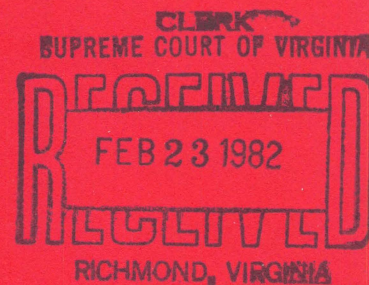


226 VA 320

IN THE
SUPREME COURT OF VIRGINIA
At Richmond



Record No. 810525

PATRICIA ANN BROWN, :
Appellant, :
v. :
KAY J. BROWN, Administratrix :
of the Estate of Edward Carol :
Brown, Deceased, :
KAY J. BROWN, Individually, :
RONNIE EDWARD BROWN, an :
infant, by his Guardian ad :
Litem, Wiley G. Gary, :
and :
TIMOTHY EARL HOGGARD, an :
infant, by his Guardian ad :
Litem, Anthony L. Montagna, :
Appellees, :
and :
ALLIED TOWING CORPORATION, :
Defendant. :

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APPENDIX

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VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK

KAY J. BROWN, Administratrix
of the estate of Edward Carol
Brown, deceased,

Plaintiff

PLAINTIFF DEMANDS A JURY

v.

ALLIED TOWING CORPORATION
100 Avory Street
Norfolk, Virginia

MOTION FOR JUDGMENT

Defendant

L-76-1918

SERVE:

Jeanne M. Collins
Assistant Secretary-Treasurer
Allied Towing Corporation
100 Avory Street
Norfolk, Virginia

The plaintiff moves for judgment against the defendant
and for her cause of action alleges as follows:

1. The plaintiff is the Administratrix of the
Estate of her deceased husband, Edward Carol Brown, who met
his death on March 17, 1975. She duly qualified in the
Circuit Court of the City of Chesapeake, on the 7th day of
April 1975.

2. That plaintiff's decedent met his death on
March 17, 1975 in the explosion and fire of Tankbarge ATC 3060
which was owned and operated by the defendant at all material
times hereto.

3. That plaintiff's decedent met his death as a
direct and proximate result of the negligence of the defendant
acting as a ship owner.

4. That the plaintiffs decedent left surviving
and dependent upon him, his wife, Kay J. Brown, and three
minor children, Ronnie Edward Brown, Timothy Earl Hoggard
and Patricia Ann Brown.

SMITH, POWER AND OWENS
ATTORNEYS-AT-LAW
NORFOLK, VIRGINIA

5. As a result of the explosion and fire destroying ATC Tankbarge 3060, the defendant herein on April 10, 1975, filed a Complaint in the United States District Court for the Eastern District of Virginia, Norfolk Division, seeking exoneration from a limitation of liability. Plaintiff was required by Court Order to participate in that proceeding initiated by the defendant.

6. Defendant's complaint came on for trial and thereafter on March 9, 1976 the United States District Court entered an Amended Memorandum Opinion and Order, attached hereto as Exhibit "A" denying defendant's petition for exoneration from or to limitation of liability.

7. Subsequent to the Court's Order of March 9, 1976, the defendant Allied, moved the U. S. District Court for Summary Judgment, claiming that the plaintiff's claim herein, among others, was specifically barred by the 1972 Amendments to Longshoremen & Harbor Workers Act.

8. That on August 2, 1976 in response to defendants motion for Summary Judgment the U. S. District Court entered a Memorandum Opinion and Order finding the defendant and the vessel ATC 3060 guilty of non-excluded owner occasioned negligence which contributed to the explosion and therefore denied the defendants Motion for Summary Judgment. In the same Order the U. S. District Court dissolved the Restraining Order entered at defendants request on April 10, 1975 thus permitting the plaintiff herein to proceed with this action in the forum of her choice. This Order appears as Exhibit "B".

9. This Claim is governed by the General Maritime Law of the United States.

10. As a result of defendant shipowners negligence as established in prior proceedings between the same parties

SMITH, POWER AND OWENS
ATTORNEYS-AT-LAW
NORFOLK, VIRGINIA

the plaintiff is entitled to recover compensatory damages of the defendant for the loss of support including all the financial contributions that the decedent would have made to his dependents over the years had he lived; for the loss of services; loss of society, love, affections, care, attention, companionship and protection; for the decedents conscious pain and suffering; the grief, mental suffering and emotional distress of his dependent survivors; the children's loss of nurture, training, education and guidance; and funeral expenses as well as other damages under the applicable law.

Plaintiff is also entitled to recover punitive or exemplary damages because in addition to the negligence heretofore found the defendant was also guilty of wanton, willful, reckless conduct and criminal indifference to the applicable federal statutes licensing and regulating the use of the Tankbarge ATC 3060 in that the defendant willfully and recklessly caused the Tankbarge ATC 3060 to transport a grade of fuel that it was not certified to carry pursuant to Coast Guard regulations. This willful and wanton violation of Coast Guard regulations was a direct and proximate cause of the explosion giving rise to the death of plaintiff's decedent.

WHEREFORE, the plaintiff moves the Circuit Court for the City of Norfolk, Virginia for judgment against the defendant for the death of Edward Carol Brown in the sum of ONE MILLION EIGHT HUNDRED THOUSAND (\$1,800,000.00) DOLLARS plus interest from March 17, 1975 together with costs of this action.

SMITH, POWER AND OWENS
ATTORNEYS-AT-LAW
NORFOLK, VIRGINIA

KAY J. BROWN

By 
Of Counsel

Alan P. Owens
Smith, Power and Owens
1412 Maritime Tower
Norfolk, Virginia 23510

1 VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK.

2

3 KAY J. BROWN, Administratrix)
4 of the estate of Edward Carol)
Brown, deceased,)
Plaintiff,)

EXCERPT

5

6 v

L76-1918.

7

Allied Towing Corporation,)
7 Defendant.)

8

9

10

11 Stenographic transcript of the testimony introduced
12 and proceedings had upon the hearing of the above-entitled
13 cause in said court on July 7, 1980, before the Honorable
14 John W. Winston, Judge of said court.

15

16

17

-----oOo-----

18

19

20

APPEARANCES: Messrs. Smith, Power and Owens
21 (Mr. Alan P. Owens), attorneys for
the plaintiff.

22

23

Messrs. Vandeventer, Black, Meredith
and Martin (Mr. John B. King, Jr.),
attorneys for the defendant.

24

25

4

APPEARANCES (Cont'd) Messrs. Eley, Rutherford and Leafe
(Mr. William B. Eley), attorneys
for the defendant.

Messrs. Breeden, Howard and
MacMillan (Mr. James A. Howard)
attorneys for Patricia Ann Brown.

Messrs. Montagna and Copeland
Mr. Anthony L. Montagna, Jr.),
attorneys for Timothy Earl Hoggard.

Mr. Wiley G. Gary, attorney for
Ronnie Edward Brown.

-----oOo-----

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
Brown, K. J.	3	16,56	57	59

DIRECT EXAMINATION

BY MR. OWENS:

Q State your name, please.

A · Kay · Jacquelin Brown.

Q And your age?

A Thirty-eight.

Q And what is your date of birth?

A April 8, 1942.

Q '41 or '42?

A '42.

MR. OWENS: I'm sorry. I think I may have given
the Court '41.

BY MR. OWENS:

Q What is your relationship to Edward Carol Brown?

A Husband.

Q When were you married?

A 1966. June 10th.

MR. OWENS: Your Honor, a copy of that wedding

1 certificate has been entered as an exhibit. I don't
2 have a list of the exhibits, but I know it's in the
3 file.

4 THE COURT: What is the date again?

5 THE WITNESS: June 10, 1966.

6
7 BY MR. OWENS:

8 Q How many children were born of this marriage to
9 Mr. Brown?

10 A One.

11 Q And what is that child's name?

12 A Ronnie Edward Brown.

13 Q And what is his date of birth?

14 A December 4, 1969. December 14th.

15 THE COURT: What is the date again?

16 MR. OWENS: December 14th. Wait. I'm sorry.

17 THE WITNESS: December 15th.

18 THE COURT: What year?

19 THE WITNESS: 1969.

20 MR. OWENS: '68 I believe the birth certificate
21 indicates. It's in the file.

22 THE COURT: December 15, 1968? Is his birth
23 certificate in the file?

24 MR. OWENS: Yes, sir.
25

1 BY MR. OWENS:

2 Q Now, do you have a son by a prior marriage?

3 A Yes, sir.

4 Q And what is his name?

5 A Timothy Earl Hoggard.

6 Q And what is his date of birth?

7 A December 4, 1965.

8 Q 1964?

9 A (The witness nodded affirmatively.)

10 MR. OWENS: Your Honor, I think that's also --
11 There's a birth certificate in there for him. I
12 think it's 1964.

13 THE WITNESS: Yes, sir. '64.

14 THE COURT: '64?

15 THE WITNESS: Yes, sir, December 4th.

16 THE COURT: 1964?

17 THE WITNESS: Um-hmm.

18 THE COURT: All right.

19

20 BY MR. OWENS:

21 Q Now, are both of these children living?

22 A Yes, sir.

23 Q How many of these children were living with you
24 and Mr. Brown when Mr. Brown died?

25 A Them two.

1 Q Did any other children live with you at that
2 time?

3 A No, sir.

4 Q By any prior marriage, have you had any other
5 children?

6 A Yes, sir.

7 Q Are any of these children alive?

8 A Yes, sir.

9 Q What are their names and ages?

10 A Brenda Kay Johnson, twenty-one, and Jimmy
11 Gilbert Johnson, twenty.

12 Q And did they live with you at the time
13 Mr. Brown died?

14 A No, sir.

15 Q Were they dependent upon Mr. Brown at the time
16 he died?

17 A No, sir.

18 Q Did they receive any kind of support from
19 Mr. Brown?

20 A No, sir.

21 Q Did they receive any support of any kind from
22 you?

23 A No, sir.

24 Q Your husband was a welder at the time of his
25 death?

1 A Yes, sir.

2 MR. OWENS: Your Honor, all the wage information
3 is already part of the record -- the W-2 forms and
4 employment.

5 THE COURT: All right.

6 MR. OWENS: It's in the record already.

7 THE COURT: All right.

8 These two children you had by your first
9 marriage I take it?

10 THE WITNESS: Yes, sir.

11 THE COURT: You've been married three times?

12 THE WITNESS: Yes, sir.

13 THE COURT: The first time was to Johnson?

14 THE WITNESS: Yes, sir.

15 THE COURT: The second time to Hoggard?

16 THE WITNESS: Yes, sir.

17 THE COURT: Third time to Brown?

18 THE WITNESS: Yes, sir.

19 THE COURT: The two children by the Johnson
20 marriage -- Who has those children?

21 THE WITNESS: He does. Him and his wife.

22 THE COURT: He meaning your first husband?

23 THE WITNESS: Yes, sir.

24 THE COURT: And he's maintained the support of
25 those children ever since you all were divorced?

1 THE WITNESS: Yes, sir.

2 THE COURT: And that support was never picked
3 up by Mr. Brown at all?

4 THE WITNESS: No, sir.

5 THE COURT: All right.

6
7 BY MR. OWENS:

8 Q Mr. Brown had a child by a prior marriage, did
9 he not?

10 A Yes, sir.

11 Q And that's Patricia Ann Brown who's in the
12 courtroom?

13 A Yes.

14 Q Now, at the time of Mr. Brown's death, was he
15 under a North Carolina court order to your knowledge to
16 support Patricia Ann Brown?

17 A Yes, sir.

18 Q And was that \$7.50 a week to your knowledge?

19 A Yes, sir.

20 Q Did he pay that support?

21 A No.

22 Q Now, of the earnings that Mr. Brown made working
23 with Allied Towing at the time of his death, what did he do
24 with those monies?

25 A Bought groceries and paid the bills.

1 Q Did he support Timothy Earl Hoggard?

2 A Yes, sir.

3 Q Did he support you?

4 A Yes, sir.

5 Q Did you work at the time?

6 A No, sir.

7 Q Did he support Ronnie?

8 A Yes, sir.

9 Q Now, which of the two children who lived with
10 you were in school at the time of Mr. Brown's death?

11 A Both of them.

12 Q What help, if any, did Mr. Brown give them with
13 reference to their studies in school?

14 A Helped them do their homework.

15 Q What type of things did he do?

16 A Well, he helped them do their homework and they
17 would fish together and play ball together and did all sorts
18 of things together.

19 Q Did he treat both children equally in terms of
20 the help that he gave them?

21 A Yes, sir.

22 Q Were either of the children in scouting
23 activities?

24 A Yes, sir, the oldest one, Timothy Earl Hoggard,
25 was.

1 Q Did Mr. Brown take an interest in those
2 activities?

3 A Yes, sir. Well, things had to be built in
4 Scouts, and he helped them with the building.

5 Q Did either you or your husband participate with
6 either of these two children in any outdoor activities such
7 as camping or fishing or anything of that nature?

