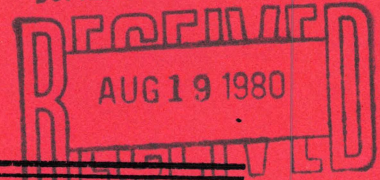


223 Va 518

CLERK
SUPREME COURT OF VIRGINIA



RICHMOND, VIRGINIA

IN THE
Supreme Court of Virginia
AT RICHMOND

RECORD NO, 800307

NATIONAL AIRLINES, INC.,

.....Appellant

v.

KEVIN P. SHEA
and
DIANA SHEA,

.....Appellees

JOINT APPENDIX

James C. Howell
WILLCOX, SAVAGE, LAWRENCE,
DICKSON & SPINDLE, P.C.
1800 Virginia National
Bank Building
Norfolk, Virginia 23510

KIRKLAND & ELLIS
1776 "K" Street, N.W.
Washington, D. C. 20006

Counsel for Appellant

Warren H. McNamara, Jr.
133 Kings Way
P. O. Box 310
Hampton, Virginia 23669

Counsel for Appellees

TABLE OF CONTENTS

APPENDIX
PAGES

1. MOTION FOR JUDGMENT DATED JUNE 22, 1979	1
2. MOTION TO SET ASIDE DEFAULT JUDGMENT WITH EXHIBITS ATTACHED FILED OCTOBER 16, 1979	1A-10
3. ACTION TO SET ASIDE DEFAULT JUDGMENT WITH EXHIBITS ATTACHED FILED OCTOBER 16, 1979	11-21
4. ORDER FILED OCTOBER 16, 1979	22
5. BILL FOR INJUNCTION AGAINST ENFORCEMENT OF DEFAULT JUDGMENT FILED OCTOBER 16, 1979	23-26
6. EXECUTED NOTICES OF APPEAL TO CIRCUIT COURT FILED OCTOBER 19, 1979	27-30
7. FIERI FACIAS AND PROOF OF SERVICE FILED OCTOBER 19, 1979	31-32
8. NOTICE OF HEARING TO SET ASIDE DEFAULT JUDGMENT FILED OCTOBER 19, 1979	33
9. ORDER FILED OCTOBER 25, 1979	34-35
10. ORDER FILED NOVEMBER 30, 1979	36-37
11. NOTICE OF APPEAL	38
12. NOTICE OF TENDERING OF TRANSCRIPT FILED DECEMBER 27, 1979.....	39
13. ASSIGNMENTS OF ERROR	40
14. TRANSCRIPT OF HEARING BEFORE THE HONORABLE NELSON T. OVERTON, JUDGE, ON NOVEMBER 30, 1979	
a) Proceedings	41-43
b) Testimony of Thomas W. Kirby	44-60
c) Testimony of Warren H. McNamara, Jr.	61-68
d) Testimony of Kevin P. Shea	69-75
e) Discussion between Court and Counsel	75-97
15. APPELLANT'S EXHIBIT 1 (Various Documents)	98-103

VIRGINIA: IN THE GENERAL DISTRICT COURT FOR THE CITY OF
HAMPTON, CIVIL DIVISION

MOTION FOR JUDGMENT

TAKE NOTICE that on the 12th day of July, 1979, at 2:00 p.m., or
as soon thereafter as the matter may be heard, the above Plaintiffs will move
the aforesaid court for judgment against the above Defendant in the sum of
FIVE THOUSAND DOLLARS, ~~(\$5,000.00)~~ for ~~punitive damages and losses~~ incurred
on June 3, 1979.

DIANA SHEA
KEVIN P. SHEA

By: Wm H Mann
OF Counsel

I hereby certify that I mailed a true copy of the foregoing to the
above defendant at the above address on the 22 day of June, 1979.

Wm H Mann

Connamara and Shea
Attorneys at Law
133 King's Way
P. O. Drawer 310
Hampton, Virginia 23669
(804) 722-9879

Judgment is granted the Plaintiff for the
sum of \$5000.00 on Damages with 8%
Interest from 7-26-79 and \$ 6.00 costs.
Given under my hand this 20 day of July 1979.

J H Wilson
Judge
General District Court
Civil Division
Hampton, Va.

8-28-79
a bot.

MOTION TO SET ASIDE DEFAULT JUDGMENT

NOW COMES the Defendant, by counsel, pursuant to Va. Code Ann. §§ 8.01-428 A and sets forth the following:

1. On or about July 12, 1979, Warren H. MacNamara, Esquire, on behalf of the Plaintiffs, filed a Motion for Judgment herein praying for judgment against Defendant in the amount of \$5,000.00 "for punitive damages and losses incurred on June 3, 1979." Said Motion was set for hearing on July 12, 1979. The claim had to do with Plaintiffs' alleged loss of luggage while flying from the Bahama Islands to Hampton.

2. Defendant retained the law firm of Kirkland and Ellis, 1776 King Street, N.W. Washington, D.C. 20006, to protect its interests in the subject matter.

3. On July 5, 1979, Mr. MacNamara agreed with Tom Kirby of Kirkland and Ellis to continue the matter for two weeks pending an investigation. See copy of letter dated July 5, 1979 attached hereto as Exhibit "A". Pursuant to said agreement, the matter was continued to July 26, 1979.

4. Investigation revealed that Defendant had several substantial defenses to the Motion for Judgment, and during a telephone conversation between Mr. MacNamara and Mr. Kirby on July 18, 1979, Mr. MacNamara, acting as attorney and agent for the Plaintiffs agreed to continue the matter further, so that he could review certain material to be provided him by Mr. Kirby. Mr. MacNamara further agreed that if, upon review of said material with his clients, he decided to proceed with the law suit, he would notify Defendant and give Defendant time to

retain local counsel and make its defense. Said material was provided with Mr. Kirby's letter of July 20, 1979, a copy of which is attached hereto as Exhibit "B".

5. Contrary to the agreement with Defendant's attorney, the matter was not continued. On July 26, 1979, without any notice to Defendant, a Default Judgment against Defendant in the amount of \$5,000.00 was obtained.

6. Neither Plaintiffs nor their attorney notified Defendant that the default judgment had been obtained. Although Mr. Kirby attempted by telephone call to Mr. MacNamara's office to determine the status of the matter, he was not informed of the judgment.

7. On August 9, 1979, Mr. Kirby wrote Mr. MacNamara requesting that Mr. MacNamara advise him of the status of the matter. A copy of said letter is attached hereto as Exhibit "C". Said letter was never responded to.

8. On August 30, 1979, Defendant was advised that an Order of Execution had been issued by the General District Court of the City of Hampton to the Sheriff of the City of Norfolk, directing the Sheriff to levy on the goods and chattels of Defendant located in the City of Norfolk, Virginia.

9. Certain goods and chattels of the Defendant were levied upon pursuant to said Order of Execution, and a forthcoming bond in the amount of \$10,000.00 was given in connection therewith by the Defendant. A copy of said forthcoming bond is attached hereto as Exhibit "D".

10. The actions of Plaintiffs in breaching their agreement to continue the matter, and in deliberately failing to advise Defendant's attorney of the status of the matter or of their wrongfully obtained default judgment until after the time for filing an appeal or Motion to Reconsider said Judgment had passed, constitute a fraud upon the Court or, in the alternative, constitute circumstances under which this Court should set said default judgment aside.

WHEREFORE, Defendant prays for the following relief:

(a) That the judgment obtained on July 26, 1979 in the above captioned matter be vacated and set aside.

(b) That the above captioned matter be set down for hearing on the merits at the earliest agreeable time.

NATIONAL AIRLINES

By 

Of Counsel

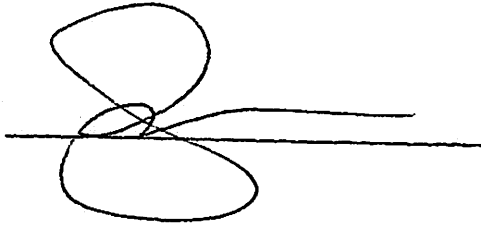
Willcox, Savage, Lawrence, Dickson
& Spindle, P.C.
1800 Virginia National Bank Building
Norfolk, Virginia 23510

NOTICE

Take notice that the foregoing Motion will be brought on for hearing before the General District Court for the City of Hampton, Civil Division at 2:00 p.m. on Thursday, October 4, 1979, or as soon thereafter as counsel may be heard.

CERTIFICATE

This is to certify that a copy of the foregoing Motion and Notice was mailed to counsel for the Plaintiffs this 25 day of September, 1979.

A handwritten signature, possibly reading "S. J.", is written over a horizontal line.

KIRKLAND & ELLIS

Washington Office
Area Code 202 857-5000

1776 K Street, N.W.
Washington, D.C. 20006

July 5, 1979

To Call Writer Direct
202 857- 5062

Chicago Office
Area Code 312 851-2000
Telex 25-4361
200 E. Randolph Drive
Chicago, Ill. 60601

W. H. McNamara, Esq.
McNamara and Shea
133 King's Way
P.O. Drawer 310
Hampton, VA 23669

Re: Shea v. National Airlines - General District
Court for the City of Hampton

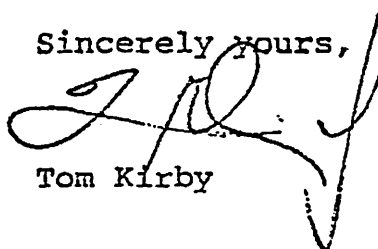
Dear Mr. McNamara:

Thank you for your courtesy in talking with me on July 5, 1979. During that conversation, we agreed that the July 12 date set for response to your motion for judgment would be extended for two weeks, and that you would notify the court of that extension. We also agreed that you would provide me with some basic information concerning the Sheas' claim, which I understand relates to luggage lost after their return from Nassau.

Upon receipt of your letter, we will conduct an investigation and, if necessary, retain local counsel. If local counsel is retained, you will be informed promptly.

Again, thank you for your cooperation.

Sincerely yours,



Tom Kirby

TK:bas

cc: J. Lindsey

EXHIBIT A

July 20, 1979

Warren H. McNamara, Esq.
McNamara and Shea
133 King's Way
P. O. Drawer 310
Hampton, Virginia 23669

Re: Shea v. National Airlines - General
District Court for the City of Hampton

Dear Mr. McNamara:

Thank you for your letter of July 11 and for returning my call on July 18. Based upon the information you provided, we have been able to confirm that the Sheas did not travel on National at all during the flight on which their luggage was lost. Instead, the computer shows that they flew through Baltimore, using Eastern and United.

Since this was an international flight, it was covered by the Warsaw Convention. I have attached a copy of this for your reference. You will note that under Article 30(3), liability for lost luggage rests on the carriers who actually performed the transportation, in this case United, Eastern and possibly Bahamasair.

As I explained, the carriers have mutually agreed that lost luggage adjustments are handled by the last carrier in the chain, in this case United. You will note that Article 30(c) expressly gives a cause of action against "the last carrier." According to United's computer, the Sheas have filed a claim with United for a red suit bag bearing tag #14-72-96 which claim is recorded as SNO #0753. United has mailed the Sheas a claim form and, upon receipt of the information requested there, appears ready to make a reasonable settlement. In that regard, however, I call your attention to the limitations of liability set out in Article 22(2).

EXHIBIT B

Warren H. McNamara, Esq.
July 20, 1979
Page Two

There are many other reasons why the Sheas have no claim against National, which never carried their bags. For example, no prompt claim was made in writing to National, nor were the other terms of National's tariff concerning lost luggage complied with. I have attached pages from a recent pleading citing numerous cases holding that such tariff provisions have an effect equivalent to law.

I hope that this letter and the Warsaw Convention provide you with sufficient grounds to drop your suit against National. If so, please let me know. If not, I understand that you will grant me a further two-week extension on which to respond to your Motion for Judgment.

Thank you for your courtesy.

Sincerely yours,

Tom Kirby

Encl.

5062

August 9, 1979

Warren H. McNamara, Esq.
McNamara and Shea
133 King's Way
P.O. Drawer 310
Hampton, Virginia 23669

Re: Shea v. National Airlines - General
District Court for the City of Hampton

Dear Mr. McNamara:

In late July we agreed to extend the date on which National must respond to your outstanding Motion for Judgment pending your decision as to whether or not it should be withdrawn. I have not heard from you since, and your secretary was unable to give me a status report when I called.

I presume that you still have the matter under consideration and will advise me when you reach a decision. If you elect to proceed, we will retain local counsel and make the prompt response to which you are entitled. In the meantime, however, I understand that the case will remain in abeyance. As we discussed, since National did not ever carry the Sheas on their journey home, it has a number of absolute defenses which it does not wish to lose by default.

Thank you for your continuing courtesy in this matter. I look forward to hearing from you.

Sincerely yours,

Tom Kirby

TWK:smm

EXHIBIT C

FORTHCOMING BOND

Know All Men by These Presents, that we National Airlines By John Y. Pearson,
Jr., Attorney in fact and Aetna Casualty & Surety Co.

are held and firmly bound unto Kevin P. Shea & Diana Shea
in the sum of \$ 10,000.00 Dollars to the payment whereof

well and truly to be made to the said Kevin P. Shea & Diana Shea aforesaid

we bind ourselves and our heirs jointly and severally, firmly, by these presents. And we hereby
waive the benefit of our homestead exemptions, respectively, as to this obligation. Sealed with our
seals and dated this 31st day of August Nineteen Hundred and 79

The condition of the above obligation is such that whereas Kevin P. Shea & Diana Shea
obtained ~~an Order of Execution~~ on the 30th day of August 19 79, from
an Order of execution
General District Court Hampton directed to CHARLES H. LEAVITT,
Sheriff, of the City of Norfolk, Virginia, for taking the goods and chattels of National Airlines
to satisfy the said Order of execution

the sum of \$ 5,000.00 Dollars, and the costs.

