

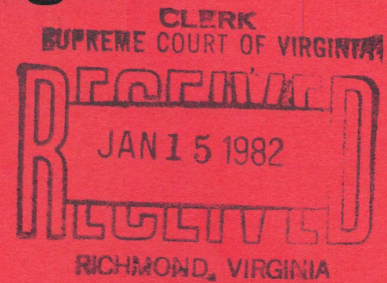
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IN THE  
**Supreme Court of Virginia**  
AT RICHMOND

RECORD NO. 810486



STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Appellant

v.

DIXIE K. DAVIES  
and  
GOVERNMENT EMPLOYEES INSURANCE COMPANY,

Appellees

JOINT APPENDIX

E. Page Preston  
and John G. Crandley  
PRESTON & WILSON  
1112 Laskin Road  
Virginia Beach, VA 23451

Counsel for Appellant

Carroll O. Ferrell  
MANNING AND FERRELL  
820 Citizens Trust Building  
Portsmouth, VA 23704

Counsel for Appellee,  
Dixie K. Davies

Alan B. Rashkind  
and Richard A. Saunders  
FURNISS, DAVIS AND  
RASHKIND  
Suite 1312  
First Virginia Bank Bldg.  
Post Office Box 3746  
Norfolk, VA 23514

Counsel for Appellee,  
Government Employees  
Insurance Company



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AMENDED MOTION FOR JUDGMENT

TO THE HONORABLE JUDGES OF THE COURT AFORESAID:

The plaintiff, Dixie K. Davies, respectfully represents unto the Court as follows:

1. State Farm Mutual Automobile Insurance Company is a foreign corporation organized to transact business in the State of Virginia and maintains offices in the State of Virginia for that purpose.

2. Government Employees Insurance Company is a foreign corporation organized to transact business in the State of Virginia and maintains offices in the State of Virginia for that purpose.

3. That the plaintiff was involved in an automobile accident in the City of Portsmouth, Virginia, on August 2, 1974, with another vehicle driven by Patricia Ann Turner, who at said place and time was an insured under an automobile liability insurance policy with State Farm Mutual Automobile Insurance Company which said policy provisions required the defendant, State Farm Mutual Automobile Insurance Company, to pay and satisfy the judgment the plaintiff subsequently obtained against Patricia Ann Turner.

4. That at the same place and time of the accident the plaintiff was an insured under an automobile liability insurance policy, bearing number 598-92-14, with Government Employees Insurance Company.

5. The plaintiff instituted an action against Patricia Ann Turner in the Circuit Court of the City of Portsmouth, Virginia, and caused a copy of said motion for judgment to be served upon Government Employees Insurance Company in accordance with the provisions of Section 38.1-381, Code of Virginia, as amended.

NING. FERRELL  
AND COUNSELLORS  
AT LAW  
SMOUTH, VIRGINIA  
23704

6. Judgment was rendered in favor of the plaintiff, Dixie K. Davies, against Patricia Ann Turner on August 6, 1979, in the sum of Ten Thousand Seven Hundred Twenty Five and no/100 (\$10,725.00) Dollars.

7. That the plaintiff is entitled to interest on said judgment and her court costs thereby incurred.

8. That the plaintiff, Dixie K. Davies, is the owner of the judgment aforesaid and that no part of the judgment has been paid and same remains unsatisfied.

9. That under the terms and conditions of the insurance policy the defendant, Government Employees Insurance Company, issued the plaintiff the defendant agreed, as is mandated by Section 38.1-381, Code of Virginia, to pay the plaintiff all sums she shall be legally entitled to recover as damages from the owner or operator of an uninsured motor vehicle and that all necessary steps were taken to make Government Employees Insurance Company a party to the aforementioned suit.

10. That the plaintiff has been advised that the defendant, State Farm Mutual Automobile Insurance Company, disclaims coverage under its aforementioned policy on the vehicle driven by Patricia Ann Turner at the time of the accident due to her noncooperation in defense of the law suit and will not pay the plaintiff's judgment

11. That as the insurer of Patricia Ann Turner the defendant, State Farm Mutual Automobile Insurance Company, is legally obligated to satisfy the plaintiff's judgment against Patricia Ann Turner.

12. That if the Court should determine that Patricia Ann Turner was not insured at the time of her accident with the plaintiff, then the defendant, Government Employees Insurance Company, under the terms of the uninsured motorist provision of its policy with the plaintiff, is legally obligated to satisfy the plaintiff's judgment against Patricia Ann Turner.

13. That there is due and owing from State Farm Mutual Automobile Insurance Company or Government Employees Insurance Company to the plaintiff the sum of Ten Thousand Seven Hundred Twenty Five and no/100 (\$10,725.00) Dollars, the amount of the judgment.

WHEREFORE, the plaintiff prays that judgment be rendered against the defendant, State Farm Mutual Automobile Insurance Company, or the defendant, Government Employees Insurance Company, as the Court may determine their liability, in the sum of Ten Thousand Seven Hundred Twenty Five and no/100 (\$10,725.00) Dollars, together with interest from August 6, 1979, until paid and her costs in this behalf expended.

DIXIE K. DAVIES

BY: 

Of Counsel

Carroll O. Ferrell, p.q.  
Manning and Ferrell, Attorneys  
820 Citizens Trust Building  
Portsmouth, VA 23704

I certify that I mailed true copies of the foregoing to John G. Crandley, counsel for State Farm Mutual Automobile Insurance Company and to Alan Rashkind, counsel for Government Employees Insurance Company, this 29th day of February, 1980.

  
Carroll O. Ferrell

Interrogatory No. 29 of Interrogatories Propounded by defendant Government Employees Insurance Company to defendant State Farm Mutual Automobile Insurance Company, filed March 28, 1980 , and State Farm Mutual Automobile Insurance Company's Answer thereto, filed June 9, 1980

Interrogatory:

29. Did any agents or employees or attorneys of State Farm ever determine from Patricia Ann Turner whether she admitted fault for the automobile accident of August 2, 1974, either at the scene or at any time subsequently, including during the course of investigation or preparation for trial, and if the answer to this Interrogatory is in the affirmative, please state for each such determination:

(a) The date.

(b) The parties present when the determination was made.

(c) The means of the determination.

(d) Whether any such record, memorandum, recording or other documentation of such determination was made.

Answer:

29. No.

ORDER OF STIPULATION

Upon joint motion of counsel for all parties, it is hereby ORDERED that the following stipulations be filed as exhibits in this action and shall be controlling upon the decision of this Court herein:

1. It is stipulated that the plaintiff, Dixie K. Davies, was the operator of an automobile and was involved in an automobile accident in the City of Portsmouth, Virginia, with an automobile operated by Patricia Ann Turner, on August 2, 1974.

2. It is stipulated that plaintiff was injured in said accident, made claim against Patricia Ann Turner, and ultimately filed suit against Patricia Ann Turner, in the Circuit Court of the City of Portsmouth, Virginia, on August 2, 1976.

3. It is stipulated that at the time of the accident, the automobile operated by Patricia Ann Turner was insured under a Virginia automobile liability insurance policy issued by State Farm Mutual Automobile Insurance Company and under the definition of persons insured in said policy, Patricia Ann Turner was an insured, being the spouse of the owner of said automobile.

4. It is stipulated that at the time of the accident, the automobile operated by the plaintiff was insured under a Virginia automobile liability insurance policy issued by Government Employees Insurance Company and under the definition of persons insured in said policy, the plaintiff was an insured, being the spouse of the owner of said automobile.



5. It is stipulated that under the terms of the said policy issued by State Farm Mutual Automobile Insurance Company, under "Conditions" in said policy, Patricia Ann Turner was obligated and required to ". . . cooperate with the company and to . . . attend hearings and trials and assist in securing and giving evidence and obtaining the attendance of witnesses . . .".

6. It is stipulated that Patricia Ann Turner duly reported the accident to State Farm Mutual Automobile Insurance Company and State Farm promptly and fully investigated the accident. Following the filing of suit by plaintiff, Patricia Ann Turner reported to State Farm that she had been served with suit papers and turned over the suit papers to State Farm for defense. The law firm of Outland, Gray, O'Keefe and Hubbard, by Mr. George Gray, filed defense pleadings for Patricia Ann Turner at the request of State Farm. The case was set for trial for February 22, 1977. In response to a written request from Mr. Gray, advising Patricia Ann Turner of the said trial date and requesting her to telephone his office for a pre-trial interview, Patricia Ann Turner did telephone Mr. Gray's office, on December 22, 1976, acknowledging receipt of the letter, for the purpose of arranging an interview date.

7. It is stipulated that subsequent to her telephone call to Mr. Gray's office on December 22, 1976, Patricia Ann Turner moved from her local address and never again contacted

anyone with State Farm or Mr. Gray's office. That State Farm made every reasonable effort to locate her, through the mails and by visiting addresses to which she had moved, all without result. That the trial of the case was continued from the February 22, 1977, date, and from several other trial dates because of the failure of Patricia Ann Turner to contact Mr. Gray and/or State Farm and her failure to appear and/or testify at trial.

8. It is stipulated that the Registered Agent of Government Employees Insurance Company was duly served in the tort case with process by plaintiff, pursuant to Section 38.1-381 (b), et seq. of the Code of Virginia, 1950, as amended, following State Farm's reserving its rights to deny coverage to Patricia Ann Turner when she did not appear for trial on February 22, 1977, and subsequent to that time Government Employees Insurance Company's interests were protected in said lawsuit by the law firm of Furniss, Davis and Rashkind, in pursuance of its rights under its "uninsured motorist" coverage of the aforesaid policy referred to herein in paragraph 4.

9. It is stipulated that the case was finally tried on August 3 through 6, 1979, with Patricia Ann Turner being absent, and a verdict was rendered by the jury for plaintiff for \$10,725.00, plus costs and interest from date of judgment. Judgment was entered on said verdict on August 6, 1979.

10. It is stipulated that Patricia Ann Turner failed to cooperate with State Farm Mutual as required by the terms of the said policy issued by State Farm, in that she did not appear and/or testify at trial, and that State Farm has not waived its right to rely upon the defense of lack of cooperation in this matter.

11. It is stipulated that the only issue for determination by this Court is that of whether the lack of cooperation on the part of Patricia Ann Turner prejudiced State Farm Mutual Automobile Insurance Company in the defense of the aforesaid action for damages brought against Patricia Ann Turner by plaintiff, Dixie K. Davies, by her failure to appear and testify at trial and/or by her mere failure to appear at trial.

12. It is stipulated that if it is determined in this Declaratory Judgment action that State Farm Mutual Automobile Insurance Company was prejudiced, in the defense of the said action for damages brought by Dixie K. Davies against Patricia Ann Turner, by the lack of cooperation of Patricia Ann Turner, then Government Employees Insurance Company owes plaintiff the amount of the said previous judgment, plus interest and the Court costs of this action, but not the Court costs of the previous action; that if it is determined herein that State Farm was not prejudiced by such lack of cooperation by Patricia Ann Turner, then State Farm owes the amount of the said previous judgment plus interest and costs of both proceedings.

Enter, this 8<sup>th</sup> day of  
August, 1980.

161  
Judge

We Ask For This:

S. Paparone  
Of Counsel for State Farm Mutual  
Automobile Insurance Company

A. Ryzin  
Of Counsel for Government  
Employees Insurance Company

Carol O'Sullivan  
Of Counsel for Plaintiff

OFFICES  
IN & WILSON  
BEACH, VA.

Commonwealth of Virginia



P. O. DRAWER 1217

PORTSMOUTH, VIRGINIA 23705

R. WINSTON BAIN

WILLIAM H. OAST, JR.

LESTER E. SCHLITZ  
JUDGES

THIRD JUDICIAL CIRCUIT

CIRCUIT COURT OF THE CITY OF PORTSMOUTH

December 17th, 1980

Alan B. Rashkind, Esq  
Attorney at Law  
P. O. Box 3746  
Norfolk, Va 23514

E. Page Preston, Esq  
Attorney at Law  
P. O. Box 928  
Virginia Beach, Va 23451

Re: Dixie K. Davies vs. State Farm Mutual Automobile Insurance Company  
Law Docket No. L-79-856

Gentleman:

The issue in this case is whether the Insured Carrier or the Uninsured Carrier should be held liable for a judgment obtained against the insured defendant at the trial of her case, the insured defendant failed to appear to cooperate with insured carrier, hereinafter called State Farm. Service had been made on the uninsured carrier, of the claimant, hereinafter called Geico.

It is stipulated and agreed that insured defendant failed to cooperate with State Farm. The question presented here is whether State Farm was prejudiced by this lack of cooperation so as to release it from liability under its insurance contract and to thus impose the liability on Geico, under its policy with the claimant.

The facts in this case are quite similar to the facts in Cooper vs. Insurance Company 199 Va. 908 (1958) with the exception that the accident report in that case indicated a defense. Since that case was decided the Code of Virginia was amended in 1966 to provide that all motor vehicle liability insurance policies shall provide coverage "not withstanding the failure or refusal of the named insured or such other person to cooperate with the insured under the terms of the policy". The amendment further provides that if such failure or refusal prejudices the insurer in the defense of an action for damage, then and only then could the carrier avoid payment under the policy.



Commonwealth of Virginia



R. WINSTON BAIN  
WILLIAM H. OAST, JR.  
LESTER E. SCHLITZ  
JUDGES

P. O. DRAWER 1217  
PORTSMOUTH, VIRGINIA 23705

THIRD JUDICIAL CIRCUIT  
CIRCUIT COURT OF THE CITY OF PORTSMOUTH

Counsel for both insurance companies have submitted excellent briefs on the issue.

State Farm in order to avoid payment under its policy must show not only lack of cooperation but also has the burden of showing that it has been prejudiced by the insured's action. Code of Virginia § 38.1-381 (a1).

The problem is that the Cooper case contains dictum that indicates that just the mere failure of an insured to cooperate by failing to appear at the trial constitutes prejudice, but the court went to great lengths to make it clear that the issue of prejudice were not before it. It must also be remembered that Code sec. 38.1-381 (a1) makes it abundantly clear that prejudice must be proved by State Farm.

The Supreme Court of Virginia has recently touched off this problem in State Farm Mutual Automobile Insurance Company vs. George Lee Porter, 221 Va \_\_\_, decided Nov. 26, 1980, holding in that case that forwarding of suit papers as required in the insurance contract was a condition precedent to coverage under the policy requiring substantial compliance by the insured. Under those circumstances the court held prejudice need not be shown but the court citing Sec. 38.1-381 (a1) stated that "the effect of the 1966 amendment, of course, was to require the insurer to prove not only that the insured failed or refused to cooperate, but also that this violation of the terms of the policy prejudiced the insurer in the defense of an action for damages arising from the insured's operation of a motor vehicle".