8 A Yes, we did a lot of fishing, or they did.

9 Q What was the -- Describe the home you had in
10 Chesapeake at the time of Mr. Brown's death.

11 A I don't understand what you mean.

12 Q The house and the area.

13 A The house was in bad shape, but he was aiming
14 to fix it.

15 Q Was he doing any work on it at the time of his
16 death?

17 A Yeah, he had it tore all to pieces. He was good
18 with his hands, and he was aiming to fix it himself.

19 Q What was his experience before he became a
20 welder?

21 A He was a laborer.

22 Q Did he ever do any farming?

23 A Yes.

24 Q Where did he do that?

25 A Murfreesboro, North Carolina

1 Q Did he maintain any farm animals in Chesapeake
2 prior to his death?

3 A Yeah.

4 Q And what type of animals did he have there on
5 the property?

6 A Chickens, hogs, ducks.

7 Q Who took care of these animals?

8 A He did.

9 Q Did he have help from you and the children?

10 A Yeah.

11 Q What happened to them when he died?

12 A Had to sell them.

13 Q Were you able to do it yourself?

14 A No, sir.

15 Q Were you able to repair the house yourself?

16 A No, sir.

17 Q Now, from whatever knowledge you may have of
18 the situation, did Mr. Brown see his daughter, Patricia
19 Ann, on any regular basis?

20 A Not on a regular basis, no.

21 Q Do you know anything about that; when he would
22 see her or when he would go away?

23 A No, sir.

24 Q Do you know of any occasions during your
25 marriage that he went to see the child?

1 A No, sir.

2 Q All right. When were you married, did you say?

3 A June 10th, 1966.

4 Q Did you and your husband live continuously
5 together from June of 1966 up until his death on March 17,
6 1975?

7 A Yes, sir.

8 Q Was the house that you were living in -- Was
9 that being purchased by you and your husband?

10 A Yes, sir.

11 Q And do Timothy Earl Hoggard and Ronnie Edward
12 Brown still live with you?

13 A Yes, sir.

14 Q And are they both in school now?

15 A Yes, sir.

16 Q Did you pay the funeral expense?

17 A Yes, sir.

18 MR. OWENS: Your Honor, for the funeral expense,
19 there is a bill in the file. I believe it's fifteen
20 hundred and some dollars. I don't have a copy of the
21 exhibits with me but --

22 Your Honor, the earnings information -- I don't
23 know if there would be any reason to go into it. It's
24 all in the record and is a matter of the record
25 previously.

1 THE COURT: Yes, the exhibits and what he
2 earned are in the file. I know that.

3 MR. OWENS: I would rely on the exhibits for
4 trial. There are some ten or eleven exhibits.

5 That would be my questions of Mrs. Brown at
6 this time.

7 THE COURT: Mrs. Brown, did Edward Carol Brown
8 ever make formal his relationship with Timothy Earl
9 Hoggard; that is, did he ever adopt the child?

10 THE WITNESS: No, sir.

11 THE COURT: This child's name was never changed
12 from Timothy Earl Hoggard to Timothy Earl Hoggard Brown
13 or Brown?

14 THE WITNESS: No, sir.

15 THE COURT: And what was the relationship between
16 Timothy Earl Hoggard and your second husband? I mean
17 by that, was there any formal relationship between
18 them? Did Mr. Hoggard furnish support for that child?

19 THE WITNESS: No, no. No, sir. He got drowned
20 in a boat accident.

21 THE COURT: Oh, you were divorced from
22 Mr. Johnson?

23 THE WITNESS: Yes, sir.

24 THE COURT: And you lost Mr. Hoggard by death?

25 THE WITNESS: Yes, sir.

1 THE COURT: And, of course, you lost Mr. Brown
2 by death. What relationship existed, so far as you
3 could observe it, between Edward Carol Brown and his
4 daughter, Patricia Ann Brown?

5 THE WITNESS: They lived --

6 THE COURT: There was a support order in
7 North Carolina --

8 THE WITNESS: Yes, sir.

9 THE COURT: -- that he did not honor or did
10 honor?

11 THE WITNESS: He did it for about a year, best
12 I can remember, but then he quit.

13 THE COURT: Was this terminated prior to your
14 marriage to him or was this something that went on for
15 a year after you were married?

16 THE WITNESS: After we were married.

17 THE COURT: And you were married in 1966, so
18 some time in '67, you're saying that he terminated the
19 compliance to that order?

20 THE WITNESS: Yes, sir, the best I can
21 remember.

22 THE COURT: And he didn't resume compliance with
23 the order later?

24 THE WITNESS: No, sir.

25 THE COURT: To your knowledge, did he send any

1 support to Patricia Ann Brown of any kind?

2 THE WITNESS: Not that I know of.

3 THE COURT: If he did it, you were not aware
4 of it?

5 THE WITNESS: That's right, yes, sir.

6 THE COURT: Did you ever visit with him and
7 Patricia Ann Brown?

8 THE WITNESS: Yes, sir. Whenever we would go
9 to his mother's, sometimes Patricia would be up there
10 at the store. I don't think he ever went up to
11 Patricia's house. I don't think, but I don't know.

12 THE COURT: What would be the occasion for the
13 two of them meeting in your presence?

14 THE WITNESS: Well, he would go to see his
15 mother. His mother and father run a store, and his
16 mother would try to arrange it where Patricia could be
17 at the store.

18 THE COURT: And where was the store located?

19 THE WITNESS: In Murfreesboro, North Carolina.

20 THE COURT: Murfreesboro. Is that where
21 Patricia lives?

22 THE WITNESS: Yes, sir.

23 THE COURT: All right. Mr. Howard.
24
25

1

CROSS-EXAMINATION

2

3

BY MR. HOWARD:

4

5

Q Mrs. Brown, what was the date and where of your first marriage?

6

7

8

A I was fourteen years old and I am thirty-eight now. That's a long time ago. I don't remember, but it was in Windsor, North Carolina, where I got married at.

9

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Q Is that in Bertie County?

A Yes, sir.

Q And you don't remember the date?

A No, sir.

Q Was it a church marriage or justice of the peace?

A Justice of the peace.

Q And how many children by that marriage?

A There were three, but one of them died. Our first babies was identical twins and one of them died, so there was two.

Q Where did you and your first husband live at the time? Where was your residence?

A Windsor, North Carolina.

Q And what did your first husband do for a living?

A He was a laborer at Leland Lumber Company.

Q When did he die?

1 A No, this one didn't die. This was my first
2 husband.

3 Q When were you all divorced?

4 A I don't remember that.

5 Q Do you know in what county you were divorced?

6 A In Chesapeake here.

7 Q Chesapeake, Virginia?

8 A Yes, sir.

9 Q Were you and your first husband then living in
10 Chesapeake?

11 A Yes, sir.

12 Q Was it then known as Norfolk County or
13 Chesapeake, Virginia?

14 A I really don't know.

15 Q And you don't know the date of your divorce
16 from your first husband?

17 A No, sir.

18 Q Do you remember the name of the attorney who
19 represented you in that divorce?

20 A He got the divorce himself and I didn't
21 protest it.

22 Q And he got the divorce in Chesapeake? You're
23 sure of that?

24 A Yes, sir.

25 Q Did you ever hear from his attorney in that?

1 A No, sir.

2 Q Do you know the name of his attorney?

3 A No, sir.

4 Q And, again, maybe I'm repetitive, but you don't
5 recall the year of that divorce?

6 A No, sir.

7 Q Well, when did you marry your second husband?

8 A I don't remember that either. I can remember
9 all this but not up here on the stand, and I have got it
10 wrote down at home. There's just so many dates running around
11 in my head, I can't remember it.

12 Q Well, did you marry your second husband the day
13 after you were divorced from your first husband?

14 A No, sir. It was about three or four years
15 later.

16 Q And did your first husband have your children
17 by that first marriage?

18 A Yes, sir.

19 Q And have you ever taken care of those children
20 at all?

21 A I did up until we were separated.

22 Q How long did you and your first husband live
23 together?

24 A Seven and a half years.

25 Q Seven and a half years?

- 1 A Yes, sir.
- 2 Q Did you live together all this time in Bertie
3 County?
- 4 A No, sir.
- 5 Q When did you move to Chesapeake, Virginia?
- 6 A I can't remember that either.
- 7 Q How much education have you had?
- 8 A The seventh grade.
- 9 Q How much?
- 10 A The seventh grade.
- 11 Q And that was in North Carolina?
- 12 A Yes, sir.
- 13 Q And you can't recall when you all moved to
14 Virginia?
- 15 A No, sir.
- 16 Q Where did you and your first husband work in
17 Virginia?
- 18 A I can't remember that either.
- 19 Q You don't remember the name of his employer?
- 20 A No, sir. He was a sheet metal worker.
- 21 Q Well, where did you and your first husband
22 live in Chesapeake?
- 23 A On Bainbridge Boulevard.
- 24 Q South Norfolk area?
- 25 A Well, it's off from South Norfolk.

1 Q Did you work at any time during your first
2 marriage at anything, Mrs. Brown?

3 A No, sir.

4 Q After your divorce or after your husband got
5 a divorce from your first marriage, did you ever hear
6 thereafter from your children when he took the children?

7 A Yes, sir, I went to see them.

8 Q And when did you last hear from those children?

9 A About three weeks ago, and I talked to my
10 daughter just about every week.

11 Q Is your daughter now married?

12 A Yes, sir.

13 Q And where is your first husband now?

14 A Still on Bainbridge Boulevard.

15 Q In South Norfolk?

16 A Yes, sir.

17 Q Has he ever remarried?

18 A Yes, sir.

19 Q Now, your second husband -- You don't recall the
20 date of your marriage to your second husband?

21 A No, sir.

22 Q And where did the marriage to your second
23 husband occur?

24 A Windsor, North Carolina.

25 Q In Bertie County?

1 A Yes, sir.

2 Q And the date escapes you as to that marriage?

3 A Yes, sir. If I weren't up here and scared, I
4 could remember. But now I just can't remember.

5 Q Well, that doesn't help us very much.

6 A No, sir.

7 MR. OWENS: Your Honor, I would question its
8 materiality.

9 THE COURT: Well, I'll let him develop it.
10

11 BY MR. HOWARD:

12 Q Were you married to your second husband by the
13 magistrate or --

14 A Justice of the peace.

15 Q And where did you -- How long did your second
16 husband live?

17 A What, after we were married -- Well, about a
18 year and a half.

19 Q And whereabouts did you live? What state?

20 A In North Carolina.

21 Q Now, after you were divorced from your first
22 husband, you moved back to North Carolina?

23 A Yes, sir.

24 Q And what did your second husband do?

25 A He was a tack welder.

1 Q A tank welder?

2 A Yes, sir.

3 MR. OWENS: I believe, Your Honor, that's
4 tack, t-a-c-k.

5 THE COURT: Tack, I believe she said.

6 MR. HOWARD: All right.

7

8 BY MR. HOWARD:

9 Q And did your second husband die in a fishing
10 accident of some kind?

11 A Yes, sir.

12 Q Do you remember the date of that?

13 A No, sir.

14 Q And do you remember where your husband was
15 working at that time, Mrs. Brown?

16 A Yes, sir. We had moved out here and he was
17 working at Globe Iron.

18 Q At Globe Iron?

19 A Um-hmm.

20 Q And was he a mechanic or laborer? Do you know?

21 A He was a laborer.

22 Q And how long had he worked for Globe Iron?

23 A That I don't know. I just don't remember.

24 Q Now, from Globe Iron, were there certain
25 benefits that went to you all's son, Timothy?

1 MR. OWENS: I object. It's a question of
2 pecuniary loss caused by this man's death, and they
3 could be millionaires. I don't think it really makes
4 any difference.

5 THE COURT: What's your response, Mr. Howard?

6 MR. HOWARD: Well, the response is that the
7 complaint or motion for judgment was framed in the
8 language under the Virginia Loss of Wrongful Death
9 Statute, and I'm looking at the third page, and I
10 think it is material, in any respect, whether or not
11 it's pecuniary loss of support or dependency. Now,
12 if a child by the second marriage had certain benefits
13 from Globe Iron, certain Social Security insurance or
14 anything else, it certainly would have a bearing on
15 the issue that Your Honor will have to rule on.