And whereas Hugh L. Morse Deputy for the said CHARLES H. LEAVITT,
Sheriff, by virtue of the said Order of execution has levied upon the
following property to satisfy the same, to-wit: Goods and chattels

And whereas National Airlines
claims the said goods and chattels so levied on as her/his property, and desires that the sale of the
said property be duly suspended. And whereas the said National Airlines
desires the said property to remain at
her/his risk in the possession of National Airlines

in whose possession it was immediately before the said levy, and has tendered the above bound
Kevin P. Shea & Diana Shea as security for the forthcoming

thereof as hereinafter provided;

Now, if the said property shall be forthcoming at such day and place of sale as may be here—
after lawfully appointed to satisfy any judgment that may be recovered by the plaintiff by virtue of
the said attachment, then the above obligation to be void, otherwise to remain in full force and vir—
tue.

National Airlines by
..... *W. J. Pansel* atty-in-fact (SEAL)
..... *W. J. Pansel* (SEAL)
..... Attorney In Fact The Acme Casino (SEAL)
..... and Surety Company (SEAL)
..... (SEAL)

EXHIBIT D

ACTION TO SET ASIDE DEFAULT JUDGMENT

NOW COMES the Complainant, by counsel, pursuant to
Va. Code Ann. §§ 8.01-428 C and sets forth the following:

1. Complainant is a foreign corporation which does
business in Virginia.

2. On or about July 12, 1979, Warren H. MacNamara,
Esquire, on behalf of the Respondents, filed a Motion for
Judgment against Complainant in this Court praying for judgment
against Complainant in the amount of \$5,000.00 "for punitive
damages and losses incurred on June 3, 1979." Said Motion was
set for hearing on July 12, 1979. A copy of said Motion for
Judgment is attached hereto as Exhibit "A".

3. Complainant retained the law firm of Kirkland and
Ellis, 1776 King Street, N.W. Washington, D.C. 20006, to
protect its interests in the subject matter.

4. On July 5, 1979, Mr. MacNamara agreed with Tom
Kirby of Kirkland and Ellis to continue the matter for two
weeks pending an investigation. See copy of letter dated July
5, 1979 attached hereto as Exhibit "B". Pursuant to said
agreement, the matter was continued to July 26, 1979.

5. Investigation revealed that Complainant had
several substantial defenses to the Motion for Judgment, and
during a telephone conversation between Mr. MacNamara and Mr.
Kirby on July 18, 1979, Mr. MacNamara, acting as attorney and
agent for the Respondents agreed to continue the matter
further, so that he could review certain material to be
provided him by Mr. Kirby. Mr. MacNamara further agreed that

if, upon review of said material with his clients, he decided to proceed with the law suit, he would notify Complainant and give petitioner time to retain local counsel and make its defense. Said material was provided with Mr. Kirby's letter of July 20, 1979. A copy of which is attached hereto as Exhibit "C".

6. Contrary to the agreement with Complainants' attorney, the matter was not continued. On July 26, 1979, without any notice to Complainant, a Default Judgment against Complainant in the amount of \$5,000.00 was obtained.

7. Neither Respondents nor their attorney notified Complainant that the default judgment had been obtained. Although Mr. Kirby attempted by telephone call to Mr. MacNamara's office to determine the status of the matter, he was not informed of the default judgment.

8. On August 9, 1979, Mr. Kirby wrote Mr. MacNamara requesting that Mr. MacNamara advise him of the status of the matter. A copy of said letter is attached hereto as Exhibit "D". Said letter was never responded to.

9. On August 30, 1979, Complainant was advised that an Order of Execution had been issued by this Court to the Sheriff of the City of Norfolk, directing the Sheriff to levy on the goods and chattels of Complainant located in the City of Norfolk, Virginia.

10. Certain goods and chattels of the Complainant were levied upon pursuant to said Order of Execution, and a forthcoming bond in the amount of \$10,000.00 was given in connection therewith by the Complainant. A copy of said

forthcoming bond is attached hereto as Exhibit "E".

11. The actions of Respondents in breaching their agreement to continue the matter, and in deliberately failing to advise Complainant's attorney of the status of the matter or of their wrongfully obtained judgment against Complainant until after the time for filing an appeal of or Motion to Reconsider said Default Judgment had passed, constitute a fraud upon the Court or, in the alternative, constitute circumstances under which said Default Judgment should be set aside and vacated.

WHEREFORE, Complainant prays for the following relief:

(a) That the judgment obtained on July 26, 1979 in the above captioned matter be vacated and set aside.

(b) That Respondents' Motion for Judgment against Complainant, attached hereto as Exhibit "A", be set down for hearing on the merits at the earliest agreeable time.

NATIONAL AIRLINES

By


Of Counsel

Willcox, Savage, Lawrence, Dickson
& Spindle, P.C.
1800 Virginia National Bank Building
Norfolk, Virginia 23510

NOTICE

Take notice that the foregoing Motion will be brought on for hearing before the General District Court for the City of Hampton, Civil Division at 2:00 p.m. on Thursday, October 4, 1979, or as soon thereafter as counsel may be heard.

MOTION FOR JUDGMENT

TAKE NOTICE that on the 12th day of July, 1979, at 2:00 p.m., or as soon thereafter as the matter may be heard, the above Plaintiffs will move the aforesaid court for judgment against the above Defendant in the sum of FIVE THOUSAND DOLLARS, (\$5,000.00) for punitive damages and loss incurred on June 3, 1979.

DIANA SHEA
KEVIN P. SHEA

By: Walter H. McFarara
Of Counsel

I hereby certify that I mailed a true copy of the foregoing to the above defendant at the above address on the 22 day of June, 1979.

Walter H. McFarara

McFarara and Shea
Attorneys at Law
133 King's Way
P. O. Drawer 310
Hampton, Virginia 23660
(804) 722-9379

EXHIBIT A

KIRKLAND & ELLIS

Washington Office
Area Code 202 857-5000

1776 K Street, N.W.
Washington, D.C. 20006

July 5, 1979

To Call Writer Direct
202 857- 5062

Chicago Office
Area Code 312 861-2000
Telex 25-4361
200 E. Randolph Drive
Chicago, Ill. 60601

W. H. McNamara, Esq.
McNamara and Shea
133 King's Way
P.O. Drawer 310
Hampton, VA 23669

Re: Shea v. National Airlines - General District
Court for the City of Hampton

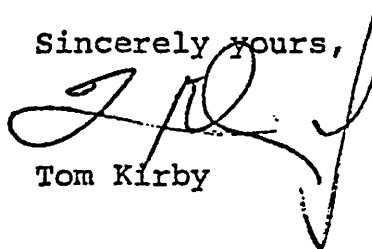
Dear Mr. McNamara:

Thank you for your courtesy in talking with me on July 5, 1979. During that conversation, we agreed that the July 12 date set for response to your motion for judgment would be extended for two weeks, and that you would notify the court of that extension. We also agreed that you would provide me with some basic information concerning the Sheas' claim, which I understand relates to luggage lost after their return from Nassau.

Upon receipt of your letter, we will conduct an investigation and, if necessary, retain local counsel. If local counsel is retained, you will be informed promptly.

Again, thank you for your cooperation.

Sincerely yours,



Tom Kirby

TK:bas

cc: J. Lindsey

EXHIBIT B

July 20, 1979

Warren H. McNamara, Esq.
McNamara and Shea
133 King's Way
P. O. Drawer 310
Hampton, Virginia 23669

Re: Shea v. National Airlines - General
District Court for the City of Hampton

Dear Mr. McNamara:

Thank you for your letter of July 11 and for returning my call on July 18. Based upon the information you provided, we have been able to confirm that the Sheas did not travel on National at all during the flight on which their luggage was lost. Instead, the computer shows that they flew through Baltimore, using Eastern and United.

Since this was an international flight, it was covered by the Warsaw Convention. I have attached a copy of this for your reference. You will note that under Article 30(3), liability for lost luggage rests on the carriers who actually performed the transportation, in this case United, Eastern and possibly Bahamasair.

As I explained, the carriers have mutually agreed that lost luggage adjustments are handled by the last carrier in the chain, in this case United. You will note that Article 30(c) expressly gives a cause of action against "the last carrier." According to United's computer, the Sheas have filed a claim with United for a red suit bag bearing tag #14-72-96 which claim is recorded as SMD #0753. United has mailed the Sheas a claim form and, upon receipt of the information requested there, appears ready to make a reasonable settlement. In that regard, however, I call your attention to the limitations of liability set out in Article 22(2).

EXHIBIT C

Warren H. McNamara, Esq.
July 20, 1979
Page Two

There are many other reasons why the Sheas have no claim against National, which never carried their bags. For example, no prompt claim was made in writing to National, nor were the other terms of National's tariff concerning lost luggage complied with. I have attached pages from a recent pleading citing numerous cases holding that such tariff provisions have an effect equivalent to law.

I hope that this letter and the Warsaw Convention provide you with sufficient grounds to drop your suit against National. If so, please let me know. If not, I understand that you will grant me a further two-week extension on which to respond to your Motion for Judgment.

Thank you for your courtesy.

Sincerely yours,

Tom Kirby

Encl.

5062

August 9, 1979

Warren H. McNamara, Esq.
McNamara and Shea
133 King's Way
P.O. Drawer 310
Hampton, Virginia 23669

Re: Shea v. National Airlines - General
District Court for the City of Hampton

Dear Mr. McNamara:

In late July we agreed to extend the date on which National must respond to your outstanding Motion for Judgment pending your decision as to whether or not it should be withdrawn. I have not heard from you since, and your secretary was unable to give me a status report when I called.

I presume that you still have the matter under consideration and will advise me when you reach a decision. If you elect to proceed, we will retain local counsel and make the prompt response to which you are entitled. In the meantime, however, I understand that the case will remain in abeyance. As we discussed, since National did not ever carry the Sheas on their journey home, it has a number of absolute defenses which it does not wish to lose by default.

Thank you for your continuing courtesy in this matter. I look forward to hearing from you.

Sincerely yours,

Tom Kirby

TWK:smm

EXHIBIT D

FORFORTHCOMING BOND

Know All Men by These Presents, that we National Airlines By John Y. Pearson,
Jr., Attorney in fact and Aetna Casualty & Surety Co.

are held and firmly bound unto Kevin P. Shea & Diana Shea
in the sum of \$ 10,000.00 Dollars to the payment whereof

well and truly to be made to the said Kevin P. Shea & Diana Shea aforesaid

we bind ourselves and our heirs jointly and severally, firmly, by these presents. And we hereby
waive the benefit of our homestead exemptions, respectively, as to this obligation. Sealed with our
seals and dated this 31st day of August Nineteen Hundred and 79

The condition of the above obligation is such that whereas Kevin P. Shea & Diana Shea
obtained ~~Writ of Habeas Corpus~~, on the 30th day of August 19 79, from
an Order of execution
General District Court Hampton directed to CHARLES H. LEAVITT,
Sheriff, of the City of Norfolk, Virginia, for taking the goods and chattels of National Airlines
to satisfy the said Order of execution

the sum of \$ 5,000.00 Dollars, and the costs.

And whereas Hugh L. Morse Deputy for the said CHARLES H. LEAVITT,
Sheriff, by virtue of the said Order of execution has levied upon the
following property to satisfy the same, to-wit: Goods and chattels

And whereas National Airlines

claims the said goods and chattels so levied on as her/his property, and desires that the sale of the
said property be duly suspended. And whereas the said National Airlines

desires the said property to remain at
her/his risk in the possession of National Airlines

in whose possession it was immediately before the said levy, and has tendered the above bound
Kevin P. Shea & Diana Shea as security for the forthcoming

thereof as hereinafter provided;

Now, if the said property shall be forthcoming at such day and place of sale as may be here—
after lawfully appointed to satisfy any judgment that may be recovered by the plaintiff by virtue of
the said attachment, then the above obligation to be void, otherwise to remain in full force and vir-
tue.

National Airlines by
W. J. Parnell atty-in-fact (SEAL)
W. J. Parnell (SEAL)
Attorney In Fact The Aetna Casualty
and Surety Company (SEAL)
(SEAL)

EXHIBIT E

O R D E R

10/4/79
Denied
J. H. Martin

This day came the Defendant, National Airlines, and the Plaintiffs, Diana Shea and Kevin P. Shea, by counsel, upon the Defendant's action to set aside default judgment, and the matter having been argued and upon due consideration of said motion by the Court, and for good cause shown,

It is ADJUDGED, ORDERED and DECREED that the judgment obtained on July 26, 1976 in the action styled "Diana Shea and Kevin P. Shea v. National Airlines" be set aside; that said Motion for Judgment filed by Plaintiffs on July 12, 1979 be set down for hearing on the merits on October ____, 1979; and that any levy made pursuant to the aforesaid judgment is hereby declared to be null and void.

Entered:

Judge

I ask for this:


Counsel for National Airlines

Seen and objected to:

Counsel for Diana Shea and
Kevin P. Shea

BILL FOR INJUNCTION AGAINST
ENFORCEMENT OF DEFAULT JUDGMENT

NOW COMES the complainant, by counsel, and sets forth the following:

1. This Court has jurisdiction and venue to grant the relief sought herein pursuant to Section 8.01-620 and 8.01-621 of the Code of Virginia as amended.
2. Petitioner is a foreign corporation licensed to do business in Virginia.
3. On July 26, 1979, respondents obtained a Default Judgment against petitioner in the General District Court of the City of Hampton, Virginia, Civil Division, in the amount of \$5,000.00.
4. On August 30, 1979, respondents obtained from said Court an Order of Execution directed to the Sheriff of the City of Norfolk, directing the Sheriff to levy on the goods and chattels of petitioner located in the City of Norfolk, Virginia.
5. Certain goods and chattels of the petitioner of a value greater than the total of said Judgment, interest and costs, were levied upon pursuant to said Order of Execution. In connection with said execution, petitioner has given a forthcoming bond in the amount of \$10,000.00. A copy of said forthcoming bond is attached hereto as Exhibit A.
6. The Default Judgment hereinabove in paragraph 3 described was obtained through fraud, accident, surprise

and other adventitious circumstances beyond the control of the complainant. Complainant is moving the General District Court of the City of Hampton, Civil Division, to vacate and set aside said Judgment on the above grounds.