The court has heard extensive evidence and stipulation in regards to any defense that would have been available to State Farm had its insured appeared at the trial and cooperated with it, but the court having heard this evidence has concluded that cooperation by the insured could not and would not have changed the results. The evidence of liability was rather overwhelming and it would stretch the imagination to believe that a different result would have been obtained. The defendant admitted her fault at the scene and the independent witnesses heavily demonstrated her fault. There was no showing of fault on the part of the plaintiff.

The argument is made that the lack of a present defendant is likely to cause an inflated verdict which in itself would be prejudicial

Commonwealth of Virginia



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LESTER E. SCHLITZ  
JUDGES

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PORTSMOUTH, VIRGINIA 23705

THIRD JUDICIAL CIRCUIT  
CIRCUIT COURT OF THE CITY OF PORTSMOUTH

to State Farm, but the judgment obtained in this case was modest considering the injuries and special damages of the plaintiff. The amount of the judgment does not suggest prejudice in this case and the presence of the defendant would not have made any difference.

The need for a showing of prejudice by State Farm appears quite obvious. It was paid a premium to cover the liability of the insured. If State Farm is relieved of this burden the burden will fall on Geico. The windfall of lack of cooperation alone should not benefit State Farm since its liability is clear and obvious.

State Farm has failed to meet its burden of showing that it has been prejudiced by the lack of cooperation of its insured and judgment will be entered against State Farm for the amount sued for.

Counsel for Geico will prepare an order in accordance with this letter.

Very truly yours,

*Lester E. Schlitz*  
Lester E. Schlitz, Judge

ES/lb  
Carroll O. Ferrell, Esq  
Attorney at Law  
920 Citizens Trust Building  
Portsmouth, Va 23704

RECEIVED  
DEC 22 1980

JUDGMENT ORDER

This cause came this day to be heard and considered upon the basis of the pleadings, the evidence and stipulations, and the argument and briefs submitted by counsel, and upon consideration thereof, and for the reasons contained in this Court's letter dated December 17, 1980, it is ADJUDGED, ORDERED and DECREED that judgment shall be and is hereby entered in favor of Dixie K. Davies against the defendant State Farm Mutual Automobile Insurance Company in the amount of Ten thousand, seven hundred twenty five and no/100 (\$10,725.00) Dollars plus interest thereon at the rate of eight (8%) percent per annum, from August 6, 1979, until paid, plus court costs of Nine (\$9.00) Dollars incurred in the case of Dixie K. Davies v. Patricia Ann Turner and all court costs incurred by the plaintiff herein.

It is further ADJUDGED, ORDERED and DECREED that judgment shall be and is hereby had in favor of the defendant Government Employees Insurance Company, and said defendant shall be and is hereby dismissed.

ivis and Rashkind  
eys at Law

ENTER:

JUDGE

I asked for this:



Counsel for Government Employees  
Insurance Company

Seen and Agreed:

Counsel for Dixie K. Davies

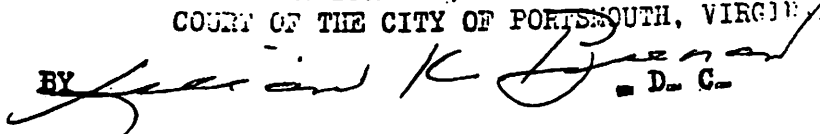
Seen and Objected to:



Counsel for State Farm

COPY, TESTE: WALTER M. EDMONDS, CLERK OF THE CIRCUIT  
COURT OF THE CITY OF PORTSMOUTH, VIRGINIA

BY



- D. C. -

ASSIGNMENT OF ERROR

The court erred in finding that Patricia Ann Turner's gross and stipulated lack of cooperation did not prejudice State Farm in the defense of the personal injury action for damages filed against Ms. Turner by the plaintiff.



\* \* \*

MR. PRESTON: Your Honor, before making an opening statement I think it would be desirable, so that I won't have to cover it in my opening statement and then cover it again, to read into the record the stipulations that we have agreed to.

We have agreed to an order of stipulations which all the counsel have signed, and I would like to ask Your Honor to enter that order of stipulation and mark it as an exhibit in the trial, please, sir.

THE COURT: All right, sir. Everyone has endorsed this, right?

MR. RASHKIND: Yes, sir.

Mr. Ferrell has left the courtroom, because it is anticipated that I might use him as a witness.

THE COURT: All right. He has endorsed the order. I am going to enter the order.

MR. PRESTON: I guess you want to mark that, Your Honor, as Court's Exhibit Number 1.

(The order of stipulation was marked Court's Exhibit No. 1 and received into evidence.)

1 THE COURT: This is the order of stipulation which  
2 has become a part of the record in this case. I would ask you to  
3 read it into the record.

4 MR. PRESTON: Yes, I am going to, Your Honor.

5 This is an order of stipulation which has been  
6 entered by the Court in this case on August the 8th of 1980 as  
7 agreed to by the parties.

8 "Upon joint motion of counsel for all parties, it  
9 is hereby ordered that the following stipulations be filed as  
10 exhibits in this action and shall be controlling upon the  
11 decision of this Court herein:"

12 Off the record, please.

13 (Discussion off the record.)

14 MR. PRESTON: "1. It is stipulated that the  
15 plaintiff, Dixie K. Davies, was the operator of an automobile and  
16 was involved in an automobile accident in the City of Portsmouth,  
17 Virginia, with an automobile operated by Patricia Ann Turner,  
18 on August 2, 1974.

19 "2. It is stipulated that the plaintiff was  
20 injured in said accident, made claim against Patricia Ann Turner,  
21 and ultimately filed suit against Patricia Ann Turner, in the  
22 Circuit Court of the City of Portsmouth, Virginia, on August 2, 1976.

23 "3. It is stipulated that at the time of the  
24 accident, the automobile operated by Patricia Ann Turner was  
25 insured under a Virginia automobile liability insurance policy

1 issued by State Farm Mutual Automobile Insurance Company and  
2 under the definition of persons insured in said policy, Patricia  
3 Ann Turner was an insured, being the spouse of the owner of said  
4 automobile.

5 "4. It is stipulated that at the time of the  
6 accident, the automobile operated by the plaintiff was insured  
7 under a Virginia automobile liability insurance policy issued by  
8 Government Employees Insurance Company and under the definition  
9 of persons insured in said policy, the plaintiff was an insured,  
10 being the spouse of the owner of said automobile.

11 "5. It is stipulated that under the terms of the  
12 said policy issued by State Farm Mutual Automobile Insurance  
13 Company, under "Conditions" in said policy, Patricia Ann Turner  
14 was obligated and required to ". . . cooperate with the company  
15 and to . . . attend hearings and trials and assist in securing  
16 and giving evidence and obtaining the attendance of witnesses  
17 . . ."

18 "6. It is stipulated that Patricia Ann Turner  
19 duly reported the accident to State Farm Mutual Automobile  
20 Insurance Company and State Farm promptly and fully investigated  
21 the accident. Following the filing of suit by plaintiff,  
22 Patricia Ann Turner reported to State Farm that she had been  
23 served with suit papers and turned over the suit papers to State  
24 Farm for defense. The law firm of Outland, Gray, O'Keefe and  
25 Hubbard, by Mr. George Gray, filed defense pleadings for

1 Patricia Ann Turner at the request of State Farm. The case was  
2 set for trial for February 22, 1977. In response to a written  
3 request from Mr. Gray, advising Patricia Ann Turner of the said  
4 trial date and requesting her to telephone his office for a  
5 pre-trial interview, Patricia Ann Turner did telephone Mr. Gray's  
6 office, on December 22, 1976, acknowledging receipt of the letter,  
7 for the purpose of arranging an interview date.

8 "7. It is stipulated that subsequent to her  
9 telephone call to Mr. Gray's office on December 22, 1976,  
10 Patricia Ann Turner moved from her local address and never again  
11 contacted anyone with State Farm or Mr. Gray's office. That  
12 State Farm made every reasonable effort to locate her, through  
13 the mails and by visiting addresses to which she had moved, all  
14 without result. That the trial of the case was continued from  
15 the February 27, 1977, date, and from several other trial dates  
16 because of the failure of Patricia Ann Turner to contact Mr. Gray  
17 and/or State Farm and her failure to appear and/or testify  
18 at trial.

19 "8. It is stipulated that the Registered Agent  
20 of Government Employees Insurance Company was duly served in the  
21 tort case with process by plaintiff, pursuant to Section 38.1-381  
22 (b), et seq. of the Code of Virginia, 1951, as amended, following  
23 State Farm's reserving its rights to deny coverage to Patricia  
24 Ann Turner when she did not appear for trial on February 22, 1977,  
25 and subsequent to that time Government Employees Insurance

1 Company's interests were protected in said lawsuit by the  
2 law firm of Furniss, Davis and Rashkind, in pursuance of its  
3 rights under its "uninsured motorist" coverage of the aforesaid  
4 policy referred to herein in paragraph 4.

5 "9. It is stipulated that the case was finally  
6 tried on August 3 through 6, 1979, with Patricia Ann Turner  
7 being absent, and a verdict was rendered by the jury for  
8 plaintiff for \$10,725.00, plus costs and interest from date of  
9 judgment. Judgment was entered on said verdict on  
10 August 6, 1979.

11 "10. It is stipulated that Patricia Ann Turner  
12 failed to cooperate with State Farm Mutual as required by the  
13 terms of the said policy issued by State Farm, in that she did  
14 not appear and/or testify at trial, and that State Farm has not  
15 waived its right to rely upon the defense of lack of cooperation  
16 in this matter.

17 "11. It is stipulated that the only issue for  
18 determination by this Court is that of whether the lack of  
19 cooperation on the part of Patricia Ann Turner prejudiced State  
20 Farm Mutual Automobile Insurance Company in the defense of the  
21 aforesaid action for damages brought against Patricia Ann Turner  
22 by plaintiff, Dixie K. Davies, by her failure to appear and  
23 testify at trial and/or by her mere failure to appear at trial.

24 "12. It is stipulated that if it is determined in  
25 this Declaratory Judgment action that State Farm Mutual



1 Automobile Insurance Company was prejudiced, in the defense of  
2 the said action for damages brought by Dixie K. Davies against  
3 Patricia Ann Turner, by the lack of cooperation of Patricia Ann  
4 Turner, then Government Employees Insurance Company owes plaintiff  
5 the amount of the said previous judgment, plus interest and  
6 the Court costs of this action, but not the Court costs of the  
7 previous action; that if it is determined herein that State  
8 Farm was not prejudiced by such lack of cooperation by  
9 Patricia Ann Turner, then State Farm owes the amount of the said  
10 previous judgment plus interest and costs of both proceedings."

11 End of stipulation.

12 \* \* \*

1  
2 MR. PRESTON: All right, sir. Now, there have  
3 been stipulations entered into regarding the facts in which the  
4 accident occurred, and counsel have sat down and listed what  
5 those stipulations are. This is not in writing.

6 THE COURT: Well, you read it into the record,  
7 and you can confirm it or make any differences if you think  
8 there is any dispute. Go ahead. You want to read that into the  
9 record?

10 MR. PRESTON: Yes, sir. I thought I would read  
11 the stipulations in the record.

12 It was agreed -- if Mr. Rashkind feels that I am  
13 omitting something or misstating something he will interrupt and  
14 say so.

15 THE COURT: I am sure he will advise us.

16 MR. PRESTON: All right.

17 It is stipulated by all counsel that the accident  
18 which occurred giving rise to the tort suit of Dixie K. Davies  
19 against Patricia Ann Turner, which case was tried on  
20 August 3, 1979, that the date of that accident was August 2, 1974,  
21 at the approximate time of 3:05 o'clock p.m.

22 It is stipulated that Dixie Davies was going north  
23 on City Park Avenue and making a first -- turning left onto  
24 Park Manor Road in the area shown in a picture which was introduced  
25 into evidence at that trial and also which we want to introduce as

1 evidence in this trial, Your Honor.

2 I have gotten this filed, and I have taken the  
3 liberty of extracting it from the tort suit with the consent  
4 of all concerned.

5 THE COURT: Since this is coming in by a  
6 stipulation, how do you suspect I should mark that?

7 MR. RASHKIND: Stipulated Exhibit Number 1.

8 THE COURT: Stipulated Exhibit Number 1, I guess.

9 (A picture was marked Stipulated Exhibit No. 1  
10 and received in evidence.)

11 THE COURT: All right, sir.

12 MR. PRESTON: It is further stipulated that at the  
13 time of trial the testimony was that Patricia Ann Turner was  
14 going east on Park Manor Road in order to enter City Park  
15 Avenue by turning to her right in the roadway area shown in the  
16 said picture.

17 It is stipulated that at the trial of that tort  
18 suit witness Park Ranger Caviness testified that he was the  
19 first person on the scene of this accident; that he found both  
20 vehicles on Dixie Davies' side of the road and a portion of the  
21 Davies' vehicle was on the triangular median to the right.

22 I will interrupt the stipulations again, Your  
23 Honor, to point out that that is the -- you can't see it's a  
24 triangle, but up in the upper right portion of that picture,  
25 where it curves around to the right, there's a triangle in there.

1 THE COURT: I can make it out. I think I  
2 understand it.

3 MR. PRESTON: It is stipulated at that trial also  
4 Park Ranger Caviness testified that at the scene Patricia Ann  
5 Turner admitted that the accident was her fault; that  
6 Patricia Ann Turner said she slid into Dixie Davies' vehicle;  
7 and he testified that it was raining and the road was wet and  
8 that the drivers' sides of the vehicles were touching one  
9 another.

10 It is stipulated that at that trial Portsmouth  
11 Police Officer Burke testified that he found the vehicles in  
12 the same position as Caviness had testified to and that it was  
13 wet and raining.

14 It is stipulated that at that trial Police  
15 Sergeant E. R. Davies, who was the plaintiff's husband,  
16 confirmed the position of the vehicles when they came to  
17 rest as testified to by the previous two witnesses;  
18 testified that Mrs. Davies' vehicle had three of its four  
19 wheels up on that median area of the triangle and that  
20 Patricia Ann Turner admitted that the accident was "my fault.  
21 I had hit Mrs. Davies." And at that time his wife, Mrs. Davies,  
22 and the park ranger, Caviness, were present.

23 It is stipulated that at that trial Mrs. Davies  
24 testified that it was a steady rain; that as Dixie Davies was  
25 making her turn she saw Patricia Ann Turner coming at a speed she

1 estimated at thirty-five miles per hour in a twenty-five mile  
2 speed zone, and that she was coming down in the middle of the  
3 street; that is, Park Manor Road.

4 That Dixie Davies had been going twenty miles per  
5 hour on City Park Avenue; that she slowed as she started her  
6 turn and slowed more as she got into her turn.