16 MR. OWENS: The law that governs in this case
17 is Federal Maritime Law. It's not governed by State
18 Law. It may look to it on occasion, but the purpose
19 of it is to protect pecuniary loss of beneficiaries.
20 The evidence is that this child was a beneficiary and
21 was supported by the man. I don't think if they had
22 an independent estate -- If the lady had an independent
23 estate, it wouldn't have a bearing on this. It's a
24 question of pecuniary loss, not like a divorce hearing
25 where you're talking maybe of someone with independent

1 means.

2 MR. HOWARD: My response would be that it is
3 not fully covered by Moragne or Federal Law, and I
4 am prepared to submit a brief on that. The Moragne
5 was in 1970, and then stated in some expectation of
6 uniformity in an award that there would be
7 uniformity, but the same thing exists and the Federal
8 courts have allowed to look to state courts in
9 determining any award and the amount and to whom.

10 THE COURT: Well, I understand that's your
11 position, although Mr. Owens said I look to Maritime
12 Law and principles announced by the Federal courts;
13 that while I look to general Maritime Law, you say
14 that I look to the State Law for guidance in applying
15 that law.

16 MR. HOWARD: And you can look to State Law
17 and look to whatever suitable law that the court
18 wants to apply from other jurisdictions.

19 THE COURT: Isn't the question here what did
20 Timothy lose as a result of the death of Mr. Brown
21 rather than what did he get from other sources?

22 MR. HOWARD: No, sir. I think the Court should
23 consider as the amount of damages -- and I put quotes
24 around damages since they've already been determined --
25 But as to the amount of distribution, I think we're

1 entitled to examine any source of support and financial
2 support any of the survivors might receive from other
3 sources.

4 MR. OWENS: Your Honor, the law that gives this
5 cause of action talks in terms of pecuniary loss, and I
6 don't think it talks in terms of the independent estate
7 of the beneficiaries. We're not interested in that.

8 MR. HOWARD: Now, Your Honor, we're at the
9 point as to the position of the administrator and to
10 the capacity as trustee or fiduciary and how they
11 can participate in this hearing. I understand that
12 it's all for the guidance of the Court, but they
13 can't act as fiduciary or trustee and at the same time
14 fight other acknowledged beneficiaries and how much
15 they should get.

16 MR. OWENS: I would correct the gentleman.
17 We're not fighting the beneficiaries. I believe the
18 girl is entitled to recover. It may well be a question
19 of counsel seeing a big settlement and wanting to
20 take it home to North Carolina, but I think the child
21 is entitled to recover.

22 THE COURT: I think we were talking about
23 Timothy at this point.

24 MR. HOWARD: We are. We're talking about
25 Timothy.

1 MR. OWENS: It should be a question of law as
2 to what that is after the Court hears the facts.

3 MR. HOWARD: My last question to the witness
4 was what fringe benefits or support did Timothy
5 receive.

6 MR. OWENS: And I objected and the Court hasn't
7 ruled on it yet.

8 THE COURT: Restate the question.

9 MR. HOWARD: My last question of this witness
10 was what benefits Timothy received from the estate of
11 his father, the father having worked for Globe Iron --
12 What fringe benefits -- Social Security insurance or
13 other benefits -- Timothy might have received from
14 his natural father; and I suggest that I'm entitled to
15 inquire about that.

16 THE COURT: Now, you're saying you're entitled
17 to that under the Virginia Death Act?

18 MR. HOWARD: Yes, sir, in the way of damages;
19 but, admittedly, it's for distribution purposes.

20 MR. OWENS: He has cited no authority, Your
21 Honor.

22 MR. HOWARD: Well, give me a minute.

23 Well, for some guidance to the Court, there is
24 a case of Matthews versus Hicks, administrator of
25 the estate of Stanley, which concerns whether or not a

1 person who was claiming as a beneficiary under the
2 Wrongful Death Statute could actually so claim when that
3 wife and widow had deserted the decedent; and the
4 Supreme Court stated as to the quantum of damages to
5 the wife and widow who deserted her deceased husband,
6 her desertion of the husband and her conduct and the
7 receipt of things could be brought in for evidence.
8 The citation, Your Honor, is 197 Va. 312 -- correction --
9 112, and the date of the case is 1955 under the
10 Virginia Wrongful Death Statute.

11 THE COURT: 8.01-52 Amount of Damages. This
12 is the Virginia Death Act I'm referring to. It says
13 that "the verdict shall include but may not be limited
14 to damages for the following: 1. Sorrow, mental
15 anguish, and solace which may include society,
16 companionship, comfort, guidance, kindly offices and
17 advice of the decedent; 2. Compensation for reasonably
18 expected loss of income of the decedent and services,
19 protection, care and assistance provided by the
20 decedent; 3. Expenses for the care, treatment and
21 hospitalization of the decedent incident to the
22 injury resulting in death; and 4. Reasonable funeral
23 expenses." It talks about apportionment.

24 MR. OWENS: Your Honor, Moragne, contrary
25 to the Virginia statute, does not allow mental anguish

1 for the survivors.

2 THE COURT: The notation under 8.01-52 refers
3 to Matthews versus Hicks with this note; and I haven't
4 read the case, but I'll read the note. "Evidence of
5 the pecuniary condition of the deceased and the
6 members of his family is inadmissible for the purpose
7 of proving the liability of the defendant or the
8 quantum of the damages because this section gives a
9 right of recovery regardless of whether the deceased
10 or the members of his family are rich or poor." I
11 will sustain the objection.

12 MR. HOWARD: All right, sir. With our
13 exception.

14
15 BY MR. HOWARD:

16 Q Could you give the date of the death of your
17 second husband?

18 A No, I done told you one time I don't remember.

19 MR. OWENS: Your Honor, this is not a question
20 of whether she's been married one or six times. The
21 question is whether she was dependent and the children
22 were dependent at the time of his death.

23 THE COURT: She has said she doesn't remember.
24
25

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1 BY MR. HOWARD:

2 Q When were you and Mr. Brown married?

3 A June 10, 1966.

4 Q And where were you married?

5 A In Windsor, in Bertie County.

6 Q And that was by a justice of the peace?

7 A Yes, sir.

8 Q And were you both living in Windsor?

9 A Yes, sir.

10 Q And what was his line of work at the time?

11 A He was working on the farm.

12 Q And how long did you all work in Windsor after
13 your marriage?

14 A About two years.

15 Q And then you moved to where?

16 A Out here in Chesapeake.

17 Q And whereabouts here in Chesapeake?

18 A On High Street.

19 Q In your present home?

20 A No, sir.

21 Q And did you rent the home there?

22 A No, sir.

23 Q And when was your child by Mr. Brown born?

24 MR. OWENS: Your Honor, that's already in
25 evidence.

1 MR. HOWARD: All right.

2

3 BY MR. HOWARD:

4 Q And in Virginia?

5 A Yes, sir.

6 THE COURT: This is Ronnie we're talking about?

7 MR. HOWARD: That would be Ronnie Edward or
8 is it Earl?

9 THE WITNESS: Edward.

10 THE COURT: Born December 15, 1968?

11 MR. HOWARD: In Virginia?

12 THE WITNESS: Yes, sir.

13

14 BY MR. HOWARD:

15 Q And your husband was working where at that
16 time, Mrs. Brown?

17 A At Royster.

18 Q As what?

19 A As a laborer.

20 Q All right. Did Timothy continue to live with
21 you and Mr. Brown from the first day of that marriage?

22 A Yes, sir.

23 Q Did he live with you in North Carolina?

24 A Yes, sir.

25 Q When you and Mr. Brown lived in North Carolina,

1 were there any visitations or visits that you know of between
2 Mr. Brown and Patricia?

3 A That is after we got married?

4 Q Yes.

5 A Not that I know of.

6 Q Do you recall how soon you married Mr. Brown
7 after the death of your second husband?

8 A Would you repeat that.

9 Q Can you give me -- Well, let me start all over
10 again. You were living in Windsor, North Carolina, with
11 Mr. Brown after your marriage?

12 A Yeah.

13 Q And Timothy Hoggard lived with you?

14 A Yeah.

15 Q Did you have any knowledge of Mr. Brown
16 visiting with Patricia while you all lived in North Carolina?

17 A Yes, sir. Well, like I say, he was helping his
18 daddy farm, and his mother would keep Patricia and sometimes --
19 That's where they were doing the farming at. He'd see her up
20 there.

21 Q And were they planned meetings; do you know?

22 A I don't know.

23 Q And they were at Patricia Ann's grandmother's
24 house?

25 A Yes.

1 Q But Patricia Ann's grandmother on Mr. Brown's
2 side?

3 A It was his momma and daddy.

4 Q Do you know whether Mr. Brown ever visited in
5 the home of Patricia where she lived?

6 A Not that I know of.

7 Q Do you know of any phone calls between the two,
8 and between the two I mean Mr. Brown and Patricia?

9 A We didn't have phones down there, not around
10 Windsor.

11 Q Now, after you moved to Virginia during your
12 marriage to Mr. Brown -- Do you recall the date of that?

13 A Not that I know of.

14 Q Do you know of any phone calls or visits by
15 Mr. Brown to Patricia?

16 A At her home or at her grandmother's?

17 Q Any place..

18 A At her grandmother's. Now, I don't know if it
19 was arranged or not. He'd go see his mother, and sometimes
20 Patricia would be up there.

21 Q And you know for a certainty that they were
22 planned meetings with Patricia?

23 A No, sir, I don't know. I don't know if they
24 were planned or not.

25 Q How about phone calls from Chesapeake down to

1 Patricia's home between Mr. Brown and Patricia; do you recall
2 those?

3 A No, sir.

4 Q Would you have any knowledge whether or not
5 any had ever been made?

6 A He could have made some. I don't know.

7 Q All right. How often would you all visit back
8 in North Carolina after you all started living in Virginia?
9 I'm talking about your marriage with Mr. Brown.

10 A I'm -- once or twice a year. Sometimes not
11 that much. We didn't have the money to go back and forth.

12 Q Very seldom did you all ever visit in North
13 Carolina?

14 A Once or twice a year.

15 Q All right. Did you and Mr. Brown own your
16 home in Chesapeake?

17 A No, sir, we were buying it. We had lived
18 there one year when he got killed. We had it torn all to
19 pieces.

20 Q And did you all own it jointly between you?

21 A Yes, sir.

22 Q And you now own the home; do you not?

23 A No, sir, I'm still paying on it.

24 MR. OWENS: Objection, Your Honor. It's the
25 same question he was going into before.

1 THE COURT: All right. I'll sustain it.

2

3 BY MR. HOWARD:

4 Q Your attorney has mentioned that each of the
5 children had been receiving \$24 a week. That's correct, is
6 it not?

7 A Yes, sir.

8 Q And that Patricia has been receiving a like
9 amount?

10 A Supposed to be the same thing.

11 Q Is that continuing for Timothy, too; do you
12 know?

13 A Well, it's all stopped now.

14 Q Do you know whether Timothy has any plans to
15 continue his education?

16 A Yes, sir. I very much intend for him to.

17 MR. HOWARD: May we have a short recess, Your
18 Honor?

19 THE COURT: Yes.

20 (The hearing recessed at 10:55 a.m. At 11:20 a.m.
21 the hearing continued as follows:)

22 THE COURT: All right, gentlemen. Are you ready
23 to proceed?

24 MR. HOWARD: Yes, sir.

25 THE COURT: Mrs. Brown, if you'll resume the

1 stand.

2 (Witness did as requested.)

3

4 BY MR. HORWARD:

5 Q Mrs. Brown, you mentioned that Mr. Brown raised
6 chickens and had a farm out at the house in Chesapeake. Was
7 that the first house or the second house?

8 A What, that we lived in after we were married?

9 Q Yes, um-hmm.

10 A That was the fourth house.

11 Q The fourth house. And was that the house on
12 Bainbridge Boulevard, too?

13 A No, sir.

14 Q I see. And as to Timothy, what year in school
15 was he in 1975?

16 A Sixth, I believe.

17 Q And while he attended school, there never was
18 any change of his name from Brown to Hoggard, was there?

19 A No, sir.

20 Q And you say that Mr. Brown contributed to the
21 support of Timothy?

22 A Yes, sir.

23 Q Did Timothy receive any other benefits?

24 MR. OWENS: Same objection, Your Honor.

25 THE COURT: I have to be consistent. I sustain.

1 MR. HOWARD: Your Honor, at this point I want to
2 advise the Court that I would proffer or intend to
3 certainly go into the benefits that all the children
4 or any of them, including Mrs. Brown -- any benefits
5 from the estate of the decedent by way of insurance,
6 fringe benefits at the employment, and I'm speaking
7 of Mr. Brown in this case who was killed.

8 MR. OWENS: It's still not admissible. It's
9 the same thing. He could have left each of them a
10 million dollars or left them nothing. The question is
11 what happens to this \$400,000, and what is the status
12 of each of these children and the widow.