7. Respondents, although fully protected by the forthcoming bond attached hereto as Exhibit A, have threatened to make further executions and levies of complainant's property at complainant's various offices around the state.

8. To allow any such further enforcement by respondents, pending complainant's opportunity to be heard and present evidence in support of its motion to vacate and set aside said Default Judgment, would cause complainant irreparable harm for which complainant has no adequate remedy at law.

WHEREFORE, complainant prays that the respondents be enjoined from taking any action whatsoever to enforce said Default Judgment, or in connection with the aforesaid forthcoming bond, for a period of ninety days, or until complainant can secure a final adjudication on its motion to vacate and set aside said Default Judgment.

NATIONAL AIRLINES

By 

Of Counsel

John Y. Pearson, Jr.
Willcox, Savage, Lawrence,
Dickson & Spindle, P.C.
1800 Virginia National Bank Building
Norfolk, Virginia 23510

FORT COMING BOND

Know All Men by These Presents, that we National Airlines By John Y. Pearson, Jr., Attorney in fact and Aetna Casualty & Surety Co.
are held and firmly bound unto Kevin P. Shea & Diana Shea
in the sum of \$ 10,000.00 Dollars to the payment whereof
well and truly to be made to the said Kevin P. Shea & Diana Shea aforesaid
we bind ourselves and our heirs jointly and severally, firmly, by these presents. And we hereby
waive the benefit of our homestead exemptions, respectively, as to this obligation. Sealed with our
seals and dated this 31st day of August Nineteen Hundred and 79

The condition of the above obligation is such that whereas Kevin P. Shea & Diana Shea
obtained ~~in execution~~ on the 30th day of August 19 79, from
an Order of execution
General District Court Hampton directed to CHARLES H. LEAVITT,
Sheriff, of the City of Norfolk, Virginia, for taking the goods and chattels of National Airlines
to satisfy the said Order of execution
the sum of \$ 5,000.00 Dollars, and the costs.
And whereas Hugh L. Morse Deputy for the said CHARLES H. LEAVITT,
Sheriff, by virtue of the said Order of execution has levied upon the
following property to satisfy the same, to-wit: Goods and chattels

And whereas National Airlines
claims the said goods and chattels so levied on as her/his property, and desires that the sale of the
said property be duly suspended. And whereas the said National Airlines
desires the said property to remain at
her/his risk in the possession of National Airlines
in whose possession it was immediately before the said levy, and has tendered the above bound
Kevin P. Shea & Diana Shea as security for the forthcoming
thereof as hereinafter provided;

Now, if the said property shall be forthcoming at such day and place of sale as may be here-
after lawfully appointed to satisfy any judgment that may be recovered by the plaintiff by virtue of
the said attachment, then the above obligation to be void, otherwise to remain in full force and vir-
tue.

National Airline by
..... *W. J. Pansel* atty-in-fact (SEAL)
..... *W. G. D...* (SEAL)
Attorney In Fact The Aetna Casualty
and Surety Company (SEAL)
..... (SEAL)

COMMONWEALTH OF VIRGINIA

SHERIFF'S DEPT.
HAMPTON VA.
1979 OCT 17 PM 4:03

Law No. 15698

In the Clerk's office of the Circuit Court of Hampton, Virginia October 17 19 79
Diana Shea
To 34 Hampton Roads Avenue Appellee
Hampton, Virginia

You are hereby notified that an appeal to the Circuit Court of Hampton, Virginia was taken on
the 11th day of October, 19 79, by National Airlines
appellant from a judgement of T.H. Wilson, II-Judge
Civil and Police Justice of the City of Hampton, Virginia, rendered by him on the 4th day of
October, 19 79, upon the trial of a Motion to Set Aside Default
Judgment issued the 28th day of September, 19 79
between said National Airlines, plaintiff
and said Diana Shea, al
by National Airlines, defendant

You are further notified that the writ tax and deposit on account of court cost required by law
to be paid when such appeal is taken, have been paid to me on the 16th day of October
19 79 and the same was docketed on the docket of our said Circuit Court on the
same day.

WITNESS, C. M. GIBSON, Clerk of said Circuit Court at the Court House this
day of October, 19 79

By

Constance M. Rogers

C. M. GIBSON, Clerk

Dep. Clerk

C. M. GIBSON, CLERK
OCT 19 1979
8:32
CIRCUIT COURT OF HAMPTON, VA.

National Airlines

Plaintiff

Executed in the City of Hampton, Va. this
18 day of Oct 1979 at
with me by depositing a true copy of the
vs.
Diana Shea, al
in person.

J. Alvin Lee, Clerk

Defendant

by:

Deputy Sheriff

and

Aetna Casualty & Surety Co.

His Surety

Notice of an Appeal taken from a Judge-
ment of the Civil and Police Justice of Hamp-
ton, Virginia, rendered in the above cause the
4th day of October, 1979, by
the Plaintiff

Executed in the City of Hampton, Virgin-
ia, by

Sergeant

\$1.25 Fee Paid Direct

COMMONWEALTH OF VIRGINIA

SHERIFF'S DEPT.
HAMPTON VA.

1979 OCT 17 PM 4:02
Law No. 15698

In the Clerk's office of the Circuit Court of Hampton, Virginia October 17 19 79
Kevin P. Shea
To 34 Hampton Roads Avenue Appellee
Hampton, Virginia

You are hereby notified that an appeal to the Circuit Court of Hampton, Virginia was taken on
the 11th day of October 19 79, by National Airlines
appellant from a judgement of T. H. Wilson, II-Judge
Civil and Probate Justice of the City of Hampton, Virginia, rendered by him on the 4th
October 19 79, upon the trial of a Motion to Set Aside Default
Judgment issued the 28th day of September 19 79
between said National Airlines, plaintiff
and said Diana Shea, al
by National Airlines, defendant

You are further notified that the writ tax and deposit on account of court cost required by law
to be paid when such appeal is taken, have been paid to me on the 18th day of October
19 79 and the same was docketed on the docket of our said Circuit Court on the
same day.

WITNESS, C. M. GIBSON, Clerk of said Circuit Court at the Court House this
day of October 19 79
By *Constance M. Rogers* Dep. Clerk
C. M. GIBSON, Clerk

C. M. GIBSON, CLERK
OCT 17 1979 AM 8:33
CITY OF HAMPTON, VA.

The within named Kevin P. Shea
not being found at his usual place of abode I
appeared for within Notice
in the City of Hampton, Va., this 18 day of
Oct 1979 in delivering
a true copy of the Diana Shea
in wife and a member of a
family over the age of 18 years old, and did
explain its purpose thereof to him.

I, Alvin Law, City Sheriff
by: [Signature]
Deputy Sheriff

National Airlines

Plaintiff

vs.

Diana Shea, et al

Defendant

and

Aetna Casualty & Surety Co.

His Surety

Notice of an Appeal taken from a Judge-
ment of the Civil and Police Justice of Hamp-
ton, Virginia, rendered in the above cause the
4th day of October, 1979, by
the Plaintiff

Executed in the City of Hampton, Virgin-
ia, by

Sergeant

\$1.25 Fee Paid Direct

The Commonwealth of Virginia,

To the Sheriff of the City of Alexandria, Greeting:

WE COMMAND YOU, That of the goods and chattels of National Airlines 206 N. Washington St., Alexandria, Virginia in your bailiwick, you cause to be made the sum of \$5,000.00 with interest thereon at the rate of 8 per centum per annum, from the 26th day of July, 1979 till paid, and ---% attorney's fee, which said amount Kevin P. Shea & Diana Shea did on the 26th day of July, 1979, in our General District Court for the City of Hampton recover against the said National Airlines as well for a debt as interest thereon; also \$6.00 which to the said Kevin P. & Diana Shea in the same Court were adjudged for Their costs by them about their suit in that behalf expended, whereof the said National Airlines is convict, as appears of record. And how you shall have executed this writ make known within 60 days in the Clerk's office of our said Circuit Court. And have then there this writ.

WITNESS, C. M. Gibson Clerk of our said Court at the Courthouse, this 1st day of October, 1979, and in the 204th year the Commonwealth. C. M. Gibson, Clerk
By Quanita F. Lupton Dep., Clerk.

-25-

day of 19 at m.

MICHAEL E. NORRIS
Sheriff

by [Signature]
Deputy Sheriff

P.O. Box 178
Alexandria, Virginia 22313
(703) 750-6581



COMMONWEALTH OF VIRGINIA
OFFICE OF SHERIFF
CITY OF ALEXANDRIA, VIRGINIA

DOCKET NO. _____

National Builders

PROOF OF SERVICE

Executed by delivering a true copy of the (within/attached) process to the within named (Defendant/Individual) IN PERSON, in my City of Alexandria, Virginia, this _____ day of _____ 19 _____, at _____ : _____ m.

The within named (Defendant/Individual) could not be found at the individual's usual place of abode on the _____ day of _____, 19 _____, at _____ : _____ m. so I executed the (within/attached) process in my City of Alexandria, Virginia, by leaving a true copy of same with _____ who is a MEMBER of the (Defendant's/individual's) FAMILY and over the age of sixteen years, and by explaining its purport.

Neither the within named (Defendant/Individual) nor any person who is a member of the (Defendant's/individual's) family, and over the age of sixteen years, could be found at the (Defendant's/Individual's) usual place of abode on the _____ day of _____, 19 _____, at _____ : _____ m., so the (within/attached) process was executed on said day, in my City of Alexandria, Virginia, by leaving a true copy of all the same, in writing, POSTED on the front door of the usual place of abode.

Executed on the 9 day of Oct, 19 79 at _____ : _____ m., in the City of Alexandria, Virginia, by delivering a true copy of the (within/attached) papers to *[Signature]* in person, who is the *[Signature]* of the within named Corporation/or Department in the City of Alexandria, Virginia, in which city

the said *[Signature]* resides.

the said *National Builders* place of business is.

the principal office of the said Corporation/Department is located.

FOR: _____

The within named (Defendant/individual) could NOT be FOUND in my City of Alexandria, Virginia, after diligent search, and does not maintain a usual place of abode therein, and the (within/attached) process could not be served in my jurisdiction. This _____ day of _____, 19 _____, at _____ : _____ m.

MICHAEL E. NORRIS
Sheriff

by *[Signature]*
Deputy Sheriff

C. M. GIBSON, CLERK
1979 OCT 19 AM 11:30
BOOK # _____
CITY OF HAMPTON, VA.

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF HAMPTON

N O T I C E

TO: Diana Shea and Kevin P. Shea
c/o Warren H. McNamara, their attorney
McNamara and Shea
133 King's Way
Hampton, Virginia 23669

TAKE NOTICE that on October 25, 1979, at 9:00 a.m., or as soon thereafter as counsel may be heard, counsel for National Airlines will move the Court to Set Aside the Default Judgment obtained against it in the General District Court of the City of Hampton, Virginia by Diana Shea and Kevin P. Shea.

NATIONAL AIRLINES

By

Of Counsel

John Y. Pearson, Jr., Esquire
Willcox, Savage, Lawrence,
Dickson & Spindle, P.C.
1800 Virginia National Bank Building
Norfolk, Virginia 23510

C. M. DICKSON, CLERK
1979 OCT 19 PM 12:10
CITY OF HAMPTON, VA.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Notice was delivered to to Warren H. McNamara, McNamara and Shea, 133 King's Way, Hampton, Virginia 23669, this 19th day of October, 1979.

ORDER

This matter came on October 25, 1979, pursuant to notice to all parties, to be heard upon the Motion of National Airlines, and was argued by counsel;

Upon consideration whereof, for good cause shown, it is

ORDERED:

(a) That execution and/or levy pursuant to a certain Default Judgment obtained on July 26, 1979 in the General District Court of the City of Hampton, Civil Division, in an action styled "Diana Shea and Kevin P. Shea, Plaintiffs v. National Airlines, Defendant" be, and it hereby is, stayed and enjoined.

(b) That the sale of the property of National Airlines by the Sheriff of the City of Norfolk, Virginia, pursuant to execution and levy previously made under said Judgment, which sale is presently set for October 29, 1979 be, and it hereby is stayed and enjoined.

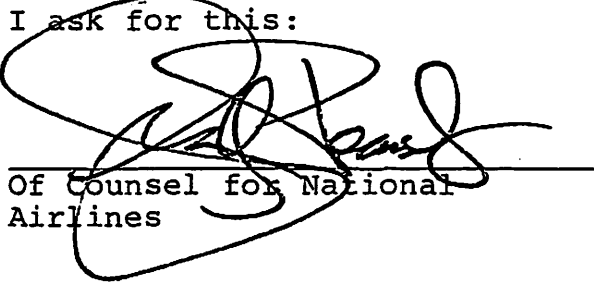
(c) That any sale of goods pursuant to any other execution and/or levy heretofore obtained pursuant to said Judgment be, and it hereby is, stayed and enjoined.


The above injunctions shall expire at 12:00 noon on December 3, 1979, unless extended or otherwise modified by further Order of the Court.

The parties are directed to file with the Court by November 8, 1979, such briefs as they deem appropriate in the matter.