7 When she saw Patricia Ann Turner coming toward  
8 her, she moved to the right and pulled off on to the triangular  
9 median strip shown in the said picture in the upper right  
10 portion.

11 That she was stopped and off the road when hit;  
12 that the driver's side struck the driver's side; that the impact  
13 with the Mustang, which was the vehicle operated by  
14 Patricia Ann Turner, did not move Dixie Davies' Chevy van; that  
15 Dixie Davies' Chevy van was approximately three times larger  
16 than the Mustang.

17 That the vehicles were not moved before witnesses  
18 Caviness, Burke or Sergeant Davies arrived, and that she  
19 testified, continued testifying, that the defendant admitted  
20 fault to Officer Caviness when he first arrived.

21 It is further stipulated that there was no testimony  
22 at the trial that Patricia Ann Turner said to or in the hearing  
23 of any witnesses who testified in that tort suit that the impact  
24 occurred on her own side of the road or that she had pulled off  
25 her side of the road to the right or that Davies' vehicle slid

1 into her.

2 At the trial there was no testimony that  
3 Dixie Davies cut the corner short or that Patricia Ann Turner  
4 did move her car over to her right side onto the dirt shoulder  
5 in an attempt to avoid the accident, or that the impact occurred  
6 six to fifteen feet from City Park Avenue. And there was no  
7 testimony as to whether or not there was an examination by any  
8 of the witnesses who testified at trial of the dirt shoulder on  
9 Patricia Ann Turner's right side of the road.

10 That is the end of the factual stipulations,  
11 Your Honor.

12 THE COURT: You have heard the stipulations,  
13 Mr. Rashkind. Any corrections that you want to make?

14 MR. RASHKIND: No, sir, those are correct and  
15 complete.

16 THE COURT: You feel that is a fair representation  
17 of the facts?

18 MR. RASHKIND: Yes, sir.

19 MR. PRESTON: Mr. Rashkind wants to offer a  
20 stipulation, Your Honor, which we have considered in this  
21 fashion: He is going to offer a stipulation as to the testimony  
22 at the tort suit in regard to the injuries and expenses incurred  
23 by the plaintiff, and we have stipulated what this evidence  
24 would be, subject to my objection to that stipulation and entry  
25 of that evidence into this case on the grounds that it is

1 irrevelent, incompetent and immaterial, as we have discussed  
2 in the Judge's chambers.

3 THE COURT: What I am going to do in that case is  
4 I am not going to rule on its admissibility. I am going to  
5 allow it in as proffered evidence, and then after, when all the  
6 evidence is in, I will determine whether or not I can consider  
7 that or not, if that's agreeable with counsel.

8 MR. RASHKIND: Your Honor, that's agreeable. I  
9 further want to add this: Since discussing the matter in  
10 chambers, I have resolved not to offer the stipulation until  
11 after I have had an opportunity to listen to the witnesses that  
12 Mr. Preston puts on. I don't want to keep him from offering it,  
13 should he change his mind. It's here, and I will read it in, if  
14 either of us wants it.

15 THE COURT: In other words, either one of you can  
16 introduce it at any time you want to, and if there is an  
17 objection we will receive the objection and the Court will take  
18 it under advisement, whether or not it is admissible or not.

19 You gentlemen will have to rely on me, if I rule  
20 it to be inadmissible, to disregard it in evaluating the case.

21 MR. RASHKIND: Yes, sir.

22 THE COURT: Is that all right with you, Mr. Preston,  
23 as far as him introducing it?

24 MR. PRESTON: Perfectly all right with me, Your  
25 Honor.



\* \* \*

That the tort suit was set for trial for February 22, 1977, October the 19th, 1977, February 23rd, 1978, August 28th, 1978, and February 21st, 1979, and was continued on each occasion, and that the case was tried on August 3rd, 1979.

Possibly Mr. Rashkind would stipulate those dates, and I won't have to ask George about all of them.

MR. RASHKIND: We will stipulate it was set for all those dates, continued from all except the trial date, and tried

1 on August 3 through 6, 1979.

2 THE COURT: All right.

3 MR. PRESTON: We will show that Jimmy Smith was  
4 subpoenaed for trial by George Gray for the trial date of  
5 February 22, 1977, for the trial date of October 19, 1977, for  
6 the trial date of February 23, 1978, and for the trial date of  
7 August 28, 1978.

8 Would you stipulate that, too, Mr. Rashkind?

9 MR. RASHKIND: Yes.

10 \* \* \*

\* \* \*

MR. PRESTON: Your Honor, first I would like to introduce the statement of Patricia Ann Turner referred to in the opening statement and ask that that be marked as State Farm Exhibit 1.

THE COURT: I will mark it State Farm Exhibit 1.

MR. PRESTON: All right, sir.

(The statement of Patricia Ann Turner was marked State Farm Exhibit 1 and received into evidence.)

MR. PRESTON: I have provided counsel, by way of answers to requests for production, with these items, I believe, but I have them if you need one.

MR. RASHKIND: I don't need one of those.

MR. PRESTON: I next offer, Your Honor, and ask it be marked as State Farm Exhibit No. 2, the automobile claim report signed by Patricia Ann Turner that I referred to

1 in my opening statement.

2 THE COURT: That will be State Farm Exhibit 2.

3  
4 (The automobile claim report signed by  
5 Patricia Turner was marked State Farm Exhibit 2 and  
6 received into evidence.)

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19 MR. PRESTON: I would like to introduce as  
20 State Farm Exhibit No. 3 the statement of Jimmy Smith referred  
21 to in the opening statement.

22 THE COURT: All right. That will be State Farm  
23 Exhibit No. 3.

24  
25 [The statement of Jimmy Smith was marked State

1                   **Farm Exhibit 3 and received into evidence.)**

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**TAYLOE ASSOCIATES**

**REGISTERED PROFESSIONAL REPORTERS**  
**NORFOLK, VIRGINIA**

1  
2  
3 GEORGE H. GRAY, called as a witness by and on  
4 behalf of the defendant, State Farm, having been previously  
5 duly sworn, was examined and testified as follows:

6  
7 DIRECT EXAMINATION

8 BY MR. PRESTON:

9 Q Would you state your name, please?

10 A George H. Gray.

11 Q Mr. Gray, what is your occupation?

12 A I am a lawyer.

13 Q What is your specialty in the law practice,  
14 primarily?

15 A I don't really have a specialty, except I  
16 practice the general practice of law. But I try a lot of  
17 casualty cases.

18 Q All right. Were you employed by State Farm  
19 Mutual Automobile Insurance Company to defend a tort suit which  
20 was filed in the Circuit Court of the City of Portsmouth by  
21 Dixie K. Davies against Patricia Ann Turner?

22 A Yes, sir.

23 Q And that suit was filed -- do you remember when  
24 that suit was filed?

25 A In 1976.

1 Q August, or something of that nature?

2 A Around that time.

3 The file was referred to me by State Farm  
4 Insurance Company by a letter dated August the 4th.

5 Q All right, sir. And were you provided with an  
6 investigation file from State Farm Mutual in this case?

7 A Yes, sir, I was.

8 Q And as part of that investigation file were you  
9 provided the statements given by Patricia Ann Turner and  
10 Jimmy Smith which were transcribed?

11 A Yes, sir. Patricia Ann Turner, according to the  
12 statement, was the driver of insured vehicle, and Jimmy Smith,  
13 her brother, was a passenger in the insured vehicle at the time  
14 of the accident alleged in the Motion for Judgment.

15 Q And you were employed to represent Patricia Ann  
16 Turner in the defense?

17 A Yes, sir.

18 Q What did you plan to do, in regard to the  
19 defense of the case, with the issues of liability and negligence  
20 during your handling of this case?

21 A Well, it was like any other case. I intended  
22 to defend the case with the testimony of the insured driver,  
23 the defendant, and her passenger, her brother. They, so far as  
24 the file disclosed, were the only witnesses that I had who  
25 would provide a defense in the case.

1 Q All right, sir. Now, that tort suit was set for  
2 trial on a number of occasions and it was continued on a number  
3 of occasions, was it not?

4 A Yes, sir.

5 Q Now, Mr. Gray, we have stipulated as to those  
6 trial dates. I will just ask you if you will verify those  
7 trial dates.

8 It was set for trial on February 22, 1977?

9 A Yes, sir.

10 Q October 19, 1977?

11 A Yes, sir.

12 Q February 23rd, 1978?

13 A Yes, sir.

14 Q August 28th, 1978?

15 A Yes, sir.

16 Q February 21st, 1979?

17 A Yes, sir.

18 Q And it was continued on all of those occasions,  
19 was it not?

20 A Yes, sir, and the trial date was on August 3, 1979.  
21 And those dates are all listed on the outside of my file.

22 Q All right, sir. Now, in regard to Jimmy Smith,  
23 did you subpoena him for trial on the February 22, 1977 trial  
24 date, the first trial date?

25 A I am certain that the file will show -- the



1 Court's file in that other case would show -- that I subpoenaed  
2 him for every trial date until it reached the point where he had  
3 left this area and it was no longer possible to subpoena him  
4 for trial.

5 \* \* \*

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12 BY MR. PRESTON:

13 Q Would you look for your subpoena letter of  
14 February 4, 1977, to the Court?

15 A That's correct. I subpoenaed or wrote a letter  
16 to the clerk of the Court asking that subpoenas be issued on  
17 behalf of the defendant, Patricia Ann Turner, for Jimmy Smith  
18 as well as the two officers who investigated the accident.  
19 I might say that the purpose in subpoenaing the  
20 officers -- I almost always do that as a matter of course.

21 Q All right. For the October 19, 1977, trial date,  
22 would you look to see if there was a September 22, 1977, letter  
23 from you getting out the subpoena for Jimmy Smith?

24 A Yes, sir, by letter dated September 22, 1977,  
25 to the clerk, I asked the clerk to issue, on behalf of the

1 defendant, subpoenas for Jimmy Smith and the two investigating  
2 officers.

3 Q You are refreshing your memory from the Court  
4 record in the case of Davies against Turner in the tort suit,  
5 are you not?

6 A Yes, sir.

7 Q All right, sir. What about the next trial date,  
8 which was February 23rd, 1978? Would you look for two letters  
9 in that record from you; one dated January 27, 1978, and one  
10 dated February 9, 1978?

11 A Yes, sir, that's correct. I wrote a letter to  
12 the clerk dated January 27, 1978, to request subpoenas for  
13 those same three people; Jimmy Smith and the two investigating  
14 officers.

15 Q And wasn't there another one on February the 9th,  
16 1978, to subpoena Mr. Smith?

17 A Yes, sir, and the reason for that is because I  
18 had received information of a different address for him.

19 Q All right, sir. And would you check your  
20 subpoena letter of 8/14/78 for the August 28th, 1978, trial  
21 date?

22 A I wrote a letter on August the 14th to the clerk  
23 requesting a subpoena for Jimmy Smith.

24 Q All right, sir. Now then, let's go back to the  
25 October 19, 1977, trial date. I will ask you whether or not

1 Jimmy Smith appeared in court to be a witness in the trial of  
2 that tort suit of Davies versus Turner on that date.

3 A Yes, sir, he did. He did come to my office  
4 previously, along with his mother, and he came to court for  
5 the trial that day.

6 Of course, Patricia Ann Turner had not appeared,  
7 and at that time both the mother and her brother disclaimed  
8 any knowledge of her whereabouts. And I believed them when  
9 they told me they did not know where she was.

10 Q What happened to the case that was set for trial  
11 on October 19, 1977? What happened to that trial date?

12 A It was continued on my motion because of the  
13 absence of the defendant, Patricia Ann Turner.

14 Q Did she appear for trial on that day?

15 A No, sir.

16 Q Did she ever appear for trial on any dates?

17 A No, sir, never.

18 Q All right, sir. During that time for the  
19 October 19, 1977 trial, did you discuss with Mr. Jimmy Smith  
20 the facts of the accident?

21 A Yes, sir. I went over the facts with him and  
22 also went over the previous statement that he had given the  
23 claims representative of State Farm.

24 Q Did you plan to offer him as a defense witness?

25 A Absolutely. In my judgment he would have been a

1 good witness for the defense.

2 MR. PRESTON: Bear with me a minute, please,  
3 Your Honor. What did I do with that sketch?

4 MR. RASHKIND: You gave me the sketch back?

5 THE WITNESS: Yes, sir.

6 MR. RASHKIND: What was the date of that that  
7 you sent that to me?

8 THE WITNESS: I don't remember the date. I had  
9 written the date on the top of the sketch as the 19th of  
10 October, '78. I can give you the date.

11 MR. PRESTON: '77.

12 THE WITNESS: '77. Correction.

13 BY MR. PRESTON:

14 Q In other words, when you talked with Mr. Smith  
15 he drew you a diagram or sketch?

16 A Well, I drew the diagram myself, in accordance  
17 with what he told me, and his statements to me verbally were  
18 consistent with the statement that he had previously given the  
19 claims representative.

20 In my judgment, I thought perhaps his statement  
21 to me was a little stronger in defense than what he had told  
22 the claims representative.

23 Q At his request, did you not send a copy of that  
24 sketch, along with other investigative material of State Farm  
25 Mutual's file, to Mr. Rashkind in January of 1979, just prior

1 to the trial date?

2 A Yes, sir. I wrote him a letter dated  
3 January 31st, 1979.

4 MR. PRESTON: Can we stipulate to this sketch?

5 MR. RASHKIND: Stipulate to -- Mr. Gray took that  
6 sketch. Sure.

7 BY MR. PRESTON:

8 Q Is this the sketch?

9 A That is a copy of the sketch that I sent to  
10 Mr. Rashkind.

11 MR. PRESTON: I would like to offer that as  
12 State Farm Exhibit No. 4.

13 THE COURT: Number 4.

14  
15 (A sketch was marked State Farm Exhibit 4  
16 and received into evidence.)

17 BY MR. PRESTON:

18 Q What were the other items of investigation that  
19 you sent to Mr. Rashkind in January of 1979?

20 A I will have to look at my letter.

21 I sent Mr. Rashkind, actually, the claims report  
22 signed by Patricia S. Turner, a copy of the investigating  
23 officer's report, a copy of the park ranger's report, two  
24 Polaroid snapshots of the scene which, as I stated in the letter,  
25 were not very good, and the sketch and notes I made when talking

1 with Jimmy Smith on October 19, 1977.

2 Q Why did you send those to Mr. Rashkind? Was it  
3 at his request?

4 A Yes, sir. We had been exchanging information  
5 between the two of us, and I don't remember at first when we  
6 had the understanding, but I think it was from the very  
7 beginning, that nothing that either of us did would prejudice  
8 the rights of the other. This was a matter of my keeping  
9 Mr. Rashkind informed without prejudicing either of us.