13 THE COURT: As existed prior to his death?

14 MR. OWENS: Yes, sir.

15 THE COURT: Isn't that right, Jimmy?

16 MR. HOWARD: Beg pardon?

17 THE COURT: I say, the status of the children
18 as existed between the children and their father prior
19 to his death is what we're looking for here, not what
20 he left them by will or anything of that nature.

21 MR. HOWARD: That would be another of my
22 inquiries as to will, but particularly any benefits
23 that might have arisen from his employment, such as
24 insurance or otherwise that went to the children.

25 MR. OWENS: Apparently the case cited by

1 counsel would deny him the privilege of entering into
2 all that material.

3 MR. HOWARD: And if the Court is going to look
4 for any dependency and use of Federal statutes for
5 any guidance, then the Court is going to have to have
6 the benefit of this information aside from the
7 Virginia Wrongful Death Statute; and I think when the
8 Court has the case as submitted, it is going to
9 realize when it looks to all the statutes, it has got
10 to look to the status that each individual had at
11 that time.

12 THE COURT: At what time?

13 MR. HOWARD: Date of death, prior to death and
14 afterwards.

15 Now, the Federal statutes, the Longshoremen
16 and Harbor Workers' Act speaks of dependency, and
17 the Federal statutes say you can look to that for some
18 guidance, although few cases have.

19 THE COURT: Speaks as to time of death, not
20 after death.

21 MR. HOWARD: That's exactly right, but the Court
22 in making distribution of that money has to look to
23 all the benefits that might have arisen by reason of
24 the death of this party, be it on dependency or
25 otherwise, aside from the Virginia Wrongful Death

1 Statute; and I think it behooves me to proffer that
2 to the Court through this witness.

3 MR. OWENS: Your Honor, the law says pecuniary
4 loss suffered or occasioned by the decedent's death;
5 and, you know, it speaks as of his death. I don't
6 think --

7 THE COURT: Let me ask you this. You say that,
8 and that's my inclination and I so ruled to a previous
9 question. Now, Mr. Howard says, "Judge, if you do
10 that, you're going to wish later you had heard it
11 because it's pertinent to the issue of this
12 distribution, and there will be Federal Law that
13 you'll look at that says it's pertinent." Now, what
14 am I going to do; wind up wishing I had the evidence?

15 MR. OWENS: Mr. Howard and counsel have known
16 for two weeks that this settlement was made. Actually,
17 it's been over two weeks. It was made two weeks ago
18 Thursday. I don't think they should come to Court
19 telling the Court what it's going to hear at any
20 future date. If he has any law to that effect --

21 THE COURT: No, no, no. I'm saying if I
22 excluded it today and find out the law says I should
23 have heard it, then I'm going to have to reconvene.
24 That's what I'm talking about.

25 MR. OWENS: I think he should be prepared on the

1 law and facts today.

2 THE COURT: He is prepared. He says that the
3 law requires it. Is that what you're saying? Are
4 you saying that the law requires me to consider this
5 evidence concerning what they received by virtue
6 of his death as opposed to what they lost by his
7 death?

8 MR. HOWARD: What I'm saying is under the
9 Moragne case, the Federal courts, thereafter, have been
10 told that they can look to the Death on the High Seas
11 Act, the Jones Act, the Longshoremen and Harbor
12 Workers' Act and the State Wrongful Death Statute in
13 determining the type of distribution or damages that
14 should be awarded. Now, what I am saying to the Court
15 is that the Court should allow me to proffer all the
16 evidence to assist the Court in making distribution of
17 this \$400,000.

18 Now, this lady has described the relationship
19 between her children -- children by the marriage, her
20 prior child -- her prior loss of her husband, her
21 prior husband. Her first divorce resulted in two
22 children. I am saying that the Court should have the
23 assistance of all this information in making the
24 distribution. In what, distribution to Mrs. Brown, to
25 the natural child and to the previous child, Patricia,

1 by the decedent. I don't see how the Court can avoid
2 not wanting this information. The Court can discard
3 every bit of it.

4 THE COURT: What case or what statute says that
5 the Court in considering the distribution must take
6 into account or should take into account or can take
7 into account what benefits one or more persons
8 received by virtue of his death?

9 MR. HOWARD: I can't point to any particular
10 provision of any of these statutes. I can say this.
11 They have talked about dependency, pecuniary loss.
12 If there had been a pecuniary loss, how was it offset
13 by the previous benefits. For instance, Timothyas
14 might have received Social Security from the death
15 of his natural father. Was that considered in
16 pecuniary loss to him. Was it offset by any benefit
17 he had by reason of the loss of his natural daddy,
18 and it could have been if such existed. If the Court
19 will not allow me to ask her what Social Security
20 benefits he may have received from the loss of his
21 natural father -- There had to be an offset. If he
22 was getting X dollars under Social Security benefits,
23 from his first father, then how much had the present
24 Mr. Brown contributed over and above that loss.

25 THE COURT: Mr. Owens.

1 MR. OWENS: Your Honor, the Death on the High
2 Seas Act talks in terms of pecuniary loss only,
3 occasioned by the death of the decedent. Even if
4 we suppose that Timothy Hoggard had Social Security
5 benefits, he still lost a person in loco parentis.
6 His benefits may have continued on, but it may be
7 the reason he wasn't adopted. I don't know. But those
8 things -- the nurture, the guidance, helping him with
9 the Scouts, helping him with his homework -- they would
10 have continued by virtue of the existence of Edward
11 Carol Brown. I don't think it's material to the Court
12 that he had another check or anything else coming in.
13 They talk about pecuniary loss brought about by the
14 death of the decedent, and I've got 761 here if I can
15 put my hand on it. It's a section of the Death on the
16 High Seas Act. But none of these that I know of go
17 into what the separate independent status of any of
18 the beneficiaries might be. I know of no law, have
19 seen no law; and reading through Gaudet, Moragne, and
20 Green versus Vantage -- 761 Death on the High Seas Act
21 provides that recovery in such suit should be fair and
22 just compensation for the pecuniary loss sustained
23 by the persons for whose benefit the suit is brought
24 and shall be apportioned among them by the Court in
25 proportion to the loss they may have severally suffered

1 by reason of the death of the person by whose
2 representative the suit is brought. So you're
3 talking about in the Virginia statute, and this statute
4 talks about pecuniary loss caused by death.

5 THE COURT: Well, let me ask you this. If I
6 accept what Mrs. Brown is testifying to, we have two
7 children -- one hers by a previous marriage, one hers
8 by a marriage to Edward Brown -- who lived in the
9 house and were supported equally by Edward Carol Brown,
10 both financially and with love, and yet so far I have
11 excluded from the evidence the fact that Timothy may
12 have gotten a Social Security check that may have been
13 put in the bank for him and kept for him and he may
14 have that sitting there piling up for him month by
15 month; then, on the other hand, it may have been cashed
16 every month and used to put food on the table.

17 MR. OWENS: They may have a rich maternal
18 grandmother whose going to leave them a trust fund.

19 THE COURT: I know that, but wouldn't that
20 reflect on how much the compensatory loss was if that
21 check was used to put food on the table for Timothy to
22 eat?

23 MR. OWENS: I would be of the opinion that that
24 would be a collateral source, Your Honor, and should
25 not be introduced into evidence; and I think the burden

1 should be on the person who wants to proffer the
2 evidence.

3 THE COURT: I agree with you. The fact that
4 Mr. Brown might have left a million dollars' worth of
5 insurance and left it all to Timothy apparently has no
6 bearing on the compensatory loss caused by the death
7 of his father. That seems to be the law.

8 MR. OWENS: Yes, sir.

9 THE COURT: But when it comes down to how much
10 was Mr. Brown contributing to the child so that the
11 question is how much was he -- How much did the child
12 suffer by virtue of his death, and don't we have to go
13 into the question of how much he contributed and how
14 much did somebody else contribute to the support of
15 Timothy in order to arrive at a fair answer to that
16 question?

17 MR. OWENS: I would be of the opinion collateral
18 source. I have not seen it discussed in any of these
19 cases. They talk about pecuniary loss. Frankly, I'm
20 not taking any position that any of these children
21 should not recover. I think they all should recover.
22 It's just a question of how much and what their loss is.

23 THE COURT: Well, I appreciate the fact that
24 you're not, but you can rest assured that Patricia is
25 up here to get as much as she can get as her share;

1 and if it comes from Timothy, I assume she's perfectly
2 willing to let it be; and the same for Timothy and
3 the same for Ronnie.

4 All right. I'm going to rule, Mr. Howard, that
5 as it relates to the issue of how much support did
6 Edward Carol Brown furnish to Timothy, to Ronnie, to
7 Patricia, to Kay Brown prior to his death, that any
8 sources of income that those people had prior to the
9 death of Edward Carol Brown would be permitted
10 including the item that I didn't allow you to ask
11 awhile ago, but that any source of income that they
12 now have which has originated since the death of
13 Edward Carol Brown is not relevant to the question.

14 MR. OWENS: I understand.

15 THE COURT: I'm talking about dependency.

16 MR. OWENS: I understand the ruling, and may I
17 take exception to that, and I would note my objection
18 to that which does allow admissibility.

19 THE COURT: All right.

20
21 BY MR. HOWARD:

22 Q Before you answer the question, wait until the
23 Court allows you to do it or not.

24 Before the death of Mr. Brown, was Timothy
25 receiving any Social Security benefits or any other benefits

1 from the death of his natural father, Mr. Hoggard?

2 MR. HOWARD: May she answer that question?

3 THE COURT: I'll let her answer it at this
4 point.

5 MR. OWENS: Subject to my objection, Your Honor.

6 THE COURT: Subject to objection. Go ahead.

7 A Yes, sir.

8

9 BY MR. HOWARD:

10 Q And what were those benefits that he received
11 from the estate of Mr. Hoggard?

12 A He got a hundred and fifteen dollars a month
13 which was used to put food on the table.

14 Q Food for him?

15 A Food for everybody that was sitting down to eat.

16 Q Was the check made out to you and you used it
17 in general household espenses?

18 A Yes, sir.

19 Q And that amount of money was how much a month?

20 A A hundred and fifteen dollars in 1975.

21 Q And no part of that money was set aside for
22 his future education, maintenance or support; but it was all
23 spent on the family itself?

24 A Yes, sir.

25 Q Which would have included you, Mr. Brown, your

1 child by Mr. Brown and Timothy?

2 A Yes, sir.

3 Q Did he receive any other benefits of any kind?

4 A No, sir, none at all.

5 Q No assistance from any assistance act?

6 A Social Security was all he was getting.

7 Q All right. Now, the support contributed by
8 Mr. Brown to Timothy would have been over and above that
9 hundred and twenty-four dollars a month?

10 MR. OWENS: I thought it was a hundred and
11 fifteen.

12 THE WITNESS: It started out at \$56 and kept
13 going up.

14 THE COURT: That was at the time of Mr. Brown's
15 death that it was that figure of a hundred and fifteen
16 dollars a month?

17 THE WITNESS: Yes, sir.

18 THE COURT: And it started out at what figure?

19 THE WITNESS: \$56 a month.

20 THE COURT: This is from the time that his
21 father died?

22 THE WITNESS: Yes, sir.

23 THE COURT: Let me ask you this. Whatever the
24 amount may have been during the course of your marriage
25 to Mr. Brown, that check was used to put food on the

1 table for all of you?

2 THE WITNESS: Yes, sir.

3 THE COURT: All right.

4
5 BY MR. HOWARD:

6 Q Now, before the death of Mr. Brown, did you,
7 yourself, receive any other benefits?

8 MR. OWENS: Objection, Your Honor. She is the
9 widow of the decedent, and I think there's prima
10 facia presumption under any law that she is dependent.
11 She's answered the question. She didn't work. Whether
12 she had any independent means I don't think is material
13 to this.

14 MR. HOWARD: I would relate back to the same
15 reasoning of inquiring of her before his death.

16 MR. OWENS: But that goes to the duty of
17 supporting a child which may or may not be for
18 argument a stepchild in loco parentis, but a husband
19 has the duty to support a wife, and I don't think
20 whether or not she has independent means is material
21 to this hearing.

22 THE COURT: Well, he had a duty to support
23 Ronnie.

24 MR. OWENS: Yes, sir, but it's at least
25 arguable that he might not have had a duty to support

1 Timothy. That's apparently Mr. Howard's argument that
2 he did not have the duty or no legal obligation or
3 a stepson is not a bona fide beneficiary. If that's
4 the case, then the issue of what Timothy's income
5 would be would be material; but that's not the case
6 with the wife. There's no question that she was the
7 wife, so I don't think it's material. I don't know
8 if she had any, but I don't think it's material.