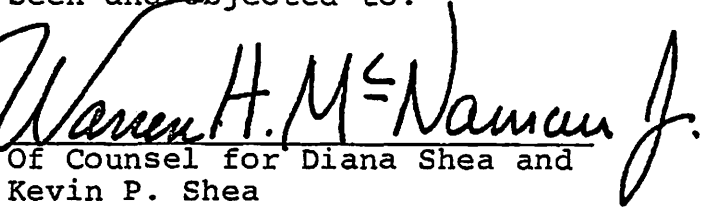
Entered this October 25, 1979

I ask for this:


Of Counsel for National
Airlines


Judge

Seen and objected to:


Of Counsel for Diana Shea and
Kevin P. Shea

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF HAMPTON
ORDER

This matter came on November 30, 1979 pursuant to notice to all parties, to be heard upon the Motion of National Airlines to set aside a certain default judgment entered against National Airlines on July 26, 1979 in the General District Court of the City of Hampton, Virginia, Civil Division, in an action styled "DIANA SHEA and KEVIN P. SHEA v. NATIONAL AIRLINES"; and upon the separate action to set aside said default judgment, styled "NATIONAL AIRLINES v. DIANA SHEA and KEVIN P. SHEA", both of which actions had been consolidated on appeal from said General District Court to the Circuit Court of the City of Hampton; upon the evidence and exhibits, and was argued by counsel;

UPON CONSIDERATION WHEREOF, for good cause shown, it is ORDERED that said motion to set aside the default judgment of July 26, 1979 is denied; and the separate action styled "NATIONAL AIRLINES v. DIANA SHEA and KEVIN P. SHEA" is dismissed; to which action of the Court counsel for National Airlines objects and excepts.

And the Court being advised that National Airlines intends to appeal the aforesaid order of the Court, it is

FURTHER ORDERED that any execution and/or levy obtained pursuant to said default judgment and any sale of goods pursuant to such execution and/or levy be, and they are hereby, stayed and enjoined. The above injunction is in effect for so long as National Airlines timely prosecutes its appeal and thereafter for so long as the matter is under

unless sooner modified, expanded or dissolved by the said Supreme Court, consideration by the Supreme Court of Virginia, The further the matter be postponed will remain in effect during the life of this corporation.

ENTER:

Walter J. Clark
Judge

DATE:

November 30, 1979

We ask for this:

Walter H. McNamee Jr.
Of counsel for Diana Shea -
and Kevin P. Shea

Seen and Objected to:

John C. McNamee
Of Counsel for
National Airlines

Done seen and read a copy
this 30 of Nov. 1979 5:20 P.M.

Walter H. McNamee Jr.
Kevin P. Shea

VIRGINIA; IN THE CIRCUIT COURT FOR THE CITY OF HAMPTON

NOTICE OF APPEAL

NOW COMES National Airlines, by counsel, pursuant to Rule 5:6 of the Supreme Court of Virginia, and hereby gives notice of its appeal of the final judgment rendered by the Circuit Court of the City of Hampton, Part I, in the subject matter on November 30, 1979. A transcript will hereafter be filed.

NATIONAL AIRLINES

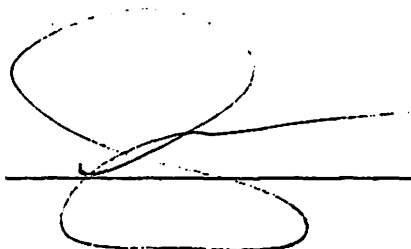
By 

Of Counsel

John Y. Pearson, Jr.
Willcox, Savage, Lawrence,
Dickson & Spindle, P.C.
1800 Virginia National Bank Building
Norfolk, Virginia 23510

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Notice of Appeal was mailed to Warren H. McNamara, counsel of record for Diana Shea and Kevin P. Shea, this 7 day of December, 1979.



VIRGINIA; IN THE CIRCUIT COURT FOR THE CITY OF HAMPTON

NOTICE OF TENDERING OF TRANSCRIPT
PURSUANT TO SUPREME COURT RULE 5:9(b)

TAKE NOTICE that the transcript of the proceedings held in this matter on November 30, 1979 is hereby tendered to the Clerk of this Court for inclusion in the Record of this matter for appeal purposes pursuant to Supreme Court Rule 5:9(b) on this the 27th day of December, 1979.

NATIONAL AIRLINES

By James C. Howell
Of Counsel

James C. Howell
Willcox, Savage, Lawrence, Dickson
& Spindle, P.C.
1800 Virginia National Bank Building
Norfolk, Virginia 23510

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Notice was mailed, postage prepaid, to Warren H. McNamara, Jr., counsel for Diane Shae and Kevin P. Shea, Post Office Drawer 310, Hampton, Virginia 23669 on this the 27th day of December, 1979.

James C. Howell

Assignments of Error

The Circuit Court erred in the following respects:

1. By holding that the evidence presented failed to establish grounds sufficient to permit and require relief;
2. By failing to hold that plaintiffs are estopped to deny that a continuance was agreed upon; and
3. By failing to hold that the default judgment is void on the face of the record.

(The reporter was first duly sworn.)

THE COURT: All right, gentlemen. This is the matter of Diana Shea and Kevin P. Shea against National Airlines which is an appeal procedure from the District Court. We had sort of a preliminary meeting or hearing some time ago at which the court asked counsel to file memoranda setting forth the authorities and matters which -- for the court to consider. Everybody has done that. The case has been set today for hearing on the merits and I believe the parties are now in agreement that what we deal with today is not the merits of the controversy, but the question of whether the lower court should or should not have granted the motion for rehearing.

MR. CLARKSON: That's correct, your Honor.

THE COURT: There is a subsidiary question which we have to deal with this morning and that is assuming for the sake of argument that the court directs or feels that the hearing has been granted, what happens then? Does the court grant the rehearing on a matter it has not heard before?

MR. CLARKSON: We believe that the court should retain jurisdiction.

1 THE COURT: That's what I think, too.

2 Is there agreement on that?

3 MR. McNAMARA: Your Honor --

4 THE COURT: We haven't got to the stage of
5 what happened yet. I don't see any way
6 practically or within what I believe to be the
7 authority of this court to direct the lower court
8 to hold the hearing.

9 MR. McNAMARA: I think the question addressed
10 this morning is whether or not Judge Wilson abused
11 his judicial discretion in not allowing them --

12 THE COURT: I think that's the issue we're
13 dealing with. I was going to the next step as
14 to what happens if we get to that.

15 MR. McNAMARA: I think, if you recall, that
16 -- if he had abused his judicial discretion, do we
17 go back down to have him address the issue again
18 or does this court then have a hearing --

19 THE COURT: I should think we would have
20 the hearing here.

21 The other thing is that the system in use
22 in Virginia, this sort of appellate process is
23 de novo.

24 MR. CLARKSON: That's correct, your Honor.

25 THE COURT: But are we now going to decide

1 de novo whether Judge Wilson should have granted
2 the rehearing from the lower court?

3 MR. CLARKSON: If your Honor please, we
4 feel that it ought to be a de novo hearing,
5 period.

6 THE COURT: So what we're really talking
7 about is a motion for rehearing.

8 MR. CLARKSON: Correct.

9 THE COURT: Okay. Now we'll proceed.

10 I've read and considered both the briefs
11 which have been filed. I'm ready to go ahead.

12 You have some evidence you want to present,
13 I suppose.

14 MR. CLARKSON: We would like to present
15 evidence to substantiate the facts as indicated
16 in our brief and we would like to get into the
17 record all the exhibits that were filed in the
18 brief.

19 THE COURT: Do you wish to make any
20 introductory remarks?

21 MR. CLARKSON: Judge, as long as the court
22 has read the two briefs, I think that that would
23 pretty well take care of any opening.

24 MR. McNAMARA: I concur, your Honor.

25 MR. CLARKSON: We would call our only

1 witness, your Honor, Mr. Kirby.

2
3 -----000-----
4

5 THOMAS WESLEY KIRBY, called as a witness on behalf
6 of the appellant, having been first duly sworn, was examined
7 and testified as follows:
8

9 DIRECT EXAMINATION
10

11 BY MR. CLARKSON:

12 Q Mr. Kirby, would you give us your full
13 name and address, please?

14 A Yes. My name is Thomas Wesley Kirby. I'm
15 an attorney with Kirkland and Ellis in Washington, D.C., a
16 member of the D.C. Bar. Kirkland and Ellis's address is
17 1776 K Street, Northwest, Washington, D.C. 20006.

18 Q As an attorney, how did you first become
19 associated with the matter of Shea versus National Airlines?

20 A Our firm from time to time has represented
21 National in a variety of matters. On July 4 or 5 I was
22 called by Jack Lindsey, National's general counsel, and I
23 was told that he had obtained a copy of a motion for
24 judgment, which is the one attached as Exhibit A to our
25 memorandum. He asked me to look into it since I was in the

1 area, decide what needed to be done and take whatever steps
2 I felt were necessary.

3 MR. CLARKSON: If your Honor please, we
4 would like to offer the motion for judgment as
5 National Airlines Exhibit 1 or A, depending on
6 how the court wants to mark it.

7 THE COURT: All right. I assume there is
8 no objection.

9 MR. McNAMARA: I have no objection, Judge.
10 It was filed with the brief.

11 MR. CLARKSON: It was filed with the brief.

12 THE COURT: All right. This is what you're
13 talking about? (Indicating)

14 MR. CLARKSON: That's correct. And I'm
15 wondering if it wouldn't simplify matters, we
16 would like to put in all exhibits as official
17 exhibits.

18 THE COURT: You've seen what's attached?

19 MR. McNAMARA: I have no objection, Judge.

20 THE COURT: There are attached to the brief
21 for National Airlines documents marked Exhibit A,
22 B, C, D, E, F --

23 THE WITNESS: That's all, your Honor.

24 I might comment that Exhibit F is simply
25 a copy of the Warsaw Convention and some related

1 cases. I don't know if we want those in
2 evidence.

3 MR. CLARKSON: I don't think it's necessary
4 to have anything beyond E.

5 THE COURT: Suppose we go through --
6 Exhibit A through E. Any objection to them being
7 admitted into evidence, gentlemen?

8 MR. McNAMARA: I have no objection, your
9 Honor.

10 THE COURT: All right. Then the documents
11 marked Exhibit A through E inclusive attached to
12 the brief of the appellant are admitted in this
13 proceeding in evidence without objection as
14 Appellant's Exhibit Number 1.

15 MR. CLARKSON: Thank you, your Honor.

16 {Received and marked in evidence by the
17 court as Appellant's Exhibit Number 1.)
18

19 BY MR. CLARKSON:

20 Q Mr. Kirby, after you received Exhibit A,
21 which is the motion for judgment, what, if anything, did you
22 do?

23 A My immediate effort was to try to find out
24 what the item of concern was. The motion for judgment on
25 its face told me nothing. I didn't know whether we had a

1 disgruntled employee, the plaintiff was making too much
2 noise or what the problem was. So I attempted to ascertain
3 from National's records if there had been any complaint or
4 adverse contact with anyone by the name of Shea and I could
5 not.

6 So at that point I decided to call
7 Mr. McNamara who was listed as plaintiff's counsel, and I
8 did so on July 5.

9 Q All right.

10 A When I spoke to Mr. McNamara he indicated
11 to me that this was an action for lost baggage, that the
12 Sheas had been flying back from the Bahamas and that -- I
13 believe it was at that time he told me that a suit bag
14 had been lost.

15 I told him that it was -- obviously luggage
16 gets lost in the airline business, that it was National's
17 policy to pay where it was responsible for the loss and I
18 asked him if he could send me information that would let
19 me verify his complaint and he agreed to do that.

20 I then noted that the date for trial was
21 close upon us and asked him if it would be possible to
22 obtain an extension and he said yes, he would be willing
23 to grant me a two-week extension. I said that I was not a
24 member of the Virginia Bar, that if we had to practice in
25 Virginia I would get local counsel, having in mind your

1 partner, Mr. Pearson; but should I send him anything, was it
2 necessary for me to do something to get that extension and
3 he said no, the practice was informal and he could handle
4 it. So I said thank you very much, hung up and as is my
5 custom promptly wrote him a letter confirming our
6 conversation dated July 5 which I think is attached to
7 Exhibit B to our memorandum and I mailed that to him.

8 Q All right. Then subsequently did you
9 receive any correspondence from Mr. McNamara?

10 A I did. I didn't hear from him for some time
11 and my records indicate that on the 16th of July I telephoned
12 his office. I don't believe I spoke to Mr. McNamara. I
13 believe it was his secretary. I said that I had not heard
14 and I'd like to know what the status of the case is. She
15 said that a letter had been sent to me and that I should
16 receive it shortly. In fact, I did receive it the next
17 day and that's Exhibit C. It's a letter dated July 11 from
18 Mr. McNamara to me and has my July 17 stamp on the bottom
19 of the copy that we submitted.

20 Attached to that letter were copies of the
21 Sheas' tickets, copies of various baggage claim checks,
22 perhaps a few other items of information.

23 Now, with that information on the 17th
24 I got back to National's employees and asked them to see
25 what they could find out about the Sheas' claim and they

1 reported back to me on the morning of the 18th.

2 Q Then on the morning of the 18th did you
3 telephone Mr. McNamara?

4 A I telephoned Mr. McNamara. It was either
5 the morning or early afternoon of the 18th and he returned
6 my call later on the afternoon of the 18th. At that time
7 I told Mr. McNamara that it was my information that the
8 Sheas had never flown on National Airlines at all, that
9 there had been -- for some reason or another connections
10 had been missed in Miami, that they had flown Bahamas there,
11 Eastern, I believe, to Baltimore and then United back down
12 to Norfolk. I said that United had informed our people --

13 MR. McNAMARA: I'm going to object. That's
14 hearsay. I think what United informed is academic.
15 It's hearsay.

16 THE COURT: Let's go ahead and hear it.

17 MR. CLARKSON: We don't have a jury here.

18 THE COURT: I'll note your objection.

19 A I told Mr. McNamara that United had
20 indicated to us that an oral complaint had been made, that
21 they had sent Mr. Shea a written claim form that had not
22 yet been returned. I told Mr. McNamara that under the Warsaw
23 Convention, which would apply because a portion of this trip
24 was in International airspace, that only the carriers
25 actually providing the service could be liable; that, moreover,

1 even if there were liability, it would be limited by the
2 terms of the Warsaw Convention and no punitive damages could
3 be allowed, and finally I pointed out to Mr. McNamara that
4 the custom among air carriers is for the last carrier in
5 line to handle any such claim because that carrier would be
6 the carrier where the passenger ended up and I suggested
7 it appeared to me quite clear that the Sheas should be
8 pursuing this claim with United rather than National and
9 asked if the Sheas would consider dropping their lawsuit
10 against National and proceeding against United.

