's admission to partnership status. Richard Glasser prepared Exhibit C to explain certain financial terms of the partnership. In connection with his decision, Wainger reviewed the Partnership Agreement of Glasser and Glasser (attached to the Bill of Complaint as Exhibit A).

Wainger then spoke to John Midgett, Seward Lawlor and Melvin Zimm regarding the terms of the partnership as offered by Richard Glasser and Michael Glasser. After receiving Exhibit D from John Midgett, on November 30, 1989, he met with John Midgett and prepared Exhibit E.

On December 4, 1989, Wainger met with Richard Glasser and prepared Exhibit F and delivered Exhibit G to Richard Glasser.

On December 6, 1989, Wainger met with John Midgett and prepared Exhibit H.

On December 18, 1989, Wainger met with Richard Glasser, Michael Glasser, Seward Lawlor and John Midgett and prepared Exhibit I.

On December 19, 1989, Wainger met with Richard Glasser, Michael Glasser, Seward Lawlor and John Midgett. He reviewed with them the figures shown on Exhibit J. After accepting the



partnership offer on or about December 20, 1989, he prepared Exhibit J.

On the date of his acceptance of the partnership offer, the terms of his admission, effective January 1, 1990, were:

- (1) Wainger would receive 6 of the 97 units of participation;
- (2) his annual base salary would be \$72,000;
- (3) based on 50% of his cumulative non-firm business fee receipts since joining the firm in 1987 of approximately \$167,000, his initial annual salary for cash profits received in 1990 could be approximately \$240,000 which was Wainger's "cap" for 1990. Fees that were earned but not received in a given year (including 1990) had no bearing or affect on reaching the "cap" in a given year or subsequent year. The "cap" did not apply and was not a limitation in evaluating a withdrawing partner's interest in the partnership which is calculated as of the effective date of the partner's withdrawal. Each subsequent year, Wainger's annual salary "cap" for cash profits received would be increased on a cumulative

basis by 50% of his non-firm business fee receipts collected during that year.

- (4) he would be entitled to a bonus of 20% of the non-firm fee receipts he generated, except that Wainger would continue to be entitled to 50% of the net fees of the cases listed on Schedule A to his Employment Agreement with Glasser and Glasser dated June 23, 1987; and
- (5) his buy-in would be approximately \$12,000.

On January 1, 1990, to Wainger's best knowledge, the Partnership Agreement of December 20, 1984 was the only written partnership agreement of Glasser and Glasser.

Some time in the Fall of 1990, Wainger met with John Midgett who had prepared Exhibit K showing in exact detail the Glasser and Glasser compensation system which specifically reflected Wainger's draw.

Based upon the expert report of Mr. McCoy and other discovery obtained to date, the previous answer that "on September 27, 1990, the partnership agreement of Glasser and Glasser dated December 20, 1984 was amended by the withdrawal agreement of John Midgett (attached to the Bill of Complaint as Exhibit D)" is hereby withdrawn and specifically denied.

Further, the withdrawal agreement of John Midgett is neither a part of the Partnership Agreement nor an amendment thereof. The Midgett Withdrawal Agreement is merely an agreement by and between John T. Midgett and the law firm of Glasser and Glasser."

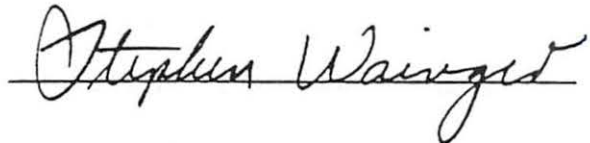
The Partnership Agreement of January 1, 1985 (signed by the partners on December 20, 1984) and Richard S. Glasser's written notes constituted the written partnership agreement of Glasser and Glasser as it pertained to Stephen Wainger.

In approximately January, 1991, Richard S. Glasser announced at a meeting of his partners that he was considering leaving Glasser by seeking appointment as a Judge of the United States District Court for the Eastern District of Virginia. During that meeting, it was confirmed that he was entitled to his share of the Manville fees which he would get if the fees were received after he became a Judge. If Glasser takes the inconsistent position from that meeting that the Manville fees were not fully earned as of January, 1991, then Wainger alleges, in the alternative, that the written 1985 Glasser and Glasser Partnership Agreement was orally modified and/or amended to establish that the Manville Trust judgments were deemed to be "fully earned," even though the fees were uncollected.

(c) On January 21, 1992, Wainger withdrew as a partner of Glasser and Glasser. On that date, all rights of Wainger as a partner of, and all obligations of Wainger to Glasser and Glasser, except those rights and obligations set forth in the January 1, 1985 written Partnership Agreement, and the written notes of Richard S. Glasser confirming the terms of Wainger's partnership offer (together the written partnership agreement), which by their nature, survived Wainger's withdrawal.

(g) Wainger, all partners of Glasser and Glasser named as defendants in this action, Ronald F. Schmidt, John T. Midgett, Errol Lifland, Deborah Flora, H. Leon Hodges, and Harry E. McCoy.

STEPHEN WAINGER

A handwritten signature in cursive script that reads "Stephen Wainger". The signature is written in dark ink and is positioned below the printed name "STEPHEN WAINGER".

Stephen Wainger, Esq.  
BAR CODE #01337  
Huff, Poole & Mahoney, P.C.  
4705 Columbus Street, Suite 100  
Virginia Beach, VA 23462-6749  
(804) 552-6078

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing Wainger's Amended Answers to Glasser and Glasser's Interrogatories Nos. 1, and 2, Filed on June 25, 1992, was



mailed to Gregory N. Stillman, Esq., Hunton & Williams, P. O.  
Box 3889, Norfolk, VA 23514, this 24<sup>th</sup> day of January, 1994.

Stephen Wainget

VIRGINIA: CIRCUIT COURT FOR THE CITY OF NORFOLK

GLASSER AND GLASSER,

Plaintiff,

v.

STEPHEN WAINGER,

Defendant.

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At Law No. L92-2021

STEPHEN WAINGER,

Complainant,

v.

GLASSER AND GLASSER,

Respondent.

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Chancery No. C92-1166

**ANSWER AND GROUNDS OF DEFENSE  
TO WAINGER'S AMENDED PLEADINGS  
ON BEHALF OF GLASSER AND GLASSER**

Glasser and Glasser, by counsel, states as follows for its answer and grounds of defense to Mr. Wainger's Amended Bill of Complaint and Amended Counterclaim (collectively "Complaint"):

**First Defense**

1. Glasser and Glasser admits the allegations in Paragraph 1 of the Complaint.
2. Glasser and Glasser denies the allegations in Paragraph 2 of the Complaint.
3. Glasser and Glasser is without information insufficient to form a belief as to the truth of the allegations in paragraph 3 of the Complaint and therefore denies them.

4. Glasser and Glasser denies the allegations in paragraph 4 of the Complaint to the extent they are inconsistent with the Employment Agreement described in that paragraph.

5. Glasser and Glasser is without information sufficient to form a belief as to the truth of the allegations in paragraph 5 of the Complaint and therefore denies them.

6. Glasser and Glasser denies the allegations in paragraph 6 of the Complaint.

7. Glasser and Glasser denies the allegations in paragraph 7 of the Complaint.

8. Glasser and Glasser denies the allegations in paragraph 8 of the Complaint.

9. Glasser and Glasser admits that it represents personal injury (and death) claimants against various producers of asbestos and asbestos products. Glasser and Glasser denies the remaining allegations in paragraph 9 of the Complaint.

10. Glasser and Glasser admits that Richard Glasser approached Mr. Wainger with a partnership offer toward the end of 1989. Glasser and Glasser denies the remaining allegations in paragraph 10 of the Complaint.

11. Glasser and Glasser denies the allegations in paragraph 11 of the Complaint to the extent they are inconsistent with Mr. Wainger's Employment Agreement, the written Partnership Agreement, and/or the Withdrawal Agreement of John T. Midgett.

12. Glasser and Glasser denies the allegations in paragraph 12 of the Complaint.

13. Glasser and Glasser denies the allegations in paragraph 13 of the Complaint.

14. Glasser and Glasser denies the allegations in paragraph 14 of the Complaint.

15. Paragraph 15 of the Complaint requires no response.

16. Glasser and Glasser denies the allegations in paragraph 16 of the Complaint.

17. Glasser and Glasser denies the allegations in paragraph 17 of the Complaint to the extent they are inconsistent with the written Partnership Agreement and/or the Withdrawal Agreement of John T. Midgett.

18. Glasser and Glasser denies the allegations in paragraph 18 of the Complaint to the extent they are inconsistent with the written Partnership Agreement and/or the Withdrawal Agreement of John T. Midgett.

19. Glasser and Glasser denies the allegations in paragraph 19 of the Complaint.

20. Glasser and Glasser denies the allegations in paragraph 20 of the Complaint.

21. Glasser and Glasser denies the allegations in paragraph 21 of the Complaint.

22. Glasser and Glasser admits that Mr. Wainger's initial notice called for his status as a partner to terminate on January 31, 1992, that Mr. Wainger's status as a partner expired before January 31, 1992, and that on January 21, 1992, it became apparent that Mr. Wainger was claiming for the first time an interest in firm matters in which he had no interest. Glasser and Glasser denies the remaining allegations in paragraph 22 of the Complaint.

23. Glasser and Glasser denies the allegations in paragraph 23 of the Complaint to the extent they are inconsistent with the written Partnership Agreement and/or the Withdrawal Agreement of John T. Midgett.

24. Glasser and Glasser admits that it has not paid Mr. Wainger any additional funds under Item B since January 21, 1992. Glasser and Glasser denies that Mr. Wainger was entitled to the prompt payment of any capital account funds. Glasser and Glasser further denies the allegations in paragraph 24 of the Complaint to the extent they are



inconsistent with the terms of the January 21, 1992 letter described in that paragraph, Wainger's 1992 K-1, and/or the Partnership Agreement. Glasser and Glasser affirmatively alleges that any amount remaining in Mr. Wainger's capital account is subject to offset for expenses incurred by Glasser and Glasser in connection with this ongoing litigation.

25. Glasser and Glasser denies the allegations in paragraph 25 of the Complaint to the extent they are inconsistent with the terms of the March 27, 1992 letter described in that paragraph. Glasser and Glasser is without information sufficient to form a belief as to the truth of the allegations pertaining to the amount of Mr. Wainger's current capital account balance and therefore denies them. Glasser and Glasser affirmatively alleges that any amount remaining in Mr. Wainger's capital account is subject to offset for expenses incurred by Glasser and Glasser in connection with this ongoing litigation.

26. Glasser and Glasser denies the allegations in paragraph 26 of the Complaint to the extent they are inconsistent with the terms of Wainger's 1992 K-1 described in that paragraph. Glasser and Glasser is without information sufficient to form a belief as to the truth of the allegations pertaining to the amount of Mr. Wainger's current capital account balance and therefore denies them. Glasser and Glasser affirmatively alleges that any amount remaining in Mr. Wainger's capital account is subject to offset for expenses incurred by Glasser and Glasser in connection with this ongoing litigation. Glasser and Glasser denies the remaining allegations in paragraph 26 of the Complaint.

27. Glasser and Glasser admits that the fact that Mr. Wainger's has received no capital account payments since January 21, 1992, results from a dispute as to the amount, if any, to which Mr. Wainger is entitled and not the result of Glasser and Glasser's financial

inability to make any such payments. Glasser and Glasser affirmatively alleges that any amount remaining in Mr. Wainger's capital account is subject to offset for expenses incurred by Glasser and Glasser in connection with this ongoing litigation. Glasser and Glasser denies the remaining allegations in paragraph 27 of the Complaint.

28. Glasser and Glasser denies that any of its fee agreements are contingent on obtaining a judgment. Glasser and Glasser further denies the allegations in paragraph 28 of the Complaint to the extent they are inconsistent with the entire transcript described in that paragraph and/or inconsistent with Judge Weinstein's ruling denying the relief sought by Glasser and Glasser.

29. Glasser and Glasser denies the allegations in paragraph 29 of the Complaint.

30. Glasser and Glasser admits that in November 1991, Richard Glasser circulated to the then existing partners of the firm a certain "Notice of Partners' Meeting" dated November 14, 1991 together with a proposed amended partnership agreement. Glasser and Glasser denies the remaining allegations in paragraph 30 of the Complaint.

31. Glasser and Glasser denies the allegations in paragraph 31 of the Complaint.

32. Glasser and Glasser denies the allegations in paragraph 32 of the Complaint.

33. Glasser and Glasser denies the allegations in paragraph 33 of the Complaint.

34. Glasser and Glasser denies the allegations in the last two sentences of paragraph 34 of the Complaint. Glasser and Glasser is without information sufficient to form a belief as to the truth of the remaining allegations in paragraph 34 of the Complaint and therefore denies them.

35. Glasser and Glasser denies the allegations in paragraph 35 of the Complaint to the extent they are inconsistent with the terms of the written Partnership Agreement.

36. Glasser and Glasser admits the allegations in the first sentence of paragraph 36 of the Complaint. Glasser and Glasser denies the remaining allegations in paragraph 36 of the Complaint. Moreover, no such amendment was ever approved.

37. Glasser and Glasser admits that Richard Glasser was approached about becoming a federal judge for the Eastern District of Virginia in January 1991, but was no longer being considered for such position as of November 1991.

38. Glasser and Glasser admits that Richard Glasser turned 50 within three weeks of November 14, 1991. Glasser and Glasser denies the remaining allegations in paragraph 38 of the Complaint.

39. Glasser and Glasser denies the allegations in paragraph 39 of the Complaint.

40. Glasser and Glasser denies the allegations in paragraph 40 of the Complaint.

41. Glasser and Glasser admits the allegations in paragraph 41 of the Complaint, but in fact Mr. Wainger's status as a partner terminated prior to January 31, 1992.

42. Glasser and Glasser denies the allegations in paragraph 42 of the Complaint.

43. Glasser and Glasser denies the allegations in paragraph 43 of the Complaint.

44. Glasser and Glasser denies the allegations in paragraph 44 of the Complaint.

45. Glasser and Glasser denies the allegations in paragraph 45 of the Complaint.

46. Glasser and Glasser denies the allegations in paragraph 46 of the Complaint.

47. Glasser and Glasser denies the allegations in paragraph 47 of the Complaint.

48. Glasser and Glasser denies the allegations in paragraph 48 of the Complaint.

49. Glasser and Glasser denies the allegations in paragraph 49 of the Complaint.

50. Glasser and Glasser separately has filed a demurrer to Count II of the Complaint.

51. Glasser and Glasser separately has filed a demurrer to Count II of the Complaint.

52. All allegations not expressly admitted herein are hereby denied.

### Second Defense

Glasser and Glasser denies that Mr. Wainger is entitled to any of the relief requested in the Complaint.

### Third Defense

Some or all of Mr. Wainger's claims are or may be barred by the doctrines of unclean hands, judicial estoppel, waiver, estoppel, as well as failure of consideration, illegality, the statute of frauds, the statute of limitations, and his breach of fiduciary duty owed to Glasser and Glasser.

WHEREFORE, Glasser and Glasser asks that the Complaint be dismissed and that it be awarded its costs and attorney's fees incurred herein.



GLASSER AND GLASSER

By   
Of Counsel

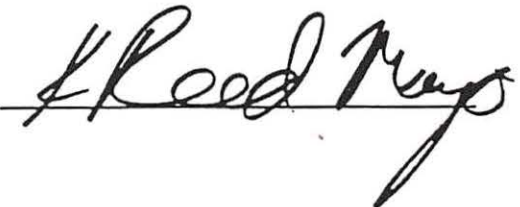
Gregory N. Stillman  
K. Reed Mayo  
HUNTON & WILLIAMS  
Post Office Box 3889  
Norfolk, Virginia 23514  
(804) 625-5501

Counsel

CERTIFICATE OF SERVICE

I hereby certify that on January 31, 1994, a true copy of the foregoing ANSWER AND GROUNDS OF DEFENSE TO WAINGER'S AMENDED PLEADINGS ON BEHALF OF GLASSER AND GLASSER was mailed to:

Stephen Wainger, Esquire  
4705 Columbus Street  
Virginia Beach, VA 23452



T:\Glasser\Answer.GOD

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF NORFOLK

STEPHEN WAINGER,	)	
	)	
Plaintiff,	)	
	)	IN CHANCERY
v.	)	NO. C92-1166
	)	
GLASSER AND GLASSER,	)	
	)	
Defendant.	)	

-----

GLASSER AND GLASSER,	)	
	)	
Plaintiff,	)	
	)	AT LAW NO.
v.	)	L92-2021
	)	
STEPHEN WAINGER,	)	
	)	
Defendant.	)	

EXCERPT OF  
TRANSCRIPT OF PROCEEDINGS

Norfolk, Virginia

February 25, 1994

Before: HONORABLE JOHN E. CLARKSON, JUDGE

Appearances:

STEPHEN WAINGER, ESQUIRE, pro se

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resolve an ambiguity in the first place. If we were, we can't have summary judgment.

Now, he spent a great deal of time talking to you about the fact that all of the words in the partnership agreement have to have meaning. I agree completely with that. He says that you have to ascribe some meaning to the term "uncollected fees" or otherwise those words would have no meaning in the context of what we are arguing. The fact of the matter is that that pertains to hourly fees. The fact of the matter is that if you want to have a susceptible interpretation of what uncollected fees means, it clearly means hourly fees. It clearly doesn't mean contingent fees where a contingency is required before that fee is realized.