9 THE COURT: How about Patricia?

10 MR. OWENS: As to whether or not Patricia had
11 any independent income?

12 THE COURT: Right. Income other than the
13 \$7.50 a month. I don't think there will be any
14 evidence that she had any other income or from any
15 other source.

16 MR. OWENS: The duty to support Patricia would
17 be the duty of Mr. Brown and Mrs. Peggy Brown. The
18 duty to support Kay Jacquelin Brown would have been
19 the obligation of Edward Brown; and, you know, I think
20 it's prima facia that she was dependent upon him. It's
21 a pecuniary loss situation.

22 THE COURT: Suppose this was a suit before a
23 jury with Kay Brown being the only statutory
24 beneficiary entitled to receive anything, and the
25 question came up as to how much her pecuniary loss was.

ERA
No
Presum.

1 Wouldn't she have to prove what that loss was other
2 than to say I am his widow and I am, therefore, his
3 dependent?

4 MR. OWENS: No, sir, I don't think so.

5 THE COURT: Somebody's got to put a dollar
6 value to a dependency.

7 MR. OWENS: But it's his income, obviously,
8 that she has lost the benefit of. She didn't work.
9 If any wife worked and she was killed, I think it's
10 unconstitutional for the Court to say, "Well, I'm not
11 dependent on her." You know, there are statutes that
12 talk about dependency and prima facia dependency and
13 this kind of thing, and I think she's in that position.
14 I think it's a practical matter she didn't have
15 anything, but I don't think it's a proper question.

16 THE COURT: Well, I'm going to allow it; and
17 if I'm wrong, I'll disregard it when the time comes.

18 MR. OWENS: Your Honor, interestingly, under
19 the D.O.H.S.A. and the Jones Act, the statutes speak
20 of dependency. Now, if dependency is offset by other
21 sources, then the Court should have the benefit of it.

22 THE COURT: I'm going to hear it over objection.

23
24 BY MR. HOWARD:

25 Q Before the death of Mr. Brown, did you have the

1 benefit of any fringe benefits such as Social Security,
2 insurance benefits, or anything like that from Mr. Hoggard?

3 A No, sir.

4 Q You did not?

5 A No.

6 Q And you had no benefits from any other source
7 before the death of Mr. Brown?

8 A No, sir.

9 Q None at all?

10 A No, sir, I weren't working.

11 THE COURT: Mrs. Brown, along that line you
12 said Timothy got a hundred and fifteen dollars a
13 month from Social Security because of the death of
14 his father.

15 THE WITNESS: Yes, sir.

16 THE COURT: Weren't you getting some type of
17 Social Security benefits until you remarried Mr.
18 Brown?

19 THE WITNESS: Yes, sir, that stopped --

20 THE COURT: When you remarried, that stopped?

21 THE WITNESS: Yes, sir, we were both getting
22 \$56 a week -- month.

23 THE COURT: But that stopped when you remarried
24 Mr. Brown, and Timothy's kept on, of course?

25 THE WITNESS: Yes, sir.

1 THE COURT: All right.

2

3 BY MR. HOWARD:

4 Q Now, as to Patricia, you knew of the order that
5 Mr. Brown was to pay \$7.50 a week to her?

6 A Yes, sir.

7 Q And he stopped paying that I think you mentioned
8 in 1967 or 1968?

9 A I believe he paid it about a year, but I'm
10 not for sure.

11 Q That was after you and Mr. Brown had married,
12 of course?

13 A Yes, sir.

14 Q And the reason Mr. Brown did not pay the \$7.50
15 to his daughter, Patricia, was that he couldn't afford it?

16 A Yes, sir.

17 Q Did he acknowledge that he couldn't afford it,
18 and that's why he did not pay it?

19 A What do you mean? Tell her?

20 Q Or tell you.

21 A Well, he didn't have to tell me. I knew it.

22 Q Has Patricia Brown ever visited up here in
23 your home?

24 A Not until the day that he got killed or the
25 day that he was buried. I can't remember if she came the day

1 he got killed or not.

2 Q Do you remember any time Patricia ever visiting
3 up here with her daddy?

4 A No, sir.

5 Q And you can't give us any dates or any
6 regularity that Mr. Brown visited with his daughter, Patricia,
7 in North Carolina?

8 A No, sir.

9 Q It could have occurred and you didn't know?

10 A It could have, but not to my knowledge.

11 Q And you knew that for awhile there was no
12 telephone contact because you could not afford to have a
13 telephone?

14 A I didn't say we couldn't afford to have one. I
15 said that they just weren't down there.

16 Q And you say that Mr. Brown participated in Boy
17 Scout activities with Timothy?

18 A Yes, sir.

19 Q In what respect?

20 A He helped them build boxcar races and suits of
21 armor and things that Boy Scouts do.

22 Q Did Mr. Brown ever go to the school where
23 Timothy attended?

24 A Yes, sir, all the time. They have father-and-son
25 nights.

1 Q And the same thing, of course, with your other
2 child by Mr. Brown?

3 A What do you mean?

4 Q Well, go to the school.

5 A Well, he wasn't but six when he got killed.

6 Q There wasn't ever any thought of adoption of
7 Timothy, was there?

8 A Yes, sir.

9 Q And you all started talking about that some
10 years ago but never did anything about it?

11 A We started talking about it just as soon as we
12 got married.

13 MR. OWENS: Objection, Your Honor. If he's
14 not adopted, I think --

15 THE COURT: That's been established by the
16 evidence. There's no change in the Hoggard boy's
17 name. I'll sustain.

18
19 BY MR. HOWARD:

20 Q You're still living in the same house, Mrs.
21 Brown?

22 A Yes, sir.

23 Q Do you have a car?

24 A Yes, sir.

25 Q A new one?

- 1 A No, sir. I need one.
- 2 Q Does Timothy still live with you?
- 3 A Yes, sir.
- 4 Q And, of course, your own child by Mr. Brown --
- 5 He lives with you?
- 6 A Yes, sir.
- 7 Q And what grade will Timothy be in?
- 8 A Tenth grade.
- 9 Q And where does he go to school?
- 10 A Great Bridge High.
- 11 Q How old is he now?
- 12 A He's fifteen.
- 13 Q Is he up to his school year in accordance with
- 14 his age?
- 15 A Yes, sir.
- 16 Q How well does he do in school?
- 17 A I think pretty good.
- 18 Q Do you know of any aspirations or ambitions
- 19 that he has to go off to school after that?
- 20 A No, sir.
- 21 Q Are there any particular courses he's good in
- 22 like math or English or --
- 23 A Well, he's good in all of them but arithmetic.
- 24 That's what his dad helped him with.
- 25 Q What would his average grades be, and I'm

1 speaking of Timothy?

2 A B's and C's.

3 Q And the name of the particular school he's
4 attending in Chesapeake?

5 A Great Bridge High School.

6 Q Great Bridge High School. Had you ever met
7 Patricia before the marriage?

8 A Yes, sir.

9 Q And where did you meet Patricia before the
10 marriage you had with Mr. Brown?

11 A Well, when he'd go to see me, he'd carry
12 Patricia with him sometimes.

13 Q Then all those visits took place in North
14 Carolina?

15 A Yes, sir.

16 Q He was rather proud of Patricia, was he not?

17 A He was rather proud of all three of them.

18 Q He loved all three of them?

19 A Yes, sir.

20 Q And contributed to their welfare and training
21 as well as he could?

22 A Yes, sir.

23 Q And he expressed this love to you that he had
24 for Patricia, did he not?

25 MR. OWENS: Your Honor, I would object to his

1 leading. It's not an adversary proceeding.

2 MR. HOWARD: It certainly is adversary if I've
3 ever seen one.

4 THE COURT: Go ahead.

5
6 BY MR. HOWARD:

7 Q He loved Patricia, did he not?

8 A He loved Patricia. He certainly did.

9 Q And did all he could for her over the years?

10 A Yes, sir.

11 Q And acknowledged to you his responsibility for
12 love and support of Patricia?

13 A Yes, sir.

14 MR. HOWARD: That's all. Thank you.

15 THE COURT: Mr. Montagna, do you have any
16 questions that you wish to put to Mrs. Brown?

17 MR. MONTAGNA: Your Honor, I just have two
18 questions.

19
20 CROSS-EXAMINATION

21
22 BY MR. MONTAGNA:

23 Q Mrs. Brown, Timothy was a year old when you
24 and Mr. Brown got married; is that correct?

25 A Yes, sir.

1 Q And he lived entirely with you and Mr. Brown?

2 A Yes, sir.

3 Q Now, Mr. Howard asked you whether Timothy has
4 any aspirations. Do you know what aspirations means?

5 A Money?

6 Q No. You answered, "No," and isn't Timothy
7 planning to go to college?

8 A Yes, indeed he is. That's what his daddy
9 wanted for both of the boys and Patricia Ann also.

10 MR. MONTAGNA: That's all the questions I
11 have.

12 THE COURT: Mr. Gary, do you have any questions
13 of Mrs. Brown?

14 MR. GARY: No questions.

15 THE COURT: Do you have anything further of
16 Mrs. Brown, Mr. Owens?

17 MR. OWENS: Several.

18

19

REDIRECT EXAMINATION

20

21 BY MR. OWENS:

22 Q It's my understanding that Timothy's Social
23 Security monies were used to support the entire family?

24 A Yes, sir.

25 Q Which was Mr. Brown's obligation?

1 A Well, Timothy wasn't getting enough money to
2 feed himself.

3 Q But this money did not go to Timothy himself.
4 He did not get the entire benefit? It went to support you
5 and Ronnie and Timothy?

6 A Yes, sir, the whole family.

7 Q Now, what is your work experience?

8 A I've never worked except put in tobacco.

9 Q And you went to the seventh grade?

10 A Yes, sir.

11 Q Now, you answered a number of questions of
12 Mr. Howard that your husband admitted that he loved Patricia
13 Ann?

14 A Yes, sir.

15 Q And he felt he had an obligation to support the
16 child; but, as a factual matter, did he support the child
17 during your marriage?

18 A For about a year after we got married.

19 Q And that would have been until about 1967?

20 A Yeah.

21 Q And then he did not actually support Patricia
22 from '67 until the time of his death in '75?

23 A That's right.

24 MR. OWENS: That's all I have.

25 THE COURT: Anybody else?

1 MR. HOWARD: Yes, sir, I do.

2

3 RECROSS-EXAMINATION

4

5 BY MR. HOWARD:

6 Q Mrs. Brown, did I understand that he stopped
7 paying support to Patricia because he couldn't afford it?

8 A That's right.

9 Q And that was true up until 1975? He claimed
10 he couldn't support his family?

11 A Well, I don't know why he didn't send \$7.50
12 down there later on.

13 Q Do you know whether he could afford it or not?

14 A It took all we had to live even up until he
15 died.

16 MR. HOWARD: That's all. Thank you.

17 THE COURT: All right. Thank you, Mrs. Brown.
18 You may step down.

19

20

21

-----oOo-----

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25

CLERK'S CERTIFICATE

I, Hugh L. Stovall, Clerk of the Circuit Court of the City of Norfolk, State of Virginia, do hereby certify that the foregoing is a true and correct copy of all of the testimony and other incidents of the hearing of the case of Kay J. Brown, Administratrix of the estate of Edward Carol Brown, deceased, plaintiff, versus Allied Towing Corporation, defendant, and that the same were lodged and filed with me as clerk of said court on the _____ day of _____, 1980.

Clerk of the Circuit Court of
the City of Norfolk, Virginia.

By: _____
Deputy Clerk

REPORTER'S CERTIFICATE

STATE OF VIRGINIA

CITY OF NORFOLK, to-wit:

I, Marion Myers, court reporter, certify that the foregoing is a correct transcript of the testimony adduced before the said court on the date aforementioned.

Given under my hand this 24th day of July, 1980.

Marion Myers
Court Reporter

-----oOo-----

1 VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK.

2

3 KAY J. BROWN, Administratrix)
4 of the estate of Edward Carol)
Brown, deceased,)
Plaintiff,)

EXCERPT

5

v

L76-1918.

6

7 ALLIED TOWING CORPORATION,)
Defendant.)

8

9

10

11 Stenographic transcript of the testimony introduced
12 and proceedings had upon the hearing of the above-entitled
13 cause in said court on July 7, 1980, before the Honorable
14 John W. Winston, Judge of said court.

15

16

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19

20

APPEARANCES: Messrs. Smith, Power and Owens
(Mr. Alan P. Owens), attorneys for
the plaintiff.

21

22

Messrs. Vandeventer, Black, Meredith
and Martin (Mr. John B. King, Jr.),
attorneys for the defendant.