11 Mr. Shea responded -- excuse me. Mr.
12 McNamara responded that he would have to take a look at my
13 information and would have to consult with his client before
14 he made any decision like that and asked me if I would send
15 him my information including a copy of the Warsaw Convention.
16 He asked for -- he said some law. I remember that phrase.

17 So I did send him the Warsaw Convention and
18 I did send him excerpts from several other pleadings I had
19 filed discussing cases, talking about the significance of
20 the Convention, of air tariffs and the availability of
21 punitive damages.

22 I then pointed out to Mr. McNamara that
23 again the date of the hearing was upon us, that in all
24 probability I wouldn't get the letter off for a day or so,
25 that he wouldn't get it until the 24th, 25th or 26th, and

1 if he then told me on the date of the 26th that they had
2 decided to go forward I would be in a bind. I asked him
3 would it be possible to have a further extension, and the
4 agreement we reached was yes, I could have an extension, that
5 he would determine whether or not the Sheas wished to go
6 forward; and if the Sheas did wish to go forward, I at that
7 point would have two weeks to contact local counsel to
8 prepare a defense and be ready to present it.

9 Again on July 20th I prepared a letter which,
10 first of all, summarized the information that I had related
11 to Mr. McNamara in my telephone conversation and, secondly,
12 stating my understanding which as I understand it was a
13 fact, that he had agreed to the extension until they decided
14 what to do, and if they decided to go forward I would then
15 have the two weeks to retain local counsel and make a defense.
16 That letter, as well, was mailed to Mr. McNamara; and the
17 hearing before Judge Wilson, he admitted receiving it before
18 the 26th and before he went into --

19 Q This was the letter of July 20th which is
20 Exhibit Number D?

21 A That is right.

22 Q And the case was originally scheduled -- or
23 secondarily scheduled for July 26th?

24 A Originally for the 12th, extended two weeks
25 to the 26th and then as pursuant to our agreement it was to

1 be held in abeyance when the decision was made whether or
2 not to go forward. If the decision was made to go forward,
3 I would be notified and we would be given two weeks to
4 prepare a defense.

5 Q That was the understanding that's indicated
6 in the last paragraph of your letter of July 20th?

7 A That's right. That is correct.

8 Q Then when was the next contact that you had
9 with Mr. McNamara or this case?

10 A Well, I didn't hear from Mr. McNamara for
11 some time, which wasn't surprising, since I presumed August
12 is a vacation month here the way it is in Washington; but
13 in any event, in early August I attempted once or twice to
14 call Mr. McNamara and he was not available.

15 On August 9, just to make sure that we didn't
16 lose contact and that there wasn't any confusion, I wrote
17 him again telling him that I didn't -- you know, that he was
18 welcome to take as long as he wanted, but letting him know
19 that we had a continued interest and if he decided to go
20 forward would he please let me know and we would make the
21 defense promptly, but we didn't want to lose our rights.
22 That letter was sent out on August 9 and it's attached as
23 the next exhibit in sequence to our memorandum.

24 Q Exhibit E?

25 A That would be correct.

1 Q And in your letter of August 9th or
2 Exhibit E did you again allude to the fact that there was
3 an understanding as to a continuance again?

4 A I did. And again at the hearing before
5 Judge Wilson, Mr. McNamara indicated that he received that
6 letter in due course.

7 Q Now, as far as the case is concerned that
8 was apparently heard on July 26th, when was your first
9 notice that the case was, in fact, heard?

10 A Well, the first notice to National was a
11 telephone call from the sheriff here in Norfolk indicating
12 that he was in the process of executing a judgment and was
13 going to seize some National property at the airport to
14 satisfy the judgment. That was the first inkling that
15 National had that Mr. McNamara was doing anything but
16 considering whether or not to drop the lawsuit.

17 At that time I was out of the country and so
18 the next few stages were handled by Mr. Bailly who is a
19 partner in my firm to whom I had handed the file when I left
20 to go out of the country. He contacted your firm, Mr.
21 Pearson, I believe, and the subsequent steps I think are
22 of record. The hearing before Judge Wilson was held in
23 early October, I believe. It would be the fourth. And the
24 reason for that was two-fold. Mr. McNamara, as I understand
25 it, wanted to proceed promptly and there had been trouble

1 getting him to hold off until we could have the hearing.

2 At the same time, since I had knowledge
3 of the dealings with Mr. McNamara, they didn't feel that
4 they could -- National didn't feel that they could hold a
5 hearing until I was available.

6 I returned on October 1, and on October 4
7 I was in court as a witness in that proceeding.

8 Q Did you ever receive an answer to your
9 letter of August 9th, Exhibit E?

10 A Only to the extent that I received various
11 notices that Mr. McNamara was in the process of executing
12 the default judgment; but, no, never -- despite the previous
13 series of phone calls and letters, after my letter of July
14 20th I had no contact with Mr. McNamara at all, nor to my
15 knowledge did National.

16 Q Did you have contact with his office after
17 July 26th?

18 A I did. As I indicated, I did call -- well,
19 now, whether my telephone calls were before or after July
20 26, I would think they were, because it was the fact that
21 on one or two occasions I had not gotten through to him that
22 led me to write the letter of August 9, so I -- frankly,
23 those calls came to nothing and I didn't make notes of those
24 calls.

25 MR. CLARKSON: If your Honor please, I don't

1 think that it would be of help to the court to go
2 through the court proceedings which have been held,
3 although we can.

4 THE COURT: Well, the pleadings, I suppose,
5 pretty well outline what has happened. The motion
6 for rehearing was heard in the District Court.
7 I'm not quite clear how it got to the Circuit
8 Court, Part 2. Was that on an appeal basis or
9 was that an independent action for an injunction,
10 I guess.

11 MR. CLARKSON: I believe that's what it was.

12 THE WITNESS: Your Honor, I believe, is
13 referring to the action before. It was heard by
14 Judge Wilson. My understanding --

15 THE COURT: We call this court Part 1 and
16 Part 2 which is the same court. It's purely a
17 matter of mechanics in the way the docket -- that,
18 then, was done before the hearing in the lower
19 court by Judge Wilson?

20 THE WITNESS: That's right, your Honor.

21 THE COURT: Okay.

22 THE WITNESS: If your Honor wishes, I think
23 I can explain what happened there just very briefly.

24 THE COURT: We'll leave that to --
25

1 BY MR. CLARKSON:

2 Q Go ahead.

3 A I don't want to get ahead of you.

4 When we first learned that the sheriff was
5 in the process of executing a judgment, the immediate concern
6 was to just stop things until something more could be done
7 and Mr. Pearson grabbed his Michies and looked to see what
8 could be done, prepared an equitable action and came over
9 and talked to the judge. The judge's response --

10 MR. McNAMARA: I'm going to have to object.
11 He's talking about something and he wasn't there.
12 There is a limit and I don't mind them building
13 up a record at National Airlines' expense, but
14 there's just a limit to what I think he should be
15 able to testify to.

16 THE COURT: Mr. Clarkson said something
17 about going into the other mechanics. It's fairly
18 obvious that the desired action in the actual
19 proceedings was not successful and we'll go on
20 from there, I guess.

21 THE WITNESS: Could I make one comment,
22 your Honor, then perhaps a motion to strike, as
23 I understand?

24 THE COURT: Lawyers are terrible witnesses.

25 THE WITNESS: I would say that the basis for

1 my knowledge is a discussion that was had was
2 the discussion that was had before your Honor some
3 time ago.

4 THE COURT: I understand.

5 THE WITNESS: And as I understand what
6 happened, no action was ever actually filed.
7 There is no pleading or paper on file because
8 the judge said there is a statutory legal remedy
9 here that you haven't gone to, and until you try
10 your legal remedies I'm not going to consider an
11 equitable action.

12 THE COURT: Okay.

13 MR. CLARKSON: I think that's it.

14 THE WITNESS: All right.

15 MR. CLARKSON: If your Honor please, I think
16 that's the facts as we have them and certainly
17 subject to cross-examination.

18 THE COURT: Okay.

19
20 CROSS-EXAMINATION

21
22 BY MR. McMANARA:

23 Q Mr. Kirby, how many trips have you made down
24 here to Hampton over this case?

25 A This is my third.

1 Q I see. Is your firm billing National
2 Airlines for your part in this defence of this matter?

3 A Yes.

4 Q Plus your -- National now has retained this
5 law firm?

6 A National regards what happened very
7 seriously and they told us to do what's necessary to correct
8 this matter. That's correct.

9 Q Now, the first time you and I ever spoke on
10 the telephone, I believe you testified, was I returned a
11 phone call and it was a day early in July?

12 A I'm not sure whether the first one you
13 returned the call or whether I got through, but it's not
14 critical.

15 Q Do you recall me voluntarily telling you
16 that the rules down here in the lower District Courts were
17 that you were entitled to a two-week continuance? Do you
18 recall me volunteering that information or did you ask me
19 about a continuance?

20 A I asked you about a continuance and your
21 response was that a continuance -- two-week continuance
22 would be no problem.

23 Q All right. And you wrote the letter which
24 is --

25 A Dated July 5.

1 Q July 5. And you wrote the letter which is
2 now Exhibit D dated July 20th, 1979, after a conversation
3 between you and I in which you had brought up the Warsaw
4 Pact and various things like this?

5 A That's correct, on the afternoon of the
6 18th.

7 Q And you recall testifying before Judge
8 Wilson that you understood that there was a continuance
9 or that I had agreed to a continuance?

10 A That's correct.

11 Q All right. Now, do you recall whether or
12 not when you testified before Judge Wilson you said we had
13 agreed to a continuance?

14 A I said that you had agreed to a continuance.
15 I was examined as to whether I could recall your precise
16 language and I testified that I could not recall your
17 precise language, but that there was no doubt in my mind
18 that a continuance had been agreed to.

19 Q And after you wrote the letter to me of
20 20 July, your next correspondence is Exhibit E dated
21 August 9?

22 A The next written correspondence was
23 August 9; that's correct.

24 Q Subsequent to the conversation you and I
25 had on approximately the 18th of July there was no more

1 communications between us via the telephone; is that correct?

2 A Not between us personally. As you will
3 recall, I testified that I did call your office on a couple
4 of occasions and you simply weren't available; and as I
5 recall your testimony, it was that you didn't know whether
6 I had done that, but it certainly could have happened.

7 MR. McNAMARA: I have no further questions,
8 your Honor.

9 THE COURT: All right.

10 MR. CLARKSON: We don't have any further
11 questions. You may come down.

12 Your Honor, if we could argue it.

13 MR. McNAMARA: I think maybe this side
14 might like to put a little evidence on first.

15 MR. CLARKSON: Excuse me.

16 THE COURT: I don't suppose there would be
17 any objection to that.

18 MR. CLARKSON: Certainly not.

19
20 -----COO-----
21
22
23
24
25

1 WARREN H. MCNAMARA, JR., called as a witness on
2 behalf of the appellees, having been first duly sworn, was
3 examined and testified as follows:

4
5 DIRECT EXAMINATION

6
7 BY MR. SHEA:

8 Q Would you state your name for the court,
9 please?

10 A Warren H. McNamara, Jr.

11 Q And you are an attorney in Hampton, Virginia?

12 A Yes, sir.

13 Q You've heard Mr. Kirby testify as to there
14 was an agreement for a first continuance until July 26th.
15 Would you now tell the court what happened as you remember
16 it in regard to a second continuance?

17 A Yes. We had instituted a suit on your and
18 Diana's behalf against National because of the luggage.
19 Mr. Kirby either called me or I called him. It may have
20 been him, but I don't remember that exactly. But he called
21 saying that his firm represented National Airlines and that
22 he had been notified about this suit and, you know, what was
23 it about and I explained to him that they lost their luggage
24 and we had been unable to get any response from National and
25 we had to do something.

1 Where Mr. Kirby and I disagree -- and I
2 told Mr. Kirby, I said it's the general practice here in our
3 lower District Courts that the defendant is entitled to a
4 two-week continuance. Knowing that -- I didn't think he was
5 familiar with our procedures here, so I said, you know, I'll
6 go over there, walk across the street and continue the case
7 for two weeks and he asked me about sending him -- he
8 apparently was having problems finding out from National
9 where you had flown and where your luggage was, so I had
10 the tickets and all those things. I made copies of those.
11 I sent them to him on July the 11th.

12 Mr. Kirby and I talked, I don't know, the
13 18th, 19th. I'm not sure, to be honest with you. He called
14 on the phone, received those things, proceeded to tell me
15 that it was covered by the Warsaw Convention and there were
16 various things like this. I told him that I wasn't --
17 didn't know much about the Warsaw Convention and suggested
18 that he might send it to me, let me read it. There was no
19 discussion and there was nothing said about a continuance.
20 What is in this brief that they have filed is simply not
21 true. I mean, it's after the fact, but it's not true.
22 There was nothing said about a continuance.

23 I received this letter from Mr. Kirby, the
24 letter of -- Exhibit D -- written on the 20th. I'm sure I
25 received it a couple of days thereafter. I did receive it

1 before the 26th. I heard nothing more from Mr. Kirby.