So when you're talking about dividing uncollected fees that are still not in the firm, what are you talking about? You're talking about hourly fees, or at least you could be. If you want to be academic about it and say, well, what -- how can I interpret this agreement to make sense, the way you interpret it to make sense, you say, well, that obviously refers to hourly fees, which in fact it does refer to.

So I agree with Mr. Wainger you have to give effect to every word.

We were criticized for not providing the

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1 VIRGINIA:

2 IN THE CIRCUIT COURT FOR THE CITY OF NORFOLK

3 STEPHEN WAINGER, )

4 Plaintiff, )

5 v. )

6 GLASSER AND GLASSER, )

7 Defendant. )

IN CHANCERY  
NO. C92-1166

8 -----  
9 GLASSER AND GLASSER, )

10 Plaintiff, )

11 v. )

12 STEPHEN WAINGER, )

13 Defendant. )

AT LAW NO.  
L92-2021

14  
15 TRANSCRIPT OF PROCEEDINGS

16  
17 Norfolk, Virginia

18 April 15, 1994

19  
20 Before: HONORABLE JOHN E. CLARKSON, JUDGE

21  
22 Appearances:

23 STEPHEN WAINGER, ESQUIRE, pro se

24  
25 372



1 THE COURT: And, again, I understand that --  
2 maybe it's because I don't understand all those -- the way  
3 they give a judgment. I think down here if you've gotten  
4 a judgment in this court and the defendant said, Well,  
5 we'll pay it, and you just hadn't gotten it yet, that's  
6 one thing. I understand. I think that's fully earned  
7 right there. Now, maybe I'm committing myself --

8 MR. WAINGER: Well, I think you're  
9 absolutely right.

10 THE COURT: -- but I think that that's just  
11 about all you can do. But now we've got stays, we've got  
12 all sorts of federal problems, federal courts and other  
13 courts dealing with it.

14 MR. WAINGER: That does not change it in the  
15 least, respectfully.

16 THE COURT: That's what you're going to  
17 argue.

18 MR. WAINGER: That's -- respectfully I think  
19 that's what is supported by the law and by everything  
20 else. This doesn't talk -- this accrual doesn't talk  
21 anything about collecting it, doesn't say the first thing  
22 about collecting it, DR 201-5, and, in fact, that's not  
23 the case at all. It just simply has -- the fully earned  
24 has nothing to do with the collection of it. The  
25 interest, the right to the fee, is accrued at the time

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\*

\*

1 but let's see what Mr. Glasser said.

2 He says near the end, After four years of  
3 constant litigation with multiple obstacles from the  
4 courts, the future claimants, all of the other  
5 unliquidated claimants, and the trust, counsel for the  
6 VJCs, which are the Virginia judgment creditors, secured  
7 payment for their own clients as well as all other  
8 judgment creditors and settlement creditors of the  
9 Manville Trust, a collective benefit of more than  
10 \$350,000,000 to those claimants. All of these legal  
11 services were supervised and directed by Robert R. Hatten  
12 and Richard Glasser, who hired counsel in Washington,  
13 D. C. and New York to assist in the prosecution of the  
14 various appeals and appearances in New York. The  
15 out-of-pocket cost associated with the collection of these  
16 judgments is in excess of \$300,000.

17 Well, the collective benefit was  
18 \$300,000,000 for the lawyers in Texas who went to the  
19 beach. I mean, here are lawyers who had \$300,000,000 in  
20 judgments. Glasser here collected -- I think they had  
21 300 -- the Texas people had \$300,000,000 and Glasser had  
22 \$50,000,000. The costs incurred were \$300,000, which is  
23 eight ten-thousandths percent of the collective benefit.  
24 The amount collected by Glasser was \$50,000,000 and the  
25 total cost by Glasser was \$300,000, which was

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\* ADAMS, HARRIS & MARTIN INC.  
Norfolk, Virginia 804-622-0457

\*



1 Are you telling me that in a lawsuit against the firm I'm  
2 entitled to construe it against him? Am I entitled to  
3 construe it against the law firm because I was not  
4 involved in writing that document? In fact, Richard  
5 Glasser did not write that document, so why should that  
6 document be construed against him. As a practical matter  
7 why should it be construed against Bill Monroe, which in  
8 effect is what Mr. Wainger is asking you to do. In this  
9 context that's not the way that worked, and ultimately in  
10 any event that only applies -- even if that rule does  
11 apply it only applies with respect to the resolution of  
12 ambiguities. In other words, you resolve ambiguities in  
13 an instrument against the drafter of that instrument. In  
14 this case Mr. Wainger has told you the document is not  
15 ambiguous, so how can you resolve something that's not  
16 ambiguous? There is no ambiguity to resolve so,  
17 therefore, it would not be appropriate to do that.

18 Now, as I indicated to you previously, he  
19 referred -- Mr. Wainger referred to the Second Circuit's  
20 opinion in this case that somehow in the summer of 1990  
21 Glasser and Glasser's clients had an entitlement. There's  
22 no question but that they had an entitlement in the summer  
23 of 1990. That -- that's what they spent three years  
24 trying to prove to the Second Circuit.

25 And by the way, when Mr. Wainger tells you



1 that the costs were \$300,000 he doesn't know what he's  
2 talking about. He's clearly outside of the record, but I  
3 can tell you as a practical matter that these are  
4 out-of-pocket costs, these are not legal fees. The  
5 \$300,000 that's referred to here does not include one hour  
6 of Glasser and Glasser's time, but Richard Glasser's time  
7 or Michael Glasser's time or any of the other lawyers in  
8 the law firm devoting their efforts to this case. All of  
9 Mr. Glasser's travel time, back and forth to New York and  
10 to attend hearings and so forth, none of that time is  
11 recorded in that \$300,000. These are simple out-of-pocket  
12 costs that Mr. Wainger has not shared in, Mr. Wainger has  
13 not been asked to share in, but Glasser and Glasser has.  
14 And that's the point. And you talk about being  
15 disingenuous to stand up in front of you when you don't  
16 have any idea what that number refers to and represent to  
17 the court that there were \$300,000 worth of costs is  
18 simply not fair. That's not the facts.

19 Now, the point simply is that just because  
20 the Second Circuit says that as a result of those  
21 judgments the Virginia claimants had an entitlement in the  
22 summer of 1990, that doesn't have anything to do with the  
23 Virginia claimants' view as to when these fees were fully  
24 earned. The issue of when they were fully earned is  
25 between Glasser and Glasser and its clients. It's not as



1 a result of what the Second Circuit says. Glasser and  
2 Glasser's clients may say, Yeah, okay, I agree I had an  
3 entitlement in the summer of 1990, but I didn't get my  
4 money, and as far as I'm concerned Glasser and Glasser had  
5 not earned theirs because I didn't have my money.

6 The agreements between Glasser and Glasser  
7 and their clients require Glasser and Glasser to effect a  
8 recovery. They don't say anything about getting a  
9 judgment. They don't say anything about getting the  
10 Manville Trust to sign consent judgments. They could care  
11 less about that. A consent judgment to these clients  
12 meant absolutely nothing. The only thing that meant  
13 something to these clients was effecting an actual  
14 recovery, and you should never -- no court should ever  
15 establish a rule of law that allows lawyers to take the  
16 position that a fee is fully earned in a contingent fee  
17 case before the clients effect a recovery. And I'm not  
18 talking about some silly situation where you and I agree  
19 to settle a case and the check's in the mail and it just  
20 doesn't get there. That's not what I'm talking about.  
21 I'm talking about where a client says, When am I going to  
22 get my check? And all I can do is say I have no idea and,  
23 in fact, I don't have any idea if you're ever going to get  
24 your check. And three years later after -- with hundreds  
25 of thousands of dollars of legal fees and costs in

1 addition to that they ultimately get it while Mr. Wainger  
2 is practicing law with another law firm. That's the  
3 situation that I'm talking about. I'm not talking about  
4 some situation where the check is in the mail and you and  
5 I have agreed. We wouldn't be fighting about that.

6 THE COURT: What about his argument that it  
7 could be set in principle and then he would pay his seven  
8 percent or proportionate share of any costs or attorneys'  
9 fees or anything else? That's what he was arguing, I  
10 think.

11 MR. STILLMAN: Well, that is what he  
12 argues. The problem with that argument is, once again, if  
13 you establish a rule of law that says that contingent fees  
14 are fully earned before the client effects a recovery,  
15 then once again you're basically saying the lawyers don't  
16 have any obligations once they get a judgment. You're  
17 saying that lawyers get a judgment and they can say,  
18 Clients, send me your money when you get it.

19 THE COURT: I think that's what he argues.

20 MR. STILLMAN: That is exactly what he's  
21 arguing, and I don't think that's the law, and I don't  
22 believe that's what the partners of Glasser and Glasser  
23 meant when they said in order for a withdrawing partner to  
24 collect uncollected fees they must be fully earned, fully  
25 earned. \* \* \*

1 VIRGINIA:

2 IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

3 STEPHEN WAINGER, )

4 Complainant, )

CHANCERY NO. C92-1166

5 v. )

6 GLASSER & GLASSER, )

7 a general partnership, )

8 Respondent. )

9 GLASSER & GLASSER, )

10 Plaintiff, )

11 v. )

AT LAW NO. L92-2021

12 STEPHEN WAINGER, )

13 Defendant. )

14  
15 Norfolk, Virginia

16 May 23, 1994

17 Before: The Honorable JOHN E. CLARKSON

18 Appearances:

19 STEPHEN WAINGER, ESQUIRE, appearing pro se

20 HUNTON & WILLIAMS

21 By: GREGORY N. STILLMAN, ESQUIRE

22 K. REED MAYO, ESQUIRE

23 Counsel for the Respondent/Plaintiff



1           THE COURT: It is my understanding that each of  
2 you -- all of you feel that this matter is right for a  
3 decision from the Court. I gather that there aren't any  
4 real factual problems now, and I think, in fact, each of you  
5 had asked for summary judgment, and I'm going to grant it.

6           This case arises from employment of Stephen  
7 Wainger as an associate, and subsequently as a partner, in  
8 the law firm of Glasser & Glasser. Mr. Glasser and his firm  
9 have traditionally for many years, I believe since 1976,  
10 represented various plaintiffs throughout the country  
11 against various and sundry asbestos manufacturers,  
12 wholesalers, retailers, users, etcetera.

13           Wainger joined Glasser & Glasser as an  
14 associate in June of 1987, and while an associate, and later  
15 as a partner, he was responsible for handling approximately  
16 110 plaintiff cases alleging asbestos product liability  
17 against the Manville Trust and others. It is my  
18 understanding as far as this motion is concerned, and also  
19 as far as the lawsuit and chancery cause are concerned,  
20 we're talking just about the Manville cases and no others.  
21 Mr. Wainger's claim stems from Glasser & Glasser's  
22 representation of various plaintiffs against the Manville  
23 Corporation, and in each case the plaintiff signed a  
24 contingent fee arrangement with Glasser & Glasser entitling  
25 Glasser & Glasser upon recovery a fee, and if my memory

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1 serves me correctly, I think it was -- which is not relevant  
2 at this point. Mr. Wainger apparently was very successful  
3 in handling these cases and other matters that he brought to  
4 the firm, and because of his active participation and legal  
5 abilities, he was asked to become a partner in the firm on  
6 January 1st of 1990. Thereafter, shortly thereafter, in  
7 December of 1991, Mr. Wainger orally advised his partners at  
8 Glasser & Glasser that at that point he intended to withdraw  
9 from the firm. His withdrawal became effective no later  
10 than January 21st, 1992.

11 The issue before this Court in the law action  
12 and in the chancery cause is whether or not Glasser &  
13 Glasser, quote, fully earned, unquote, the legal fees in the  
14 Manville cases now pending in -- well, judgment was  
15 rendered, but they are still pending in a federal court.

16 MR. WAINGER: I believe the judgments have been  
17 paid, judge.

18 THE COURT: All right. Judgment has now been  
19 paid.

20 MR. STILLMAN: I assume you were talking as of  
21 the day of Mr. Wainger's departure from --

22 THE COURT: I was talking -- the issue is  
23 whether they were earned by his departure, not whether they  
24 had been paid. Maybe that was brought to my attention. I  
25 just forgot it. The question is, were the legal fees earned

1 before he left. Mr. Wainger alleges that Glasser & Glasser  
2 has fully earned the Manville fees by obtaining a judgment  
3 and, therefore, he would be entitled to his portion or share  
4 of the partnership -- or his portion or share of the fees.  
5 Mr. Glasser -- I mean, Mr. Wainger bases his allegations and  
6 proof on the written partnership agreement. I believe that  
7 there was a question as to whether or not he had signed that  
8 agreement. What I believe that all parties agreed, that if  
9 he is going to recover at all, he would recover because of  
10 that agreement, and, therefore, that is the agreement that  
11 this Court must use in its ruling.

12 The agreement specifically outlines the  
13 payments which a partner is entitled to recover for his  
14 partnership interest. The payments consist of any unpaid  
15 monthly draws as item A, and additional compensation as  
16 described in paragraph three of Section B, Article IV, plus  
17 his capital account, which it's my understanding has either  
18 been paid or will be paid with interest. I assume -- Mr.  
19 Wainger is shaking his head. It has not been paid, but it  
20 certainly should be paid. I'm not sure why it hasn't been  
21 paid, but --

22 MR. STILLMAN: The reason is, the accounting  
23 has not yet been completed, so we really don't know what  
24 that number is.

25 THE COURT: The accounting -- someone ought to

1 be able to figure that out.

2 MR. WAINGER: I'll address that later.

3 THE COURT: If you want to address something,  
4 you better do it now because I'm getting ready to rule.

5 MR. WAINGER: My understanding from the ruling  
6 is, there was an amount that was uncontested that came from  
7 their accountant --

8 THE COURT: They sent you everything but --

9 MR. WAINGER I thought you ordered them to send  
10 me that with interest, and they would -- they insisted upon  
11 signing a release of all claims if I were to take that  
12 check, and I sent it back to them.

13 THE COURT: Not all claims, just claims in  
14 the -- as to the capital account.

15 MR. WAINGER: As to the capital account.

16 THE COURT: That ought to be done, and item C,  
17 which is your undivided profits account, plus his share, if  
18 any, of any undivided profits of the firm with respect to  
19 uncollected fees which were fully earned by the firm prior  
20 to the date of his death or the effective date of his  
21 withdrawal or retirement, withdrawal, which, of course,  
22 we're talking about, or expulsion, but which fees are  
23 received by the firm subsequent to such date.

24 Now, it's my understanding that in order to  
25 collect a portion, his share of the Manville fees, Mr.



1 Wainger would have to prove that the Manville fees were,  
2 quote, fully earned, unquote, by Glasser & Glasser prior to  
3 the effective date of his withdrawal. I think and suggest  
4 and rule that this issue must be resolved by analyzing the  
5 construction of the language contained in the partnership  
6 agreement to determine what is meant by, quote, fully  
7 earned. Mr. Wainger places a strong emphasis on the verb  
8 earned and its definition as stated in Blacks law  
9 dictionary. According to Mr. Wainger, earned means, quote,  
10 to do that which entitles one to a reward, whether the  
11 reward is received or not, unquote. He briefed that rather  
12 extensively. Under this analysis a fee is earned  
13 irrespective of the fact that the money has not been fully  
14 recovered.

15 Mr. Waingers' argument implies that the verb  
16 fully used prior to the verb earned in item C has no  
17 effective meaning. In Virginia the law, as I understand it,  
18 is that a contract is to be construed as a whole, and effect  
19 given to every provision thereof if possible. No word or  
20 paragraph can be omitted in construing a contract if it can  
21 be retained and a sensible construction given to the  
22 contract as a whole. That quote is cited in Ames versus  
23 American National Bank of Portsmouth, 163 Virginia 1, 1934  
24 case. In addition, words used by the parties are to be  
25 given their ordinary use unless it can be clearly shown in



1 some legitimate way that they were used in some other sense,  
2 and the burden of showing this is always upon the party who  
3 alleges it. The verb fully placed before the verb earned  
4 implies that the fees must be completely earned before Mr.  
5 Wainger has a financial interest in the fees.

6 When we -- when Glasser & Glasser used the  
7 term fully earned, it would be apparent to me that they were  
8 taking into consideration the type of work that they  
9 normally do, and that is the contingent fee basis in  
10 contrast to doing work for a client on an hourly basis or on  
11 a case-by-case basis and then billing him when the work is  
12 done or the time is spent. For instance, if they were  
13 working for, for instance, the bank or an insurance company  
14 or something and they weren't doing work on a contingent fee  
15 basis, they would bill maybe on a monthly basis, and that  
16 work once billed would be fully earned, and Mr. Wainger, in  
17 my opinion, would have been entitled to receive it. Now,  
18 when employment is entered into on a contingent fee basis,  
19 the attorney does not recover a legal fee unless the  
20 attorney collects the sum of money for the client. I think  
21 it is rather traditional in this area, at least when you're  
22 charging a client under a contingent fee, that you do more  
23 than get the judgment. There is many a judgment recovered  
24 but no fee earned. There is many a judgment gotten on  
25 default judgments. There is many judgments that are

1 received one way or another, but if it's on a contingent fee  
2 basis, I've never heard of an attorney charging the client  
3 for that. I don't think they would be able to charge the  
4 client for a judgment obtained without getting the money  
5 first.