10 Q All right. Getting back to Jimmy Smith, were  
11 you ever able to obtain his testimony for the trial of this  
12 case? Not this case, the tort case between Dixie K. Davies --

13 A I understand what you are saying. No, sir, I  
14 was not. I can tell you --

15 Q Your subpoena of Mr. Smith for the 8/28/78  
16 trial date, what was the return on that subpoena?

17 A He was not found, was the return. I remember the  
18 facts very well, although I don't remember dates.

19 Q All right, sir. Well, did you inaugurate efforts  
20 to locate Mr. Smith through your help and State Farm's?

21 A Yes, sir, I attempted to find out where he was,  
22 and I don't remember now whether I located him or whether  
23 somebody for State Farm located him, but it was determined that --  
24 I believe it was determined at that time that he had gone into  
25 the Army.

1 Q And was out of state in the Army?

2 A And out of state.

3 Q Did you later arrange -- attempt to arrange --  
4 for him to come on a deposition in this case?

5 A Yes, sir, I did. I served notice on the  
6 other attorney, and I thought that everything was arranged for  
7 him to appear for the deposition.

8 And on the date scheduled --

9 Q Why did you think that? Where were you going  
10 to take the deposition?

11 A The deposition was going to be taken in my  
12 office.

13 Q No. How did you feel you were going to get him  
14 to come to your office?

15 A Well, I had talked to his mother, and I had  
16 written letters. And, if you will bear with me a minute, I  
17 will look in the file and --

18 Q I have some copies of various letters. Would  
19 you want to see if any of those refresh your recollection?

20 A All right. Now, the first letter here of  
21 October the 19th was my report to State Farm, to Mr. Owen,  
22 the claims superintendent, of what had occurred on the morning  
23 of October 9.

24 Q I should not have handed you that one.

25 A All right.

1 Q I don't know which one it is, if there is one  
2 in there that would refresh your recollection on this point.

3 A Then I wrote a letter on August 17th, 1980.

4 Q Well, please don't read the letter. Just  
5 refresh your recollection and tell us what happened in regard  
6 to attempting to take that deposition; why it was going to be  
7 taken in your office.

8 A Well, it appears here I had requested State Farm  
9 to try to find out where Jimmy Smith was.

10 Then State Farm either informed me or gave me  
11 information or I learned it otherwise that he was in the Army.  
12 So I wrote him a letter in care of his mother in Elizabeth City,  
13 North Carolina, and informed him that I wanted to take his  
14 deposition for reading at the trial on February 21st; that I  
15 understood he expected to be in Fort Lewis, Washington, on  
16 that date and not available for trial.

17 I sent him a copy of the notice that I was  
18 serving on the other attorneys, which I gave them the time and  
19 place, and told him if there was some reason why he could not  
20 be in my office that date please let me know.

21 Q What made you think he was going to be in this  
22 area? Was he coming here for any reason?

23 A Yes, he was due to be home, and he was in this  
24 area, or at least in Elizabeth City, North Carolina.

25 Q And what had been your information about his



1 coming home?

2 A Do you mean where that information came from?

3 Q When was he going to be here?

4 A Oh, he was going to be here at the time of the  
5 deposition on November 20, 1978, but he was going to be leaving  
6 in a few days after that.

7 Q All right, sir. Did he show up for the  
8 deposition?

9 A He did not appear for the deposition, and we  
10 waited for him. The other attorney, the court reporter and I  
11 waited for him to appear.

12 I was very much puzzled by it, and my recollection  
13 is, although I don't see it in this note, I attempted to call  
14 his mother in Elizabeth City.

15 In any event, after we had waited for some  
16 period of time, about an hour after the deposition was scheduled--  
17 wait a minute. I have my note here. I have it here.

18 An hour after the deposition was scheduled my  
19 secretary called Smith's mother in Elizabeth City and his  
20 grandmother in Chesapeake but neither one of them knew where  
21 Smith was.

22 We had another phone number, obtained from him,  
23 but no one answered the ringing of that phone, and I thought  
24 perhaps he was on his way to the office.

25 Anyway, after the other attorney and the court

1 reporter had left, about five minutes afterwards I got a  
2 phone call from Smith, and he was an entirely different person  
3 that time than the one I had talked to previously.

4 He told me he didn't intend to give me his  
5 deposition. He said he was in the Army and wasn't a resident  
6 of Virginia; that he hadn't been served with any subpoena, and  
7 then the most unusual thing was that he said that he remembered  
8 little, if anything, about the facts of the accident, and that  
9 he didn't think the testimony would help.

10 And this was entirely contrary to the willing  
11 attitude he had when I had seen him personally on October the 19th,  
12 '77, and also contrary to his statement which had previously  
13 been taken by the claims representative for State Farm.

14 I have no idea why he had changed his attitude  
15 almost to the point of hostility.

16 Q The tort suit of Davies against Turner ultimately  
17 went to trial on August the 3rd, 1979?

18 A Yes, sir.

19 Q Were either Patricia Ann Turner or Jimmy Smith  
20 available to you as witnesses at the trial?

21 A No, sir. I had no information of where  
22 Patricia Ann Turner was. She had never gotten in touch with  
23 me except on one occasion when she called the office not long  
24 after the suit was filed.

25 And, of course, Smith was gone from the area, and

1 I assume he was out in Fort Lewis, Washington, But I do not  
2 know that for a fact.

3 Q At the trial of that tort suit, were you able  
4 to produce any evidence that was favorable to Patricia Ann  
5 Turner's case on the defense of the facts of the case?

6 A None at all. In fact, I had previously written  
7 a letter to Mr. Owen, I believe, and I used the description that  
8 I was going into the trial naked.

9 In other words, I had nothing whatever that I  
10 could offer in the defense of the case. That is on the issue  
11 of liability.

12 Of course, the only defense I ever had would  
13 have been the testimony of the defendant herself and the  
14 witness, her passenger. And both statements of these witnesses  
15 and the verbal statement to me by Jimmy Smith indicated, to me,  
16 that I did have a defense; a defense which I could classify  
17 as substantial, although there is no guarantee that any case  
18 is going to turn out favorably, even though your witnesses'  
19 testimony gives you a good defense.

20 Q What did the Court do in that case in regard to  
21 the issues of fact or negligence? What did it submit to the  
22 jury?

23 A Well, there being no evidence on behalf of the  
24 defendant, and there being no evidence offered by the plaintiff  
25 which indicated any fault on the part of the plaintiff, the

1 Court struck the defendant's evidence on the issue of  
2 liability and submitted the case to the jury on the issue of  
3 damages only.

4 That was, as far as I was concerned, a foregone  
5 conclusion that that is what was going to happen unless I  
6 could have, in cross-examination or somewhere, gotten the  
7 plaintiff or somebody to testify to something which might have  
8 shown some contributory negligence on her part. But that never  
9 developed and, frankly, I never had much hope of that  
10 developing because I had previously heard her deposition and  
11 obviously she was prepared when she came to court.

12 MR. PRESTON: All right. Thank you, Mr. Gray.

13 I have no further questions.

14  
15 CROSS-EXAMINATION

16 BY MR. RASHKIND:

17 Q Mr. Gray, let me go over something, because I  
18 am not sure I heard what you said.

19 Did you say that the defense you would have  
20 provided, had Turner and Smith been there, that that defense  
21 was not a substantial defense or was a substantial defense?

22 A In my judgment it was a substantial defense.

23 Now, of course, whether the jury would have  
24 accepted it or not is another question, which I cannot answer  
25 and nobody else can.

1 Q In fact, it was your prediction, though, on  
2 January 6th of 1977 that you would probably lose on that  
3 defense?

4 A I had written the company, as in all cases that  
5 I handle, sort of a crystal ball prediction of what I think may  
6 occur. And I think I am familiar with the letter you are  
7 referring to.

8 MR. PRESTON: Let me interrupt you, please,  
9 Mr. Gray.

10 Your Honor, I am going to object to any  
11 questions asking for the opinions of any witnesses.

12 THE COURT: Why is that relevant, Mr. Rashkind?  
13 Doesn't every attorney make an assessment of what the  
14 chances of winning are? That doesn't mean you give up  
15 your right to defend.

16 The fact he might think the odds are against  
17 him, he still has a right to defend his case, and he  
18 can give a judgment whether he thought the jury would  
19 believe the witnesses or not. But that doesn't mean  
20 he has to abandon the case.

21 MR. RASHKIND: Your Honor, my view of the  
22 law is that it is relevant whether or not he thought  
23 the issue was a winner or not.

24 Also, I remind the Court I am on cross-examination  
25 of a witness who has already testified on direct that he

1 has a substantial defense, and I am cross-examining that  
2 by showing that although he would call it a substantial  
3 defense he also predicted it would be a loser.

4 THE COURT: All right, sir. I will permit it.

5 MR. PRESTON: Your Honor, I would like to argue  
6 the point just a minute about opinion evidence being  
7 allowed --

8 THE COURT: All right, sir.

9 MR. PRESTON: -- in the case.

10 THE COURT: In other words, it is not being  
11 offered for his opinion as to -- in other words, he  
12 certainly can't take the place of a jury in the case,  
13 Mr. Preston. I understand that.

14 His opinion as to the case would not be bound  
15 on a jury and would not be valid evidence even as to  
16 whether there was liability or not.

17 But the issue here is not the question of is  
18 his opinion valid evidence. The question was -- he  
19 stated that he believed it to be a substantial defense.  
20 I am admitting it for the purpose to contradict him in  
21 the fact whether or not he believed it to be a substantial  
22 defense and the fact he has expressed another opinion.

23 Whether that opinion is correct or not is not  
24 the reason I am admitting it.

25 MR. PRESTON: Subject to my objection, Your Honor,

1 I would be willing to have the statement that it wa a  
2 substantial defense stricken from the record, and the  
3 reason is that I do not think that the Court --

4 THE COURT: You didn't ask him that on direct  
5 examination?

6 MR. PRESTON: He volunteered that. I can  
7 withdraw that, I assume. We have no jury here.

8 Here's the problem I see, Your Honor. The issue  
9 to be decided is to be decided by the Court as to  
10 whether or not a statement of Patricia Ann Turner would  
11 have given rise to a defense in the case. And it  
12 doesn't make any difference what the lawyers' opinions  
13 are as to whether they did or did not. And these cases  
14 with lack of cooperation shouldn't end up being a  
15 swearing match between lawyers as to his opinion as to  
16 what was this and what was that.

17 I would like to read the Court from the law of  
18 evidence in Virginia that I think is apropos on this.

19 "Thus, a witness' opinion as to whether or not  
20 the defendant is guilty or negligent is almost  
21 universally rejected. It is one thing to allow a witness  
22 to state an opinion as to a fact" --- this is  
23 expert witnesses they are talking about -- "however  
24 close the fact may be to the essential  
25 issues of the case. It is quite another thing

1 to permit a witness, expert or otherwise, to express an  
2 opinion embracing a legal concept. The latter, indeed,  
3 must be decided by the Court or by a jury acting under  
4 the instructions of the Court."

5 And that is the point I am making, Your Honor.  
6 That is what we are dealing with here; a legal concept.  
7 What was the law; how do you apply it to this thing;  
8 were there statements as such that raise a defense?  
9 That is a legal concept.

10 Mr. Rashkind is going to offer, I believe from  
11 previous representations, various opinions in this case,  
12 and I suggest to Your Honor that those opinions are  
13 irrelevant and immaterial and incompetent in the case,  
14 and it is on that basis I am objecting.

15 THE COURT: Let me ask you this question: Isn't  
16 it one of the issues in this case whether or not -- or  
17 probably the only issue in this case, really -- your  
18 company was prejudiced by the fact that this defendant  
19 did not appear? That's the issue in the case.

20 If you were not prejudiced by it, then, certainly,  
21 you are out of court here as far as we are concerned.

22 The idea is, if I read the statute, that you have  
23 to show you were prejudiced by the fact that the person  
24 did not appear.

25 Now, I understand you said you would like to



1 withdraw his answer, but the answer was made without  
2 objection, that he thought, at the time, that he had a  
3 significant defense.

4 Now, Mr. Rashkind comes back -- and I am not dis-  
5 agreeing with what you read that his opinion as to  
6 whether or not there was liability, whether you win or  
7 lose the case, is not relevant. For the purpose of this  
8 case, that was tried and the jury considered the  
9 evidence. But now there's a different issue here.

10 Mr. Gray has stated that he believed the  
11 company was prejudiced and, in essence, he stated it was  
12 prejudiced because they did have a substantial defense.

13 I feel that this is not a question of his expert  
14 opinion as to whether or not there was liability. I  
15 think it is admissible on cross-examination to test his  
16 belief in the fact that he had a substantial defense  
17 by the fact that he has indicated, perhaps by letter to  
18 the company, that he did not think so.

19 If you think you are going to lose, that means,  
20 in my judgment, you think you don't have a substantial  
21 defense.

22 MR. PRESTON: Your Honor, do I understand you to  
23 rule because he testified to that his credibility can be  
24 attacked if he said something different earlier?

25 THE COURT: As far as Mr. Gray being a

1 credible person, his truthfulness on the witness stand,  
2 in my opinion, is beyond reproach. But it is not a  
3 question, in my judgment, of credibility in the sense  
4 of whether a person is to be believed or not.

5 But he is testifying today, some two years  
6 after the fact -- he is giving an opinion today what he  
7 thought the possibility of the case was at that time,  
8 and if there's written evidence in the case of a  
9 contrary opinion that was made at the time of the case,  
10 I think that is admissible.

11 MR. PRESTON: I don't want to belabor it forever,  
12 but I would like to make one more statement.

13 It is our view that the statement that it was a  
14 substantial defense is, in and of itself, irrelevant and  
15 of no interest to the Court in determining this case,  
16 and there is no reason for him to be cross-examined on  
17 the subject; that the issue before the Court is not  
18 whether there is a substantial defense. The issue before  
19 the Court, in this aspect of it, is the fact that she was  
20 not there to testify as to what the statements said.  
21 That is only one aspect of it, but in that aspect of it  
22 the issue is whether there was enough in that statement  
23 for a jury to determine that she was not liable in that  
24 case.

25 And that issue is for the Court to determine,

1 because you have got it right in front of you as to  
2 what she said. You have the facts that were testified  
3 against her in the case. There was no other evidence  
4 for her to indicate that, and that is the relevant issue  
5 in the case, and it is on that ground that I am  
6 objecting to the testimony.

7 MR. RASHKIND: Your Honor, that is Mr. Preston's  
8 view of the law. Mine is the opposite, as we went over  
9 earlier.

10 I believe it is important for the Court to know  
11 what Mr. Gray means when he says "substantial," and  
12 whether he thought it a loser.