2 On the 26th, the day of court, I went over
3 before Judge Wilson with you. I remember it. And Judge
4 Wilson remembers it because, you know, he swore you in and
5 he asked me about it and I said, well, I had talked with the
6 lawyer, that no one was there, that I continued it once
7 voluntarily. No one was there to do anything, you know, so
8 the judge gave us a judgment.

9 Now, I never talked to Mr. Kirby again.
10 I'm sure I received this letter he wrote of August 9th,
11 and then, of course, after the appeal time had expired we
12 took the steps, then I think that's when they realized there
13 was a judgment. Then the Norfolk law firm became involved
14 in it.

15 Q Are you positive that you never agreed to
16 a second continuance?

17 A Absolutely not. And what they say here is
18 not true and I don't like to say bad things about people,
19 but this is not correct.

20 Q What are you referring to?

21 A Well, this brief that they filed referring
22 to the conversation Mr. Kirby and I had on about the 18th
23 or 19th of July. The brief says Mr. Kirby requested a
24 further extension. Well, that's not true. It was not
25 discussed. I mean, if the thrust of their brief is that

1 somehow I or you and I took unfair advantage of National
2 Airlines, if that was the case, we'd have not done it the
3 first time. I didn't have to continue it the first time.
4 I volunteered to continue it and I told the man I would
5 do it and I did it. There was no discussion of continuance.
6 He could have called me up on the morning of trial. I never
7 heard another word from him.

8 MR. SHEA: That's all we have, your Honor.
9

10 CROSS-EXAMINATION
11

12 BY MR. CLARKSON:

13 Q Mr. McNamara, did you receive Mr. Kirby's
14 letter of July 20th, 1979?

15 A Yes.

16 Q And in there it says in the last paragraph
17 he hoped that the letter and the law will provide sufficient
18 grounds for dropping the suit and, if so, would you please
19 let him know and, if not, he at least indicated to you, did
20 he not, his understanding that you had granted him a two-week
21 extension?

22 A That's what the letter says, but I'm saying
23 I had not granted him any extension. We had not even talked
24 to him about it on the phone.

25 Q But you did receive the letter?

1 A Yes.

2 Q Did you write to Mr. Kirby or in any way
3 tell him that his understanding was incorrect, that he was
4 wrong or anything like that?

5 A No.

6 Q So do you remember reading that?

7 A Certainly.

8 Q And what was your impression as to what that
9 last paragraph meant?

10 A Frankly, I assumed that Mr. Kirby would get
11 in touch with me, would call me on the phone before trial.
12 I mean, I can write letters just like -- you know, I can
13 write you a letter and say I assume we have agreed to this.
14 If I don't hear from you, does that mean you've agreed with
15 this? I get things in the mail selling shoes; does that mean
16 I'm going to send them a check if I don't order any? I
17 think Mr. Kirby could have called me the date of trial, but
18 I never heard from him after receiving this basically self-
19 serving letter.

20 Q So then I assume that you received his
21 letter of August 9th, 1979?

22 A I'm sure I did, yeah.

23 Q And this, in fact, was after you got default
24 judgment?

25 A That's right.

1 Q And in this case did he indicate that there
2 was a continuance?

3 A Yeah.

4 Q In fact, he says, "In the meantime, however,
5 I understand the case will remain in abeyance"?

6 A When I received this letter I already
7 obtained judgment in the lower court. I had the judgment
8 then.

9 Q Did you call him up?

10 A No. I never spoke to Mr. Kirby after the
11 18th or 19th of July.

12 Q You understood his letter to mean that he
13 thought at least that the case was continued. Is that your
14 understanding?

15 A He wrote me on August the 9th saying he
16 thought the case had been continued, but we'd been in court
17 on the 26th of July.

18 Q Did you call him up and say, Mr. Kirby,
19 there has been a terrible mistake, I misunderstood you and
20 went and got judgment?

21 A I didn't call him because he didn't ask me
22 for a continuance. After the 18th of July I never talked
23 to Mr. Kirby again until I met him down here later on.

24 Q Did you try to call him to tell him that he
25 had been mistaken and you had gone in and gotten a judgment?

1 A No.

2 Q When you went to court and obtained
3 judgment on July 26th, was there evidence at that time as
4 to the value of the lost property?

5 A No.

6 Q At that time did you explain to the court
7 the provisions of the Warsaw Convention?

8 A No. I didn't know about it.

9 Q Well, now, sir, you had knowledge of it,
10 did you not, from the papers that were forwarded to you in
11 Mr. Kirby's letter of July 20th?

12 A Yeah, he sent these things to me. Certainly.

13 Q Did you have occasion to review them prior
14 to trial?

15 A I think I read them, yeah.

16 Q So you were familiar with the Warsaw
17 Convention?

18 A As familiar as you can get by reading
19 quickly through it.

20 Q Did you point out to the court the importance
21 of the Warsaw Convention as to that hearing?

22 A I certainly did not.

23 Q Did you give a copy of the July 20th letter
24 to Judge Wilson?

25 A No. We certainly did not.

1 Q Was it your testimony or was it Mr. Shea's
2 testimony -- excuse me. It was your case on July 26th
3 that you were asking for punitive damages rather than any
4 other type of damages?

5 A As I recall in the other court on the 26th
6 the judge -- the defendants were called but were not there,
7 he asked Mr. Shea the amount sued for, five thousand dollars,
8 and granted judgment.

9 Q So there wasn't any proof of any loss or
10 number of suits or any value of the suits?

11 A No.

12 Q From your examination of the facts, do you
13 know whether or not Mr. and Mrs. Shee, in fact, did fly on
14 National Airlines on or about June 3rd, 1979?

15 A I would rather have Mr. Shea tell you. I
16 think what it was is they were to pick up a National flight
17 in Miami and National canceled the flight or put them
18 somewhere and flew them to Philadelphia and Mrs. Shea at that
19 point was seven months pregnant and they flew them all around.
20 I would rather he tell you.

21 MR. SHEA: I can clarify that matter.

22 MR. CLARKSON: That's all right. I have no
23 further questions. You can put Mr. Shea on if
24 you want.
25

1 KEVIN P. SHEA, the appellee, called as a witness
2 on his own behalf, having been first duly sworn, was
3 examined and testified as follows:

4
5 DIRECT EXAMINATION

6
7 BY MR. McNAMARA:

8 Q Mr. Shea, you've heard the testimony here.

9 A Yes, sir.

10 Q Did you, in fact, actually fly National
11 Airlines?

12 A No, I didn't. National Airlines canceled
13 the flight that we were supposed to take from Miami to
14 Norfolk and gave no reason for canceling it.

15 Q You were running from Nassau to Miami?

16 A That's right.

17 Q At Miami you were scheduled to board
18 National Airlines?

19 A That's correct.

20 Q Was your baggage checked by National
21 Airlines?

22 A My baggage was checked through National
23 Airlines to Norfolk.

24 Q The flight, you're saying, was canceled?

25 A Right. It was canceled without any

1 explanation given.

2 Q And when you returned to Norfolk, did you
3 approach the National baggage --

4 A Yes. We had a lot of problems with
5 National. As I said, my wife was seven months pregnant.
6 We couldn't get any cooperation out of the ticket people
7 from National in Miami to fly us out that night. I had to
8 be in court that day. Finally, after arguing with them about
9 a half an hour, they finally got us a flight via United
10 to Baltimore and I guess we caught another United flight
11 from Baltimore back to Norfolk.

12 After we arrived back home we were missing
13 all our baggage. I called National several times. My wife
14 called National several times. The one number at the
15 airport was busy. The other number in downtown Norfolk,
16 when I called there the girl said she couldn't take care
17 of things like that and it was just too bad if the other
18 number was busy at the Norfolk airport. So at that time
19 that's when I filed suit because of their nasty attitude.

20 Q You purchased your ticket in Hampton,
21 Virginia?

22 A I purchased my ticket in Hampton, Virginia,
23 through an agent of National Airlines.

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

CROSS-EXAMINATION

BY MR. CLARKSON:

Q Mr. Shea, I gather that you and Mr. McNamara are law partners?

A That's correct.

Q And when you went over to court on the 25th, I gather from Mr. McNamara that you were not asked to give any evidence as to the value of the lost goods?

A I had a list at that time which I don't have with me today and I was prepared to testify, but the judge just entered judgment since nobody from National showed up.

Q Had you had an opportunity to review your file or Mr. McNamara's file, if you will, prior to the trial?

A I haven't -- I've looked through it, but I can't say that I've reviewed it.

Q Do you know whether or not you read Mr. McNamara's letter -- I mean Mr. Kirby's letter to Mr. McNamara on July 20th?

A Yes, I did read that letter.

Q And do you remember the last paragraph in there? Did it make any impression on you where Mr. Kirby wrote to Mr. McNamara, "I understand that you will grant me a further two-week extension in which to respond to your

1 motion for judgment"?

2 A I remember reading it. I know Mr. McNamara
3 never agreed to it.

4 Q Did you at that time feel that maybe a phone
5 call or another letter to Mr. Kirby was indicated?

6 A I felt that it was -- we were the plaintiffs,
7 and if he wanted to make a phone call he should call us.

8 Q Were you familiar with the fact that
9 Mr. McNamara received another letter on July -- dated
10 August 9th, 1979, from Mr. Kirby?

11 A Yes, I am.

12 Q Did you read that letter shortly after it
13 was received?

14 A That I don't remember I know what was in
15 it because I remember Mr. McNamara told me what was in it.

16 Q Did you and Mr. McNamara ever discuss letting
17 Mr. Kirby know by phone or by letter that you had gotten a
18 judgment and things were kind of moving along?

19 A No, we hadn't, because we had had such
20 bad luck with National all along we were just going to wait,
21 and when we got the time levy on some equipment.

22 Q Did you ever write Mr. Kirby and instead of
23 levying on some equipment write Mr. Kirby and ask when he was
24 going to pay the judgment or what he was going to do about it?

25 A I don't believe I wrote any correspondence

1 in the matter.

2 Q Did you know that Mr. Kirby was an attorney?

3 A Did I know he was?

4 Q Yes.

5 A I assumed he was. It was on an attorney --
6 law firm in D.C., the stationery.

7 Q So you did know that your law firm was
8 dealing with another law firm?

9 A That's correct.

10 Q And you were not dealing with the client,
11 National. You knew you were dealing with an independent law
12 firm?

13 A I knew I was dealing with National Airlines'
14 law firm because I read an article and I believe it was in
15 the American Lawyers saying that Kirkland and Ellis have been
16 paid four hundred and some odd thousand dollars in legal fees
17 by National Airlines.

18 Q You don't think that has anything to do with
19 the case, do you?

20 A No, but I knew there was a connection because
21 I remember reading it.

22 Q You indicated that you bought a ticket from
23 a travel agent.

24 A Yes.

25 Q Did you -- is that Travel Associates,

1 Ltd., Hampton, Virginia?

2 A Yes.

3 Q So you really didn't buy them from National
4 Airlines, you bought it --

5 A I bought it from their agent is what I said.
6 That's their agent.

7 Q What leads you to believe that they are an
8 agent of National rather than an independent local
9 corporation?

10 THE COURT: We've had quite a bit of
11 evidence in this hearing so far that deals with
12 the merits of the case. This is some more of it.
13 I don't mind listening to it, but I don't think
14 it has anything to do with what we're talking
15 about.

16 MR. CLARKSON: It might, Judge, if we get
17 into the record the Warsaw Convention. That would
18 be the only connection.

19 THE COURT: We won't get into that unless
20 we open for rehearing. I don't object to it. I
21 think it's fair to tell you it doesn't have anything
22 to do with whether or not the motion for rehearing
23 is granted.

24 MR. KIRBY: If I can comment, your Honor,
25 it is relevant to the motion only to the extent

1 that our brief talks about the Warsaw Convention.
2 One of the jurisdictional bases is sale by the
3 carrier in the jurisdiction of the court where
4 suit was brought and that's why I wanted to pursue
5 this and demonstrate --

6 THE COURT: Nobody is suggesting that the
7 lower court had no jurisdiction to deal with a
8 motion for judgment.

9 MR. CLARKSON: That's all I have, your Honor.
10 Thank you, Mr. Shea.

11 MR. McNAMARA: No further questions, your
12 Honor. We have no further evidence, your Honor.

13 MR. CLARKSON: We have no further evidence,
14 your Honor.

15 THE COURT: Gentlemen, what are you going
16 to say about it?

17 MR. CLARKSON: If your Honor please, I was
18 somewhat hesitant in making the final argument
19 when I have my expert sitting next to me who is
20 really the expert, but we feel very, very strongly
21 that this matter should be set aside, we feel,
22 for the reasons that were given in the brief, but
23 if I could just go over them.

24 THE COURT: Yes, sir.

25 MR. CLARKSON: We feel that the facts have

1 been established, and now that both sides are in,
2 there obviously are some discrepancies as far as
3 what was said to whom, but I think the evidence
4 is clear that Mr. Kirby at least, rightly or
5 wrongly, thought that the extension was granted
6 and at least he confirmed that feeling by two
7 separate letters to Mr. McNamara, the letters
8 of July 20th and August 9th. He at least indicated
9 to Mr. McNamara that he felt there was an extension
10 and that he was going to act accordingly.

11 I think it's significant that Mr. McNamara
12 never replied to those two letters, either by
13 telephone or letter, and even after the judgment
14 did nothing until a levy was made on an airplane.
15 We feel, first of all --

16 THE COURT: Was it on an airplane? I thought
17 it was a truck.

18 MR. CLARKSON: I thought it was on an
19 airplane.

20 MR. KIRBY: I think it was a truck.

21 MR. CLARKSON: We feel that this court does
22 have the authority to consider this case de novo
23 and we feel that all the issues up to the point
24 of the merits in the case can be decided in this
25 court. We feel that this court does not have any

1 reason to send it back to the lower court; and
2 if this court does send it back, then I'm sure
3 it would be back here sooner or later anyway.