6           There was some discussion as to settlements.  
7 I think settlements are a little different situation. A  
8 settlement is usually made between two able attorneys who  
9 have worked out a settlement of the case, where the  
10 plaintiff's attorney promises to accept a certain figure  
11 called X and the defendant or insurance carrier promises to  
12 pay Y, and the check is usually in the mail shortly  
13 thereafter, along with the release. I think this case also  
14 can be distinguished between a partnership breaking up. We  
15 were -- I was cited various cases throughout concerning law  
16 firms that break up and what is the retiring partner's  
17 share. I think in this case we must limit it to the  
18 contingent fee cases which we're talking about.

19           I feel very strongly and find that an  
20 attorney -- that when an attorney has recovered the money  
21 and he's working on a contingent fee basis, then he has  
22 accomplished the task which he was asked to do by the client  
23 and he is entitled to his reward or the legal fees. In this  
24 case Glasser & Glasser entered into contingent fee contracts  
25 which required them to recover funds for their clients as a

1 condition precedent to obtaining legal fees. Glasser &  
2 Glasser had not recovered any of the money in question from  
3 its clients seeking recovery from the Manville Trust. I  
4 understand today they may have, but as of the date of the  
5 withdrawal from the law firm they had not. Most  
6 importantly, Glasser & Glasser had not recovered any money  
7 from the Manville Trust at the time Mr. Wainger withdrew.  
8 Since Glasser & Glasser had only obtained judgments at the  
9 time of Mr. Wainger's withdrawal, any subsequent action done  
10 to acquire the actual recovery of money would be work  
11 completed after Mr. Wainger's withdrawal.

12 There was some evidence before the Court, and  
13 I have, quite frankly, forgotten the amount, but I think  
14 there was thousands of dollars that Mr. Glasser or the  
15 Glasser firm has spent in trying to collect this money,  
16 trying to get this money not only for their own law firm and  
17 clients but apparently for other law firms and other  
18 clients. So it's obvious to me that all the work was not  
19 done at the time of the withdrawal.

20 The language of the contingent fee contracts  
21 entered into between Glasser & Glasser and their plaintiffs  
22 or their claimants or the -- their clients plays an  
23 important role to this Court in interpreting item C of the  
24 partnership agreement. Contingent fee contract states in  
25 part, it is understood and agreed that this employment is



1 upon a contingent fee basis, and if no recovery is made, I  
2 will not be indebted to my said attorneys for any sums  
3 whatsoever as attorney's fees, although I will be indebted  
4 to my said attorneys for all unpaid costs incurred.

5 The contingent fee contract clearly states  
6 that the attorney will not recover any attorney's fees from  
7 the client unless the attorney makes a recovery. I don't  
8 think it needs to be pointed out that that would be the only  
9 place that the attorneys would get any fees, would be from  
10 the recovery, and not from the client but from the  
11 recovery.

12 Mr. Wainger contends that recovery means final  
13 judgment. He argues in obtaining the judgments against the  
14 Manville Trust, Glasser & Glasser have fully earned its  
15 one-third contingent fee. In addition, he asserts that the  
16 issue of when a fee is earned was resolved in a recent  
17 decision by Judge Randall B. Johnson, Circuit Court of the  
18 City of Richmond in Page versus Baskerville. This is the  
19 case where an attorney sued a client because she was  
20 discharged after performing all the work to procure a  
21 settlement offer for the client, and then after the attorney  
22 was discharged, the client wished to accept the settlement  
23 offer, and the Court opined that it's the same settlement  
24 which defendant is now willing to accept. To allow  
25 defendant to receive that settlement without honoring her

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1 contract with plaintiff will result in the deprivation of  
2 plaintiff's right to be compensated in accordance with the  
3 contract, and a windfall to defendant, and then for these  
4 reasons the Court held that the attorney was entitled to  
5 receive the one-third contingent fee rather than quantum  
6 merit because, in fact, she had fully earned her fee.

7           The Court looked to the contract of the  
8 parties having the dispute to resolve the conflict. Mr.  
9 Wainger argues that the Page case is analogous and on  
10 point. However, the Court distinguishes Page from the case  
11 at bar. In Page the Court was referring to the contract  
12 between the client and the attorney. In this case the  
13 contract is the partnership agreement, and it's between an  
14 attorney and the attorney's law firm. Mr. Wainger is not  
15 being deprived of his right to be compensated in accordance  
16 with the partnership agreement. These different interests  
17 must be balanced. The attorney in Page had completed her  
18 obligations to her client. The attorney -- the recovery  
19 would have been made if the client had not interfered by  
20 dismissing counsel. In this case at bar Glasser had not  
21 fulfilled its obligations to its clients, and the  
22 partnership agreement, therefore, must be a controlling  
23 factor in determining whether legal fees were fully earned  
24 at the time of Mr. Wainger's withdrawal. Although the  
25 contracts between the Manville claimants and Glasser &

1 Glasser can be examined and used to shed some light on the  
2 partnership agreement between Wainger and Glasser & Glasser,  
3 in my opinion they're not controlling.

4 Mr. Wainger interprets, quote, fully earned,  
5 unquote, as it is utilized in the partnership agreement and  
6 the term, quote, recovery, unquote, as it was used in the  
7 contingent fee contracts differently than I do. A close  
8 examination of the circumstances exhibit the inequities that  
9 will prevail if Mr. Wainger's interpretation is accepted and  
10 implied to the parties in the case at bar, and I think there  
11 was some discussion about going to the beach or something  
12 like that, but I would point out that if the Court finds  
13 that Mr. Wainger is entitled to a portion of the Manville  
14 fees, the Court then reciprocally must also find that  
15 Glasser & Glasser has done all that is necessary to fulfill  
16 its obligation to the Manville claimants. If such a finding  
17 is made, the Manville clients would be placed at a terrible  
18 disadvantage, as I think was argued for Mr. Glasser.  
19 Glasser & Glasser, that they could then abandon this  
20 representation and still have a claim for their full  
21 contingent fee after someone else had gone to the effort and  
22 expense to collect the debt for them. The Manville  
23 claimants are looking to Glasser & Glasser, their  
24 attorneys. They contracted in very clear language to pay  
25 Glasser & Glasser legal fees, and they contracted to do it,

1 in very plain language, only after recovery. A judgment is  
2 worthless to the plaintiffs against Manville unless the  
3 recovery is effective.

4 I think I've discussed the earning of hourly  
5 fees. I understand about that, and I think I've indicated  
6 that if there were hourly fees, the language would be clear,  
7 that they were fully earned even if they would have been  
8 received afterwards, but then we go back to what is fully  
9 earned and the difference between hourly fees, contract fees  
10 or contingent fees. I feel very strongly and have  
11 throughout that an attorney and/or law firm is not entitled  
12 to a contingent fee until all of the work is performed and  
13 the money is recovered for the client, and I don't think it  
14 has to be as strong as deposited into their escrow account  
15 for division and delivery, but almost. I think there is no  
16 question that the money must be received before it is fully  
17 earned and received could go as far as a settlement, in  
18 other words, the check is in the mail, but I think that  
19 would have probably -- but in this case we're not worried  
20 about that. The language in item C referring to uncollected  
21 fees which were fully earned is inapplicable in contingent  
22 fee cases because contingent fees are earned at basically  
23 the same time they are collected.

24 This Court finds and orders that Mr. Wainger  
25 is not entitled to share in the Manville fees because they



1 were not fully earned at the time of his withdrawal from  
2 Glasser & Glasser. In a contingent fee arrangement Glasser  
3 & Glasser must actually collect the money before fees can be  
4 considered fully earned. Since the money had not been  
5 collected at the time of Wainger's withdrawal from Glasser &  
6 Glasser, he is not entitled to share in the fees. That is  
7 my decision, gentlemen. I would ask that you prepare an  
8 order encompassing that, and I note Mr. Wainger's  
9 exception. I say this with great emotion, I would like to  
10 rule for both of you.

11 MR. WAINGER: Thank you, judge. I would at  
12 this time just like to, for the record, note my objection to  
13 the Court ruling for the reasons stated in my brief and oral  
14 argument.

15 Your Honor also referred to the capital  
16 account.

17 THE COURT: I think it ought to be paid  
18 immediately. I don't understand those big figures, so maybe  
19 I can't understand the degree of difficulty.

20 MR. STILLMAN: There is no difficulty paying  
21 the capital account. The problem was that when we tendered  
22 the check to Mr. Glasser (sic), he did not want to accept  
23 our calculation as to what that capital account is -- excuse  
24 me, Mr. Wainger did not want to accept --

25 THE COURT: Send him the check. Let him dig



1 around. If he finds you're wrong, let him --

2 MR. WAINGER: I don't need to sign any  
3 release?

4 THE COURT: You don't have to sign the release,  
5 no. He's entitled to his capital account. He doesn't have  
6 to sign a release.

7 MR. STILLMAN: The only problem is that if  
8 there is going to be a final accounting done, and I have no  
9 problem with doing exactly what you're saying, but if there  
10 is going to be a final accounting, then obviously that  
11 partnership -- the partnership that he is seeking the final  
12 accounting in has to account for the legal costs associated  
13 with this, and all of that has to be factored into it, and  
14 that's my only point, but we'll send him that check.

15 THE COURT: Send him what you can and tell  
16 him -- even if you -- I've forgotten how much, but if you  
17 send him half -- send him nine-tenths of it or whatever.

18 MR. WAINGER: The amount that they sent is less  
19 than what Mr. Hodges had already indicated was owed.

20 THE COURT: Well, you know, I can't -- I can  
21 decide that. I guess that's ended this case, but I haven't  
22 decided that yet. I thought it would be a simple thing to  
23 tell you what your capital account is. I guess when I look  
24 back on it, maybe we were all naive over at Willcox &  
25 Savage, you can look at a book and there would be the

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VIRGINIA: CIRCUIT COURT FOR THE CITY OF NORFOLK

GLASSER AND GLASSER,

Plaintiff,

v.

STEPHEN WAINGER,

Defendant.

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At Law No. L92-2021

STEPHEN WAINGER,

Complainant,

v.

GLASSER AND GLASSER,

Respondent.

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Chancery No. C92-1166

**ADMISSION IN SUPPORT OF GLASSER AND GLASSER'S  
MOTION FOR SUMMARY JUDGMENT**

In further support of its motion for summary judgment, Glasser and Glasser submits Request for Admission No. 8 of Mr. Wainger's Third Request for Admissions (attached as Exhibit A), the Glasser and Glasser contingent fee agreements that were attached as Exhibit 8 to Exhibit A (under seal), and Glasser and Glasser's response to the Request.

GLASSER AND GLASSER

By K. Reed Mayo  
Of Counsel

Gregory N. Stillman  
K. Reed Mayo  
HUNTON & WILLIAMS  
Post Office Box 3889  
Norfolk, Virginia 23514  
(804) 625-5501

CERTIFICATE OF SERVICE

I hereby certify that on May 26, 1994, a true copy of the foregoing ADMISSION IN  
SUPPORT OF GLASSER AND GLASSER'S MOTION FOR SUMMARY JUDGMENT  
(except for the fee agreements attached to Exhibit A) was <sup>mailed</sup> ~~hand-delivered~~ to:

Stephen Wainger, Esquire  
4705 Columbus Street  
Virginia Beach, VA 23452

K. Reed Mayo

T:\Glasser\AdmSup.MSJ

## VIRGINIA: CIRCUIT COURT FOR THE CITY OF NORFOLK

GLASSER AND GLASSER,

Plaintiff,

v.

STEPHEN WAINGER,

Defendant.

At Law No. L92-2021

STEPHEN WAINGER,

Complainant,

v.

GLASSER AND GLASSER,

Respondent.

Chancery No. C92-1166

**GLASSER AND GLASSER'S RESPONSES TO  
WAINGER'S THIRD REQUEST FOR ADMISSIONS**

Glasser and Glasser, by counsel, states as follows for its responses to Mr. Wainger's third request for admissions:

1. Admit that the document attached as Exhibit 1 is a true and accurate copy of transcribed portions of the hearing held before The Honorable John E. Clarkson on November 22, 1993.

**RESPONSE:**

Admitted.

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2. Admit that the document attached as Exhibit 2 is a true and accurate copy of transcribed portions of the hearing held before The Honorable John E Clarkson on May 3, 1993.

RESPONSE:

Denied.

3. Admit that the document attached as Exhibit 3 is a true and accurate copy of transcribed portions of the hearing held before The Honorable John E Clarkson on May 3, 1993.

RESPONSE:

Glasser and Glasser objects to this request as Exhibit 3 does not include a transcription of the entire hearing. Subject to this objection, the request is admitted.

4. Admit that the document attached as Exhibit 4 is a true and accurate copy of transcribed portions of the hearing held before The Honorable John E Clarkson on May 3, 1993.

RESPONSE:

Glasser and Glasser objects to this request as Exhibit 4 does not include a transcription of the entire hearing. Subject to this objection, the request is admitted.

5. Admit that the document attached as Exhibit 5 is a true and accurate copy of transcribed portions of the hearing held before The Honorable John E Clarkson on May 3, 1993.

RESPONSE:

Glasser and Glasser objects to this request as Exhibit 5 does not include a transcription of the entire hearing. Subject to this objection, the request is admitted.

6. Admit that the document attached as Exhibit 6 is a true and accurate copy of transcribed portions of the hearing held before The Honorable John E Clarkson on May 3, 1993.

RESPONSE:

Glasser and Glasser objects to this request as Exhibit 6 does not include a transcription of the entire hearing. Subject to this objection, the request is admitted.

7. Admit that the document attached as Exhibit 7 is a true and accurate copy of transcribed portions of the hearing held before The Honorable John E Clarkson on May 3, 1993.

RESPONSE:

Glasser and Glasser objects to this request as Exhibit 7 does not include a transcription of the entire hearing. Subject to this objection, the request is admitted.

8. Admit that the Glasser and Glasser Retainer Agreements attached as Exhibit 8 are true and accurate copies of the Glasser and Glasser Retainer Agreements for the clients identified therein.

RESPONSE:

Admitted.

9. Admit that Wainger has at least \$60,000 in his capital account.

RESPONSE:

Glasser and Glasser admits that Mr. Wainger's capital account had at least \$60,000 in it as of the date he voluntarily left Glasser and Glasser. The amount currently in Mr. Wainger's capital account is unknown because Mr. Wainger's share of certain partnership expenses has yet to be determined.

10. Admit that Wainger has at least \$70,000 in his capital account.

RESPONSE:

See response to Request No. 9.

11. Admit that Wainger has at least \$80,000 in his capital account.

RESPONSE:

See response to Request No. 9.

12. Admit that Wainger has at least \$90,000 in his capital account.

**RESPONSE:**

See response to Request No. 9.

13. Admit that Wainger has at least \$100,000 in his capital account.

**RESPONSE:**

See response to Request No. 9.

14. Admit that Wainger has at least \$110,000 in his capital account.

**RESPONSE:**

See response to Request No. 9.

15. Admit that Wainger has at least \$120,000 in his capital account.

**RESPONSE:**

See response to Request No. 9.

16. Admit that Wainger has at least \$130,000 in his capital account.

**RESPONSE:**

See response to Request No. 9.



17. Admit that Wainger has at least \$140,000 in his capital account.

RESPONSE:

See response to Request No. 9.

18. Admit that Wainger has at least \$150,000 in his capital account.

RESPONSE:

See response to Request No. 9.

19. Admit that Wainger has at least \$160,000 in his capital account.

RESPONSE:

See response to Request No. 9.

20. Admit that Wainger has at least \$170,000 in his capital account.

RESPONSE:

See response to Request No. 9.

21. Admit that Wainger has at least \$180,000 in his capital account.

RESPONSE:

See response to Request No. 9.

22. Admit that Wainger has at least \$190,000 in his capital account.

RESPONSE:

See response to Request No. 9.

23. Admit that Wainger has at least \$200,000 in his capital account.

RESPONSE:

See response to Request No. 9.

GLASSER AND GLASSER

By   
Of Counsel

Gregory N. Stillman  
Benjamin V. Madison, III  
K. Reed Mayo  
HUNTON & WILLIAMS  
Post Office Box 3889  
Norfolk, Virginia 23514  
(804) 625-5501

Counsel

CERTIFICATE OF SERVICE

I hereby certify that on February 7, 1994, a true copy of the foregoing GLASSER AND GLASSER'S RESPONSES TO WAINGER'S THIRD REQUEST FOR ADMISSIONS was mailed to:

Stephen Wainger, Esquire  
Huff, Poole & Mahoney  
4705 Columbus Street  
Virginia Beach, VA 23452

A handwritten signature in cursive script, appearing to read "Reed Myers", written over a horizontal line.

T:\Glasser\Rsp3Req.Adm

The contingent fee contracts attached or referred to in Request for Admission No. 8 have thirteen variations. A representative copy of each of those variations follows.