13 And I don't believe the Court can decide whether  
14 Mr. Preston or I am correct until after it has received  
15 and reviewed the law we are going to present to you later.

16 THE COURT: I am going to receive it into  
17 evidence, but I will leave the matter open for you  
18 gentlemen to brief, as far as the admissibility.

19 MR. PRESTON: All right, sir.

20 THE COURT: I will receive it as evidence at this  
21 time.

22 BY MR. RASHKIND:

23 Q Mr. Gray, quite some time ago your answer was,  
24 I believe --

25 MR. PRESTON: Excuse me. I hate to keep

1 interrupting. It is very impolite.

2 May I have the agreement of the Court, or of  
3 counsel, or whatever, that all of the questions in this  
4 respect are subject to my objection?

5 THE COURT: It will only be considered by the  
6 Court after consideration of the law.

7 MR. PRESTON: And I don't have to state an  
8 objection after each question on this subject?

9 THE COURT: No, sir. And I will certainly,  
10 gentlemen, expect you-all to try to offer the Court some  
11 guidance as to whether or not that is admissible. And  
12 after seeing what you-all have to offer, I will make a  
13 decision.

14 MR. RASHKIND: Yes, sir.

15 BY MR. RASHKIND:

16 Q So Mr. Gray, in a letter of January 6th, 1977,  
17 to State Farm Insurance Company you said, didn't you, based  
18 on what is in the file there is apparent liability?

19 A Yes, sir, I said that. I would like to come  
20 back, if I may, and tell you what I mean by substantial defense.

21 Q Well, go ahead.

22 A What I mean by that is this: That there is  
23 evidence which can be presented to a jury which, if believed,  
24 would result in a verdict for that litigant, that defendant,  
25 if believed.

1 Now, that doesn't mean, when I say there is a  
2 substantial defense, that I am going to win the case.

3 Now, when you reminded me of this letter where  
4 I said there is apparent liability, what I am doing is trying  
5 to give the company, the claims superintendent, my best  
6 judgment as to what I think the outcome of the case will be.

7 Now, that doesn't mean that I have backed off  
8 from what I think is a substantial defense.

9 Q In other words, you didn't plan on admitting  
10 liability, and you didn't think you would have to, and you  
11 thought you would have a jury issue?

12 A I would have a jury issue and the case would go  
13 to the jury. And I am satisfied if the defendant had been  
14 present and her brother had been available that the case would  
15 have presented an issue of fact to go to the jury.

16 I don't want to stray too far, but I had a case  
17 the other day in which I had --

18 Q Please don't get into cases the other day.

19 A I can only give the company my best judgment,  
20 and I can't say flat out that we are going to win this case or  
21 lose this case. I can tell the company, we have got a defense  
22 here which, if believed, will result in a verdict for the  
23 defendant. And at the same time I can say that, apparently,  
24 this is a case of apparent liability.

25 Q All right.

1           A           Because the other side may have twenty witnesses  
2 against one, but still the defense is substantial.

3           THE COURT: Sometimes in the past you have been  
4 proven wrong, haven't you, Mr. Gray?

5           THE WITNESS: Yes, sir.

6 BY MR. RASHKIND:

7           Q           Right and wrong both?

8           A           Yes, sir.

9           MR. PRESTON: You win some you think you are  
10 going to lose, and you lose some you think you are going  
11 to win.

12 BY MR. RASHKIND:

13           Q           The defense that you had, however good it was  
14 or wasn't, when you made the statement in January of 1977, that  
15 was assuming Patricia Turner and her brother both showed up to  
16 testify and testified in accordance with the statements and  
17 the investigation in your file?

18           A           Yes, sir, and I told the company that it appeared  
19 to be an apparent case of liability.

20           Q           Yes, sir.

21           A           The reason for that was notwithstanding the  
22 defense we had, the other side had a lot of evidence against us.

23           Q           All right. Now, you never did get an opportunity  
24 to talk, yourself, to Patricia Turner, did you?

25           A           No, I did not.

1           Q           You talked personally to Jimmy Smith, as you have  
2 recounted. But, as you have also recounted, the last time you  
3 talked to him, I believe, he completely turned tail; absolutely  
4 turned around, I believe?

5           A           Yes, sir. Well, all he said was as I wrote in  
6 my letter; that he was in the Army, he wasn't a resident of  
7 Virginia.

8                       In other words, he just was not going to  
9 cooperate with me any further. This was a complete turn around  
10 from his attitude when he appeared for trial on October the 19th,  
11 1977.

12           Q           You also reported that he said he didn't remember  
13 very much and that he didn't think he could help you. Didn't  
14 he say that?

15           A           I reported to the company that he said he  
16 remembers very little, if anything, about the facts of the  
17 accident, and he did not think his testimony would help.

18           Q           And this was an entire repudiation of the  
19 statement on which you were going to base a part of the defense  
20 on the case?

21           A           That is not my conclusion. My conclusion was  
22 not that. I don't know why he had suddenly turned hostile and,  
23 of course, this is merely a matter of opinion, but I just got  
24 his attitude over the telephone that he just didn't want to be  
25 bothered with it any further and didn't want to testify. I

1 didn't get the impression he didn't remember anything.

2 Q You thought he was telling you a misstatement  
3 when he said that?

4 A I did, indeed.

5 Q As far as Patricia Turner goes, you have no way  
6 of knowing, if she had appeared at trial, if she would have  
7 testified in accordance with the statement --

8 MR. PRESTON: I object to that. It is true  
9 speculation.

10 THE COURT: The only information you had from  
11 Patricia Turner was the statement you received from the  
12 State Farm agent; is that correct?

13 THE WITNESS: That is correct.

14 THE COURT: You can't speculate what she would  
15 have done if you had actually gotten an interview with  
16 her?

17 THE WITNESS: No, sir.

18 BY MR. RASHKIND:

19 Q The statement taken was taken shortly after the  
20 accident; is that right?

21 A I don't remember the date.

22 Q I will get that from somebody else.

23 The suit was filed almost two years before the  
24 accident; is that right?

25 A The suit was filed August the 2nd, 1976.



1 Q And the accident was August the 2nd, 1974?

2 A Yes, sir.

3 Q So that was two years after the accident --

4 A To the day.

5 Q -- before suit papers were ever filed?

6 A Yes, sir.

7 MR. PRESTON: Did you plead the statute?

8 THE WITNESS: I concluded the Statute of  
9 Limitations was not applicable.

10 BY MR. RASHKIND:

11 Q During the course of the trial -- you defended  
12 Patricia Turner at the tort trial; is that correct?

13 A To the best of my ability by cross-examining  
14 witnesses and, as I said before, attempting to find something  
15 from the testimony offered by the plaintiff in her evidence  
16 which would indicate some contributory negligence.

17 But I was totally unsuccessful, and there just  
18 was absolutely no evidence or testimony I could put on to defend.

19 Q You were allowed to cross-examine the witnesses,  
20 but you couldn't get any favorable testimony from them?

21 A That's right. When Patricia Turner failed to  
22 appear and her brother failed to appear, I had lost every  
23 chance of any defense on the issue of liability.

24 Q During the course of the trial, with the  
25 exception of yourself no comment was made by plaintiff's counsel,

1 or any of the plaintiff's witnesses, or the Court, about the  
2 absence of Patricia Turner; isn't that correct?

3 A I believe that is true. I do not recall anybody.

4 Q Except for you?

5 A Except for any statement that I may have made.

6 Q All right. And in addition, during opening  
7 statement did you make a statement to the jury attempting to  
8 explain, as best you could, under the circumstances, why  
9 Patricia Turner was not present for trial?

10 A That's correct.

11 Q Do you recall yourself as saying that the  
12 accident had happened a long time ago; that Patricia Turner  
13 had since married and moved from the area, but that you had  
14 been hired to defend the case and would to the best of your  
15 ability?

16 A I don't remember what my exact words were, but  
17 I am sure I made an accurate statement to the jury without  
18 telling them that insurance was involved.

19 Q Yes, sir. And was there any objection made  
20 by counsel or the Court to your explanation?

21 A I do not recall any.

22 THE COURT: Mr. Rashkind, are you going to be  
23 much longer?

24 MR. RASHKIND: No, sir.

25 THE COURT: Because I have an appointment with

1 some lawyers who are waiting for me.

2 BY MR. RASHKIND:

3 Q During the course of your attempts to search for  
4 Patricia Turner, did you determine, through information given  
5 to you by Patricia Turner's mother, that her husband had been  
6 convicted of a felony?

7 A That's true. I learned that on the morning --  
8 I believe it was on the morning of October the 19th, 1977, and  
9 based on the information she gave me, I sought, through the  
10 probation officer here in Portsmouth, to locate him, and I was  
11 referred to the probation officer in Roanoke, as I recall--  
12 either there or Lynchburg--in an effort to call him.

13 It was a very strange situation. The mother of  
14 this defendant asked me not to reveal where my source of  
15 information was in knowing that Patricia Turner's husband was  
16 a felon or had been convicted of a felony.

17 Q Did you, after the deposition that failed, the  
18 deposition you attempted to take of Jimmy Smith, attempt to  
19 arrange for a deposition out in Washington state, or wherever  
20 he went to in the Army?

21 A I did not.

22 \* \* \*

\* \* \*

REDIRECT EXAMINATION

BY MR. PRESTON:

Q Mr. Gray, I hand you a letter addressed to you by Alan B. Rashkind dated January 22, 1979, and ask you if that is a letter which you did receive from him in that general time frame.

A Yes, sir. This is an exact copy of it.

MR. PRESTON: Your Honor, I would like to offer this letter.

MR. RASHKIND: Your Honor, I object to it. I don't know what the relevance of that would be, especially in light of Mr. Gray's statement on the stand

1 that there were exchanges between the two of us.

2 THE COURT: What is the letter all about?

3 MR. PRESTON: I thought he agreed to it when he  
4 handed it back to me and didn't say anything about it.

5 THE COURT: You have to lay a foundation for it.

6 MR. RASHKIND: He's got a foundation.

7 MR. PRESTON: This is a letter from Mr. Rashkind  
8 which is dated January 22, 1979. Now, I am offering this  
9 letter, Your Honor, under protest in this respect: If  
10 opinions are admissible in this case, then I think --

11 THE COURT: Do you object to the letter?

12 MR. RASHKIND: Yes, sir.

13 THE COURT: What is your objection?

14 MR. RASHKIND: This letter was in the course  
15 of one of the exchanges between Mr. Gray and myself  
16 about information in this case, which Mr. Gray testified  
17 to earlier, on direct examination, all such exchanges  
18 were made without prejudice.

19 We had both, early on, agreed to that.

20 MR. PRESTON: I am offering this letter subject  
21 to my objections to opinion evidence.

22 THE COURT: This is a negotiation between  
23 lawyers who say many things. This is not an  
24 inter-company communication. This was bargaining  
25 between lawyers.

1 MR. PRESTON: I haven't read it to you yet,  
2 Your Honor.

3 THE COURT: Well --

4 MR. RASHKIND: I would like the Court to read it,  
5 because I think the relevance is tenuous, especially  
6 by Mr. Gray's comment.

7 THE COURT: If you-all will let me look at it,  
8 I will read it.

9 MR. PRESTON: I would like to call your  
10 attention to the part I am offering it for. It is a  
11 letter from Mr. Rashkind to Mr. Gray.

12 It says, "The last couple of times we have been  
13 about to try this case, you have indicated that State  
14 Farm would have you move for a continuance, and failing  
15 that, you would withdraw, leaving the case to be  
16 defended, if at all, by our firm.

17 "In the past we have exchanged some information  
18 relevant to the defense of this case, such as statements  
19 by witnesses and reports by parties. Would you please  
20 send me copies of any statement or investigation that  
21 you have in your file that might assist me in preparing  
22 for the defense of this case, if our firm has to defend  
23 it on February 21? I am hopefully looking for any  
24 statements taken from your insured, or her brother the  
25 passenger, or any of the claimants and their witnesses,

1 and the report that I believe you mentioned at one time  
2 that was filed by the Park Ranger, in which he failed  
3 to mention an admission by Mrs. Turner that the Park  
4 Ranger now says he will testify to at trial."

5 It goes on to mention something about Dr. Vann  
6 and that it might be continued because one attorney might  
7 become a Judge.

8 Now, I am offering this subject to my --

9 THE COURT: I understand the objection to it,  
10 because I think this is just correspondence between  
11 attorneys. It has got nothing to do with opinion as to  
12 liability.

13 MR. PRESTON: I am offering it as an indicated  
14 opinion of GEICO that the case was one to defend on  
15 facts.

16 THE COURT: I will mark it State Farm offered  
17 and refused.

18 MR. PRESTON: State Farm No. 5, please, sir.  
19 I believe that's right.

20 THE COURT: I won't give it a number. I am just  
21 going to put offered and refused. I am not accepting  
22 that as an exhibit, because I don't think it is relevant  
23 at all.

24 If lawyers are going to have to start worrying  
25 about every time they send a letter to another lawyer it's

1 going to be sent back to them in another case --

2 MR. PRESTON: I just got through doing that  
3 with Mr. Gray.

4 THE COURT: That was inter-company communication.  
5 That wasn't inter-company information between lawyers.

6 State Farm Exhibit refused.

7 MR. RASHKIND: Your Honor, anticipating the  
8 possibility that there may be several such refused,  
9 should we label it with a letter, perhaps?

10 THE COURT: I will put State Farm A refused.

11  
12 (A letter dated January 22, 1979, from  
13 Mr. Rashkind to Mr. Gray, was marked State Farm Exhibit  
14 A refused.)

15 MR. PRESTON: I think I am intimidated. I  
16 don't believe I will offer any more.

17 THE COURT: All right, sir.

18 MR. PRESTON: May I see that letter again, please?

19 THE COURT: Yes, sir.

20 MR. PRESTON: Your Honor, I won't ask any more  
21 questions about it.

22 THE COURT: I don't see that any conversation  
23 between Mr. Rashkind and Mr. Gray where Mr. Rashkind is  
24 inquiring whether Mr. Gray is going to defend the case  
25 or not is admissible in this hearing. I don't see where



1           it is admissible at all.