4 Now, as far as what happened with this
5 default judgment, we feel that it should be set
6 aside. We feel that the reasons it should be
7 set aside were because of accident or surprise
8 or, if you will, I put it in quotes, fraud, and
9 I'm not saying that Mr. McNamara was fraudulent.
10 We're just saying there was a misunderstanding
11 between two members of the bar, two officers
12 of the court, and it's a very unfortunate thing
13 and we feel that if for no other reason, when you
14 have two brother attorneys fighting over something,
15 that it at least ought to be heard on the merits
16 that the truth can come out.

17 We have suggested in here that no one is
18 going to be hurt by having this matter heard on
19 the merits. Mr. and Mrs. Shea, if they have a
20 valid case, will certainly have their day in court.

21 There is a bond posted now and the court
22 could certainly give them judgment if it was
23 indicated. However, it would certainly do
24 irreparable harm to the defendant if a judgment
25 were granted against them, and as indicated, they

1 didn't even have Mr. Shea as a passenger or they
2 certainly did not have their day in court.

3 THE COURT: By his testimony they must have
4 had his baggage. I don't know how they work, but
5 he said that it was checked through on National
6 and he was shifted to United when the flight was
7 canceled. I've heard no other evidence about the
8 baggage.

9 MR. CLARKSON: If your Honor please --

10 THE COURT: It may not make any difference,
11 again, on the basis of what we're talking about
12 this morning, but his evidence at this point is
13 that the baggage was placed or checked through on
14 National and thereafter they canceled the flight
15 and he was put on United. It may not make a
16 difference this morning.

17 MR. CLARKSON: I think that the point as
18 far as the claim is where he flew, not where the
19 baggage flew and --

20 THE COURT: I don't know whether that would
21 be true or not. It may not be important here.

22 MR. CLARKSON: On Page 6 of our brief,
23 your Honor, we point out that a default judgment
24 may be set aside if it is void or resulted from
25 fraud, accident, surprise. I'd like to point out,

1 first of all, Section 16.1-113 of the Virginia Code
2 and I'd like to go over this briefly and then hand
3 this section to the court, if I may. I know the
4 court is familiar with it, but just --

5 THE COURT: Don't assume anything, Mr.
6 Clarkson.

7 MR. CLARKSON: In this particular section
8 it says, "Every such appeal shall be tried by the
9 court in a summary way." Then it goes on to say --
10 and I'm paraphrasing -- "All legal evidence
11 produced by either party shall be heard, whether
12 the same was produced or not before the court from
13 which the appeal is taken." Then it goes on, "such
14 order or judgment shall be made or given by the
15 court from which the appeal was taken."

16 I would also refer the court to Section
17 16.1-106, "Appeals from courts not of record in
18 civil cases. From any order entered or judgment
19 rendered in a court not of record in a civil
20 case in which the matter in controversy is of
21 greater value than fifty dollars, exclusive of
22 interest," et cetera, et cetera, "there shall be
23 an appeal of right, if taken within ten days after
24 such order of judgment, to a court of record."
25

Now, as far as Virginia law is concerned,

1 your Honor, I would like to cite to the court
2 which were in the brief, of course, two cases
3 which I feel are very important and we would ask
4 the court to read. I have copies of them here.
5 One is Moore vs. Lipscomb which is 80 Va. 546,
6 an 1887 case. It's an old one and it's been around
7 for a long time, but I think that it is good
8 authority for why we're here today. This is a
9 case where a summons was returnable to a certain
10 time in the February Rules as the pleadings used
11 to be and at that time the attorney for Mr. Moore
12 got together with the other attorney and it says
13 Mr. Turner was at the time confined to his room
14 by a severe injury received in the breaking of a
15 bridge and he told Lipscomb in answer to the
16 inquiry whether he was going to demand a trial
17 in the case that he would not, that he would not
18 attend the court and that he, Lipscomb, might rest
19 assured that he would not ask for a trial in the
20 case, that he had no intention of trying the case.
21 Relying upon this assurance of the plaintiff's
22 attorney and knowing that if no trial of the case
23 was to be held in the May term, he would have
24 nearly eight months within which to employ counsel
25 and make his preparation for the defense.

1 He was completely thrown off his guard and
2 prevented from making his defense to the common
3 law at the May term, 1887, a judgment by default
4 was rendered against him and the court goes on in
5 saying, "But it is also true that the object of
6 Mr. Lipscomb's visit to Mr. Turner was to ascertain
7 whether the judgment would be rendered against him
8 at the May term. If from any cause he had made no
9 defense and not merely to learn whether he would
10 ask for or insist upon a trial within the literal
11 meaning of these words and from the assurances of
12 Mr. Turner on this point, it was natural that he
13 should believe that there would be no judgment at
14 the May term and that there was no necessity of
15 his looking after the case at that time."

16 Conceding for the sake of argument that
17 Lipscomb knew nothing about the necessity of a
18 plea, it seems clear that the assurance of Turner
19 prevented him from employing a lawyer previous to
20 the May term of the Circuit Court, who would have
21 known and we must presume would have done what was
22 necessary in this matter and so was the occasion
23 of Lipscomb's default. And we feel that the facts
24 in this case are similar to what happened here.
25 Two attorneys were discussing the matter, two

1 attorneys had by agreement continued a case for
2 two weeks, two attorneys, whether they had
3 discussed a continuance or not or whether it was
4 agreed upon, one attorney at least thought they
5 had agreed upon it and confirmed this agreement in
6 writing on two occasions, and by silence, by doing
7 nothing, or not informing Mr. Kirby he was wrong,
8 he was crazy, he was -- they were going to get a
9 judgment, in fact, nothing was done except silence
10 and, therefore, there was a judgment rendered
11 against --

12 THE COURT: There is evidence before the
13 court that Mr. Kirby's letter was dated July 10th.

14 MR. CLARKSON: Yes, sir.

15 THE COURT: There is evidence that
16 Mr. McNamara received and read the letter and didn't
17 respond to it.

18 MR. CLARKSON: That's correct, your Honor.

19 THE COURT: Is there evidence as to when
20 he got it?

21 MR. CLARKSON: When he got it?

22 THE COURT: Yes.

23 MR. CLARKSON: He testified, your Honor,
24 I'm advised -- I was not at the lower court --

25 THE COURT: I'm talking about here.

1 MR. CLARKSON: -- that he got it before the
2 26th.

3 THE COURT: Okay.

4 MR. CLARKSON: And then there is evidence,
5 which is Exhibit E, that again he was notified
6 after the trial that Mr. Kirby at least thought
7 there was an agreement on a continuance.

8 THE COURT: And at that point, assuming the
9 judgment to have been obtained, on the 26th of
10 August the period for appealing that had already
11 expired, a response wouldn't have helped.

12 MR. McLEMORE: But the thirty days for
13 opening the case -- the case was in the lower court
14 for thirty days and the execution was not issued.
15 There was no notice to National Airlines until after
16 the thirty days.

17 THE COURT: That's right.

18 MR. McLEMORE: Beyond the thirty days to even
19 execute it.

20 MR. CLARKSON: So at that point there could
21 have been something done.

22 I think it's significant that there was no
23 answer to the August 9th letter. At that point
24 I think it was the duty of an attorney dealing with
25 another attorney in good faith to at least call him

1 and say there has been a misunderstanding,
2 apparently, and we did go in and get a judgment
3 against your client and now what can we do about
4 it. But apparently by silence by Mr. McNamara
5 nothing was done until a levy was made on some
6 property.

7 And I would also suggest to the court that
8 when brother attorneys are dealing with each other
9 as we do every day, all day, that there has to be
10 a certain amount of good faith in our dealings.
11 Most attorneys in this area would not go to the
12 length that Mr. Kirby did. I would suggest to the
13 court that cases are continued by agreement every
14 day. I would suggest -- I believe cases will be
15 continued in court even with the court's permission.
16 I think an attorney could represent to the court
17 that he had talked with opposite counsel and by
18 agreement of counsel, your Honor, we would like a
19 continuance. In most cases the circuit courts do
20 that.

21 THE COURT: Generally speaking, that's the
22 way it works.

23 MR. CLARKSON: And so, therefore, I think
24 that by custom in this area when attorneys are
25 dealing with each other they've got to go above

1 and beyond what the general business community
2 would do to each other and above the marketplace.
3 The court is more familiar than I am about the way
4 the stock market works. People live on their word
5 and I think it's the same with attorneys. This
6 was a terrible misunderstanding. Again, I don't
7 say that there is fraud with the quotes around
8 it. I think it was a misunderstanding. I think
9 that possibly Mr. McNamara was pressed and was busy
10 and quite possibly -- and I don't know this -- but
11 I'm suggesting maybe he didn't read the letter.
12 Maybe he didn't know that. So I'm not pointing my
13 finger totally at the fraud angle, but I do feel
14 that it was plainly clear and plainly documented
15 that Mr. Kirby thought that there was a continuance
16 and acted accordingly and I think that something
17 also goes through my mind. I think that the law
18 firm of McNamara and Shea, they're law partners, and
19 I think that they felt -- and obviously I didn't
20 realize this until I got here -- but they were very
21 bitter or they're very mad with National and they
22 said all right --

23 THE COURT: They did sound a little irritated
24 today, didn't they?

25 MR. CLARKSON: They did. And for that I'm

1 sorry. But I think that as bad as National may be
2 in their eyes, I think that National as a defendant
3 at least deserves, like any other defendant, a day
4 in this court. I think if this case were the
5 little, old widow who came in here after having
6 thought that she had gotten a continuance and
7 the sheriff had come out and levied upon her
8 homestead furniture, that there would be great
9 sympathy for her here and I think that even though
10 this is a corporation, they're all equal under the
11 law and we're not asking for sympathy. We're just
12 asking for a chance to try this case on the merits.

13 THE COURT: All right.

14 MR. CLARKSON: If your Honor please, I would
15 like to go back into one further thing. We cited
16 a lot of cases. We feel that the law is in our
17 favor and we feel that equity is in our favor and
18 we feel that this court can consider both in this
19 court at this time and that has been spelled out
20 pretty well in the brief.

21 We feel that there was notice to all concerned.
22 We feel that Mr. Kirby did what he was supposed to
23 have done under the circumstances. Next, we feel --
24 and I alluded to it -- that if this court does grant
25 a hearing on the merits, no one is going to get hurt

1 with the exception that Mr. Shea is going to have
2 to come back here another day. Mr. Kirby is going
3 to have to come down here and try the case another
4 day and that would be the only harm. If it's not
5 done, I think that the court realizes that the
6 defendant has not had its day in court.

7 Now, as far as the judgment is concerned,
8 we feel that, first of all -- and it's outlined
9 in the brief, your Honor -- that we feel very
10 strongly that the judgment over there in the lower
11 court is void on its face. We feel that it's
12 void on jurisdictional and procedural grounds.
13 We've gone into that in the brief and I think
14 that it's said much better than I can say it right
15 here.

16 I think it's interesting, Judge, the exhibit
17 of the motion for judgment, it states in effect
18 that they're asking for five thousand dollars for
19 punitive damages and losses and I think it's
20 certainly true that you've got to have actual
21 losses before you can have punitive losses. There
22 is no pleading of that and I think that --

23 THE COURT: Mr. Clarkson, for punitive
24 damages and losses incurred. I can see no way to
25 read this as punitive losses, so it seems to say

1 punitive damages and losses incurred. That, again,
2 may not be especially pertinent to what we're doing
3 this morning, but I guess it's the way you put the
4 emphasis on that sentence.

5 MR. CLARKSON: I think in any court it would
6 certainly be demurrable or at least the court
7 would ask --

8 THE COURT: You could get a bill of
9 particulars.

10 MR. CLARKSON: You certainly could get a
11 bill of particulars.

12 I think that the only thing it does as far
13 as a defendant is concerned is indicate that they're
14 in court and you've got to find out something
15 further.

16 And also, if your Honor please, we feel very
17 strongly that the law of this case should be under
18 the Warsaw Convention. That's the law of the land.
19 It's nothing peculiar to Virginia or the Circuit
20 Court of the City of Hampton, the General District
21 Court of the City of Hampton.

22 THE COURT: Somewhere between Taiwan --

23 MR. CLARKSON: Maybe like our treaty of Iran.

24 I think that that is the law and we feel that
25 Mr. McNamara was at least given notice of it and I'm

1 sure as a practicing attorney he's familiar with
2 it and he apparently didn't point that out to the
3 court over there. Apparently the court didn't
4 take it into consideration and we feel that the
5 judgment is void on its face because that was not
6 considered and there is evidence and testimony
7 today that it wasn't considered.

8 For those reasons, your Honor, we very
9 strongly urge upon the court to grant our motion,
10 give National its day in court and let the chips
11 fall as they may.

12 THE COURT: All right, sir. Do you wish
13 to comment?

14 MR. McNAMARA: Yes, sir. It will be very
15 brief.

16 After listening to my co-counsel talking
17 about things being equitable, I shudder to think
18 what it's costing National Airlines in legal fees
19 and time over this five thousand dollars.

20 THE COURT: That's a matter which is also
21 not relevant.

22 MR. McNAMARA: True. I've been practicing
23 before the Bar for fifteen years. I've never had
24 any problems with giving cases continuances; but
25 on the other hand, I don't know whether any attorney

1 in our area -- I wouldn't write a letter and say
2 I assume you're going to continue it. We agreed
3 to continue it. We continued it. But I didn't
4 assume it.