23

24

25

1 APPEARANCES (Cont'd) Messrs. Eley, Rutherford and Leafe
 2 (Mr. William B. Eley), attorneys
 for the defendant.

3 Messrs. Breeden, Howard and
 4 MacMillan (Mr. James A. Howard)
 attorneys for Patricia Ann Brown.

5 Messrs. Montagna and Copeland
 6 (Mr. Anthony L. Montagna, Jr.),
 attorneys for Timothy Earl Hoggard.

7 Mr. Wiley G. Gary, attorney for
 8 Ronnie Edward Brown.

9
 10 -----oOo-----
 11

12
 13 I N D E X
 14

15 <u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
16 Brown, P. A.	3	8,11	14	

7 BY MR. HOWARD:

8 Q Patricia, I want you to speak loud enough
9 so that Judge Winston can hear you and everybody in the
10 courtroom can hear you. First, give us your full name.

11	A	Patricia Ann Brown.
----	---	---------------------

12 Q And how old are you right now, Patricia?

18 A Seventeen.

14 Q Did you recently complete high school?

15 A Yes, sir.

16 Q And what school was that?

17	A	Murfreesboro High.
----	---	--------------------

18 Q And was that in May of this year?

19 A June.

20 Q In June of this year. And where would
21 your grandmother and grandfather live; that is, your
22 daddy's mother and dad?

28 A About eight to ten miles from me.

24 Q Could you tell us whether or not you visit
25 them very often?

1 A As much as I can.

2 Q What are your plans for next year?

3 A I'm going to Chowan.

4 Q Is that the name of a college in
5 Murfreesboro?

6 A Yes, sir.

7 Q And why do you plan to go there?

8 A Well, I want to further my education and
9 become an accountant.

10 Q An accountant?

11 A Yes, sir.

12 Q Is Chowan close to your home?

13 A Yes, I can commute back and forth.

14 Q Would that make it cheaper for you?

15 A Very much.

16 Q On completion of your education at Chowan,
17 where do you plan to continue your education?

18 A At East Carolina in Greenville.

19 Q In Greenville, North Carolina?

20 A Yes, sir.

21 Q When was the last contact you had with
22 your daddy?

23 A As far as I can remember, about a year before
24 he got killed.

25 Q Did you talk to your daddy on the phone?

1 A Yes, sir.

2 Q Did you visit with your daddy -- Where did
3 you visit with your daddy when he did come to North Carolina?

4 A My grandmother's.

5 Q And would you spend the night with them or
6 just go over for the day?

7 A Yes, sir, I'd spend two or three nights;
8 and anytime daddy was down, I'd be there too.

9 Q And how often would you say he visited with
10 his own mother and daddy?

11 A Well, as far as I can remember, about twice
12 a year.

13 Q And did you talk to your daddy on the phone?

14 A Yes.

15 Q Where would those calls be placed from,
16 Patricia?

17 A My grandmother's family's house. Her
18 sister's or whatever.

19 Q Did your daddy have any kin folks living
20 up here in Chesapeake?

21 A Yes, sir, his brother.

22 Q His brother lived up here. Did you visit
23 with your daddy up here?

24 A Yes, I went to my uncle's house and daddy
25 came over to see me there.

1 Q Have you ever talked to the present
2 Mrs. Brown on the phone?

3 A As far as I can remember, one time.

4 Q And what was that conversation all about?

5 A I was about nine, and my daddy and Jackie
6 were telling me that when I turned twelve that I had the
7 choice of living with either my mother or my father; and
8 that if I wanted to live with my father, then they would
9 be happy to come and pick me up.

10 Q And live with them?

11 A Yes, sir.

12 Q Now, Patricia, have you had any sort of
13 illness for the last few years.

14 A Yes, sir.

15 Q And what was it?

16 A Asmatic bronchitis.

17 Q Your daddy knew about that?

18 A As far as I know.

19 Q Did you have to get any special treatment
20 at Duke or any place for it?

21 A Yes, I was in the hospital seven, eight --
22 seven or eight times during the school year, and I was
23 at Duke two or three times, and I had two sinus operations.

24 Q Did your grandmother and grandfather on your
25 daddy's side know about that?

1 A Yes, they did.

2 Q And were they in contact, as far as you know,
3 with your daddy?

4 A So far as I know.

5 Q When your daddy was in North Carolina on
6 any of the visits, did he ever visit with you at the
7 school?

8 A Yes. One time that I can remember was when
9 I was in the fifth grade, and he came to the schoolhouse
10 and met my teachers and talked to them and ate lunch with
11 me at school.

12 Q Was your daddy interested in your getting
13 an education?

14 A Yes, sir.

15 Q Did you talk to your daddy about your
16 well-being and how you felt about things and things like
17 that, Patricia?

18 A As far as I can remember.

19 Q Did you confide in your daddy?

20 A Yes, sir.

21 Q Did he confide in you?

22 A Yes, sir.

23 Q Did he express to you a love he had for you?

24 MR. OWENS: Objection, Your Honor, to leading.

25 All his questions are leading.

1 BY MR. HOWARD:

2 Q How did your daddy feel toward you, Patricia?

3 A He loved me, and he showed me when he could.

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

5 THE COURT: Mr. Owens, do you have any questions?

6

7

CROSS-EXAMINATION

8

9 BY MR. OWENS:

10 Q As a practical matter, though, he did not
11 send you any money?

12 A Not that I know of.

13 Q You're unaware of any monies that he ever
14 sent for your benefit?

15 A Yes, sir.

16 Q Now, how many dates -- Let's see. Do you
17 know what year your parents were divorced?

18 A No, sir, I was only a baby as far as I know.

19 Q When they were divorced?

20 A Yes, sir.

21 Q So other than twice a year -- Now, when you
22 say twice a year that your father came to visit with his
23 parents, you say on those occasions he stayed with his
24 parents -- he stayed with your grandparents?

25 A Yes, sir. I mean, I stayed with my grandparents

1 and I was there two or three nights, and I saw him when
2 he was there.

3 Q But did he stay at his parents, your
4 grandparents, or did he stay somewhere else?

5 A He went back that night.

6 Q So you didn't spend three or four consecutive
7 days with him on two occasions a year?

8 A No, sir.

9 Q And was this every year or just in a couple
10 of years that this happened?

11 A As far as I can remember, about twice a year.

12 Q Do you remember how far back that went
13 from 1975, how far back?

14 A No, sir.

15 Q Now, because he was living in Virginia at
16 the time, he really wasn't in much of a position to help
17 you with, like, your school work?

18 A No.

19 Q Or your training, your day-to-day training?

20 A No, sir.

21 Q And I take it there wasn't anything in the
22 way of services that he performed for you or building
23 things for you or making things for you on a regular
24 basis?

25 A No, sir.

1 Q Painting your room or doing anything to your
2 room?

3 A No, sir.

4 Q And what year was it that you had this sinus
5 operation?

6 A '78.

7 Q Okay. Now, Mr. Howard asked you something
8 about whether your grandparents kept in touch with your
9 father. Did you mean at that time?

10 A No.

11 Q Because your father died in '75.

12 A Yes, sir.

13 Q And you'll be eighteen Wednesday?

14 A Yes, sir.

15 Q Now, you didn't have much of an opportunity
16 because of the situation existing between, I guess, your
17 mother and your father to have companionship like most
18 children have with their mother and dad?

19 A I didn't see him like a normal father, no.

20 Q I take it in spite of the difficulties your
21 mother and father might have had, your grandparents have
22 been very good to you?

23 A Yes, sir.

24 Q And I believe you said that the last contact
25 of any kind that you had with your father was a year before

1 his death?

2 A About a year.

3 Q And that was by telephone?

4 A Yes, sir.

5 MR. OWENS: Excuse me a minute, Your Honor.

6 That's all the questions I have, Your Honor.

7 MR. HOWARD: If I may, Your Honor, on
8 redirect.

9 THE COURT: Just a minute. Mr. Montagna,
10 do you have any questions?

11 MR. MONTAGNA: I just have a couple of
12 brief questions, Your Honor.

13

14 CROSS-EXAMINATION

15

16 BY MR. MONTAGNA:

17 Q Patricia, you were what, thirteen when your
18 father died?

19 A Twelve.

20 Q You'll be what, eighteen?

21 A On Wednesday.

22 Q You say your last contact with your father
23 was by telephone a year before he died in 1974.

24 A About a year.

25 Q Did you know your father's telephone number

1 in Virginia?

2 A No, I didn't

3 Q You didn't know how to reach him?

4 A I reached him when I was with my grandmother.

5 Q They knew how to reach him?

6 A Yes, sir.

7 Q And your last contact -- Did you call him
8 or did he call you?

9 A I was with my grandmother, and my grandmother
10 got in touch with him so I could talk to him.

11 Q And your grandmother never talked to him in
12 your presence in the last year of his life?

13 A Not that I recall.

14 Q Okay. You say that you would see him how
15 many times a year?

16 A About twice.

17 Q But you didn't see him at all the last year
18 of his life?

19 A Not that I remember.

20 Q And you'd always see him in North Carolina
21 other than the one time that you came up to your uncle's?

22 A Yes, sir.

23 Q But you never called him yourself. Did you
24 have a telephone at your house?

25 A Yes, sir.

1 Q And he never called you at your home and you
2 never called him from your home?

3 A Yes, sir.

4 Q You did or you didn't?

5 A No.

6 Q You didn't call?

7 A No, sir.

8 MR. MONTAGNA: That all I have.

9 THE COURT: Mr. Gary?

10 MR. GARY: I have no questions.

11 THE COURT: All right, Mr. Howard.

12

13

REDIRECT EXAMINATION

14

15 BY MR. HOWARD:

16 Q Patricia, you mother has not remarried?

17 A Yes, sir.

18 Q And it's with you that she lives?

19 MR. OWENS: Objection. I don't know what
20 the remarriage of her mother has to do with it.

21 THE COURT: I sustain the objection.

22

23 BY MR. HOWARD:

24 Q You were asked whether or not your father
25 ever sent you any money.

1 A Yes.

2 Q It's a yes, he sent money to you?

3 A No.

4 MR. OWENS: It's a question of whether or
5 not he ever sent any money.

6 MR. HOWARD: I agree. Forget it.

7

8 BY MR. HOWARD:

9 Q Do you know whether or not your daddy
10 had any money to send to you?

11 MR. OWENS: Objection. Immaterial.

12 MR. HOWARD: You asked the question. I
13 can follow-up on it.

14 THE COURT: Go ahead.

15

16 BY MR. HOWARD:

17 Q Do you know whether or not your daddy
18 had any money to send you, Patricia?

19 A No, sir.

20 MR. HOWARD: All right. That's all.

21 THE COURT: Patricia, your birth date was
22 or is July 9, 1962?

23 THE WITNESS: Yes, sir.

24 THE COURT: And this being the 7th of July,
25 you'll have another birthday the day after tomorrow,

1 July 9th, and at that time you'll be eighteen years
2 of age?

3 THE WITNESS: Yes, sir.

4 THE COURT: Who did you say raised you until
5 you were twelve years of age?

6 THE WITNESS: My mother.

7 THE COURT: And what was this about a choice
8 whether you wanted to live with your mother or
9 father after that?

10 THE WITNESS: When I was about nine, I talked
11 to my father on the phone, and himself and Jackie
12 both talked to me about living with them when I
13 turned twelve.

14 THE COURT: And when you turned twelve, did
15 you do anything about that conversation?

16 THE WITNESS: No, sir.

17 THE COURT: Did you ever follow-up on it
18 with him?

19 THE WITNESS: We talked about it occasionally,
20 but there was nothing really that I could do about
21 it.

22 THE COURT: You've always been raised by
23 your mother?

24 THE WITNESS: Yes, sir.

25 THE COURT: She is remarried; has she or not?

1 THE WITNESS: No, sir.

2 THE COURT: She's never remarried?

3 THE WITNESS: No, sir.

4 THE COURT: And the grandmother and grandfather
5 that you spoke of in Murfreesboro are Mr. Brown's
6 mother and father?

7 THE WITNESS: Yes, sir.

8 THE COURT: And you said that when you would
9 see him there, he would be there for the day only?

10 THE WITNESS: Yes, sir.

11 THE COURT: And then he'd go on back to
12 Norfolk?

13 THE WITNESS: Yes, sir.

14 THE COURT: All right. Thank you very much.

15 MR. HOWARD: Step down, Patricia.

16 That's all, Your Honor.

17

18

19 -----oOo-----

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REPORTER'S CERTIFICATE

STATE OF VIRGINIA

CITY OF NORFOLK, to-wit:

I, Marion Myers, court reporter, certify that the foregoing is a correct transcript of the testimony adduced before the said court on the date aforementioned.

Given under my hand this 28th day of July, 1980.