MANVILLE LIMITED POWER OF ATTORNEY AND AGREEMENT

I, Rodney Wendell Pierce, have made, constituted and appointed, and by these presents do make, constitute and appoint GLASSER AND GLASSER, Attorneys at Law, my true and lawful attorneys for me and in my name, place and stead to institute suit or compromise my claim for damages which I have against Johns Manville and its affiliated companies and/or the Manville Personal Injury Settlement Trust for injuries to and/or the death of Rodney Wendell Pierce as a result of asbestos-related disease, and to do, execute and perform all and every other act or acts, thing or things in law needful and necessary to be done in and about the premises as fully, largely and amply to all intents and purposes as I might or could do if acting personally.

I agree to pay the necessary costs and all other necessary and proper expenses which are incurred by my attorneys in the prosecution of my aforesaid claim. I hereby ratify and confirm all lawful acts previously done by my said attorneys in virtue hereof.

As compensation for their services, I agree to pay my said attorneys, from the proceeds of recovery, a fee of thirty-three and one third percent (33 1/3%) of the gross recovery by way of compromise settlement before the institution of suit.

It is understood and agreed that this employment is upon a contingent fee basis, and, if no recovery is made, I will not be indebted to my said attorneys for any sums whatsoever as attorney fees, although I will be indebted to my said attorneys for all unpaid costs incurred. It is further agreed that, in addition to the attorneys fees as set forth herein, all unpaid costs incurred shall be deducted from any recovery.

WITNESS the following signature and seal this 26th day of January, 1989.

  
\_\_\_\_\_  
RODNEY WENDELL PIERCE

MANVILLE LIMITED POWER OF ATTORNEY AND AGREEMENT

We, Franklin D. Pilkington and Daisy M. Pilkington, have made, constituted and appointed, and by these presents do make, constitute and appoint GLASSER AND GLASSER, Attorneys at Law, our true and lawful attorneys for us and in our name, place and stead to institute suit or compromise our claims for damages which we have against Johns Manville and its affiliated companies and/or the Manville Personal Injury Settlement Trust for injuries to and/or the death of Franklin D. Pilkington as a result of asbestos-related disease, and to do, execute and perform all and every other act or acts, thing or things in law needful and necessary to be done in and about the premises as fully, largely and amply to all intents and purposes as we might or could do if acting personally.

We agree to pay the necessary costs and all other necessary and proper expenses which are incurred by our attorneys in the prosecution of our aforesaid claim. We hereby ratify and confirm all lawful acts previously done by our said attorneys in virtue hereof.

As compensation for their services, we agree to pay our said attorneys, from the proceeds of recovery, a fee of thirty-three and one third percent (33 1/3%) of the gross recovery either by way of compromise settlement before or after the institution of suit.

It is understood and agreed that this employment is upon a contingent fee basis, and, if no recovery is made, we will not be indebted to our said attorneys for any sums whatsoever as attorney fees, although we will be indebted to our said attorneys for all unpaid costs incurred. It is further agreed that, in addition to the attorneys fees as set forth herein, all unpaid costs incurred shall be deducted from any recovery.

WITNESS the following signature and seal this 21st day of January, 1989.

Frank D. Pilkington

Daisy M. Pilkington

RETAINER FOR LEGAL SERVICES

I, William B. Porter, age 51, address 393 Forest Road, Chesapeake, VA 23320, telephone no. 482-1467, employed by Norfolk Naval Shipyard, do hereby employ and retain GLASSER AND GLASSER, BARON & BUDD, and FREDERICK C. GRULICH, Attorneys at Law, to institute legal proceedings on behalf of me against Raymark Industries, Inc. et al or the proper defendant or respondent to cover damages sustained by me, to make such settlements or compromises that they may deem advisable, and to execute such releases as they may deem advisable in my name, place and stead.

I do hereby agree with my said attorneys to pay them forty per cent (40%) of any recovery in said case if by settlement before trial thereof; a sum equal to forty per cent (40%) of any sum recovered by trial or settlement after trial commences; or the sum of fifty per cent (50%) of any amount recovered in the event of an appeal perfected in said case. I also authorize my said Attorneys to make expenditures which are reasonably necessary for the prosecution of my claim, and I agree to reimburse my said Attorneys for any such expenditures.

I HAVE READ OVER AND FULLY UNDERSTAND THE ABOVE CONTRACT.

WITNESS the following signatures this 23rd day of September, 1986.

  
\_\_\_\_\_  
William B. Porter

Porter, William



POWER OF ATTORNEY AND AGREEMENT

We, William T. Pritchett, Jr., and Frances D. Pritchett, have made, constituted and appointed, and by these presents do make, constitute and appoint GLASSER AND GLASSER, Attorneys at Law, our true and lawful attorneys for us and in our name, place and stead, to institute suit or compromise our claims for damages which we have against all manufacturers and/or distributors as a result of William T. Pritchett's asbestos-related disease, and to do, execute and perform all and every other act or acts, thing or things in law needful and necessary to be done in and about the premises as fully, largely and amply to all intents and purposes as we might or could do if acting personally.

If suit is instituted, we agree to pay the necessary Court costs and all other necessary and proper expenses which are incurred by our attorneys in the prosecution of our aforesaid claim, such expenses are hereby acknowledged to include, without limitation, court filing fees, process server fees, trial transcripts, deposition transcripts, medical records, x-rays, copying fees, expert witness fees, telephone calls, and travel and lodging more than 100 miles from Norfolk, Virginia. We hereby ratify and confirm all lawful acts previously done by our said attorneys in virtue hereof.

As compensation for their services, we agree to pay our said attorneys, from the proceeds of recovery, a fee of thirty-three and one-third percent (33 1/3%) of the gross recovery if this matter is resolved prior to trial, and forty percent (40%) if the case proceeds an appeal.

It is understood and agreed that this employment is upon a contingent fee basis, and, if no recovery is made, we will not be indebted to our said attorneys for any sums whatsoever as attorney fees, although we will be indebted to our said attorneys for all unpaid costs incurred. It is further agreed that, in addition to the attorneys fees as set forth herein, all unpaid costs incurred shall be deducted from any recovery.

In the event our attorneys determine, in their sole discretion, during investigation and discovery that there is not sufficiently good legal and/or factual basis to justify further prosecution of our claim, they shall have the right to withdraw as counsel.

WITNESS the following signature and seal this \_\_\_\_ day of \_\_\_\_\_, 1992.

William T. Pritchett, Jr.  
William T. Pritchett, Jr.

Frances D. Pritchett  
Frances D. Pritchett

\*\$500.00 RETAINER FEE WAIVED

Pritchett, William T.



## POWER OF ATTORNEY AND AGREEMENT

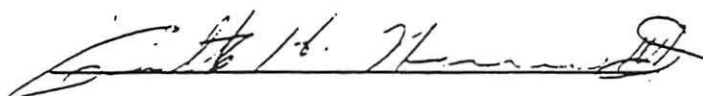
I, EVERETTE H. NEWMAN, surviving son and Personal Representative of the Estate of Everett H. Newman, Jr., deceased, have made, constituted and appointed, and by these presents do make, constitute and appoint GLASSER AND GLASSER and PATTEN, WORNOM AND WATKINS, Attorneys at Law, my true and lawful attorneys for me and in my name, place and stead to institute suit in the Commonwealth of Virginia or any other more suitable and appropriate jurisdiction and/or compromise any and all claims for damages which the estate of the decedent has against all manufacturers of asbestos products, and to do, execute and perform all and every other act or acts, thing or things in law needful and necessary to be done in and about the premises as fully, largely and amply to all intents and purposes as I might or could do if acting personally.

If suit is instituted, I agree to pay the necessary Court costs and all other necessary and proper expenses which are incurred by my attorneys in the prosecution of my aforesaid claim, such expenses are hereby acknowledged to include, without limitation, court filing fees, process server fees, trial transcripts, deposition transcripts, medical records, x-rays, copying fees, expert witness fees, telephone calls, and travel and lodging more than 100 miles from Norfolk, Virginia. As a deposit for such costs and for the costs of the consolidated expenses of discovery in related cases which are pending in the United States District Court for the Eastern District of Virginia, the United States District Court for the Northern District of Texas and elsewhere, I hereby agree to pay the sum of \$500 to my attorneys. I hereby ratify and confirm all lawful acts previously done by my said attorneys in virtue hereof.

As compensation for their services, I agree to pay my said attorneys, from the proceeds of recovery, a fee of forty percent (40%) of the gross recovery either by way of compromise settlement before or after the institution of suit and a fee of forty-five percent (45%) of the gross recovery if the case is appealed.

It is understood and agreed that this employment is upon a contingent fee basis, and, if no recovery is made, I will not be indebted to my said attorneys for any sums whatsoever as attorney fees, although I will be indebted to my said attorneys for all unpaid costs incurred. It is further agreed that, in addition to the attorneys fees as set forth herein, all unpaid costs incurred shall be deducted from any recovery.

WITNESS the following signature and seal this 24th day of August, 1989.



EVERETTE H. NEWMAN, III

William Pierce

CONTINGENT FEE AGREEMENT

I, the undersigned, do hereby retain and employ the firm of MOODY, STROPLE AND KLOEPPEL, LTD., as my attorney to represent me in my claim for all damages against any and all railroads, any and all miners, manufacturers, processors, importers, converters, compounders, retailers, and/or users of asbestos and asbestos related insulation materials or other person, firm or corporation who may be liable in damages for the injuries suffered by me as a result of my exposure and/or use to said asbestos related materials.

I further authorize the law firm of MOODY, STROPLE AND KLOEPPEL, LTD. to employ any other additional legal assistance and/or expert assistance that they deem needed to fully represent my interests.

It is agreed and understood that this employment is upon a contingent fee basis and if no recovery is made, I will not be indebted to MOODY, STROPLE AND KLOEPPEL, LTD., for any attorney's fees.

At the conclusion of my claim for damages, I agree to pay for all costs that were incurred by my attorneys that were necessary costs to process my claim. These costs will include, but not be limited to, filing costs, medical reports, discovery costs, photographic costs, transportation costs, and other similar expenses related to this case.

If there is a recovery of money damages, whether by way of settlement, verdict, or judgment, I agree that MOODY, STROPLE AND KLOEPPEL, LTD., shall receive thirty-three and one-third (33 1/3%) percent of said gross settlement, verdict, or judgment as compensation for its professional services.

I further agree with said attorneys not to make any settlement or to take part in any settlement negotiations without prior written permission of my attorneys and/or their attendants and participation in accordance with this agreement.

It is also agreed and understood that this employment is contingent upon whether further developed facts clearly indicate that I have a cause of action against any defendant. In the event such facts are not developed, I will be so advised by my attorney and my attorney's representation will then terminate with no further obligations on my part. I do hereby bind my

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to 10-30

Pierce, Benjamin L.

heirs, executors and legal representatives to the terms and conditions as set forth herein.

I HAVE READ OVER AND FULLY UNDERSTAND THE ABOVE CONTRACT, AND HAVE FULLY DISCUSSED THE TERMS AND CONDITIONS THEREOF AND I DO HEREBY SET MY HAND AND SEAL.

Maria B. Pierce  
Signature of Client

\_\_\_\_\_  
Date



POWER OF ATTORNEY AND AGREEMENT

I, James A. Booth, have made, constituted and appointed, and by these presents do make, constitute and appoint, GLASSER AND GLASSER, Attorneys at Law, my true and lawful attorneys for me and in my name, place and stead to institute suit or compromise my claims for damages which I have against all manufacturers and/or distributors for injuries to my person as a result of asbestos-related disease, and to do, execute and perform all and every other act or acts, thing or things in law needful and necessary to be done in and about the premises as fully, largely and amply, to all intents and purposes, as I might or could do if acting personally.

If suit is instituted, I agree to pay the necessary Court costs and all other necessary and proper expenses which are incurred by my attorneys in the prosecution of my aforesaid claim, such expenses are hereby acknowledged to include, without limitation, court filing fees, process server fees, trial transcripts, deposition transcripts, medical records, x-rays, copying fees, expert witness fees, telephone calls and travel and lodging more than 100 miles from Norfolk, Virginia. As a deposit for such costs and for the costs of consolidated expenses of discovery in related cases which are pending in the United States District Court for the Eastern District of Virginia, the United States District Court for the Northern District of Texas and elsewhere, I hereby agree to pay the sum of Five Hundred Dollars (\$500.00) to my attorneys. I hereby ratify and confirm all lawful acts previously done by my said attorneys in virtue hereof.

As compensation for their services, I agree to pay to my said attorneys, from the proceeds of recovery, a fee of thirty-three and one-third percent (33 1/3%) of the gross recovery, whether this matter is resolved prior to trial or if the case proceeds to trial and verdict.

It is understood and agreed that this employment is upon a contingent fee basis and, if no recovery is made, I will not be indebted to my said attorneys for any sums whatsoever as attorney fees, although I will be indebted to my said attorneys for all unpaid costs incurred. It is further agreed that, in addition to the attorney fees as set forth herein, all unpaid costs incurred shall be deducted from any recovery.

In the event my attorneys determine, in their sole discretion, during investigation and discovery that there is not sufficiently good legal and/or factual basis to justify further prosecution of my claim, they shall have the right to withdraw as counsel.

WITNESS the following signature and seal this 6 day of January, 1992.

James A. Booth



AGREEMENT FOR PROFESSIONAL SERVICES

I, the undersigned client, do hereby retain and employ the law firm of BROWN, TERRELL & HOGAN, P.A., and \_\_\_\_\_, as my attorneys to represent me in my claims for damages against \_\_\_\_\_ or any other person, firm or organization liable therefor, related to an asbestos-related condition which was diagnosed on the 24th day of OCTOBER, 1984

I agree to pay for the cost of investigation, and should it be necessary to file suit, the court costs. As compensation for their services, I agree to pay my attorneys from the proceeds of recovery the following fee:

33-1/3%	if settled without suit;
36%	if settled after suit is filed;
40%	anytime after trial has begun.

It is agreed and understood that this employment is upon a contingent fee basis, and, if no recovery is made, I will not be indebted to my attorneys in any sum whatsoever as attorney's fees, but I will be responsible for the costs incurred.

It is understood that BROWN, TERRELL & HOGAN, P.A. and \_\_\_\_\_ will be working together on my case, and that my attorneys will share in the fee described above, according to the work done by each. This will not increase the fee I agree to pay.

Finally, it is further agreed and understood that should my attorneys determine that, in their opinion, there are not reasonable prospects of recovery on the claim or that the potential recovery would not likely be sufficient to justify the time and expense required to obtain it, they are relieved from any obligation to prosecute the claim.

DATED this 21st day of DECEMBER, 1984.

X \_\_\_\_\_  
  
Margaret V. Deavers

The above employment is hereby accepted upon the terms stated herein.

BROWN, TERRELL & HOGAN, P.A.

Deavers, Harry C.

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J. Edward Hogan  
804 Blackstone Building  
Jacksonville, FL 32202-3459

JOHN S. JOANNOU  
POWER OF ATTORNEY

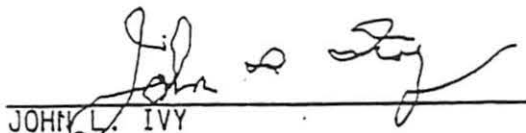
KNOW ALL MEN BY THESE PRESENTS, that I have made, constituted and appointed, and by these presents do make, constitute and appoint the law firm of JOHN S. JOANNOU, of Portsmouth, Virginia, my true and lawful attorneys for me and in my name, place and stead to institute suit or compromise my claim for damages which I have against \_\_\_\_\_, or any other person, firm or corporation liable therefore, for injuries and damages to my person which occurred on or about the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, and to do, execute and perform all and every other act or acts, thing or things in law needful and necessary to be done in and about the premises as fully, largely and amply to all intents and purposes as I might or could do if acting personally. I agree to pay or reimburse the necessary Court costs, trial preparation fees and investigation fees. And I hereby ratify and confirm all lawful acts done by said attorneys in virtue hereof.

As compensation for their services, I agree to pay to said attorneys, from the proceeds of recovery, the following fee:

- 40% of the amount recovered if settlement prior of after suit is brought.
- 50% of the amount recovered if this matter is appealed to any Court of Appeals.

It is agreed and understood that this employment is upon a contingent fee basis, and if no recovery is made, I will not be indebted to my said attorneys for any sum whatsoever as attorney's fees.

WITNESS the following signature and seal on this 27 day of August 27, 1987.

 (SEAL)  
JOHN L. IVY

AUTHORITY TO REPRESENT

I, (we), the undersigned, hereby retain and employ Paul T. Gillenwater, H. Douglas Nichol, or Sherman Ames, Attorneys at Law, Bearden Commercial Park, 6401 Baum Drive, Knoxville, Tennessee 37919, to represent me, (us) with regard to all rights and remedies I, (we), may have against manufacturers of asbestos containing products

and others legally concerned, arising out of personal injury to my  
decedent, Harold C. Heatherly

which occurred on the     --     day of     --    , 19    , and empower him to effect a compromise settlement in said matter, or to institute such legal action as may be advisable in his judgment.

It is agreed that said representation is on a contingent fee basis; that is, in the event there is no recovery had against the defendant (s) herein, then no attorney fee is to be charged; and that contingent fee in the event of recovery based upon the amount of recovery according to the following schedule:

(a) Upon a compromise settlement without litigation, or upon a judgment from which there is no appeal, 40% per cent of the gross amount of recovery.

(b) Upon a judgment which is appealed to a higher court,          per cent of the gross amount of recovery.