5 There is a dispute in the facts here between
6 Mr. Kirby and I and this thing is like a pyramid,
7 it just keeps growing. I think the burden of proof
8 is on National. They're coming in here and asking
9 that the thing be set aside and a new trial be
10 held, and there was never any agreement as to the
11 second continuance. I think it probably to a
12 large degree comes down to perhaps my testimony
13 against Mr. Kirby's. True, he wrote me a letter
14 on the 20th. He wrote a letter on the 9th. By
15 the time the letter on the 9th got to me, the ten
16 days for appeal had passed. I think the court
17 has thirty days to set aside. Basically we think
18 you can appeal for ten days. Ten days has gone.

19 I think what this whole case really boils
20 down to -- and we've been to Judge Massenburg,
21 we've been to Judge Wilson and now we're here. I
22 can quote Judge Wilson almost to a tee. He said,
23 "Did Kirby drop the ball?" And that's what happened
24 and that's why we're here. I would oppose their
25 motion.

1 MR. CLARKSON: We have the burden, your
2 Honor, if I may have the last word.

3 I must disagree with my brother attorney,
4 that I don't believe that Mr. Kirby dropped the
5 ball. I think Mr. Kirby is a very prolific
6 letter writer. He at least understood that the
7 agreement was made. He may have not had any facts
8 to base that understanding, but he at least in
9 good faith understood it and expressed that
10 understanding on two different occasions, and
11 by silence Mr. McNamara never indicated that he
12 was wrong.

13 I think that there is certainly a duty when
14 you're dealing with attorneys and you're dealing
15 with someone else's case, and this is a case.
16 This isn't a matter between two attorneys. That
17 if an attorney is wrong, you would normally point
18 that out to them, Dear Mr. Kirby, I do not agree
19 with your assumption that this case is continued
20 and, in fact, I got a default judgment last week.
21 I think those are the things that we all
22 understand and we all come to expect. I don't
23 think that you need to be a member of the bar to
24 understand those and we feel that Mr. Kirby did
25 not drop the ball, but he threw two passes at

1 Mr. McNamara and they were fumbled and now we're
2 asking them to play by the rules.

3 THE COURT: All right. Thank you, gentlemen.
4 I think the file and the matters that you have
5 come in on today have pretty well illustrated what
6 we're talking about. I'm not going to rehash
7 everything. Counsel and the parties have agreed
8 that we're talking here today not about the merits
9 of the claim itself, but about the question of
10 whether the motion to set aside and for a new trial
11 should be granted. That should be done if the
12 evidence establishes either that it appeared to
13 be void or it's a result of fraud or whether it
14 was the actual time or the constructive time which
15 is a prior unfair dealing before the court as a
16 result of misleading statements or conduct on the
17 part of one side, in this case one attorney, which
18 resulted in causing the other side to not realize
19 what it had to do to defend itself.

20 Of course, we've had basically Mr. Shee
21 who didn't know anything about this. Mr. McNamara
22 knows something about it. Mr. Kirby knows something
23 about it. Mr. Shee might have been on the airplanes,
24 but he doesn't know anything about the negotiations
25 and the letters going back and forth, and what we

1 have is Mr. Kirby's belief that the second
2 continuance was granted, Mr. McNamara's statement
3 that it was not. The letter of the 20th says that
4 in part, that Mr. Kirby hopes that with the material
5 he has sent Mr. McNamara that the suit should be
6 dropped and asks that -- and he said if that's not
7 the result that's to be reached I understand you
8 will grant me another two-week extension.

9 There has been some reference here to the
10 District Court having said that Mr. Kirby dropped
11 the ball and some reference here to Mr. McNamara
12 fumbling a couple of passes. It seems to the court
13 that if we say -- well, first, I don't think there
14 is any reason to think that either Mr. Kirby was
15 trying to in some manner twist Mr. McNamara
16 around nor do I think from the evidence that the
17 reverse occurred; but if we say that Mr. McNamara
18 must in his peril read these letters and respond
19 to them promptly to keep Mr. Kirby from making a
20 mistake, it seems to me we must also say that Mr.
21 Kirby in his peril would fail to keep track of the
22 docket and on an answer to the inquiry made.

23 I think that's where we are. Quite frankly,
24 as I have told everybody in this case, either
25 privately or in the last hearing, I don't think the

1 case ought to be here and I had very much hoped
2 that counsel and the parties would have found some
3 way to dispose of it before it hit this point; but
4 in the view of the court, the evidence does not
5 justify or establish the ground which would either
6 require or authorize this court to set aside the
7 prior judgment and order a new trial and that's
8 the ruling of the court.

9 I note the exception, of course, of National
10 Airlines to this action. If counsel desire the
11 entry of this order to be withheld for a couple
12 of days, you decide whether you want to go forward
13 with it or not, we'll do that. Do you want to go
14 ahead and spread it now?

15 MR. CLARKSON: I would spread it right now.
16 We're going to appeal it.

17 THE COURT: Mr. Gibson, if you will spread
18 it right now and they will note their appeal.

19 MR. CLARKSON: Could we have the injunction
20 that is now in effect to continue on?

21 THE COURT: That injunction is dissolved
22 by its own terms on the third of December, this
23 coming Monday. I presume from what has gone on
24 before in this case that it's the intention of
25 National Airlines to ask the appellate review of

1 the decision, and I'm inclined to think that the
2 injunction or something in the nature of supersedeas
3 should continue for the reason that I'm quite
4 certain that if I should dissolve the injunction and
5 refuse to proceed further with it, you should be
6 able to get a contrary ruling from one of the
7 justices of the Supreme Court within fifteen
8 minutes. I think it's appropriate that we simply
9 continue it until the Supreme Court has received
10 and acted upon the preliminary papers you file.
11 At that point, though, I would ask you to --
12 depending again on what results you want to reach,
13 if the Supreme Court intends to take cognizance
14 of the matter and rule on it, that you seek a
15 supersedeas at that point.

16 The bond is now ten thousand dollars and I
17 suppose in view of the language of the order or
18 the decree which set up the injunction you better
19 have another one because it expires on Monday,
20 I think it's noon.

21 MR. MONMARA: Noon on the 3rd.

22 THE COURT: I suggest that you give me a
23 decree which will extend it.

24 MR. CLARKSON: I think we may have one right
25 here, your Honor.

1 THE COURT: I don't see any sense in taking
2 all of this.

3 (Discussion off the record.)

4 MR. CLARKSON: Tom, do you want to --

5 MR. KIRBY: All right.

6 After the court's ruling the court and
7 counsel had a discussion in which it was agreed
8 that the Sheas would not attempt to enforce the
9 outstanding judgment until such time as the Supreme
10 Court of Virginia or a Justice thereof has acted
11 upon National's application for --

12 THE COURT: I don't think that's accurate.
13 I think what happened was that the court said it
14 would extend its injunction to that point. The
15 Sheas didn't agree not to enforce it.

16 MR. KIRBY: I thought we were going to do
17 it by agreement.

18 THE COURT: I was asked to extend the
19 injunction. We were talking about whether the bond
20 would remain in effect and you all agreed that
21 you were going to submit a new injunction before
22 the old one expires, which will be endorsed by
23 counsel which will say that the execution of the
24 judgment, which is really the foundation of this
25 action, would be enjoined unless the injunction

1 is modified or dismissed until such time as the
2 Supreme Court of Virginia acts on the petition
3 for writ of error. That's got to be done before
4 the other expires.

5 MR. McLEMORE: We'll have an order for you
6 Monday morning.

7 (The court adjourned at 11:00 a.m.)

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VIRGINIA: IN THE GENERAL DISTRICT COURT FOR THE CITY OF HAMPTON,
CIVIL DIVISION

DIANA SHEA
KEVIN P. SHEA

Plaintiff

v.

NATIONAL AIRLINES
PLEASE SERVE:
THOM F. POWERS, JR., District Sales Manager
206 N. Washington Street
Alexandria, Virginia 22314

DEFENDANT

MOTION FOR JUDGMENT

TAKE NOTICE that on the 12th day of July, 1979, at 2:00 p.m., or
as soon thereafter as the matter may be heard, the above Plaintiffs will move
the aforesaid court for judgment against the above Defendant in the sum of
FIVE THOUSAND DOLLARS, (\$5,000.00) for punitive damages and loss incurred
on June 3, 1979.

DIANA SHEA
KEVIN P. SHEA

By: William H. McNamee
Of Counsel

I hereby certify that I mailed a true copy of the foregoing to the
above defendant at the above address on the 22 day of June, 1979.

William H. McNamee

McNamee and Shea
Attorneys at Law
133 King's Way
P. O. Drawer 310
Hampton, Virginia 23660
(804) 722-9379

KIRKLAND & ELLIS

Washington Office
Area Code 202 857-5000

To Call Writer Direct
202 857- 5062

1776 K Street, N.W.
Washington, D.C. 20006

July 5, 1979

Chicago Office
Area Code 312 861-2000
Telex 25-4361
200 E. Randolph Drive
Chicago, Ill. 60601

W. H. McNamara, Esq.
McNamara and Shea
133 King's Way
P.O. Drawer 310
Hampton, VA 23669

Re: Shea v. National Airlines - General District
Court for the City of Hampton

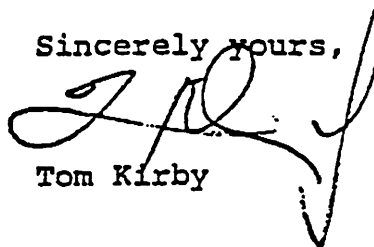
Dear Mr. McNamara:

Thank you for your courtesy in talking with me on July 5, 1979. During that conversation, we agreed that the July 12 date set for response to your motion for judgment would be extended for two weeks, and that you would notify the court of that extension. We also agreed that you would provide me with some basic information concerning the Sheas' claim, which I understand relates to luggage lost after their return from Nassau.

Upon receipt of your letter, we will conduct an investigation and, if necessary, retain local counsel. If local counsel is retained, you will be informed promptly.

Again, thank you for your cooperation.

Sincerely yours,



Tom Kirby

TK:bas

cc: J. Lindsey

McNamara and Shea
Attorneys at Law
133 King's Way
Third Floor Suite
Post Office Drawer 310
Hampton, Virginia 23669

Area Code 804
Telephone 722-9879
722-2605

Warren H. McNamara, Jr.
Kevin P. Shea
Gregory B. Blanchard
William J. Boyer

July 11, 1979

Mr. Tom Kirby
Kirkland & Ellis
1776 K Street, N. W.
Washington, D. C. 20006

Re: Shea v. National Airlines - General
District Court for the City of Hampton

Dear Mr. Kirby:

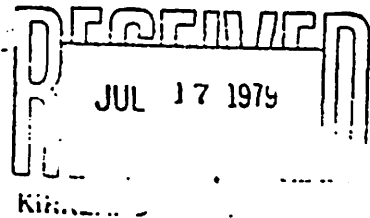
I am enclosing herewith copies of the tickets and baggage receipts and related documents showing the flights by Mr. Shea on National Airlines.

I believe that these should be helpful to you and I might point out that since Mr. Shea returned to Norfolk he has only had the use of two summer suits because of all his other suits were lost by National Airlines.

Sincerely Yours,

Warren H. McNamara, Jr.
Warren H. McNamara, Jr

WHMUR:dj
Encl.



July 20, 1979

Warren H. McNamara, Esq.
McNamara and Shea
133 King's Way
P. O. Drawer 310
Hampton, Virginia 23669

Re: Shea v. National Airlines - General
District Court for the City of Hampton

Dear Mr. McNamara:

Thank you for your letter of July 11 and for returning my call on July 18. Based upon the information you provided, we have been able to confirm that the Sheas did not travel on National at all during the flight on which their luggage was lost. Instead, the computer shows that they flew through Baltimore, using Eastern and United.

Since this was an international flight, it was covered by the Warsaw Convention. I have attached a copy of this for your reference. You will note that under Article 30(3), liability for lost luggage rests on the carriers who actually performed the transportation, in this case United, Eastern and possibly Bahamasair.

As I explained, the carriers have mutually agreed that lost luggage adjustments are handled by the last carrier in the chain, in this case United. You will note that Article 30(c) expressly gives a cause of action against "the last carrier." According to United's computer, the Sheas have filed a claim with United for a red suit bag bearing tag #14-72-96 which claim is recorded as SND #0753. United has mailed the Sheas a claim form and, upon receipt of the information requested there, appears ready to make a reasonable settlement. In that regard, however, I call your attention to the limitations of liability set out in Article 22(2).

Warren H. McNamara, Esq.
July 20, 1979
Page Two

There are many other reasons why the Sheas have no claim against National, which never carried their bags. For example, no prompt claim was made in writing to National, nor were the other terms of National's tariff concerning lost luggage complied with. I have attached pages from a recent pleading citing numerous cases holding that such tariff provisions have an effect equivalent to law.

I hope that this letter and the Warsaw Convention provide you with sufficient grounds to drop your suit against National. If so, please let me know. If not, I understand that you will grant me a further two-week extension on which to respond to your Motion for Judgment.

Thank you for your courtesy.

Sincerely yours,

Tom Kirby

Encl.

August 9, 1979

Warren H. McNamara, Esq.
McNamara and Shea
133 King's Way
P.O. Drawer 310
Hampton, Virginia 23669

Re: Shea v. National Airlines - General
District Court for the City of Hampton

Dear Mr. McNamara:

In late July we agreed to extend the date on which National must respond to your outstanding Motion for Judgment pending your decision as to whether or not it should be withdrawn. I have not heard from you since, and your secretary was unable to give me a status report when I called.

I presume that you still have the matter under consideration and will advise me when you reach a decision. If you elect to proceed, we will retain local counsel and make the prompt response to which you are entitled. In the meantime, however, I understand that the case will remain in abeyance. As we discussed, since National did not ever carry the Sheas on their journey home, it has a number of absolute defenses which it does not wish to lose by default.

Thank you for your continuing courtesy in this matter. I look forward to hearing from you.

Sincerely yours,

Tom Kirby

TWK:smm