Marion Myers
Court Reporter

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FOURTH JUDICIAL CIRCUIT OF VIRGINIA
CIRCUIT COURT OF THE CITY OF NORFOLK

JOHN W. WINSTON
JUDGE

October 31, 1980

100 ST. PAUL'S BOULEVARD
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P. O. Box 3503
Norfolk, Virginia 23514

Re: Kay J. Brown, Administratrix of the Estate
of Edward Carol Brown, deceased
v. Allied Towing Corporation
At Law No. L-76-1918

Gentlemen:

On March 17, 1975, Allied's tank barge ATC 3060 lay afloat in the Elizabeth River, a navigable body of water inside the territorial limits of the Commonwealth of Virginia. An explosion occurred on the barge which took the life of Edward Carol Brown, an Allied employee who was performing repairs to that vessel though not as a crew member.

His wife, Kay J. Brown, retained counsel to seek money damages from Allied. But because an exoneration/limitation proceeding had by that time been filed by Allied in the United States District Court in Norfolk, her suit for damages was temporarily withheld. Thereafter, U. S. District Judge J. Calvitt Clarke, Jr. ruled that Allied was not entitled to either exoneration from liability or limitation of its liability for claims arising out of the casualty. Judge Clarke also ruled that Allied was not protected from the claims of its injured employees or of their representatives (if killed) by the 1972 amendments to the Longshoremen's and Harbor Workers' Compensation Act, 33 USCA, § 901 et seq. Those rulings are now final.

October 31, 1980

Having thus been allowed to proceed, Mrs. Brown commenced this legal action in this state court seeking money damages from Allied for negligently injuring Edward Carol Brown and thereby causing his death. Claiming the benefit of the general maritime law of the United States, she sought compensatory damages on behalf of Brown's dependents (listed as his wife Kay J. Brown and his children Ronnie Edward Brown, Timothy Earl Hoggard, and Patricia Ann Brown) for their loss of his support, of his services, of his society, love, affection, care, attention, companionship and protection, for their grief, mental suffering and emotional distress, for the children's loss of his nurture, training, education and guidance, and for the funeral expenses incurred. She also sought punitive damages for his death and compensatory damages for his conscious pain and suffering before he died. (The punitive damage claim was dismissed by the court before trial. The money claim for his conscious pain and suffering has been abandoned since it is now conceded that Brown's death was instantaneous.)

This admiralty death by wrongful act suit came on for trial before a jury on June 18, 1980. Allied conceded liability for its negligence and the jury was instructed to consider the issue of compensatory damages only. A proposed settlement was thereafter agreed on between the parties and the jury trial was discontinued. The settlement amount was \$400,000 and was to be paid over and above the workmen's compensation benefits that had already been received by the widow and by the children. Such proposed settlement was approved by this court on July 21, 1980, and a partial distribution to Smith and Owens, attorneys, was ordered. The distribution amounted to \$133,333.33 for their contracted legal fees and \$1,815.92 for their advanced legal expenses.

The balance of the settlement money amounting to \$264,850.75 remained for distribution by the court because no agreement could be reached between the various claimants as to its disbursement. Concerning that remaining issue evidence and legal briefs and the argument have all been presented. Based thereon and its own research this court will now state its findings of fact and conclusions of law. Some preliminary comments however are appropriate.

Until 1970 no cause of action for wrongful death occurring upon navigable waters such as the Elizabeth River was provided by the general maritime law of the United States. The Harrisburg, 119 US 199 (1886); Moragne v. States Marine Lines, Inc., 398 US 375 (1970). A maritime remedy was afforded by adopting the provisions of the wrongful death statutes of the state on whose waters the death occurred. American Steamboat Co. v. Chace, 16 Wall. 522 (1873); Sherlock v. Alling, Admr., 93 US 99 (1876); The Hamilton, 207 US 398 (1907);

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Western Fuel Co. v. Garcia, 257 US 210 (1921). This remedy was controlling whether the death action was commenced in a Federal court or in a state court or was commenced in a state court and removed before trial to a Federal court. The general maritime law required the trial court to enforce the provisions of the applicable state death by wrongful act statute just as it was written. The Tungus v. Skovgaard, 358 US 588 (1959); Hess v. United States, 361 US 314 (1960); Goett v. Union Carbide Corp., 361 US 340 (1960).

This literal application of all of the provisions of these state statutes led to problems and to a Supreme Court review of The Harrisburg principle. According to Gilmore and Black "The Law of Admiralty", 2nd Ed., "The only thing that can be said in favor of the series of cases initiated by The Tungus is that the Court had maneuvered itself into such an untenable and absurd position that the only solution was to tear down the entire stricture and make a fresh start..."

That fresh start was made in Moragne v. States Marine Lines, Inc., 398 US 375 (1970). There a longshoreman was killed while working on a vessel which lay in navigable waters within the State of Florida. A wrongful death action was commenced in a Florida state court and removed to a Federal court for trial. Over the decedent estate's objection, the court applied the Florida wrongful death statute. Since no provision of that law was proven to have been violated, the defendant prevailed. The estate appealed, claiming that it was entitled to reversal under general maritime law without regard to the limited scope of the Florida state statute. The Supreme Court unanimously agreed, overruled The Harrisburg and held that an action does lie under general maritime law for death caused by the violation of maritime duties such as the warranty of seaworthiness. Justice Harlan stated for the court that "...our decision does not require the fashioning of a whole new body of federal law, but merely removes a bar to access to the existing general maritime law..." already in place for personal injury cases (pages 405-406). He added that "In sum, in contrast to the torrent of difficult litigation that has swirled about The Harrisburg, The Tungus which followed upon it, and the problems of federal-state accommodation they occasioned, the recognition of a remedy for wrongful death under general maritime law can be expected to bring more placid waters." (page 408).

The question of who should benefit from the application of this new maritime remedy was left unresolved in Moragne. The court only noted that "General maritime law, which denied any recovery for wrongful death, found no need to specify which dependents should receive such recovery." (page 406). It was left to future maritime cases to resolve such subsidiary questions as the measure of damages and the identity of the beneficiaries of such damage awards.

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The answer to the measure of damages question was not long in coming. In Sea-Land Services, Inc. v. Gaudet, Admr., 414 US 573 (1974), Justice Brennan expressed the view of a majority of his brethren that in the new non-statutory general maritime law action for wrongful death the decedent's dependents may recover damages for their loss of support, services, and society as well as funeral expenses. By including loss of society as compensable damage the court disregarded the provisions of both the Federal Death on the High Seas Act, 46 USCA, § 761 et seq., and of various state death statutes which limit beneficiary damages to pecuniary loss. It chose to follow the wording of 27 other state wrongful-death statutes permitting recovery for loss of society. It added that "in any event, our decision is compelled if we are to shape the remedy to comport with the humanitarian policy of the maritime law to show 'special solicitude' for those who are injured within its jurisdiction." (But this "special solicitude" is not available in death cases originating on navigable waters outside the territorial waters of the United States. There the directives of Congress control and limit death damages to the pecuniary loss provided for in the Death on the High Seas Act. See Mobil Oil Corp. v. Higgenbotham, Admr., 436 US 618, 625 (1977)).

The schedule of beneficiaries to be compensated in non-statutory maritime death cases has not yet been reviewed by the United States Supreme Court. But broad hints have come down as to who can be so listed. Thus in Gaudet, supra, it is stated that the shape of this judge-made remedy must be guided by the maritime law principle "...that 'certainly it better becomes the humane and liberal character of proceedings in admiralty to give than to withhold the remedy when not required to withhold it by established and inflexible rules'..." (page 583). Further, in Gaudet the court spoke repeatedly of the decedent's dependents as such beneficiaries (see pages 573 and 583 for example). And in Higgenbotham, supra, the court said that when considering subsidiary issues such as the schedule of beneficiaries "...DOHSA (Death on the High Seas Act) should be the courts' primary guide as they refine the non-statutory death remedy, both because of the interest in uniformity and because Congress' considered judgment has great force in its own right..." (page 624). That Act names as beneficiaries certain relatives and dependent relatives of decedent.

All of the above leads this court to the firm conclusion that the provisions of the Virginia wrongful death statute shall no longer apply to cases involving the death of non-seaman persons upon the territorial waters of that state, that the non-statutory general maritime law controls instead, that such maritime law uniformity requires both that the schedule of beneficiaries be the same whether the death occurs in the waters of Virginia or North Carolina or

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California or Alaska and that such beneficiaries be the same whether death takes place inside or outside the territorial waters of a particular state. Congress having declared that the wife, husband, parent, child, dependent relative of a person killed outside a state's territorial waters shall be the exclusive beneficiaries of any wrongful death benefits, this court now holds that the same relatives shall likewise be the exclusive beneficiaries of any such benefits derived from a death upon a state's territorial waters.

It further holds that a lawful wife, lawful husband, blood parent, legitimate child, illegitimate child, and adopted child are all beneficiaries automatically and that step-parents, step-children, and others similarly situate may qualify as dependent relatives by means of factual evidence. For "relative" means a person connected with another by either blood or affinity (the connection existing, in consequence of marriage, between each of the married persons and the kindred of the other). Black's Law Dictionary, 3rd Edition. But live-in "wives" and "husbands" or bigamous mates do not qualify. Bell v. Tug Shrike, 332 F2d 330 (4th Cir. 1964). McPherson v. S/S South African Pioneer, 321 F. Supp. 42,49 (ED Va. 1971); Ford v. American Original Corp., et al., 475 F. Supp. 10 (ED Va. 1979). Illegitimate children do so qualify. Middleton v. Luckenbach SS Co., 70 F2d 326 (2nd Cir. 70 F2d 326, 934p5; Mungin, Admr. v. Calmar Steamship Corp., 342 F. Supp. 479; also see Carroll v. Sneed, 211 Va. 640 (Va. 1971) and Withrow v. Edwards, 181 Va. 344 (Va. 1943).

Because the status of Kay J. Brown and of Timothy Earl Hoggard as beneficiaries has been contested, those questions will be now considered.

The uncontradicted evidence is that Kay J. Brown has been married three times. Her first marriage was to Thomas Gilbert Johnson, Jr. on December 28, 1956. They were divorced in Chesapeake, Virginia, a final decree being entered there on October 22, 1964. She then married Cedrick Earl Hoggard on October 31, 1964, in Elizabeth City, North Carolina. To them was born Timothy Earl Hoggard on December 4, 1964. That marriage was terminated by the drowning death of Cedrick Earl Hoggard on August 4, 1965. Then on June 10, 1966, she again was married, this time to Edward Carol Brown. They lived together as man and wife until his death on March 17, 1975. She bore him a son, Ronnie Edward Brown, born December 15, 1968. A child had been born to Edward C. Brown during his previous marriage, that being Patricia Ann Brown, born July 9, 1962.

The court finds that Kay J. Brown was and is the lawful wife and widow of Edward Carol Brown. Her marriage to Cedrick Earl Hoggard

October 31, 1980

was a lawful one, though they were married only nine days after her divorce from Thomas Gilbert Johnson, Jr. became final. And Hoggard had died before she married Edward Carol Brown.

Turning to Timothy Earl Hoggard, he is unquestionably the blood son of Kay J. Brown by her then husband Cedrick Earl Hoggard. He resided with and was raised by his parents until Cedrick Earl Hoggard was drowned. Parental responsibility for Timothy's upbringing was assumed by his mother until she married again. From that time on Timothy resided with and was raised by his mother and by his step-father Edward Carol Brown and partly supported by him. Though Timothy was never adopted by his step-father, as step-son in this case he is declared to occupy the status of decedent's dependent relative.

There are then four beneficiaries entitled to share the proceeds of this settlement: Kay J. Brown, decedent's lawful wife and now widow; Timothy Earl Hoggard, step-son of decedent and his dependent relative; Ronnie Edward Brown, his natural son; and Patricia Earl Brown, his natural daughter.

We come now to the final question which is the value of those shares to the four beneficiaries.

The uncontradicted evidence is that from the time her parents were divorced Patricia Ann Brown lived exclusively with her mother in North Carolina. (When she was twelve she elected not to live with her father.) By a court order entered there, Edward C. Brown was directed to pay \$7.50 a week toward her financial support. This he did until around the middle of 1967, when for financial reasons he stopped paying anything. These payments were never resumed. No other financial support or other material benefits were ever thereafter provided Patricia Ann Brown by her father before his death in 1975. He visited with her briefly on infrequent occasions when in North Carolina to see his own parents. But such visits were not in her home there. And they averaged once or twice a year. She once visited him in Virginia by going to his brother's house in Chesapeake. She last talked with her father when she called him by telephone a year before he died. That he loved Patricia and was proud of her is unquestioned.