It is expressly agreed that said compensation shall be solely for the personal services of said attorney and that without regard to the final outcome of the matters, I, (we) the undersigned, will pay all court costs and actual expenses incurred by my, (our), said attorney in the investigation and preparation of this matter for litigation. I, (we), the undersigned, hereby make an assignment to my, (our) said attorney from any recovery to be had of sufficient monies to pay medical expenses incurred in connection with this matter, and authorize my, (our), said attorney to pay said expenses directly from such recovery. And I, (we), the undersigned, hereby agree with my (our), said attorney not to make any settlement unless he is present and receives his share in accordance with this agreement.

It is understood and agreed that my attorney shall withhold Five-Hundred (\$500.00) Dollars from my net recovery from the initial settlement monies with said money to be applied to the expenses incurred in the preparation and pursuit of my lawsuit and I further understand that, in all probability, at the termination of my lawsuit, the total expenses incurred as they apply to my lawsuit will be in excess of Five Hundred (\$500.00) Dollars.

It is agreed that said attorney has made no guarantees regarding the successful termination of said cause of action, and all expressions relative thereto are matters of his opinion only.

In testimony, whereof, said party, (parties), have executed this contract in duplicate originals, one of which is retained by each of the parties.

I, (WE), HAVE READ OVER AND FULLY UNDERSTAND THE ABOVE CONTRACT.

Witness my, (our) hand(s) this 12 day of Oct, 1985.

Dorothy M. Heatherly  
Dorothy Mae Heatherly  
Widow of Harold Coleman Heatherly

The above set forth conditions and stipulations are hereby accepted and assumed by the undersigned.

Paul T. Gillenwater, H. Douglas Nichol,  
or Sherman Ames



RETAINER FOR LEGAL SERVICES

July 25, 1986

I, Kenneth E. Miller, Age 63, residing at 1972 Lee Highway, Bristol, Virginia 24201, Telephone Number 703/466-3275, and presently unemployed, do hereby employ and retain the firms of COPELAND, MOLINARY & BIEGER, of Abingdon, Virginia, GLASSER & GLASSER of Norfolk, Virginia, and BARON & BUDD of Dallas Texas, Attorneys at Law, to institute legal proceedings on behalf of Kenneth E. Miller against Ramark Industries, Inc., et al, or the proper defendant or respondent to recover damages sustained by Kenneth E. Miller to make such settlements or compromises that they may deem advisable, and to execute such releases as they may deem advisable in my name, place, and stead.

I do hereby agree with my said attorneys to pay them a retainer for advance costs of \$500.00 dollars, \$200.00 of which has been paid this date. The remainder of \$300.00 dollars shall be paid in three (3) monthly installments of \$100.00 dollars each, due September 1, 1986, October 1, 1986 and November 1, 1986. In addition to the aforesaid retainer, I agree to pay the aforesaid attorneys 40% of any recovery in said case if by settlement before trial thereof; a sum equal to 40% of any sum recovered by trial or settlement after trial commences; or the sum of 45% of any amount recovered in the event of an appeal perfected in said case. I also authorize my said Attorneys to make expenditures which are reasonable necessary for the prosecution of my claim and I agree to reimburse my said Attorneys for any such expenditures.

I HAVE READ OVER AND FULLY UNDERSTAND THE ABOVE CONTRACT.

WITNESS the following signatures and seals this the 25 day of July, 1986.

Kenneth E. Miller (SEAL)  
Kenneth E. Miller

Daniel E. Bieger (SEAL)  
Daniel E. Bieger, Esq.  
for COPELAND, MOLINARY & BIEGER  
GLASSER & GLASSER AND  
BARON & BUDD



## POWER OF ATTORNEY AND AGREEMENT

I, James C. Ward, have made, constituted and appointed, and by these presents do make, constitute and appoint GLASSER AND GLASSER, Attorneys at Law, my true and lawful attorneys for me and in my name, place and stead to institute suit or compromise my claims for damages which I have against all manufacturers for injuries to my persons as a result of asbestos-related disease, and to do, execute and perform all and every other act or acts, thing or things in law needful and necessary to be done in and about the premises as fully, largely and amply to all intents and purposes as I might or could do if acting personally.

If suit is instituted, I agree to pay the necessary Court costs and all other necessary and proper expenses which are incurred by my attorneys in the prosecution of my aforesaid claim, such expenses are hereby acknowledged to include, without limitation, court filing fees, process server fees, trial transcripts, deposition transcripts, medical records, x-rays, copying fees, expert witness fees, telephone calls, and travel and lodging more than 100 miles from Norfolk, Virginia. ~~As a deposit for such costs and for the costs of the consolidated expenses of discovery in related cases which are pending in the United States District Court for the Eastern District of Virginia, the United States District Court for the Northern District of Texas and elsewhere, I hereby agree to pay the sum of \$500 to my attorneys.~~ I hereby ratify and confirm all lawful acts previously done by my said attorneys in virtue hereof.

As compensation for their services, I agree to pay my said attorneys, from the proceeds of recovery, a fee of thirty-three and one-third percent (33 1/3%) of the gross recovery if this matter is resolved prior to trial, and forty percent (40%) if the case proceeds to trial.

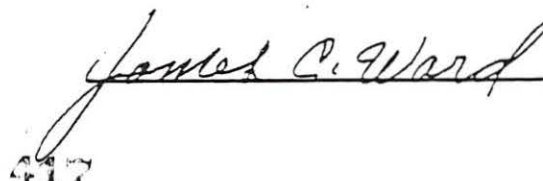
It is understood and agreed that this employment is upon a contingent fee basis, and, if no recovery is made, I will not be indebted to my said attorneys for any sums whatsoever as attorney fees, although I will be indebted to my said attorneys for all unpaid costs incurred. It is further agreed that, in addition to the attorneys fees as set forth herein, all unpaid costs incurred shall be deducted from any recovery.

In the event my attorneys determine, in their sole discretion, during investigation and discovery that there is not sufficiently good legal and/or factual basis to justify further prosecution of my claim, they shall have the right to withdraw as counsel.

WITNESS the following signatures and seals this 14 day of February, 1991.

  
James C. Ward

It is further understood and agreed that the law firm of Glasser and Glasser reserves the right to withdraw as counsel of record and/or request that the lawsuit be dismissed if I continue smoking.

  
James C. Ward

HOWELL, DAUGHERTY, BROWN & LAWRENCE

HENRY E. HOWELL JR.  
GUY DAUGHERTY  
ROBERT E. BROWN  
J. GRAY LAWRENCE, JR.

ONE EAST PLUME STREET  
POST OFFICE BOX 3688  
NORFOLK, VIRGINIA 23514  
TELEPHONE (804) 623-7334

ROBERT H. ROMM  
HENRY E. HOWELL III

I hereby retain and employ HOWELL, DAUGHERTY, BROWN & LAWRENCE, and GLASSER & GLASSER, of Norfolk, Virginia, as my attorneys to represent me; to institute suit or compromise any and all claims against any person or entity liable for any and all injuries incurred by me from exposure to asbestos.

I agree to pay and/or to reimburse my attorneys for all costs of preparing the case for settlement or trial, including but not limited to the cost of medical reports, investigation, the services of any expert deemed necessary by my attorneys and depositions.

I agree to pay to my said attorneys for services rendered or to be rendered 40% of the gross amount of any recovery received in settlement or by trial of the above claim, and 40% in the event an appeal is taken to an appellate court.

It is understood that this contract is on a contingent fee basis and in the event my said attorneys do not make a recovery, I will not be indebted to my said attorneys in any sum whatsoever for attorney's fees.

I further understand that I am obligated for the costs and expenses incurred for me as set forth above.

DATED this 26 day of September, 1984.

HOWELL, DAUGHERTY, BROWN & LAWRENCE

By: [Signature]  
GLASSER & GLASSER

[Signature]  
MELVIN T. FREEMAN

By: [Signature]

Freeman, Melvin T., Sr.

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

STEPHEN WAINGER, )  
 Complainant, ) CHANCERY NO. C92-1166  
 v. )  
 GLASSER & GLASSER, )  
 a general partnership, )  
 Respondent. )

GLASSER & GLASSER, )  
 Plaintiff, )  
 v. ) AT LAW NO. L92-2021  
 STEPHEN WAINGER, )  
 Defendant. )

Norfolk, Virginia

June 10, 1994

Before: The Honorable JOHN E. CLARKSON

Appearances:

STEPHEN WAINGER, ESQUIRE, appearing pro se

HUNTON & WILLIAMS

By: GREGORY N. STILLMAN, ESQUIRE

K. REED MAYO, ESQUIRE

Counsel for the Respondent/Plaintiff

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1 would like to get his input before I respond and bind  
2 myself.

3 MR. STILLMAN: I'm not asking you to bind  
4 yourself. I'm just saying that is an issue that has to be  
5 resolved.

6 MR. WAINGER: I will seek Leon's guidance on  
7 this and get back with you on it.

8 MR. STILLMAN: Okay. And we're also going to  
9 have to resolve at some point this whole issue about the  
10 railroad case fees and whether those fees were fully earned  
11 as of the date of Mr. Wainger's departure, but, once again,  
12 that's something we can put the facts on the table, let you  
13 know exactly what happened, and maybe we can do it by way of  
14 a stipulation and let -- once again let you tell us how to  
15 resolve that issue, and we'll do whatever you say.

16 THE COURT: If you two agree, that will be  
17 easy. If you don't agree, then I'll have to have a  
18 hearing.

19 MR. WAINGER: It's not that I don't enjoy being  
20 with you because I do, but I know you're tired of spending  
21 your Fridays with us, and there is no reason that we can't  
22 try to agree on these things.

23 MR. STILLMAN: Now, it's our position, Your  
24 Honor, and I hope you agree with us on this, that -- there  
25 is a claim in the -- that's been asserted by Mr. Wainger



1 that is still dangling, and it's not specifically addressed  
2 by this order, pertaining to a contract right, if you will,  
3 of 10 percent of the Manville fees. Do you remember that 10  
4 percent issue?

5 THE COURT: No, I don't. I'm sorry.

6 MR. STILLMAN: There were approximately 110  
7 cases that were assigned to --

8 THE COURT: Okay.

9 MR. STILLMAN: -- certain associates of the law  
10 firm.

11 THE COURT: To do it and get it done and they  
12 would take a bonus.

13 MR. STILLMAN: It was our contention you had to  
14 be there at the time of settlement in order to participate  
15 in that. Mr. Wainger said you did not. We believe that  
16 your ruling as to the definition of what it means to be  
17 fully earned resolves this issue. We believe that as a  
18 practical matter, given your ruling of how these fees are  
19 fully earned, that you had to be there at the time of  
20 settlement and so forth and that effectively disposes of  
21 this issue. If it does, fine. If it doesn't, that's  
22 something we're going to have to resolve or you're going to  
23 have to decide.

24 THE COURT: Why is that issue any different  
25 than the others? If they're not fully earned, they're not

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1 fully earned.

2 MR. STILLMAN: I don't think it is.

3 THE COURT: Were they reduced to judgments?

4 MR. STILLMAN: It's the same cases. They're  
5 the Manville cases, but it was sort of a different theory  
6 that Mr. Wainger was asserting for recovery, and this order  
7 doesn't address that, and we need to nail that down. We  
8 need to have some understanding to make certain -- maybe it  
9 needs to be done in this order, but that needs to be  
10 resolved.

11 MR. WAINGER: Well, as I understood your order,  
12 judge, that took care of that. Your ruling effectively  
13 denied me recovery on that.

14 THE COURT: It seems to be the same principle.

15 MR. STILLMAN: If we agree on that, maybe when  
16 we do this final order, that ought to be made clear in the  
17 order.

18 MR. WAINGER: You said in the transcript that  
19 you thought this really resolved everything but the  
20 accounting, all the issues that were presented to you.

21 MR. STILLMAN: There is one other rather large  
22 matter that has not been resolved, Your Honor. You may  
23 recall that as an additional defense in this case we  
24 asserted, and Mr. Wainger disagreed very strongly, that his  
25 earnings had been capped in any event in 19 -- at the time

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1 that he withdrew and that even if you had ruled that these  
2 fees had been fully earned, his earnings are capped. His  
3 response to that was that, I'm a withdrawing partner and  
4 caps don't apply to withdrawing partners.

5 That issue -- we filed a motion for summary  
6 judgment. That issue has never been resolved. If this case  
7 went to the Supreme Court of Virginia, it needs to be  
8 resolved at that time. As far as I'm concerned, it's a  
9 purely legal issue. We have briefed it already.

10 THE COURT: I don't think it's capped.

11 MR. STILLMAN: We need that in the order so  
12 that issue can get resolved. Is it your -- is it your  
13 opinion -- I guess I need to know why it's not capped.

14 THE COURT: Well, I -- I --

15 MR. WAINGER: It was briefed.

16 THE COURT: The argument was, I think, that he  
17 was making more as an associate and he made more than the  
18 cap every year.

19 MR. R. GLASSER: No, sir.

20 MR. STILLMAN: You're -- that's a different  
21 issue. There is no dispute and Mr. Wainger does not dispute  
22 that every year that he was a partner in the law firm his  
23 earnings were capped pursuant to a formula that everybody  
24 agrees to. There is no issue about this. I believe that in  
25 1990 the -- the year that Mr. Wainger contends these fees

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1 were fully earned, which is the date of the entry of the  
2 consent judgments, there is no dispute that his earnings  
3 capped that year at approximately \$239,000.00. There is no  
4 dispute about that. Mr. Wainger agrees with that. His  
5 point, however, is that as a withdrawing partner, the year  
6 that I withdrew there is no cap that applies to me because  
7 I'm a withdrawing partner and that doesn't have anything to  
8 do with withdrawing partners.

9 MR. WAINGER: It also -- the cap only applied  
10 to cash received. My further point on this is that your  
11 ruling on the Manville fees not being fully earned makes  
12 this issue moot. There is no -- there is no controversy now  
13 because under your ruling I'm not entitled to the Manville  
14 fees, and as a result, that issue -- the issue is moot.  
15 Whether there is a cap or not, there is no issue. There is  
16 no reason or controversy now because I don't recover.

17 MR. STILLMAN: The reason why that is not true,  
18 Your Honor, is that if the Supreme Court of Virginia  
19 disagrees with you, then the issue of Mr. Wainger's cap is  
20 right squarely on the table, and the Supreme Court of  
21 Virginia could then decide the case saying, well, I disagree  
22 with Judge Clarkson, that these fees were fully earned, but  
23 as a practical matter, pursuant to the partnership  
24 agreement, Mr. Wainger capped in 1990 at the time that these  
25 fees were earned and so he doesn't get any money anyway, and

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1 we need to have that issue on the table so the Supreme Court  
2 would have two issues to resolve, not just one, and there is  
3 no question that Mr. Wainger did cap in 1990. He agrees  
4 that he capped in 1990.

5 MR. WAINGER: That is not an issue, judge. The  
6 Supreme Court, if they affirm your ruling on this issue,  
7 that's the end of the litigation.

8 THE COURT: You are way ahead of me. I'm just  
9 not up to you.

10 MR. R. GLASSER: If Manville had not only been  
11 fully earned but paid in 1990, Steve Wainger would not have  
12 gotten one penny more even though tens of thousands of  
13 dollars, millions would have come in. Why? Because the  
14 maximum that he could earn in the best possible scenario was  
15 239 and change and he got that.

16 MR. STILLMAN: He admits that.

17 MR. R. GLASSER: Even if the Court says, no, I  
18 think Manville was fully earned, put it back into 1990 and  
19 pay him his share, his share is zero because he was capped.  
20 There is two ways we should win.

21 MR. STILLMAN: In fairness to you, this is a  
22 big issue, and we're springing it on you right now and  
23 you're listening and you don't remember. I think this issue  
24 has been fully briefed. I hate to ask you to do some more  
25 work, but I believe you need to go back and read those

1       briefs.

2               MR. WAINGER: I think --

3               THE COURT: How about you going in there and  
4       finding them for me?

5               MR. STILLMAN: I'll give you another copy.

6               MR. WAINGER: It is an issue that really is an  
7       issue that is mooted by your decision, on whether there is a  
8       cap or not. Withdrawing partner's interest under the  
9       partnership agreement did not have --

10              THE COURT: You agree with them, then, that  
11       even if you got all the Manville fees, you wouldn't have  
12       gotten a cent more in 1990 because it was capped?

13              MR. WAINGER: In 1990 I was -- my fees were  
14       capped at the \$239,000.00, but as a withdrawing partner, my  
15       interest in whatever fees were then earned but not received  
16       were unaffected by what was not received.

17              THE COURT: What made the cap go away?

18              MR. WAINGER: The cap dealt with your cash  
19       receipts for income for a given year. There was work in  
20       progress all the way through, and if a partner were capped  
21       in a given year and a case was settled on January -- on  
22       December 23rd of that year and the money was received the  
23       following year, even if a partner was capped, he would still  
24       share in it the following year, so the withdrawal partner's  
25       interest -- it's when the cash was received. That's when it

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1 was distributed, and that is what would go to the cap. It  
2 was the money when it was collected and received.

3 My point here is that the issue of the cap,  
4 which is a -- a factual issue that would require a trial, is  
5 unnecessary to resolve based upon your decision that I'm not  
6 entitled to the Manville fees in any event. If the Supreme  
7 Court --

8 THE COURT: They say that it is an issue.

9 MR. WAINGER: The fact they say it doesn't mean  
10 it's an issue. If the Supreme Court were to rule and affirm  
11 your decision, then that's the end of it.