2           MR. PRESTON: All right.

3 BY MR. PRESTON:

4           Q       Mr. Gray, was it ultimately determined that you  
5 would be the one who defended the case?

6           A       Yes, sir.

7           Q       You would actually go into court and try the  
8 case?

9           A       Yes, sir. I will be glad to tell you how that  
10 came about.

11          Q       All right, sir.

12           THE COURT: Well, no question about it. It is  
13 undisputed that you came in and you defended the case.

14           THE WITNESS: I defended the case.

15           THE COURT: As attorney for State Farm Insurance  
16 Company?

17           THE WITNESS: Yes, sir.

18           THE COURT: All right. That is all I want to  
19 know.

20 BY MR. PRESTON:

21          Q       If you want to make an explanation --

22           THE COURT: I don't see where it is relevant,  
23 so I don't think any explanation is necessary.

24           MR. PRESTON: All right, sir. Take exception.

25           THE COURT: All right, sir.

1 BY MR. PRESTON:

2 Q Mr. Gray, how long have you been trying tort  
3 suits in the courts of the Commonwealth of Virginia?

4 A Since 1951.

5 Q About how many suits would you say you have  
6 tried over the course of the years in tort suits?

7 A This is a very rough estimate, and on bodily  
8 injury cases my best estimate is somewhere between one thousand  
9 and fifteen hundred.

10 Q Do you have an opinion --

11 MR. PRESTON: Your Honor, I am offering this  
12 evidence from Mr. Gray only in rebuttal to the question  
13 he was asked on his opinion in the case, and I am  
14 offering --

15 THE COURT: He wasn't asked his opinion. It was  
16 just that he gave his opinion in an inter-company  
17 communication.

18 I am not going to permit him, or any lawyer,  
19 to get up here and qualify as an expert on what a jury  
20 would do and what a case would be decided. Mr. Gray  
21 himself says he is frequently wrong.

22 MR. PRESTON: Or whether there was negligence  
23 in the case?

24 THE COURT: I will not allow him to testify as  
25 to that.

1 MR. PRESTON: All right, sir. Take exception,  
2 and come down, Mr. Gray.

3 THE COURT: You are a regular attorney for  
4 State Farm Insurance Company in trying cases for them,  
5 defenses for them, in Portsmouth, aren't you, Mr. Gray?

6 THE WITNESS: Yes, sir.

7 THE COURT: No, sir, I am not going to let him  
8 testify to that.

9 MR. PRESTON: I don't think it is relevant  
10 either, Your Honor. I am offering it because we have  
11 already had opinion evidence, and I felt like I had a  
12 chance to rebut it.

13 MR. RASHKIND: I have no further questions.

14 MR. PRESTON: Come down, Mr. Gray.

15 Your Honor, we rest.

16 \* \* \*

1                    ROBERT SCURLOCK, called as an adverse witness  
2 by and on behalf of the defendant, GEICO, having been  
3 previously duly sworn, was examined and testified as follows:  
4

5                    DIRECT EXAMINATION (Adv.)

6 BY MR. RASHKIND:

7            Q            Would you please state your name for His Honor?

8            A            Robert Scurlock.

9            Q            And you are employed by State Farm?

10          A            Yes, sir.

11          Q            How long have you been employed by State Farm?

12          A            Oh, about nineteen years.

13          Q            And for how many years have you -- well, you  
14 investigated the accident involving Patricia Turner and  
15 Dixie Davies, did you not?

16          A            Yes.

17          Q            And you did so by taking the statements which  
18 have previously been referred to in Exhibits 1 and 3?

19          A            That is the statement of Jimmy Smith dated  
20 December 27, 1974, and the statement from Patricia Turner dated  
21 December 18, 1974.

22          Q            You were the one who took those statements,  
23 were you not?

24          A            Yes, sir.

25          Q            And what was your capacity at the time you took

1 those statements? What was your job title called?

2 A Job title?

3 Q Yes.

4 A Claims representative.

5 Q Are you still in that position?

6 A Yes, sir.

7 Q How long have you been a claims representative?

8 A Nineteen years.

9 Q In the course of your investigation in this  
10 particular case, did you prepare a summary of your report dated  
11 January 7, 1975?

12 THE COURT: Mr. Rashkind, before you get to this  
13 thing, I allowed what Mr. Gray testified to because  
14 Mr. Gray had made a statement that he had a significant  
15 defense. I allowed you to come in on cross-examination  
16 and question him in regards to whether he had made the  
17 statement he made. But I am not going to let you go  
18 ahead and start putting on witnesses as to what they  
19 thought of the case. I don't think that is relevant.

20 I don't know whether he is a lawyer or not. I  
21 don't know whether he just does the best he can and the  
22 company makes an evaluation on it after he makes his  
23 report. They make an evaluation as to what they think of  
24 the case.

25 Just because he may have said to them, I don't

1 think it is a good case, it certainly shouldn't be  
2 binding on the company in any way whatsoever. He is a  
3 fact finder, a fact gatherer, and maybe they listen  
4 to him, maybe they don't. I don't know.

5 But I allowed it in Mr. Gray's case because  
6 Mr. Gray had stated that he was asked about this case,  
7 and he said that they had a significant defense in this  
8 case.

9 You can certainly get him on cross-examination  
10 on that. But I don't know if this is what you are  
11 planning on doing with this man.

12 MR. RASHKIND: That is, in part, what I am  
13 planning on doing.

14 THE COURT: I will not permit that.

15 MR. RASHKIND: Your Honor, remembering that the  
16 Court still has to read memorandum from us and that I  
17 will take the position that this information by State  
18 Farm's investigators, the only gentleman presented who  
19 has talked personally to Patricia Turner, is relevant,  
20 may I proffer that for the record?

21 THE COURT: Proffer it out of my presence,  
22 Mr. Rashkind. I don't want to hear it.

23 MR. RASHKIND: That I would be willing to do,  
24 if that is the Court's ruling. May I continue with  
25 other examination which, hopefully, will not run afoul

1 with the Court's ruling on this point?

2 THE COURT: All right.

3 \* \* \*

25 TAYLOE ASSOCIATES

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NORFOLK, VIRGINIA

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\* \* \*

Q Mr. Scurlock, at any time did Patricia Turner state to you that she slid into Dixie Davies' vehicle?

MR. PRESTON: The statement speaks for itself, Your Honor.

Oh, you mean orally?



1 THE COURT: Did she orally tell you that?

2 MR. PRESTON: Okay.

3 THE WITNESS: I honestly can't remember. I  
4 could read the statement you have just given me and  
5 maybe see what she said in that.

6 BY MR. RASHKIND:

7 Q If it's not in the statement you don't remember  
8 it?

9 A I don't remember. It was six years ago when I  
10 took it.

11 Q Mr. Scurlock, did you ever get from -- do you  
12 ever remember getting from Patricia Turner an explanation as  
13 to how her vehicle wound up on Dixie Davies' side of the road  
14 if she was struck on her side of the road?

15 \* \* \*

16  
17  
18  
19  
20  
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22 THE WITNESS: I don't remember that either.  
23 The only thing I could do is look at the  
24 statement or notes.

25 THE COURT: Do you have any independent recollection

1 of your conversation with her?

2 THE WITNESS: No, I do not. At least very  
3 hazy.

4 \* \* \*

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1                   The following testimony of Mr. Scurlock and  
2                   Mr. Owen was proffered testimony outside the presence  
3                   of the Judge.

4                   Proffered testimony pages 81 through 102.

5                   \*   \*   \*

1 MR. PRESTON: The questions which are now being  
2 asked -- I am going to state for the record what we are  
3 doing -- of Mr. Scurlock are being asked over my  
4 objection on behalf of State Farm and with the ruling  
5 of the Court sustaining my objection, but for the  
6 purpose of being proffered into evidence by GEICO,  
7 Government Employees Insurance Company.

8 BY MR. RASHKIND:

9 Q Mr. Scurlock, you were never satisfied with  
10 any explanation that Dixie -- I'm sorry -- that Patricia Turner  
11 gave to you as to how her vehicle wound up on the right side  
12 of the road; that is on Dixie Davies' side of the road rather  
13 than her side of the road when she stated she had been struck  
14 on her side of the road; isn't that correct?

15 MR. PRESTON: I object to that question on a  
16 different ground. You are asking him to state an  
17 impression as to truth and veracity of Patricia Ann  
18 Turner, and I object to that question on the grounds  
19 that that is irrelevant. That is for jury determination  
20 at the trial of the case and not for Mr. Scurlock's  
21 determination.

22 MR. RASHKIND: I will agree that that objection  
23 continues to every question I am going to ask during  
24 this proffering.

25 MR. PRESTON: If that is the type of questions

1           you are asking.

2                   MR. RASHKIND: It is, and so it will.

3 BY MR. RASHKIND:

4           Q           All right. Based upon and following that  
5 objection, would you go ahead and answer?

6           A           State that question again.

7           Q           I will state it somewhat differently, but still  
8 retaining the objection to the question.

9                   You could never satisfy yourself as to how  
10 Patricia Turner could have been struck when she was on the  
11 right side of the road and wound up on the left side of the  
12 road, could you?

13          A           I really don't remember that detail about it.  
14 I know she said she was on the right side of the road when she  
15 was hit.

16          Q           To refresh your recollection, then, I want you  
17 to please review the short form combined liability report  
18 dated January 7, 1975, which indicates it is from Robert  
19 Scurlock. I want you to review this, and it is several pages.  
20 Please read it in its entirety, not just the parts I have marked.  
21 I don't want you to be misled by that.

22                   \*   \*   \*

\* \* \*

Q You have finished it now?

A Yes.

Q Didn't you say in that report, at the last sentence of the third paragraph, if she had been on the far right side as she states with her wheels off the road and the Davies' car had hit the left side of her car, it was difficult to see how she would have gotten across the road when she came to rest?

A Yes, sir.

Q And doesn't that represent that your impression was that you were not satisfied with the explanation given by Patricia Turner to you as to how the accident happened and the cars wound up where they were?

A Yes, there is some doubt as to what she said.

Q In fact, you concluded, after further investigation and after interviewing Officer Caviness, that Patricia Turner and her brother probably were not giving you the true version of how the accident happened; isn't that correct?

A Yes, sir.

1 Q And as to Jimmy Smith, you made the conclusion  
2 that he was probably not as strong a witness as Patricia Turner,  
3 didn't you?

4 A Yes, sir.

5 Q And as to Patricia Turner, you made the  
6 statement, I believe, that she gave a fair appearance but that  
7 you didn't feel that she was giving you a correct version of  
8 the facts?

9 A Yes, that is correct.

10 Q And under that section of the report entitled,  
11 "desirability of risk" you reported again to the company that  
12 Patricia Turner was not giving you the true statement of the  
13 facts; is that correct?

14 A Yes.

15 Q And finally you concluded, from all of your  
16 investigation, did you not, that it was a liability case; that  
17 is, liability was shown by your investigation, in your  
18 opinion, to be on Patricia Turner and that liability was so  
19 clearly on Patricia Turner that you recommended making advance  
20 payment on the property damage to Dixie Davies; is that not  
21 also correct?

22 A Yes.

23 \* \* \*

CROSS-EXAMINATION (Adv.)

BY MR. PRESTON:

Q Mr. Scurlock, when you were asked this question by Mr. Rashkind, did you remember what you had written in that report or were you reading from that report in order to testify from what you have read?

A That's right. I refreshed my mind with the report.

Q Do you remember having written that now or did you just read the report as to what you read?

A Now that I see it again, I can remember that I did write it, but I wouldn't have remembered any of it if I hadn't looked at it.

Q Is this entire report what you wrote to State Farm on the short form combined liability report form?

A That was all of that report.

Q And is all that report -- you had the same memory of it as you do of what you testified to?

A What was that again?

Q From reading the entire report, is your memory the same in regards to any one part as it is with regard to the part you testified to?

A You mean do I remember it all the same way?

Q Does it refresh your recollection?

A Yes, I remember writing it.



1 MR. PRESTON: I am going to offer this into  
2 evidence as an exhibit, subject to objection, of course.

3 MR. RASHKIND: It is going to be an exhibit to  
4 the proffered section.

5 MR. PRESTON: Right.

6 MR. RASHKIND: I have no objection to that,  
7 although I don't know what I would do if I had an  
8 objection without the Judge here.

9 MR. PRESTON: You want to offer it as your  
10 exhibit?

11 MR. RASHKIND: No, I will let you do it.

12 MR. PRESTON: Let's call this Proffered Exhibit  
13 No. A.

14 THE CLERK: I have another one called A.

15 MR. RASHKIND: Yes, he does.

16 MR. PRESTON: Proffered Exhibit No. 2; is that  
17 right?

18 MR. RASHKIND: B. Letter B.  
19

20 (The short form combined liability report was  
21 marked Proffered Exhibit B and received in evidence.)  
22  
23  
24  
25

\* \* \*

MR. PRESTON: Come down. I want to call

Mr. Owen to the stand.

THE CLERK: Mr. Owen, were you sworn this morning?

MR. OWEN: Yes.

MR. RASHKIND: Let me understand what you are doing in calling Mr. Owen to the stand.

MR. PRESTON: You want me to explain it to you?

MR. RASHKIND: Yes.

MR. PRESTON: I want to offer testimony from Mr. Owen subject to my agreement with the Judge that all of this is irrelevant, but in the case it is later determined that it is relevant on these opinions of these folks, I want to offer his opinion as a State Farm claims supervisor in the case. That is the purpose of putting him on the stand.

MR. RASHKIND: All right.

\* \* \*

MR. PRESTON: This testimony is being offered in evidence out of the presence of the Judge, under the proffered testimony which is being offered concerning opinions of these witnesses.

And I am not waiving my objection that the Court has ruled, that he agrees with, that this is irrelevant, incompetent and immaterial evidence that should not be admitted in the case, but I am offering this simply in the event that the Court should ultimately change its mind in regard to the ruling on evidence of this nature.

JOHN OWEN, called as a witness by and on behalf of the defendant, State Farm, having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. PRESTON:

Q Mr. Owen, would you state your name, please, sir?

A John Owen.

Q And what is your job, Mr. Owen?

1           A           I am a claims superintendent with State Farm  
2 Insurance Company.

3           Q           What is a claims superintendent's job?

4           A           A claims superintendent's job is to supervise  
5 the claims representatives who investigate claims and to make  
6 decisions as to what should be done after the investigation is  
7 made.

8           Q           Is Mr. Scurlock -- excuse me. Strike that.

9                       At the time that we are dealing with here,  
10 subsequent to the accident which occurred which gave rise to the  
11 tort suit between Dixie K. Davies and Patricia Ann Turner and  
12 which is also in the background of this particular case, and  
13 during the investigative process of that case and handling it to  
14 a conclusion, in as far as the trial of that tort suit was  
15 concerned and up to the present time in regard to this suit we  
16 are involved in, have you been in that capacity all during  
17 this time?

18          A           Yes, I have.

19          Q           And has Mr. Scurlock been a claims representative  
20 under your supervision during that time?

21          A           Yes, he has.

22          Q           And was Mr. Scurlock a claims representative  
23 acting under your control and direction when he was investigating  
24 this case and writing the reports that he wrote in this case?