Having lost no financial contributions by her father's death, Patricia is entitled to no award for loss of support. Since her father provided her with little in the way of nurture, training, education, and guidance as she grew toward maturity, only a nominal award can be made for the loss of her father's services caused by his death. But since "society" includes the mutual benefits of love,

October 31, 1980

affection, care, attention, companionship, comfort, and protection, a reasonable award should be allowed her for the loss of society caused by his death. Patricia was almost fourteen years old when her father died. He was then thirty years of age, had a life expectancy of 40.9 years (Exhibit 6 - Va. Code § 8.01-419). Her loss of services is valued at \$1000.00. Her loss of society is valued at \$6000.00.

Timothy Earl Hoggard came into his step-father's household on June 10, 1966, when the marriage of his mother to Edward C. Brown took place. He remained there until his step-father died on March 17, 1975. Timothy was then eleven years of age. That he lost financial support by his step-father's death is unquestioned. His necessities such as food, clothing, shelter, school expenses, spending money, and the like were furnished by his step-father, except that Timothy's monthly social security check of \$115.00 went toward the whole family's bills. All of Edward C. Brown's earnings went toward the family's monthly expenses also. No savings were possible from either source of income. Mr. Brown's take-home pay in 1974 amounted to \$11,382.10 (Exhibit P 10). Until his death on March 17, he took home pay totaling \$2,794.25 (Exhibit P 8). Since this amount represented two and one-half months work, it can be estimated that Brown would have taken home \$13,420.00 during the full year 1975. Brown had worked as a welder, both 3rd and 1st class, a shipfitter 1st class, and a leadingman. He was working as a supervisor when he died. According to the evidence he was a responsible and constant worker. Raises in take-home pay on an annual basis could be anticipated which the court fixes at 8% per year.

Timothy will be eighteen years old on December 4, 1982. His loss of support is valued at \$4340.00 (reduced because of his monthly contribution of the \$115.00 social security check).

Ronnie Edward Brown was seven years old when his father died. Ronnie was a member of that household all of those years. All of his financial support came from Edward C. Brown. Ronnie will be eighteen years of age on December 15, 1986. His loss of support is valued at \$22000.00.

Both boys were helped by Edward C. Brown with their school work. He fished with them, played ball with them, did other things with them. He treated both boys equally in all respects. Ronnie being older was in the Boy Scouts and his step-father took an interest in these activities. This loss of services is valued at \$7000.00 for Timothy and \$11000.00 for Ronnie.

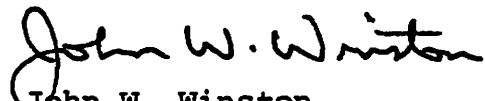
October 31, 1980

Mutual love and affection existed between the boys and their father/step-father. With that went the care and attention, companionship, comfort and protection that comprise "society." That loss is valued at \$20000.00 for Timothy and the same for Ronnie.

Kay J. Brown was a faithful wife to Edward C. Brown. That he performed his expected duties as her husband is unquestioned. He loved her, provided her with a home and other necessities within his means, gave her care and attention. Her loss of support, services, and society is valued at the balance of the settlement fund available after she is repaid the funeral expenses she incurred amounting to \$1508.60. That balance (less those funeral expenses) is \$172,002.15.

Counsel for the Administratrix is requested to submit a proposed decree making the distribution as ordered.

Very truly yours,


John W. Winston
Judge

JWW:se

cc: William B. Eley, Esquire
John B. King, Jr., Esquire

P.S. See attachment.

SUMMARY OF DISTRIBUTION

Net Settlement Amount for Distribution

\$264,850.75

Less Distribution To:

Patricia Ann Brown

(1) Loss of Support	\$ 0
(2) Loss of Services	1,000.00
(3) Loss of Society	6,000.00
— (\$150 for 40 years)	
Total	<u>\$ 7,000.00</u>

Timothy Earl Hoggard

(1) Loss of Support	\$ 4,340.00
(\$2,000 - 1,380 = 620 for 7 years)	
(2) Loss of Services	7,000.00
(\$1,000 for 7 years)	
(3) Loss of Society	20,000.00
— (\$500 for 40 years)	
Total	<u>\$31,340.00</u>

Ronnie Edward Brown

(1) Loss of Support	\$22,000.00
(\$2,000 for 11 years)	
(2) Loss of Services	11,000.00
(\$1,000 for 11 years)	
(3) Loss of Society	20,000.00
— (\$500 for 40 years)	
Total	<u>\$53,000.00</u>

Kay J. Brown

(1) Funeral expenses	\$ 1,508.60
(2) Loss of Support, services and society	172,002.15
Total	<u>\$173,510.75</u>

TOTAL DISTRIBUTION

\$264,850.75

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NORFOLK
on the 15th day of January 1981
KAY J. BROWN, Administratrix of the
Estate of EDWARD CAROL BROWN, deceased

Plaintiff

AT LAW NO. L 76 1918

v.

ALLIED TOWING CORPORATION

Defendant

O R D E R

*Entered
1-15-81*

This matter stands upon the motion of Kay J. Brown, Administratrix of the Estate of Edward Carol Brown, deceased, for an Order apportioning to the decedent's dependents, after attorney's fees and costs, the net proceeds of the \$400,000.00 settlement approved by this Court on July 21, 1980.

After appointing guardians ad litem for those claiming as minor dependents of the decedent, the Court heard evidence, the arguments of counsel and reviewed the written memoranda of law filed on behalf of the respective claimants. The Court thereafter issued its letter opinion dated October 31, 1980, which is incorporated by reference as if restated in full herein.

Therefore, pursuant to the letter opinion of October 31, 1980, it is ORDERED, ADJUDGED and DECREED:

1. There are four persons entitled to share the proceeds of this settlement: Kay J. Brown, decedent's lawful wife and now widow; Timothy Earl Hoggard, natural child of Kay J. Brown, and stepson of decedent and his dependent relative; Ronnie Edward Brown, his natural son; and Patricia Ann Brown, his natural daughter.

Kay J. Brown, funeral expenses	1,508.60
Kay J. Brown, as widow	172,002.15
Ronnie Edward Brown	53,000.00
Timothy Earl Hoggard	31,340.00
Patricia Ann Brown	7,000.00

Total Distribution	\$264,850.75
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2. The Court awards as attorney's fees, the sum of \$350.00 to Anthony L. Montagna for legal service as guardian ad litem for the infant beneficiary Timothy Earl Hoggard; and a like sum of \$350.00 to Wiley G. Gary for legal services as guardian ad litem for the infant beneficiary Ronnie Edward Brown. These sums are to be paid out of the gross amounts awarded to Ronnie Edward Brown and to Timothy Earl Hoggard.

It appearing to the Court that by prior court order, the net settlement funds have been deposited in interest bearing accounts; any interest earned to the date of actual distribution of the settlement after payment of the approved fees for the guardians ad litem shall be apportioned pro rata in accordance with each beneficiaries' percentage share of the total amount for distribution.

It further appearing that Timothy Earl Hoggard and Ronnie Edward Brown are still minors, it is ORDERED that the sums to which they are entitled shall be paid, upon her proper qualification to Kay J. Brown, as guardian of their respective estates, to be invested and used for the benefit of said minors according to law until they become of legal age. Bond is fixed at Sixty Thousand (\$60,000.00) Dollars, with surety in the case of Ronnie Edward Brown and at Thirty ^{Five} Thousand ^(35,000.00) (\$30,000.00) Dollars with surety in the case of Timothy Earl Hoggard.

SMITH AND OWENS
ATTORNEYS-AT-LAW
NORFOLK, VIRGINIA

(changed)
by
Judge
Houston
98

It is further ORDERED that the transcripts of the testimony taken on July 7, 1980, of Kay J. Brown and Patricia Ann Brown, the only witnesses to testify in this proceeding, be, and they hereby are, made a part of the record in this matter.

Distribution having now been Ordered and it appearing to the Court that nothing remains to be done in this cause, this matter is dismissed with prejudice.

Enter
On the 15th day of January 1981

John W Winston, Judge

WE ASK FOR THIS:

A COPY, TESTE: HUGH L. STOVALL, CLERK
BY, *Hugh L. Stovall*, D.C.

Alan P. Owens, Counsel for Plaintiff

Anthony L. Montagna, guardian ad litem
for Timothy Earl Hoggard

Wiley G. Gary, guardian ad litem
for Ronnie Edward Brown

SEEN AND OBJECTED TO:

S. Miles Dumville
S. Miles Dumville
James A. Howard, /counsel for
Patricia Ann Brown

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK
on the 29th day of January, 1981

KAY J. BROWN, Administratrix :
of the Estate of EDWARD
CAROL BROWN, deceased, :

Plaintiff, :

v. : AT LAW NO. L-76-1918

ALLIED TOWING CORPORATION, :

Defendant. :

ORDER

Upon motion of Patricia Ann Brown, by counsel, and for good cause shown, the Order entered by the Court in this matter on January 15, 1981, is hereby amended by adding thereto the following language, to be inserted immediately preceding the last paragraph of said Order:

"It further appearing to the Court that at the time this proceeding was instituted, Patricia Ann Brown was a minor under the age of eighteen (18) years; that James A. Howard, the Court's duly appointed guardian ad litem, has heretofore represented the interest of Patricia Ann Brown in this proceeding; that during the pendency of this proceeding, to-wit: on July 9, 1980, Patricia Ann Brown reached the age of eighteen (18) years; and that Patricia Ann Brown, having become an adult, should therefore be made a party to this proceeding and that she does consent to becoming a party;

"It is accordingly ADJUDGED, ORDERED, and DECREED that Patricia Ann Brown be, and she hereby is, made a party to this cause."

In all other respects, the Order of January 15, 1981, is hereby ratified and of full force and effect.

ENTER:

Morris B. Gutterman, Judge


Judge


A COPY, TESTE: HUGH L. STOVAL, CLERK
BY, *[Signature]*, D.C.

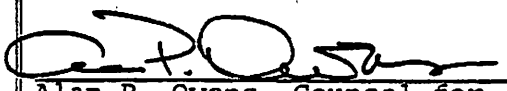
WE ASK FOR THIS:


Counsel for Patricia Ann
Brown

SEEN:


Anthony L. Montagna, guardian
ad litem for Timothy Earl
Hoggard


Wiley G. Gary, guardian ad
litem for Ronnie Edward Brown


Alan P. Owens, Counsel for
Plaintiff

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NORFOLK
On the ____ day of January, 1981

KAY J. BROWN, Administratrix :
of the Estate of EDWARD :
CAROL BROWN, deceased, :

Plaintiff, :

v. : AT LAW NO. L-76-1918

ALLIED TOWING CORPORATION, :

Defendant. :

NOTICE OF APPEAL

Now comes Patricia Ann Brown, by counsel, and notes her
appeal from the Order entered herein on the 15th day of January,
1981.

Inasmuch as all transcripts, exhibits, and other incidents
of the case have heretofore been filed, no transcript, statement
of facts, testimony, or other incidents of the case will hereafter
be filed.

PATRICIA ANN BROWN

By SMD
Of Counsel

James A. Howard
S. Miles Dumville
Breedon, Howard & MacMillan
1700 First Virginia Bank Tower
Norfolk, Virginia 23510

I hereby certify that on the 30th day of January, 1981, true
copies of the foregoing Notice of Appeal were mailed to Alan P.
Owens, Esquire, Smith & Owens, Post Office Box 3646, Norfolk,
Virginia, 23514, attorney for Kay J. Brown; Anthony L. Montagna,
Jr., Esquire, Montagna & Copeland, 5291 Greenwich Road, Virginia
Beach, Virginia, 23462, guardian ad litem for Timothy Earl
Hoggard; Wiley G. Gary, Esquire, Post Office Box 3503, Norfolk,
Virginia, 23514, guardian ad litem for Ronnie Edward Brown;
William B. Eley, Esquire, Eley, Rutherford & Leafe, Post Office

LAW OFFICES
BREEDON, HOWARD
AND MACMILLAN

Box 3686, Norfolk, Virginia, 23514, attorney for Allied Towing Corporation; and to John B. King, Jr., Esquire, Vandeventer, Black, Meredith & Martin, 2050 Virginia National Bank Building, Norfolk, Virginia, 23510, attorney for Allied Towing Corporation.

SMD

Attorney

LAW OFFICES
BREEDEN, HOWARD
AND MACMILLAN

ASSIGNMENTS OF ERROR

1. The trial court erred in refusing to grant Patricia Ann Brown any recovery for loss of support.

2. The trial court erred in awarding Patricia Ann Brown a disproportionately small amount for loss of society, said award being over three times less than the amount awarded to any other claimant.

3. The trial court erred in awarding Patricia Ann Brown a disproportionately small amount for loss of services, said award being seven times less than the amount awarded to any other claimant.

4. The trial court erred in awarding any amount to the son of decedent's widow by one of her prior marriages.