12 THE COURT: Let's say they overrule me.

13 MR. WAINGER: If they overrule it, then,  
14 depending upon the grounds that they overrule it, we either  
15 have to come back and try some of the other issues that they  
16 raise on the appeal or they then get to at that time, rather  
17 than this time, come back and raise their issue of cap.

18 MR. STILLMAN: We've already raised the issue,  
19 and let me remind you that when you entered the first  
20 summary judgment order, you ruled in favor on this issue.  
21 So you considered it was relevant the first time, and --

22 THE COURT: I forgot that.

23 MR. STILLMAN: My point simply is that this  
24 gives the Supreme Court the chance to decide for Glasser &  
25 Glasser on one of two alternative theories. Rather than

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1 remanding it back and having us litigate the whole thing  
2 over again, we can resolve it in one swoop.

3 THE COURT: You say that it would be -- your  
4 understanding is that if I rule with them I would be right?

5 MR. WAINGER: If the Supreme Court affirms your  
6 decision, then the issue of cap is mooted and that's it.  
7 There is no need to resolve that issue.

8 MR. STILLMAN: If they don't affirm your  
9 decision, then they have the opportunity to say, but the net  
10 result is the same because Mr. Wainger still doesn't win  
11 because he capped.

12 THE COURT: Send me what briefs you want and  
13 I'll write you a letter, and you incorporate it in this  
14 order.

15 MR. WAINGER: Why go to an unnecessary trial  
16 and expense now when it may not be necessary?

17 THE COURT: We're not going to a trial. He's  
18 going to send me whatever brief he wants to and you're going  
19 to send me whatever brief you want to. I'm going to get  
20 back the next day hopefully in a letter and then you can  
21 incorporate that into this order.

22 MR. WAINGER: I'm not sure it's an issue that's  
23 right for summary judgment when it can have -- when there  
24 are factual -- when there is factual evidence. For example,  
25 the very issue of whether a --



1 THE COURT: Why didn't you tell me this  
2 before? Why did you let me rule -- each of you asked for  
3 summary judgment. I ruled and now we're getting all this  
4 other stuff thrown in.

5 MR. STILLMAN: You may remember, this was part  
6 of our -- you ruled on this already.

7 THE COURT: I tell you, I'll be consistently  
8 right or wrong. I'll rule the same way. I don't even  
9 remember which way I ruled. I'll rule the same way.

10 MR. STILLMAN: The original ruling you made  
11 incorporates this.

12 THE COURT: Incorporate it again.

13 MR. WAINGER: Okay. Let me make my exception  
14 to that. I think it's a factual issue, and for the reasons  
15 stated before.

16 THE COURT: Okay.

17 MR. STILLMAN: Believe it or not, that's all  
18 I've got. We need to work on the order.

19 THE COURT: Let me tell you about my problem.  
20 Can someone get that file out of my -- you know, I've kept  
21 it there just because I don't think it all ought to be  
22 published for a lot of reasons.

23 MR. STILLMAN: I think what we'll have to do,  
24 if you don't mind, is come over, and if we can use your  
25 conference room, and with Mr. Wainger -- working with Mr.

\* \* 429 \*

VIRGINIA:

~~CLASSIFIED ORIGINAL~~

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

STEPHEN WAINGER,	)	
Complainant,	)	CHANCERY NO.
v.	)	92-1166
GLASSER AND GLASSER,	)	
A General Partnership,	)	
Respondent.	)	
GLASSER AND GLASSER,	)	
Plaintiff,	)	AT LAW NO.
v.	)	L92-2021
STEPHEN WAINGER,	)	
Defendant.	)	

TRANSCRIPT OF PROCEEDINGS

Norfolk, Virginia

June 24, 1994

Before:

THE HONORABLE JOHN E. CLARKSON, JUDGE

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TAYLOE ASSOCIATES, INC.

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THE COURT: Well, I think we had mentioned sometime that they were final nonappealable judgments. Let's stick it in. I don't think it makes any difference, but --

MR. WAINGER: Also, Judge, on Page 3, I guess it's the bottom of Page 2 you had indicated, as I understood, that you were going to permit the paragraph, first paragraph in the contingent fee agreement that you referred to.

That first paragraph is any compensation for their services, We agree to pay our said attorneys from the proceeds of recovery a fee of 33 and one-third percent of the gross recovery, either by way of compromise, settlement, before or after the institution of suit.

I believe that you had indicated that that would be permissible, and on Page 18 of the transcript starting at Line 6, I think the import of that was that you were going to permit that first paragraph because it really was part and parcel of the second paragraph, which was contained in there.

I had underlined in the open copy I had given to you certain words, and you said, well, take the underline out, but you did permit this paragraph. This talks about the proceeds of recovery, which is

1 inherent and very much connected to the next  
2 paragraph of recovery. And so --

3 THE COURT: Wasn't there some argument  
4 that that wasn't in all the agreements or something?

5 MR. WAINGER: Oh, no, that they were  
6 saying --

7 MR. MAYO: Well, no reason to debate.  
8 Let's let the Court look at the transcript.

9 MR. WAINGER: Well, I have copies of  
10 the transcript.

11 MR. MAYO: Can he look at that one?

12 MR. WAINGER: Well, sure. And that's  
13 part of the problem, Judge. I think they have gotten  
14 you to rule on a lot of things for which there is no  
15 evidence, and on those cases where there were  
16 transcripts --

17 MR. STILLMAN: Your Honor, I can  
18 represent to the Court that I have a very clear  
19 understanding of your ruling on this. I remember it  
20 very clearly, and the question talked about whether  
21 this paragraph --

22 MR. WAINGER: Judge, I don't think we  
23 need to go into Mr. Stillman's recollection when we  
24 have the transcript.

25 MR. STILLMAN: I am perfectly happy to



1 go with the transcript because I do not believe the  
2 transcript said that you said that first paragraph  
3 will be in there. In fact, I recall the exact  
4 opposite.

5 MR. WAINGER: Well, Judge, let's let  
6 you read it. Page 18, Line 6, and it appears, now,  
7 here are some of the contingent fee agreements that  
8 I -- that were in the motion for summary judgment  
9 that I gave you, and I think if we look through all  
10 of the others that they have subsequently filed,  
11 you'll see the same thing, but -- and that's the  
12 paragraph that I addressed in so much detail in the  
13 brief. It is about proceeds of recovery, explaining  
14 what recovery is.

15 THE COURT: Okay. Well, let me ask  
16 this: Is it factually correct -- can we agree on  
17 this: Is it factually correct that fee agreements  
18 between the claimants and their attorneys contain  
19 that first paragraph?

20 MR. STILLMAN: All of them?

21 MR. WAINGER: I don't know if all of  
22 them did because there were a thousand. They weren't  
23 in evidence, and it's my position, Judge, that that  
24 really is immaterial, anyway.

25 But if you are going to add this

1 paragraph, if you are going to start taking some  
2 selected part out of a retainer agreement, then it's  
3 only fair that the other paragraph that really  
4 explains it just as much be put in.

5 MR. STILLMAN: The fact is that that  
6 paragraph is not in all of the fee agreements. I  
7 believe the effect of this paragraph is for all  
8 intents and purposes, but the other one is not.

9 THE COURT: The second one, not the  
10 first one?

11 MR. STILLMAN: Yes.

12 MR. WAINGER: Well, Judge, I have just  
13 shown you a group of them. They have filed a  
14 thousand retainer agreements, and I think it would be  
15 appropriate to go through them.

16 The point is that this concept should  
17 be addressed in the order. If one paragraph is being  
18 put in the order, it's just not fair not to include  
19 the other paragraph.

20 MR. STILLMAN: Your Honor, let me  
21 perhaps shortcut it a little bit. Mr. Wainger keeps  
22 talking about what's fair and not fair. This is an  
23 order that is being entered over his objection. The  
24 factual recitations that are being included in this  
25 order are factual recitations that drove your

1 decision.

2 We could put in the entire record of  
3 this order if we wanted to make a brief. The point  
4 is we're presenting to you an order that we believe  
5 fairly reflects your rulings based upon the facts as  
6 you understood them, not the arguments of counsel.

7 And Mr. Wainger's objecting to the  
8 entire order. It's getting ridiculous. It is  
9 getting to the point that we can't agree to disagree.  
10 We are just asking him to sign the order seen and  
11 objected to, and he won't do that.

12 MR. WAINGER: Judge, it is interesting  
13 that your order was a lengthy order and they are  
14 selectively picking out the facts from your order  
15 that they want to put in there. So your order was  
16 filled with findings of facts, but they have decided  
17 to selectively just put in that one paragraph. And  
18 although I object to all of it, I think in fairness,  
19 if you are going to do that, then you ought to put in  
20 the other paragraph that explains it.

21 MR. STILLMAN: Well, Your Honor, it is  
22 true that we are selectively including facts. That's  
23 what winners of lawsuits routinely do when they draft  
24 orders, they draft those orders based upon the facts  
25 that drove the Court's decision, not the facts that

1 the other side was arguing supported their case. I  
2 have never drafted an order like that.

3 MR. WAINGER: Well, there were many  
4 facts that supported the Judge's finding, and you are  
5 selectively picking out those facts.

6 THE COURT: Let's do this, gentlemen:  
7 Let's take that second paragraph, new paragraph, a  
8 fee of, and then put in --

9 MR. STILLMAN: Where are you now?

10 THE COURT: I am at his suggested, a  
11 fee of, and then put in dash, dash, dash percent:

12 MR. WAINGER: So you are leaving out  
13 the -- expressing the amount?

14 THE COURT: Yes, because --

15 MR. STILLMAN: Your Honor, I don't even  
16 know what -- I am looking at my order --

17 THE COURT: I just took out percent.  
18 That's the only thing that could bother anyone. We  
19 are not sure of what percentage it was, so I just put  
20 in, We agree to pay our said attorneys from said  
21 recovery a \_\_\_\_ of the gross recovery, either by way  
22 of compromise, settlement, before or after the  
23 institution of suit, except without the percentage.

24 MR. STILLMAN: This paragraph is not in  
25 every one of the fee agreements, and --



1 THE COURT: Okay. Well, if it is not  
2 in every one, then we better not put it in.

3 MR. WAINGER: Well, Judge, it certainly  
4 is, I would say, in a substantial number of plea  
5 agreements -- I mean, retainer agreements, and I'm  
6 not sure that language that he quotes in there is in  
7 all of the retainer agreements, either.

8 And so maybe the appropriate thing  
9 under the circumstances, if you are going to put  
10 anything in it, is not to quote from it at all.

11 MR. STILLMAN: Judge, if you look at  
12 Page 19 of your order, you eventually got to the  
13 bottom line where you said, let's take it out, and  
14 that's the paragraph that we are talking about.

15 MR. WAINGER: No, he did not say to  
16 take it out. He said to take out what I had  
17 underlined.

18 MR. MAYO: That is what you have  
19 written on the transcript. I think the court  
20 reporter typed in something entirely different.

21 MR. WAINGER: That is not the case.

22 MR. STILLMAN: The point is this is  
23 exactly what we argued the last time we were here.  
24 We are back arguing the same thing over.

25 THE COURT: Let me be right or wrong

1 consistently.

2 MR. WAINGER: Please note my objection.

3 THE COURT: Okay. What's the next one?

4 MR. WAINGER: The next one would be  
5 on -- I think it would be on Page 4, This is for the  
6 reasons stated from the bench on May 23, 1994 and  
7 June 10, 1994, and I've just added in parenthesis, as  
8 recorded in the court reporter's transcript. I don't  
9 know if that's a big deal.

10 THE COURT: I have lost you. I'm  
11 sorry. Oh, I see it.

12 MR. STILLMAN: I'm sorry, I still don't  
13 know what we are doing here.

14 THE COURT: I don't think that is a big  
15 deal. I agree.

16 MR. STILLMAN: What are we talking  
17 about?

18 THE COURT: This one right here. So he  
19 has added, as recorded in the court reporter's  
20 transcript. I think this is fine. This is yours.

21 MR. STILLMAN: This is mine.

22 THE COURT: This is yours.

23 MR. STILLMAN: Where are we adding the  
24 words?

25 THE COURT: We are not adding.

1 MR. WAINGER: Judge, the next is I  
2 think a paragraph in your order where it says, The  
3 judge orders and decrees as follows, what I have is a  
4 new C, which is, Wainger's motion for partial summary  
5 judgment that he has not been overpaid as alleged in  
6 Count 2 of Glasser's motion for declaratory judgment  
7 is moot and that Glasser and Glasser nonsuited its  
8 Count 2. I think that reflects -- just makes it a  
9 clear picture of what has happened.

10 MR. STILLMAN: Well, I don't see why  
11 that is necessary. If you have a nonsuit order,  
12 there is no reason why you would say that -- say that  
13 the --

14 MR. WAINGER: Because I was moving for  
15 summary judgment on that.

16 MR. STILLMAN: I understand that, but  
17 we have nonsuited the claim, so I don't know why you  
18 need to include in the order that the claim is moot.  
19 It is not moot. It's over. It is not moot. It's  
20 been nonsuited.

21 THE COURT: It could mean different  
22 things.

23 MR. STILLMAN: I mean, I have got the  
24 right within six months to reassert it, so it's  
25 not -- I mean --

1 you put in yours.

2 MR. WAINGER: Well, I will include them  
3 from the transcript of the objections today.

4 THE COURT: Okay. You wanted to talk  
5 about this second order?

6 MR. WAINGER: Yes, sir, in just one  
7 moment.

8 Judge, there are a number of concerns  
9 and problems and objections I have to the other  
10 proposed order tendered by Mr. Stillman.

11 THE COURT: Okay.

12 MR. WAINGER: In the first place, there  
13 has been no evidence or any trial on my employment  
14 agreement or the 20 percent compensation, extra  
15 compensation that I was to get.

16 There's no provision in the partnership  
17 agreement requiring a fee to be received before a  
18 withdrawing partner leaves, that is from that 20  
19 percent bonus. An example of --

20 THE COURT: Now, is this in Paragraph 1  
21 of this proposed order?

22 MR. WAINGER: Yes. One, for example,  
23 talks about the additional compensation -- that's the  
24 additional compensation I'm talking about -- to which  
25 Wainger is entitled under Article IX, Item A of the



1 partnership agreement (as set forth in Article IV,  
2 Section B, Paragraph E) shall be based upon fees that  
3 were fully earned by the firm prior to January 21,  
4 1992 as a direct result of business from a client  
5 originated by Wainger, regardless of when the firm  
6 actually received the fees.

7 Now, you have given several rulings in  
8 describing when a fee is fully earned, but in the  
9 partnership agreement for the Article IV cited, there  
10 is no reference to the fact that or requirement that  
11 the fees have to be received before withdrawal.

12 That's Number 1.

13 And as an example, let me just tell  
14 you -- show you two things, Judge. One is amended  
15 answers to interrogatories filed by Mr. Glasser.  
16 This shows with explanation fees that were billed  
17 before I left and when they were collected.

18 For example, if you look at the very  
19 first, the very first one, which is Cain versus CSX,  
20 now, Judge, that reflects my half of the share of 20  
21 percent because it was split with Mr. Lawlor, but  
22 here is a case where under that order -- and a check  
23 while I was still working with Glasser and Glasser, I  
24 went to Mr. Cain's home with I believe the check that  
25 I have a copy of here dated January 17th, 1992.

1 That's before I left.

2 Now, the money may not have come in.  
3 Mr. Lawlor was with me. And if you read the  
4 explanation that is on this sheet, it says it was  
5 received 1-28-92 from Moody. Well, it depends on  
6 how -- which of your rulings as to when a fee is  
7 fully earned applies.

8 THE COURT: Are we going to do this  
9 check by check?

10 MR. WAINGER: Well, no, sir. I guess  
11 Mr. Hodges may have to do that, and that is why he is  
12 here, in part to --

13 MR. LAWLOR: Judge, I don't think that  
14 one is in dispute. I think he has received his money  
15 for that one.

16 MR. STILLMAN: It doesn't matter.

17 THE COURT: Okay. It says --

18 MR. LAWLOR: It says fully earned. We  
19 have never disputed that.

20 MR. STILLMAN: Our point is -- excuse  
21 me, please, if I may just so -- if your ruling was  
22 that a fee, to be fully earned had to be received,  
23 now here is a situation from what they're telling  
24 you --

25 THE COURT: This has nothing to do

1 with -- this isn't Manville, is it?

2 MR. WAINGER: No, sir.

3 THE COURT: This has nothing to do with  
4 my rulings, does it?

5 MR. WAINGER: Well, I don't know. If  
6 Mr. Hodges is going through all of the cases to see  
7 what I am entitled to, if there is a -- and I think  
8 Leon needs this guidance --

9 THE COURT: Is this -- for some reason  
10 or other I thought we were just talking about  
11 Manville fees.

12 MR. WAINGER: No, sir, because as you  
13 get into the --

14 MR. STILLMAN: Summary judgment motion.

15 THE COURT: Is for Manville fees.

16 MR. STILLMAN: But -- now what is this  
17 for, capital account?

18 MR. WAINGER: Excuse me, but the  
19 summary judgment motion does not say that you have  
20 limited it to Manville fees, I don't believe.