25          A           Yes, sir.

1 Q Including the one which has been proffered into  
2 evidence here?

3 A Yes, he was.

4 Q And when you receive reports of that nature from  
5 Mr. Scurlock, what do you do with them?

6 A I review the reports, and if anything further  
7 needs to be done I would suggest that, or if a decision needs  
8 to be made at that time then I would decide what should be done  
9 on the case at this particular time.

10 Q All right, sir. In that capacity, did you  
11 review his short form combined liability report from which he  
12 has refreshed his recollection here today and which has been  
13 proffered into evidence as Proffered Exhibit B?

14 A Yes, I did.

15 Q Did you respond to that report with a memo back  
16 to Mr. Scurlock?

17 A Yes, I did.

18 Q And is that memo dated 1/8/75?

19 A I think that is the date. Let me see it.

20 Q Well, would you mind looking at the one in your  
21 file? You have one in your file, don't you?

22 A Okay.

23 Q This one is somewhat illegible, and I want you  
24 to ink over it in order to give it the correct words, with  
25 Mr. Rashkind's cooperation.

1 MR. RASHKIND: That's all right.

2 MR. PRESTON: Would you like to look at the  
3 original, Alan?

4 MR. RASHKIND: Well, I will just stand here  
5 while you go over it.

6 MR. PRESTON: Okay.

7 THE WITNESS: The date of the memo is 1/8/75.

8 BY MR. PRESTON:

9 Q All right. From whom?

10 A It's from Owen to Scurlock.

11 Q All right. Policy number or claim number?

12 A That's the claim number. 46-4334-270.

13 Q And the name and address of the person who was  
14 insured under the policy?

15 A The name is Turner.

16 Q Was that report written in regard to the  
17 accident that Patricia Ann Turner had that we have been dealing  
18 with in this cause of action and the evidence we have in regard  
19 to it, the tort suit and so forth?

20 A Yes, it was.

21 Q All right, sir. What does that report say?  
22 I don't -- well, go ahead. What does that report say? I  
23 can't read this report.

24 MR. RASHKIND: I have no objection to his reading.

25 THE WITNESS: You want me to read it or just

1 say what it says?

2 BY MR. PRESTON:

3 Q Just read it. You can't tell what claim number  
4 is on this one. Take a pen and make this legible.

5 A All right. The report is as follows: "CLR  
6 received. I am not sure about liability on this one. Report  
7 of Park Ranger Caviness does not establish liability.

8 "Contact Attorney Morris and request medicals,  
9 specials, and demands, but make no promise of payment at this  
10 time."

11 Q Would you correct that copy there to conform  
12 with that?

13 A All right. I think the rest of that is okay.

14 Q Thank you.

15 MR. PRESTON: All right. I offer into  
16 evidence the memo of Owen to Scurlock dated 1/8/75,  
17 about which he has been testifying, and mark it  
18 Proffered Exhibit C.

19  
20 (A memo to Mr. Scurlock dated 1/8/75 was  
21 marked Proffered Exhibit C and received into  
22 evidence.)

23 BY MR. PRESTON:

24 Q Mr. Owen, on what basis did you arrive at the  
25 opinion that the case was not one of liability?

1 MR. RASHKIND: Excuse me. That is his  
2 conclusion.

3 MR. PRESTON: It was a questionable case of  
4 liability.

5 MR. RASHKIND: He said he was not sure.

6 THE WITNESS: It seemed to me that we had two  
7 exactly opposite stories of how this accident occurred.  
8 The jury --

9 BY MR. PRESTON:

10 Q Where did you get that information from? Did  
11 you have an investigative file?

12 A Yes, I did have an investigative file, and I had  
13 reports from Patricia Turner and also her brother, Jimmy Smith.

14 Q All right, sir.

15 A And I thought that the jury could believe  
16 either side, and therefore it was a questionable case of  
17 liability.

18 Q All right, sir. Until such time as Jimmy Smith  
19 and Patricia Ann Turner both absented themselves in such ways  
20 that you realized they were not going to be able to be used as  
21 witnesses in the case, did your opinion as to liability of the  
22 case based on the facts ever change?

23 A No, it did not.

24 MR. PRESTON: I have no further questions.  
25



CROSS-EXAMINATION

BY MR. RASHKIND:

Q Mr. Owen, you were the gentleman to whom -- well, let me start over.

You were the supervisor in charge of this particular claim?

A That's correct.

Q You were then, you are now?

A Right.

Q You are the supervisor in charge of this particular case?

A Right.

Q When it is over and the Judge makes his ruling, Mr. Preston will report to you on how it came out?

A Right.

Q You are the supervisor of many other cases in this area, some of which are tried in this particular court, are you not?

A That's correct.

Q And many of these cases, the outcome, or how State Farm deals with it, may depend upon the outcome of this particular case, wouldn't they?

A It is very possible that you would have a similar case, yes.

Q Do you have any other cases right now where you

1 are perplexed or at issue over what prejudice has occurred, if  
2 any, as a result of non-cooperation?

3 A Not that I know of, and I am supervisor.

4 Q How many are you supervising right now?

5 A How many files?

6 Q Yes, sir.

7 A I don't have any idea, really. I could give you  
8 a rough guess.

9 Q Go ahead. Just a rough guess. Nobody is  
10 listening anyway.

11 A I would guess between probably one hundred,  
12 one hundred and fifty.

13 Q Now, during the course of the original tort  
14 litigation George Gray reported to you in a letter of  
15 January 6, 1977, that, based on what is in the file, there is  
16 apparent liability; didn't he?

17 A Could I see the letter?

18 Q Certainly.

19 A That is what he said.

20 Q And unlike your handwritten memo, which is  
21 labeled Proffered Exhibit C, there was no negative response  
22 back to Mr. Gray by you disagreeing with his conclusion as to  
23 apparent liability, was there?

24 A I don't always write letters to the company  
25 attorney when I disagree with what he says. Not necessarily at

1 that time, and sometimes I might never let them know that I  
2 disagree with that particular statement.

3 Q In this case, did you ever, prior to learning  
4 as you did a month later that there was some difficulty with  
5 Patricia Turner's attendance, convey to George Gray within that  
6 next month or so your disagreement with the liability conclusion?

7 A With the statement he made in that letter?

8 Q Yes, sir.

9 A I don't think that I did.

10 Q And the letter you are referring to is the  
11 January 6th, 1977, letter to State Farm Insurance Company from  
12 George Gray?

13 A That's right.

14 \* \* \*

This is Robert Scurlock interviewing Mrs. Turner at 1812 Dock Landing Road, in Chesapeake, Virginia at 2:45 p.m. on December 18, 1974, it concerns an accident that occurred in Portsmouth, Virginia on August 2, 1974.

Q. Mrs. Turner, would you please state your name?

A. Patricia (inaudible) Turner

Q. What is your address, Mrs. Turner?

A. 1812 Dock Landing Road, Chesapeake (inaudible)

Q. How are you married or single?

A. Married

Q. What is your age and occupation?

A. 18 and I am a student

Q. Where do you go to school, Mrs. Turner?

A. Well I was suppose to (inaudible)

Q. That is Virginia Tech, is that correct?

A. Yes

Q. What kind of car were you driving when the accident occurred, Mrs. Turner?

A. It was a 1969 Mustang

Q. Whose name is that in?

A. My husband, Robin Turner

Q. Robin Turner?

A. Yes

Q. I have here this happened at Park Avenue and it looks like Park Manor, City Park Avenue and Park Manor in Portsmouth, is that correct?

A. Yes sir

Q. What happened in the accident as you saw it, Mrs. Turner?

A. We had just finished playing tennis at City Park (inaudible) and went all around the golf course and came to the stop sign and stopped and made a left hand turn onto Park Manor Road (inaudible)

Q. All right as I understand it you were on Park Manor Road prior to the accident, is that correct, Patricia?

A. Yes sir

Q. And you were proceeding toward City Park Avenue is that correct?

A. Yes sir

Q. How far from City Park did the accident occur, approximately?

A. About six feet

-2-

Q. And the other car was making a left turn into Park Manor?

A. Yes sir

Q. And you say she turned too short so that she came over on your side of the road, is that correct?

A. Yes sir

Q. Were you still moving at the time?

A. Yes I was

Q. About how fast were you going, do you know?

A. (Inaudible) Before the accident I was doing between 12 and 15 and I had slowed down to about 5

Q. You said you pulled over so your two right wheels were over in the dirt off of the road?

A. Yes sir

Q. You were there when she hit you then?

A. Yes sir

Q. Do you know how fast the other car was going? \_\_\_\_\_

A. I don't know, she said she was going about 15

Q. Is there a traffic control down at that intersection such as a stop sign or a stop light or anything like that?

A. No sir

Q. How many people were in your car, Patricia?

A. Just one my brother

Q. Now did either you or he have any injuries in it?

A. Yes he did

Q. And what injuries did he have?

A. He received I believe it was his right knee

Q. Did he have to go to the doctor with that?

A. Yes sir (inaudible)

Q. Is he still going to the doctor now?

A. Yes he is

Q. What injuries did you have?

A. I hit my head somehow in the accident and I still have recurring headaches and dizziness

Q. And you are going to the doctor also?

A. Yes I am

Q. What doctor are you going to?

A. Dr. Whitehill is my doctor (inaudible)

Q. Did the police come out to the scene?

A. Yes they did

Q. Did they give any summons to anyone?

A. No sir

Q. How many people were in the other car?

A. Just the driver

Q. That was Dixie Davies?

A. Yes sir

Q. Did she appear to be hurt in anyway?

A. No, she stated that she wasn't

Q. The car that you were driving that was a 69 Mustang, is that still down here?

A. No, it isn't

Q. Back in Radford?

A. Yes sir

Q. Has it been repaired now?

A. No, it hasn't

Q. How much damage was there to it, do you know?

A. It totaled it

Q. How about the other car, was there much damage to it?

A. No, not really

Q. You don't know if it has been repaired or not, do you?

A. Yes it has

Q. I understand something else about the accident?

A. She hit me three times (inaudible)

Q. You mean three different places or just bounced back and kept hitting?

A. Well she hit the front fender and spun my car around to where (inaudible)

Q. Did she say anything after the accident to you about it?

A. Said it was my fault

Q. What made her think it was your fault?

A. No, (inaudible)

Q. As I understand it then you were just coming down Park Manor and saw the car coming through the trees and then she made a left turn and swung over on your side of the road and you were 15 feet back from the corner when the impact occurred and off on the side of the road, is that correct?

-4-

A. Yes sir

Q. Now is there any other witnesses to the accident that you know of, anything like that?

A. No sir

Q. Was it wet at the time that it happened?

A. Yes it was - it was raining

Q. Was it daylight or night time?

A. It was daylight

Q. About what time of day was it?

A. It happened about 3:00 o'clock

Q. Well this completes the information I need to ask you here, is there anything further you wish to add to what I have asked you here?

A. Well it shocked me that the police didn't check like skidmarks or see if I had stopped over on the side of the road you know in the dirt or anything like that, to see if the windshield wipers were on

Q. How far off of the hard surface did you say your right wheels when you were hit?

A. I'd say about a foot and a half

Q. Did the police indicate whose fault he thought it was or anything like that?

A. No he didn't

Q. Are the remarks you have made in this report your true version to the best of your knowledge?

A. Yes sir

A4/7517-7520



46-4334-270

INSURED <b>Turner, Robin F.</b>		POL. NO. <b>4885 903-A/2-46402</b>	BASIC NO.	STATE CODE <b>46</b>	CHANGE CAR NO.
ADDRESS (NUMBER AND STREET - CITY - STATE - ZIP CODE) <b>Rt 1, Estes Tel Ct, Radford, VA 24141</b>					
DATE <b>8-2-74</b>	TIME <b>3:08pm</b>	STREET OR HIGHWAY <b>City Park Ave. + Park Manor Rd.</b>		CITY OR COUNTY <b>Portsmouth</b>	
INSURED'S VEHICLE (YEAR - MAKE - MODEL SERIES - BODY STYLE) <b>69 Mustang</b>		PRIOR DAMAGE <input checked="" type="checkbox"/>	NO YES DESCRIBE <b>UA</b>		
IDENTIFICATION NUMBER <b>9T02F163888</b>		LICENSE NUMBER		IS THIS THE VEHICLE INVOLVED IN THIS ACCIDENT? <input checked="" type="checkbox"/>	
DRIVER <b>Patricia Turner</b>		OCCUPATION <b>housewife</b>		AGE <b>18</b>	PHONE <b>639-0260</b>
ADDRESS (NUMBER AND STREET - CITY - STATE - ZIP CODE) <b>Rt 1, Estes Tel Ct, Radford, VA</b>		RELATIONSHIP TO INSURED <b>wife</b>			
DRIVER WHOSE VEHICLE WAS BEING DRIVEN? <b>same</b>		WAS DRIVER ON MISSION FOR OWNER? <input checked="" type="checkbox"/>		PURPOSE OF TRIP	
VEHICLE DAMAGE <b>left front + left rear</b>		DRIVE IN SERVICE? <input checked="" type="checkbox"/>		WHERE IS VEHICLE? <b>Residence</b>	
OTHER VEHICLE (YEAR - MAKE - BODY STYLE) <b>68 Chev. Truck</b>		LICENSE NUMBER			
DRIVER <b>Edward R. Davies</b>		ADDRESS (NUMBER AND STREET - CITY - STATE) <b>607 Almosa Rd, Portsmouth, VA</b>		PHONE <b>488-7389</b>	
DRIVER <b>Eric R. Davies</b>		ADDRESS (NUMBER AND STREET - CITY - STATE) <b>same</b>		PHONE <b>488-7389</b>	
VEHICLE DAMAGE <b>left front + left rear</b>		DRIVE IN SERVICE? <input checked="" type="checkbox"/>		WHERE IS VEHICLE? <b>Residence</b>	
NAME OF INSURANCE COMPANY <b>GENCO</b>		ADDRESS		POLICY NUMBER	

DESCRIPTION OF ACCIDENT  
 #1 making a right turn, #2 cut too short making a left turn, #1 + #2 applied brakes slid into each other.