21 THE COURT: I thought I had. I thought  
22 we were ruling on the Manville fees.

23 MR. WAINGER: Well, there is nowhere in  
24 here that I see where you have limited your ruling to  
25 the Manville fees.

1 MR. STILLMAN: The point --

2 THE COURT: I thought that is what we  
3 were always talking about.

4 MR. WAINGER: Well, can we put that in  
5 your order, Judge, that this -- your ruling there is  
6 specific?

7 THE COURT: I certainly didn't take  
8 check by check and go through them to see whether you  
9 have earned it or not.

10 We were talking about Manville fees  
11 with final nonappealable judgments. Isn't that what  
12 we are talking about?

13 MR. WAINGER: Then what we need to do  
14 is to change here where it says, in connection with  
15 certain asbestos personal injury claims, and put, in  
16 connection with the nonappealable Manville judgments.

17 THE COURT: Well, isn't that what we  
18 have been talking about? Am I dreaming all this?

19 MR. STILLMAN: You are not, but the  
20 explanation is simple, Your Honor. The point is that  
21 once you define how any fee, whether it's a Manville  
22 fee or any fee is fully earned --

23 THE COURT: I thought we were talking  
24 about just Manville fees. I thought that you-all  
25 kept insisting upon that.



1 MR. STILLMAN: We were talking about  
2 Manville fees. There is no --

3 MR. WAINGER: That was the principal --

4 MR. STILLMAN: You are right about  
5 that, but once you establish that rule as to how a  
6 contingent Manville fee is fully earned, that's the  
7 law of the case, and obviously it can't be different  
8 if the facts are the same.

9 THE COURT: But if a check came in.  
10 Now you are handing me checks with a date on it, one  
11 date and date received another date. I haven't gone  
12 through this.

13 MR. WAINGER: That is what I am telling  
14 you, Judge. If your rulings -- that your rulings --

15 THE COURT: Well, you-all are trying to  
16 lead me into error, and it just seems that you are  
17 making this much more complicated than it really is.

18 I am talking about the nonappealable  
19 judgments, as you kept insisting upon that were  
20 Manville that you said were fully earned, and I said  
21 they weren't because they hadn't been received.

22 MR. WAINGER: May we put that in your  
23 order?

24 THE COURT: You have got it right here  
25 in the transcript.

1 MR. WAINGER: But I am saying the order  
2 that you just signed on the first --

3 THE COURT: No. I am not going to put  
4 anything further in that order. I have already  
5 entered it. Now, what is this next order?

6 MR. WAINGER: Well, the effect is in  
7 your order -- it's what Mr. Stillman said, it depends  
8 in applying the facts that you made in the Manville  
9 case.

10 I had mentioned all along that there  
11 are these other group settlements, but the principal  
12 amount of the principal purpose of my claim was the  
13 Manville case, but it certainly had application to  
14 these other cases.

15 And you have ruled that -- if I recall  
16 it, and I have the transcript -- that in contingent  
17 fee cases sometimes when lawyers would enter into a  
18 settlement agreement -- and you referred to Page  
19 versus Baskerville -- when the check would be coming,  
20 that could be a fee that was earned under the  
21 contingency fee, but you felt generally the fee had  
22 to be in hand to be fully earned. Now, we get into a  
23 situation --

24 THE COURT: And now you made an  
25 exception there. You said in a settlement. Now,

1 when two lawyers settle a case and the check is in  
2 the mail, that's earned. I thought we talked about  
3 all that.

4 MR. WAINGER: Well, you did, but here  
5 is a situation -- and, frankly, I think that the  
6 Manville case is following that.

7 THE COURT: I understand you.

8 MR. WAINGER: But here is a situation  
9 where I think from the way they have worded the order  
10 I'm going to be out because a case where the check --  
11 the settlement was made before I left, in fact, the  
12 check was even drawn before I left but it wasn't  
13 collected --

14 THE COURT: I have never seen that  
15 check. I have never had that issue.

16 MR. WAINGER: Well, there are going to  
17 be many issues in the accounting like that, which is  
18 one of the reasons that Mr. Hodges is here is to get  
19 some guidance because the literal meaning of your  
20 order could preclude my interest in just this sort of  
21 case.

22 MR. STILLMAN: Your Honor, if I could  
23 help a little bit. I really -- it really is not that  
24 complicated. Once you establish the law of the case  
25 in terms of how a fee is fully earned, which you have

1 done in your order that you entered now, obviously  
2 that provides the kind of guidance on a case-by-case  
3 basis to Mr. Hodges so that he can perform the  
4 accounting that we've asked him to do or that Mr.  
5 Wainger's asked him to perform.

6 We resolve Mr. Wainger's concerns if  
7 you would just look to the last line of paragraph  
8 Number 1. We say, regardless of when the firm  
9 actually received the fee so that in the situation  
10 that Mr. Wainger is describing, if you have got a fee  
11 that has been fully earned within the context of your  
12 order and the check happens to come in the day after  
13 he leaves, he still gets it.

14 The accountant will simply look at your  
15 ruling, decide when a fee is fully earned based upon  
16 your prior ruling, and then makes a decision as to  
17 whether that is Mr. Wainger's or that belongs to  
18 Glasser and Glasser, regardless of when the check  
19 actually arrives in the mail.

20 MR. WAINGER: Yes, but you see what he  
21 has done is put in the order fully earned under the  
22 rulings that you have made with Manville, which means  
23 that the money has to be in hand. And so --

24 THE COURT: Regardless of when the  
25 fee -- when the firm actually received the fee?



1 Doesn't that take care of it?

2 MR. WAINGER: No, sir, because when  
3 they talk about fully earned as you have ruled, then  
4 you have ruled in one part of your rulings that the  
5 cash has to be in hand.

6 THE COURT: But this sentence, it says,  
7 regardless of when the firm actually received the  
8 fee.

9 MR. WAINGER: Well, then why do they  
10 need fully earned? Why couldn't --

11 THE COURT: Because it's got to be  
12 fully earned and received normally, but this changes  
13 that. This is fully earned and whenever they receive  
14 it.

15 MR. STILLMAN: You said that in the  
16 Manville cases one of the things that drove you was  
17 that there was so much additional work that was done  
18 and so forth after those judgments were obtained.

19 You also said that if that were a  
20 situation where two lawyers had settled a case over  
21 the telephone and the only thing remaining to be done  
22 was to send the check, that that fee was probably  
23 fully earned, according to your ruling.

24 THE COURT: That's right.

25 MR. STILLMAN: This paragraph does

1 nothing more than incorporate that.

2 MR. WAINGER: Well, I thought that it  
3 was susceptible to the meaning that I gave, and that  
4 is why I wanted to bring it to your attention. And  
5 with his explanation, I think that will give guidance  
6 to Mr. Hodges, but I don't know why that has to be  
7 incorporated into an order at this stage until and  
8 unless we have some problems with that.

9 THE COURT: Okay. What else is wrong  
10 with this?

11 MR. WAINGER: The other thing is that,  
12 for example, escrow accounts, there could be many  
13 escrow accounts where the money is sitting right in  
14 an escrow account but hasn't been distributed.

15 THE COURT: Are they fully earned?

16 MR. WAINGER: I would say they are  
17 fully earned.

18 THE COURT: Well, if they agree with  
19 you, then they ought to be distributed.

20 MR. WAINGER: Well, that would be the  
21 position that we would be taking. With regard to  
22 the --

23 MR. MAYO: What paragraph are you on  
24 now?

25 MR. WAINGER: I am skipping over 3 and

1 4 because I think that is where Leon needs to address  
2 it, but the Number 5, Wainger's claim to the ten  
3 percent bonus of fees derived from approximately  
4 hundred and ten Manville cases, the Court's  
5 determination in the summary judgment order is that  
6 the Manville fees had not been fully earned as of  
7 January 21, 1992.

8 Judge, I just want to make it clear. I  
9 don't see how that can be a basis for summary  
10 judgment when it's a question of fact as to what was  
11 meant by, an attorney must be with the office at  
12 settlement.

13 These cases were settled well before  
14 the time I left. Their position is that it talks  
15 about when the fee has to have been received. But  
16 absent a trial, I don't see how that could be a  
17 summary judgment. I just want --

18 THE COURT: Did you ask for summary  
19 judgment?

20 MR. WAINGER: I asked for summary  
21 judgment on the Manville fees, and then if the  
22 Manville fees --

23 THE COURT: Is this what we are talking  
24 about, a hundred and ten Manville cases?

25 MR. WAINGER: But this is a bonus; this

1 is an extra bonus.

2 THE COURT: Isn't it concerning the  
3 Manville fees?

4 MR. WAINGER: It relates to the  
5 Manville cases. Then I think those are probably the  
6 only points that I wanted to make other than 3 and 4,  
7 which gets to the undivided profits account for which  
8 I believe Mr. Hodges would have perhaps some feelings  
9 about what needs to be done on how the undivided  
10 profits account should be handled.

11 THE COURT: All right. What is wrong  
12 with 21, 31st if it was to be determined for an  
13 amount between January 1 to January 21 and 31 days?

14 I don't see what's wrong with 21, 31.  
15 I'll hear any testimony you want.

16 MR. STILLMAN: You just tell us. We  
17 just need some guidance on that.

18 THE COURT: Is that fair, Mr. Hodges,  
19 21, 31st?

20 MR. HODGES: Yes, in my opinion, and  
21 that is what I had formulated my findings upon.

22 THE COURT: Okay. Why don't we do it  
23 that way. Okay.

24 MR. WAINGER: Then on Number 4 it talks  
25 about, in calculating Wainger's share of undivided



1 profits of the firm which were fully earned by the  
2 firm prior to January 21, 1992, other than contingent  
3 fees as addressed by this Court's summary judgment  
4 ruling, the Court reserves for determination any  
5 disputes that arise regarding inclusion or exclusion  
6 of specific fees or categories of fees. I don't know  
7 why they eliminate the contingent fees in this  
8 paragraph.

9 MR. STILLMAN: Well, it may be that we  
10 won't be able to. I have to tell you that depending  
11 upon --

12 MR. WAINGER: Can we just put Manville  
13 contingent fees? That will make it, other than  
14 Manville contingent fees.

15 MR. STILLMAN: That's okay. I don't  
16 have any problem with that because it may very well  
17 be that we won't be able to eliminate it when we get  
18 down to it.

19 THE COURT: Okay.

20 MR. WAINGER: Do you need any guidance  
21 from the Court in anything else about your  
22 accounting?

23 (Discussion off the record.)

24 MR. MAYO: Judge, let me explain a  
25 little bit. I was asked to prepare this order that

1 we have been talking about. We sat down on June 10;  
2 that was a pretrial conference. We were trying to  
3 figure out whether there were any issues that were  
4 ripe to be tried on June 20, and we went through the  
5 remaining issues, and that's -- and I have prepared  
6 this order.

7 And that's why some of these issues are  
8 necessarily left for another time. For example,  
9 Paragraph 3, you'll recall we were trying to  
10 determine what issue there was with respect to how we  
11 computed the expenses to be charged to the undivided  
12 profits account or what Steve's --

13 THE COURT: Because of attorney's fees.

14 MR. MAYO: So it's written out this way  
15 because here were the options we were considering.  
16 You resolved that issue today, but I give that as an  
17 example.

18 Paragraph 4 simply says that we are  
19 going to go back now that we have gotten direction  
20 from the Court and the parties are going to try to  
21 sit down and figure out what the right amounts are  
22 really for all these issues, and to the extent there  
23 are any disagreements, we'll come back to you.

24 And, for example, in this matter,  
25 obviously the parties have to preserve their appeal

1 rights, so the Court is -- you made clear just a  
2 moment ago that you consider these cases settled and  
3 fully earned before Steve left. That's fine.

4 We need obviously to get some evidence  
5 in the record so that that can be taken up to the  
6 Supreme Court, if necessary, by way of stipulation,  
7 perhaps.

8 But the purpose in drafting this order  
9 was to simply play out what needed to be done before  
10 we moved to the next stage, what issues are out  
11 there, what issues are not out there. That was the  
12 purpose of this.

13 For that reason, 4 is left open. You  
14 know, for purposes of determining his share of  
15 undivided profit, the Court reserves for  
16 determination any disputes that arise regarding the  
17 treatment.

18 So Mr. Hodges may go through the books  
19 and he'll come up with a list of fees that he thinks  
20 were fully earned, and we'll take a look at his list.  
21 What we dispute we'll come up with a stipulation or  
22 we may even present evidence, but we'll come back to  
23 you.

24 Same thing for Number 1. This goes to  
25 the issue of what was fully earned before Steve left

1 from his clients, even though the fees were all done  
2 later, for example, hourly fees and what have you,  
3 same thing. He'll put together his list. If we  
4 disagree, we'll come back and let you arbitrate that  
5 dispute. That's the tenor in which I have prepared  
6 this order.

7 THE COURT: Okay.

8 MR. LAWLOR: Had he been paid for that  
9 seventy-nine thousand --

10 MR. MAYO: Well, yes. Paragraph 2 is  
11 really somewhat moot at this point, although I would  
12 like to add a statement that he has been paid the  
13 79,383.65, and I would like to insert that somewhere  
14 in that paragraph. It sounds like --

15 THE COURT: Well, the Court  
16 acknowledges that Glasser and Glasser has paid --

17 MR. STILLMAN: Right.

18 MR. WAINGER: Judge, I think it is  
19 important to establish that that was a reimbursement  
20 to me of my previously established capital account  
21 plus interest of that capital account.

22 MR. STILLMAN: That is what it says.  
23 It says, return of capital and interest.

24 MR. WAINGER: Can we set forth how  
25 much -- I think I have that in my proposed order.



1 Can we set forth how much is capital and how much is  
2 interest?

3 THE COURT: Sure, just put it in  
4 parenthesis.

5 MR. WAINGER: And that would be  
6 \$63,065.55 is capital.

7 THE COURT: 63065 what cents?

8 MR. WAINGER: Point 55 is capital.

9 THE COURT: 55, okay.

10 MR. WAINGER: And the rest is interest.

11 Judge, since we rely so heavily, as you  
12 can see, on these transcripts, do you have any  
13 objection to setting forth what your feeling was off  
14 the record on the status of the railroad cases on  
15 settlements, you know, where the settlement has been  
16 reached but they were still --

17 THE COURT: I thought I said it. If  
18 the parties agree that the case is settled, it was  
19 settled.

20 MR. WAINGER: Okay. And the fee would  
21 have been earned for purposes of my --

22 THE COURT: As far as I can see it's  
23 been earned unless it still hadn't come in or took a  
24 long time or there was some problem with the  
25 settlement or something.

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1 MR. M. GLASSER: We have a good  
2 rapport, but he is very particular, and it is not a  
3 ministerial act to do that.

4 THE COURT: Why don't you-all look at  
5 each one, and if you two agree, I'll certainly agree  
6 with you. If you don't agree, I'll hear it.

7 MR. STILLMAN: Thank you

8 MR. MAYO: Sounds fair, Judge.

9 MR. WAINGER: Just one minute, please.

10 Judge, on a number of these cases,  
11 Judge, there are moneys that are in the escrow  
12 account from which the fees will ultimately be taken.  
13 I'm not talking about necessarily foreclosures, but  
14 in personal injury cases you would have that, and  
15 they couldn't get in touch with the client or the  
16 client couldn't come in, and in many cases these  
17 would be escrow accounts that fees were in accounts  
18 of Bobby Hatten's office with whom the Glasser firm  
19 had an arrangement, shared responsibility, as well as  
20 Willard Moody's firm, with regard to the railroad.

21 And so all of those moneys are in the  
22 escrow accounts. I would suggest that they, in  
23 effect, are even stronger than agreements, that  
24 that's, in fact, the money. So for guidance of Mr.  
25 Hodges, would you consider that those are fees that

1 are earned?

2 THE COURT: Well, not always. I mean,  
3 just because it is in an escrow account doesn't mean  
4 you earned your fee.

5 MR. R. GLASSER: If I may interject,  
6 with the Court's permission. We have a large amount  
7 of money that we received from Manville. This is  
8 certainly well beyond Steve's time period, and the  
9 Court has ruled on those, but by means of example,  
10 that were received in January of this year.

11 We felt it safe to begin distribution  
12 in late April. Bill Monroe has been working for  
13 months one at a time preparing the wrongful death  
14 petitions, meeting with the families, and running  
15 them through. He's been taking them to Judge Clarke  
16 I want to say on a daily basis, and if it's not  
17 daily, there is communication and constant  
18 preparation, and, respectfully -- and this will give  
19 the Court an easy yes or no -- my position is when  
20 Steve Wainger left, we stopped working for Steve on  
21 January 21; Steve stopped working for us.

22 Things that were fully earned, I wish  
23 arrangements had been made for him to have those  
24 things before he left and eliminate all this  
25 controversy, but we have had an ongoing practice with

1 a staff of 60 people. We are dedicating not only  
2 Bill Monroe's time, but a number of staff people on a  
3 daily, full-time basis, so I concur with the Court,  
4 the fact that that money is sitting there -- we have  
5 had families with the second wife and the children of  
6 the first marriage not given this distribution  
7 scheme --

8 THE COURT: I understand that.

9 MR. WAINGER: There are situations  
10 where there may be -- and we had this situation while  
11 I was there in Federal Court -- maybe 50 to a hundred  
12 cases where the money was in the escrow account and  
13 it just remained to be distributed to the clients  
14 because of whatever the reasons.

15 THE COURT: Maybe they couldn't find  
16 the client.

17 MR. WAINGER: That's right, but for  
18 whatever the reason. From a guidance standpoint  
19 under those situations, would you not consider that  
20 those fees were earned?

21 THE COURT: I think what I am going to  
22 have to do is look at every one. You-all know as  
23 much or more about when a fee is earned as I do.

24 MR. STILLMAN: It seems to me, Your  
25 Honor, that the best guidance that we could probably



1 draw from the ruling that you have already made is  
2 that you consider fees to be earned more than likely  
3 when the client considered them to be earned. If the  
4 client doesn't consider them to be earned, I don't  
5 know how the lawyers could consider them to be  
6 earned.

7 MR. WAINGER: Judge, Mr. Stillman is  
8 trying to distill, I don't know, 10 or 12 hearing  
9 dates where you had -- where you have said other  
10 things than what the client viewed, but when you had  
11 an arrangement between the lawyers for a settlement,  
12 and --

13 THE COURT: Each case is different  
14 apparently except for those Manville cases. They  
15 were all the same. But I think it depends on what  
16 type of case it is.

17 I can understand Michael's problem with  
18 accounting. I did many a one, and a lot of times you  
19 can't distribute the money. Sometimes if you have  
20 got a foreclosure, you can't find the owner of the  
21 property. I mean, they just deserted it, they leave.  
22 The foreclosure brings more money than the note  
23 holder needed, and you can't eat it up in fees, so  
24 you have got two or three thousand dollars sitting in  
25 your account and --

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VIRGINIA: CIRCUIT COURT FOR THE CITY OF NORFOLK

GLASSER AND GLASSER,

Plaintiff,

v.

At Law No. L92-2021

STEPHEN WAINGER,

Defendant.

STEPHEN WAINGER,

Complainant,

v.

Chancery No. C92-1166

GLASSER AND GLASSER,  
A General Partnership,

Respondent.

**SUMMARY JUDGMENT ORDER**

In these consolidated actions, both parties have moved for partial summary judgment with respect to whether Mr. Wainger is entitled to share in fees earned pursuant to the Partnership Agreement by Glasser and Glasser in connection with certain asbestos personal injury claims. Based upon the pleadings, interrogatory responses, and admissions of the parties or counsel, and after considering the lengthy arguments of counsel and the numerous briefs on this issue, the Court finds as follows:

1. On January 1, 1990, Wainger (formerly an Associate) became a partner in Glasser and Glasser. At that time, he agreed to be bound by, *inter alia*, Article IX of the

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Partnership Agreement for the Law Firm of Glasser and Glasser. This Partnership Agreement provides, in pertinent part, as follows:

The payment of a partner's interest in the partnership, calculated as of the date of his death, or the effective date of retirement, withdrawal or expulsion, will be on the following basis:

- Item A. Any unpaid monthly draw, and additional compensation (as described in Paragraph 3 of Section B, Article IV).
- Item B. His Capital Account.
- Item C. His Undivided Profits Account, plus his share, if any, of any undivided profits of the firm with respect to uncollected fees which were fully earned by the firm prior to the date of his death or the effective date of his retirement, withdrawal or expulsion, but which fees are received by the firm subsequent to such date.

Wainger's interest in Glasser and Glasser is governed by this provision.

2. In June and July 1990, Glasser and Glasser and Patten, Wornom & Watkins together obtained over 1,000 final and nonappealable judgments in the United States District Court for the Eastern District of Virginia on behalf of various asbestos disease claimants against the Manville Corp. Asbestos Disease Compensation Fund ("the Manville cases"). The fee agreements between the claimants and their lawyers in the Manville cases contain the following language (or substantially similar language) that requires money to be recovered before any fees can be "fully earned":

It is understood and agreed that this employment is upon a contingent fee basis, and, if no recovery is made, I will not be indebted to my said attorneys for any sums whatsoever as attorney fees, although I will be indebted to my said attorneys for all unpaid costs incurred.



3. As of January 21, 1992, Wainger had voluntarily withdrawn from Glasser and Glasser. By that date, no money had been received on the Manville judgments.

4. Glasser and Glasser seeks a summary judgment declaration that fees from the Manville cases were not "fully earned" within the meaning of Item C as of January 21, 1992.

5. Wainger, by contrast, has moved for summary judgment on the basis that Glasser and Glasser "fully earned" its "right" to its contingent fees from the Manville cases prior to Wainger's withdrawal from the Glasser Firm on January 21, 1992 (even though those fees were received at a later date) and, that pursuant to the complete (entire) language of Article IX, Item C., he (Wainger) is entitled to his proportionate share of the fees "from the proceeds of those (Manville) recoveries" (judgments) which were received after January 21, 1992.

For the reasons stated from the bench on May 23, 1994, June 10, 1994, and June 24, 1994, and deeming it just and proper so to do, it is hereby ADJUDGED, ORDERED, and DECREED as follows:

a. Glasser and Glasser's motion for partial summary judgment is GRANTED, and Wainger is not entitled to share in any fees from the Manville cases.

b. Wainger's motion for partial summary judgment asserting a right to share in the Manville fees, when received, is DENIED.

c. The Court declares that legal fees from contingent fee agreements containing the following language (or substantially similar language) cannot be "fully earned" within the meaning of Item C of the Partnership Agreement prior to the time money is recovered:

It is understood and agreed that this employment is upon a contingent fee basis, and, if no recovery is made, I will not be indebted to my said



attorneys for any sums whatsoever as attorney fees, although I will be indebted to my said attorneys for all unpaid costs incurred.

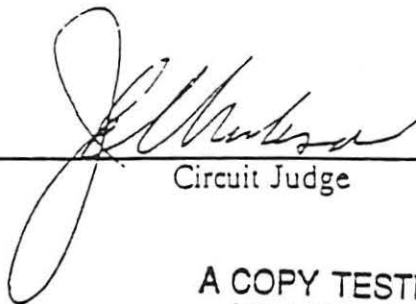
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d. Additionally, the Court declares that Wainger is barred from sharing in any fees that were "fully earned" by Glasser and Glasser during 1990 by virtue of the agreed limitation (or "cap") on his share of Glasser and Glasser's profits.

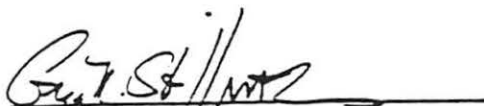
It is so ORDERED.

Entered:

6-24-94.


  
Circuit Judge

We ask for this:

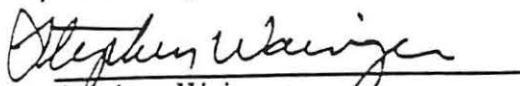
  
Gregory N. Stillman  
Counsel for Glasser and Glasser

A COPY TESTE:

WILLIAM T. RYAN, CLERK  
NORFOLK CIRCUIT COURT

BY  a  
Deputy Clerk authorized to sign  
on behalf of William T. Ryan.

Seen and objected to for this reason at forth in Stephen Wainger's briefs and in the transcripts of hearings on November 6, 1992, May 3, 1993, June 2, 1993, November 22, 1993, February 25, 1994, April 15, 1994, May 23, 1994, June 10, 1994, and June 24, 1994 as though fully set forth and incorporated herein by reference.

  
Stephen Wainger

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

STEPHEN WAINGER,	)	
	)	
Complainant,	)	
	)	
v.	)	CHANCERY NO. C92-1166
	)	
GLASSER AND GLASSER,	)	
A General Partnership,	)	
	)	
Respondent.	)	
	)	
GLASSER AND GLASSER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	AT LAW NO. L92-2021
	)	
STEPHEN WAINGER,	)	
	)	
Defendant.	)	

**AMENDED SUMMARY JUDGMENT ORDER**

In these consolidated actions, both parties have moved for partial summary judgment with respect to whether Wainger is entitled to share in fees earned pursuant to the Glasser and Glasser Partnership Agreement in connection with certain asbestos personal injury claims. Based upon the pleadings, interrogatory responses, and admissions of the parties or counsel, and after considering the lengthy arguments of counsel and the numerous briefs on this issue, the Court finds as follows:

1. On January 1, 1990, Wainger (formerly an Associate) became a partner in the Law Firm of Glasser and Glasser. At that time, he agreed to be bound by, *inter alia*, Article IX of the Partnership Agreement for the Law Firm of Glasser and Glasser. This Partnership Agreement provides, in pertinent part, as follows:

The payment of a partner's interest in the partnership, calculated as of the date of his death, or the effective date of retirement, withdrawal or expulsion, will be on the following basis:

- Item A. Any unpaid monthly draw, and additional compensation (as described in Paragraph 3 of Section B, Article IV).
- Item B. His Capital Account.
- Item C. His Undivided Profits Account, plus his share, if any, of any undivided profits of the firm with respect to uncollected fees which were fully earned by the firm prior to the date of his death or the effective date of his retirement, withdrawal or expulsion, but which fees are received by the firm subsequent to such date.

Wainger's interest in Glasser and Glasser is governed by this provision.

2. In June and July 1990, Glasser and Patten, Wornom & Watkins together obtained over 1,000 final and nonappealable consent judgments in the United States District Court for the Eastern District of Virginia on behalf of various asbestos disease claimants against the Manville Corp. Asbestos Disease Compensation Fund ("the Manville cases"). The fee agreements between the claimants and their lawyers in the Manville cases contain

the following language (or substantially similar language) that requires money to be recovered before any fees can be "fully earned":

As compensation for their services, we agree to pay our said attorneys, from the proceeds of recovery, a fee of \_\_\_\_\_ percent (\_\_\_\_%) of the gross recovery either by way of compromise settlement before or after the institution of suit.

It is understood and agreed that this employment is upon a contingent fee basis, and, if no recovery is made, we will not be indebted to our said attorneys for any sums whatsoever as attorney fees, although we will be indebted to our said attorneys for all unpaid costs incurred.

3. As of January 21, 1992, Wainger had voluntarily withdrawn from Glasser and Glasser. By that date, no money had been received on the Manville judgments.

4. Glasser and Glasser seeks a summary judgment declaration that fees from the Manville cases were not "fully earned" within the meaning of Item C. as of January 21, 1992.

5. Wainger, by contrast, has moved for summary judgment on the basis that Glasser and Glasser had "fully earned" its "right" to its contingent fees from the Manville cases prior to Wainger's withdrawal from the Glasser Firm on January 21, 1992 (even though those fees were received at a later date) and, that pursuant to the complete (entire) language of Article IX, Item C., he (Wainger) is entitled to his proportionate share of the fees "from the proceeds of those (Manville) recoveries" (judgments) which were received after January 21, 1992.



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For the reasons stated from the bench on May 23, 1994, June 10, 1994, and June 24, 1994, and deeming it just and proper so to do, it is hereby ADJUDGED, ORDERED, and DECREED as follows:

- a. Glasser's motion for partial summary judgment is GRANTED, and Wainger is not entitled to share in any fees from the Manville cases.
- b. Wainger's motion for partial summary judgment asserting a right to share in the Manville fees, when received, is DENIED.
- c. The Court declares that legal fees from contingent fee agreements containing the following language (or substantially similar language) cannot be "fully earned" within the meaning of Item C. of the Partnership Agreement prior to the time money is recovered:

As compensation for their services, we agree to pay our said attorneys, from the proceeds of recovery, a fee of \_\_\_\_\_ percent (\_\_\_%) of the gross recovery either by way of compromise settlement before or after the institution of suit.

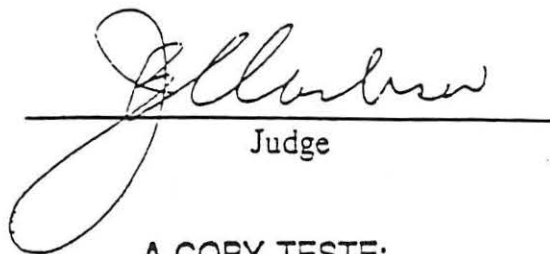
It is understood and agreed that this employment is upon a contingent fee basis, and, if no recovery is made, we will not be indebted to our said attorneys for any sums whatsoever as attorney fees, although we will be indebted to our said attorneys for all unpaid costs incurred.

- d. Additionally, the Court declares that Wainger is barred from sharing in any fees that were "fully earned" by Glasser and Glasser during 1990

by virtue of the agreed limitation (or "cap") on his share of Glasser and  
Glasser's profits.

It is so ORDERED.

ENTERED THIS 24 DAY OF June, 1994.

  
Judge

We ask for this:

A COPY TESTE:  
WILLIAM T. RYAN, CLERK  
NORFOLK CIRCUIT COURT

BY Karen Slater a  
Deputy Clerk authorized to sign  
on behalf of William T. Ryan.

\_\_\_\_\_, p.q.  
Gregory N. Stillman  
Counsel for Glasser and Glasser

Seen and Objected to for the reasons set forth in  
Stephen Wainger's Briefs and in the Transcripts of  
Hearings on November 6, 1992, May 3, 1993, June 2, 1993,  
November 22, 1993, February 25, 1994, April 15, 1994,  
May 23, 1994, June 10, 1994, and June 24, 1994 as  
though fully set forth and incorporated herein by reference.

Stephen Wainger p.d.  
Stephen Wainger, Pro Se

VIRGINIA: CIRCUIT COURT FOR THE CITY OF NORFOLK

GLASSER AND GLASSER,

Plaintiff,

v.

STEPHEN WAINGER,

Defendant.

At Law No. L92-2021

STEPHEN WAINGER,

Complainant,

v.

GLASSER AND GLASSER,  
A General Partnership,

Respondent.

Chancery No. C92-1166

ORDER

On June 10, 1994, the Court met with the parties to determine the factual and legal issues that remained for resolution in these consolidated actions. Based upon the Court's Summary Judgment Order and the representations of the parties, the Court finds and orders as follows:

1. The Additional Compensation to which Wainger is entitled under Article LX, Item A of the Partnership Agreement (as set forth in Article IV, Section B, Paragraph 3) shall be based upon fees the firm received that were "fully earned" by the firm prior to January 21, 1992, as a direct result of business from a client originated by Wainger, regardless of when the firm actually received the fees.

2. For Wainger's Capital Account, Wainger is entitled to interest on the unpaid balance at the rate of 12% from January 21, 1992, until paid. The Court acknowledges that Glasser and Glasser has paid to Wainger the additional sum of \$79,383.65 as return of capital (\$63,065.55) and interest (\$16,318.10), pending a determination as to the proper amount of capital and/or interest (including any set-off by Glasser and Glasser). Glasser and Glasser objects to this paragraph.

3. For Wainger's Undivided Profits Account, the Court determines that Wainger's share of expenses for January 1 through January 21, 1992, shall be computed as 21/31 of the expenses for the entire month.

4. For Wainger's share of undivided profits of the firm which were fully earned by the firm prior to January 21, 1992, other than Manville contingent fees as addressed by this Court's Summary Judgment Order, the Court reserves for determination any disputes that arise regarding the treatment of specific fees or categories of fees.

5. For Wainger's claim to 10% of fees derived from approximately 110 Manville cases, the Court's determination that the Manville fees had not been fully earned as of January 21, 1992, disposes of this claim as well. Wainger objects to this paragraph.

It is so ORDERED.

A COPY TESTE:  
WILLIAM T. RYAN, CLERK  
NORFOLK CIRCUIT COURT  
BY Karen Slater, a  
Deputy Clerk authorized to sign  
on behalf of William T. Ryan.

Entered: JULY 1, 1994  
Nunc Pro Tunc 6/24/94

[Signature]  
Circuit Judge



Objected To As Set Forth Above: <sup>as applicable, for the reasons set forth</sup>  
in Stephen Wainger's brief and in the Transcript of hearing on  
November 6, 1992, May 3, 1993, June 2, 1993, November 22, 1993, February 25, 1994,  
April 15, 1994, May 23, 1994, June 10, 1994 and June 24, 1994 as though  
Stephen Wainger fully set forth and incorporated  
Stephen Wainger, Pro Se herein by reference

G. N. Stillman  
Gregory N. Stillman  
Counsel for Glasser and Glasser

the firm's undivided profits. Glasser & Glasser nonsuited Count II of its declaratory judgment action, seeking judgment against Wainger for overpayment. Still remaining in the Circuit Court are Wainger's claims for an accounting and of an oral modification of the partnership agreement.

#### ASSIGNMENTS OF ERROR

1. The Trial Court erred in granting partial summary judgment to Glasser & Glasser and in denying Wainger's motion for partial summary judgment.

2. The Trial Court erred in ruling that Wainger, as a withdrawing partner, did not have a vested right to share in the Manville and other fees from claims reduced to final, nonappealable judgments and/or settlements while he was a partner at Glasser & Glasser, even though the judgments and/or settlements were not collected until after his withdrawal.

3. The Trial Court erred in holding that the limitation on the maximum annual draw of an active partner applied in the case of a withdrawing partner so as to preclude Wainger's sharing, after his withdrawal, in Manville and other fees which were fully earned but uncollected at the time of his withdrawal.

4. The Trial Court erred in ruling that a contingent fee was not fully earned until recovery of the money from which such fee was to be paid.

#### QUESTIONS PRESENTED

1. Are the Court's orders of June 24, 1994 final orders which may properly be appealed to this Court?