WIND DIRECTION <b>Syds</b>	SPEED LIMIT IN AREA OF ACCIDENT <b>25</b>	SPEED WHEN DANGER FIRST NOTED <b>15</b>	INSO. VEH. <b>15</b>	OTHER VEH. <b>15</b>	SPEED AT IMPACT <b>10</b>	INSO. VEH.	OTHER VEH.	SIGNAL GIVEN	INSO. VEH.	OTHER VEH.
ROAD CONDITIONS <b>wet</b>	HEADLIGHTS ON? <input checked="" type="checkbox"/>	INSO. VEH. YES <input checked="" type="checkbox"/>	OTHER VEH. YES <input checked="" type="checkbox"/>	DEPRECIATION - ITEM		COST	AGE	MILEAGE OR CONDITION	AGREED DEDUCTION	COMPANY PORTION
TRAFFIC CONTROL <input checked="" type="checkbox"/>	YES - TYPE		WERE POLICE THERE? <input checked="" type="checkbox"/>		NO YES WHO RECEIVED TICKET? <b>None</b>		VIOLATION			
INJURIES #1 <b>Patricia Turner</b>	YES - IDENTIFY (NAME - ADDRESS - INJURIES)		NO		YES		NORTH H. General			
INJURIES #2 <b>Jimmy Smith</b>	YES - IDENTIFY (NAME - ADDRESS - INJURIES)		NO		YES		Braised left knee, cut on forehead			
PROPERTY DAMAGE #1 <b>Jimmy Smith</b>	YES - IDENTIFY (NAME - ADDRESS - INJURIES)		NO		YES		1812 Duck Landing Rd, Chesapeake			
THEFT	PARTIAL - NAME ITEM	ENTIRE VEHICLE	TIME	PLACE	LAW OFFICERS NOTIFIED	NO YES - DATE	VEHICLE RECOVERED	NO YES - DATE		

I hereby declare that the facts stated in this report are true and accurate.

INSURED SIGN HERE X	DATE	DRIVER SIGN HERE X <b>Patricia S. Turner</b>	DATE
COVERAGES IN FORCE <b>B.C.D, G.S.O, H.U.S.</b>	COVERAGES INVOLVED <b>G.S.O</b>	DATE REPORTED TO AGENT <b>8-7-74</b>	HAS AN SR 21 BEEN FILED, IF NECESSARY? <input checked="" type="checkbox"/>
AGENT <b>H.P. Hartwell</b>	CODE NO. <b>2277</b>	PHONE <b>639-3810</b>	REPORT TAKEN BY <b>H.P.</b>
VEHICLE ASSIGNED TO	DATE	OTHER VEHICLE ASSIGNED TO	DATE



This is Robert Scurlock interviewing Jimmy Smith at his residence at 1812 Dock Landing Road, Chesapeake, Virginia, this concerns an accident that occurred on August 2, 1974 and this interview is being conducted at 2:35 p.m. on December 27, 1974.

Q. Jimmy, would you please state your name?

A. Jimmy Smith

Q. And what is your address, Jimmy?

A. 1812 Dock Landing Road

Q. And what is your age and date of birth?

A. I am 14, January 20th

Q. And you live at this address with your parents?

A. Yes

Q. And what are their names, Jimmy?

A. Vernon Smith and Elsie (inaudible)

Q. Where do you go to school?

A. Western Branch Junior

Q. Now as I understand it you were a passenger riding with your sister Patricia when the accident occurred?

A. Yes I was

Q. And what happened in it as you saw it, Jimmy?

A. We were going around the corner and we saw this van like truck coming through the trees and it was in the middle of the road so Pat went off the side of the road and on the dirt to avoid the van and it was raining and the van hit the front end of the Mustang and the back end moved over and hit and she hit us about three times before she stopped hitting us and then when we stopped you know we were over on the other side of the road at that time and then we just got out, cut the car off and got out

Q. Now you say when your car was hit you had pulled off to the right side of the road, is that correct?

A. Yes sir

Q. And how far off of the road were you when you were hit the first time, would you say approximately?

A. A foot

Q. That would put you into the dirt?

A. Yes

Q. And how fast was your car going at that time would you say?

A. (inaudible)

-2-

Q. And as I understand it the left front of the other car hit the side of your car right about the driver's door?

A. (inaudible)

Q. And this caused the back end of your car to swing back out into the road then?

A. Yes sir.

Q. Do you know how fast the other car was going approximately?

A. I'd say around 30

Q. Would you say she cut the corner too, I guess you would have to say she cut the corner too close then, is that right?

A. Yes sir

Q. How many people were in the other car, Jimmy?

A. One

Q. Did she seem to have any injuries in the accident?

A. No, she told the officer (inaudible)

Q. Just you and your sister in your car?

A. Yes

Q. What injuries did you have?

A. I had injuries to my knee

Q. Which knee was it?

A. My right knee

Q. Is it giving you any trouble now?

A. Yes sir

Q. And what doctor did you go to, Jimmy?

A. (inaudible)

Q. Did the police come out to the scene?

A. After a while

-3-

Q. Did they give any summons in it?

A. No sir

Q. Did they make any comments about who they felt at fault or anything like that?

A. No sir

Q. Was it raining at the time or was the weather clear?

A. It was raining

Q. Let's go over this once more you and your sister were coming down Park Manor and as I understand it you and your sister saw the car coming going to make the left turn and she pulled over to the side, is that correct?

A. Yes sir

Q. And then this car made too sharp a left turn and swung over and struck your car in the side, is that correct?

A. Yes sir

Q. Well this completes the information I need to ask you here, is there anything further you wish to add to what I have asked you?

A. No sir

Q. Are the remarks you made in this report your true version to the best of your knowledge?

A. Yes sir

A4/7514-7516

10/19/77 Jimmy Smith

Park Manor Rd



MUSTANG →

he <sup>then</sup> went to right side of  
road or avoid accident -  
almost hit tree

he did not hear his sister  
admit she was at fault  
Δ going 15-20 m/h

he does not not remember  
car just trailing

City Park Ave

TO: Supt. John Owen  
FROM: Robert A. Scurlock

DATE: January 7, 1975 (1/6/75)  
RE: Robin Turner  
46 4334 270

SHORT FORM COMBINED LIABILITY REPORT

1. FACTS OF ACCIDENT:

This accident occurred on Friday, August 2, 1974, about 3:08 p. m. at the intersection of Park Manor Road and City Park Avenue in the city of Portsmouth, Virginia.

From talking with the party, there is some discrepancy given in the statements as to how the accident occurred.

Our insured driver, Patricia Turner, and her brother, Jimmy Smith, state that they had been driving east on Park Manor Road and as they approached the intersection with City Park Avenue, they noted a white van back through the trees which was making a left turn into Park Manor Road. Patricia Turner states that the car making the left turn turned too short, and that she slowed to about five to ten miles per hour and was still back about 15 feet from the intersection when she pulled to the right as far as she could, even getting her right wheels off the pavement, and was still hit by the van making the left turn into Park Manor Road. However, in going on then, Patricia Turner states that her car came to rest further out in the road, that is, Park Manor Road. She states that at first she was nearly all the way on the other side of the road and then on my questioning her, she stated that she was a little past the middle of Park Manor Road but toward the other side. If she had been on the far right side as she states, with her wheels off the road, and the Davies car had hit the left side of her car, it was difficult to see how she would have gotten across the road when she came to rest.

I found later in the investigation that there were two officials who had come to the scene of the accident, one being the Portsmouth Police which we have the police report but before the Portsmouth Police arrived, I found that a park ranger who patrolled this area, which is sort of in the nature of a city park, by the name of Paul Caviness had come to the scene and made a preliminary investigation. He states that when he questioned the parties after the accident, that he felt that there was no question at all but that the accident was the fault of Patricia Turner. He states the accident occurred right at the intersection, and that Mrs. Davies was making a left turn, and that Patricia Turner had been proceeding east on Park Manor Road. However, he states that in coming to the corner, Patricia Turner applied her brakes and the road was wet as there was a light rain going on, and that she lost control of her car and ran right

- 2 -

into the Davies van which was making the left turn. He further states that right after the accident Patricia Turner so advised him that she had lost control of her car and struck the Davies vehicle which was making the left turn.

Up until the time that I talked with Paul Caviness, I had had some doubts about how the accident occurred and felt that Patricia Turner and her brother might be giving me the true version but after I talked to him, all thought of this left my mind and I feel that they are not giving me the correct version, and that the accident occurred as Mr. Caviness gives it.

Further, I did find that he has written up a report which I understand is very short and doesn't give all the details that he gave me when he talked with me. In the report, he said he did not put down that Patricia Turner had lost control of her car, but he did write it up as it was her fault. The Park Ranger Service is sending me a copy of this report and when I get it I will forward it in. I only talked with Mr. Caviness on Friday, January 3, 1975.

## 2. OCCUPANTS INSURED'S CAR, MEDICAL, HOSPITAL REPORTS:

### A. Not Injured:

None.

### B. Injured:

PATRICIA TURNER, 1812 Dock Landing Road, Chesapeake, Virginia, 18 years old, WAF. She is married and her husband, Robin Turner, lives in Radford, Virginia. I understand from visiting at her house on Dock Landing Road that her parents are trying to get this marriage annulled.

She states that she is a student at Virginia Tech University.

She would make a fair witness and makes a fairly good presentation; however, it is my belief that the report on the accident which she gives is not correct. That is, at least all the details are not correct in how the accident occurred.

After receiving this assignment, I went by her house two or three times before finding her and I then took a statement from her by portable dictaphone at her residence which I am forwarding with this report.

In it she states she was driving a 1969 Mustang in her husband's name. She said she had been out playing tennis with her brother prior to the accident. She gives an account of the accident as I have previously given, stating that when she was still about 15 feet from the intersection she pulled completely over to the right, slowed to about five to ten miles per hour with her right wheels off the pavement to get over as far as she could get, and the other car cut the corner too short and struck her car. She states that she has been having headaches since the accident and is going to Dr. Whitehill.

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She further says police came out and that no summons were given. She states the person in the other car, Mrs. Davies, did not appear to be hurt.

She further said the cars hit each other about three times when the collision occurred, and that she and her brother were thrown around in the car. She said the other driver stated that it was her fault, that is Patricia Turner's fault.

In regard to her injuries, Patricia Turner stated that she had Blue Cross Insurance and would make no claim under MPC. She and her mother further stated that they probably would make a claim against Government Employees Insurance Company for both Patricia's injuries and her brother's injuries.

(2) JIMMY SMITH, 1812 Dock Landing Road, Chesapeake, Virginia, 14 years old, date of birth January 19, 1960, WAM. He is single and lives at the above address with his parents, Mr. and Mrs. Smith. He is the brother of Patricia Turner and was a passenger in the car when the accident occurred. He is a student at Western Branch School.

I also had trouble locating Jimmy Smith and had to go to the house several times; however, I did locate him on December 27th and also took a statement from him by portable dictaphone which I am forwarding with this report.

He gives a similar account of the accident as given by Patricia Turner, although he is not as strong on who was at fault and the details. He states that the van made a left turn too close and hit their car. He further states that when their car was hit this caused the back of their car to swing out and the cars hit together about three times. He first brought out that they were near the other side of the road after the collision, and this was hard to understand if the car had made a left turn and hit the left side of their car, and this was one of the first things to make me feel they were probably not telling me the complete truth about this accident. He states the other car was going about 30 miles per hour, whereas his sister states it was going about 15 miles per hour.

He states he has had a sore right knee since the accident, and he is also going to Dr. Whitehill. Again, they stated that they would make no claim under MPC since they have their own insurance, and they probably will make a claim against GEICO. Jimmy Smith would make a fair witness, I would say somewhat below average though.

### 3. OCCUPANTS OTHER THAN INSURED'S CAR, (PEDESTRIAN, BICYCLIST, ETC.):

#### A. Not Injured:

None.

#### B. Injured:

DIXIE LEE DAVIES, 607. Mimosa Road, Portsmouth, Virginia, 38 years old, WAF. According to the police report, she is a housewife. She was the

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driver of the other vehicle in this accident and was driving a 1968 Chevrolet van.

I received this file when a letter came in that Mrs. Davies was represented by Attorney S. Lee Morris, and I had no opportunity to contact her or to take a report from her.

I do not know the nature of her injuries, however, Mr. Morris states he is representing her for her injuries from the accident.

I believe she was alone in her car.

#### 4. ANALYSIS AND EVALUATION:

It appears this has been a very hard case in which to analyze liability. It was an in-office case for some time, and I note from the notes in the in-office file that we felt that the case was the fault of Mrs. Davies apparently from Mary Spears having talked with Patricia Turner. We had paid the collision damage to the Turner vehicle and had tried to subrogate it against GEICO, and they had turned us down on this, I believe they were correct in so doing.

As I stated in paragraph one, I also felt that it might be that Patricia Turner and Jimmy Smith were giving the correct version of somewhat the correct version, although what they were telling me did not agree with the police report which we received from Portsmouth. The police report indicated that Patricia Turner was driving too fast for conditions and shows the accident taking place right in the intersection with Patricia Turner over on the other party's side of the road when the collision occurred. Further, Mrs. Davies stated that Patricia Turner applied brakes and slid across into the side of her vehicle as she was making a left turn.

I felt that we had a pretty good case and should possibly deny this claim, until I found that the park ranger had checked into the case before the police, and I talked with Ranger Paul Caviness who arrived very shortly after the accident occurred, talked with the parties, and made up a preliminary report. He is very definite in stating that it is his opinion that Patricia Turner is fully at fault, and he states as a matter of fact she told him at the scene that she had lost control of her car and run into the Davies' car as it was making a left turn. She states that her car slid on the wet pavement and she slid into the Davies' car.

Therefore, from this, it is my opinion this is a case of liability and that we should go ahead and make settlement with Attorney Lee Morris for the injuries to Mrs. Davies. I feel it is strong enough that we should even go ahead and pay the damage to the Davies' car in advance if he so desires; however, I suspect they have had it repaired under their collision coverage with GEICO. I am not sure of this as there is no indication in the file.

#### 5. SETTLEMENT REPORT:

Coverage A ——— remains open



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Coverage B ——— remains open.

Coverage C ——— cwp'ed.

Coverage G50 ——— closed by draft 735-495 J, made out to Robin F. Turner and the First and Merchants National Bank, in the amount of \$537.50, dated August 13, 1974, and coded 400-1.

As I previously stated, we tried to subrogate for this against GEICO and were turned down on this by GEICO.

6. DESIRABILITY OF RISK:

As I previously brought out, I think the version of the accident given us here by Patricia Turner is incorrect. That is the only adverse thing that I know of on these parties.

7. ENCLOSURES:

ACR previously forwarded  
Statement from Patricia Turner  
Statement from Jimmy Smith  
Police Report previously forwarded  
Letter from Attorney Morris previously forwarded  
Photographs of scene

BC/11-12

BD/01-03

MEMO

In "and Exhibit" C

Owen

C

Sunkel

CLAIM NO.

4334-270

NAME AND ADDRESS

Buckner

DLR received. I am not sure about liability on this one.  
est of Park Ranger (business) does not establish liability.  
contact atty Morris and request medicals, specials & demands.  
I make no promise of payment at this time.

PLEASE REPLY BELOW IF THIS MEMO REQUIRES AN ANSWER

DATE

SIGNATURE

DO NOT INSERT CARBON PAPER—THIS FORM IS PRINTED ON NO CARBON REQUIRED PAPER—KEEP SECOND COPY