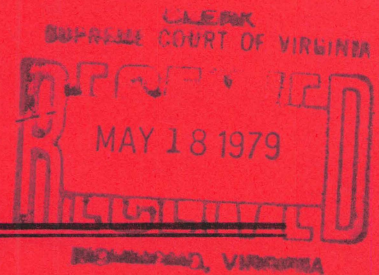


221VA592



IN THE
Supreme Court of Virginia

AT RICHMOND

RECORD NO. 790053

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY,
Appellant

v.

GEORGE LEE PORTER,
Appellee

APPENDIX

George H. Gray
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Attorneys at Law
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MOTION FOR JUDGEMENT

The plaintiff moves the Court for a Judgement and an award of execution against the defendant, State Farm Mutual Automobile Insurance Company, in the sum of Five Thousand (\$5000) Dollars, with interest from the 24th day of May, 1976, which sum of money is due from said defendant to the undersigned plaintiff for this, to-wit:

1. That on or about the 3rd day of November, 1974, the plaintiff was standing on the sidewalk on Elm Avenue, near Duke Street, in Portsmouth, Virginia, in close proximity to the street.

2. That at the aforesaid time and place, William H. Edwards drove a car at a high rate of speed in a negligent and reckless manner and caused it to collide with and strike the plaintiff, and that as a result, the plaintiff sustained severe and permanent injuries.

3. That on the said date, the defendant had issued an automobile liability insurance policy to Rosa Lee Edwards, the wife of William H. Edwards, both parties resided at 1303 Elm Avenue, Portsmouth, Virginia, and the said policy was in the amount at least equaling the sum of \$20,000.00.

4. That at the time of the said accident, William H. Edwards was operating a car owned by Rosa Lee Edwards, and the said William H. Edwards was covered by said policy.

5. That on the 24th day of May, 1976, the plaintiff obtained a judgement in the Circuit Court of the City of Portsmouth, Virginia against William H. Edwards in the sum of \$5000 with interest thereon at the rate of eight (8) per cent, plus court cost.

6. The aforesaid policy issued by the defendant was applicable to the said judgement set forth above obtained by the plaintiff.

7. The plaintiff had a fieri facias issued by the aforesaid court and the fieri facias was returned on the 14th day of June, 1977 marked by the Sheriff "no effects known to me".

8. Pursuant to Section 38.1-380 (2) of the Code of Virginia, the plaintiff brings this action against the defendant under the terms of the aforesaid judgement with interest from the date of the judgement and the costs of the proceeding pursuant to the aforesaid insurance policy.

GEORGE LEE PORTER

BY George Minor, Jr.
COUNSEL

George Minor, Jr., Esquire
Attorney At Law
539 High Street
Portsmouth, Virginia 23704

SHH/cs

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF PORTSMOUTH

GEORGE LEE PORTER,

Plaintiff,

v.

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY,

Defendant.

LAW DOCKET
No. L-77-487

(Testimony of witnesses and Judge's ruling.)

Before: R. Winston Bain,
Judge of the aforesaid Court.

Date: October 19, 1978.

Place: Portsmouth, Virginia.

APPEARANCES:

GEORGE MINOR, JR.,
Attorney for the Plaintiff.

OUTLAND, GRAY, O'KEEFE & HUBBARD
By George H. Gray,
Attorney for the Defendant.

Reported by Susan H. Horner, Shorthand Reporter.

I N D E X

<u>Plaintiff's Witnesses</u>	<u>Direct</u>	<u>Cross</u>	<u>Redirect</u>	<u>Recross</u>
George Lee Porter	3	11	18	19
Richard A. Lyons	21	39	48	

<u>Plaintiff's Exhibits</u>	<u>Description</u>	<u>Page</u>
1	Copy of judgment	9
2	Execution levied	9
3	Letter	10
4	Letter	26
5	Transcript	32
6	Transcript	36
7	Transcript	50

<u>Defendant's Exhibits</u>	<u>Description</u>	<u>Page</u>
1	Policy	39

1 GEORGE LEE PORTER, called as a witness on
2 his own behalf, being first duly sworn, was examined and
3 testified as follows:
4

5 DIRECT EXAMINATION
6

7 BY MR. MINOR:

8 Q State your name, please.

9 A George Porter.

10 Q And are you the plaintiff in this case, you
11 brought this suit?

12 A Right.

13 Q Were you involved in an accident on
14 November 3, 1974?

15 A Right.

16 Q Were you injured in that accident?

17 A Right.

18 Q And did you later bring a suit in which you
19 obtained a judgment?

20 A Right.

21 Q And was that judgment in the sum of \$5,000.00?

22 A Right.

23 Q And who was the person that struck you?

24 A (No response.)

25 Q Do you recall in that particular suit?

1 A Right.

2 Q Who was the defendant? Can you recall his
3 name?

4 MR. GRAY: Judge, there is no dispute about
5 any of this.

6 MR. MINOR: We will stipulate.

7 THE COURT: Isn't a question of stipulating.
8 All this is a record of this Court.

9 MR. MINOR: Okay. We can stipulate.

10 THE COURT: Just take it from there.

11
12 BY MR. MINOR:

13 Q Now, would you explain how that accident
14 happened?

15 THE COURT: You don't have to go into the
16 accident, Mr. Minor. What you want to get into, if I
17 might suggest it at this point is he has a judgment
18 against Edwards for \$5,000.00 plus interest, et cetera.

19 MR. MINOR: Yes, sir.

20 THE COURT: Now, I think the thing to take
21 up now is whether or not he has collected anything on
22 it, what he has done in an effort to collect against
23 this man, Edwards.

24 MR. MINOR: Yes, sir. Your Honor, what has
25 not been pointed out to His Honor is that the law has

1 substantially changed. The General Assembly changed
2 the law and said that the other cases were not
3 applicable under the uncooperation clause, and that now
4 the companies had to show prejudice in order to avail
5 themselves of a defense. That prejudice is the key.
6 That's 38.1-381, which I call to His Honor's attention.

7 THE COURT: What is that citation again?

8 MR. MINOR: 38.1-381, 1A.

9 THE COURT: I have got my own Code.

10 MR. MINOR: 38.1-381, that's A 1, in the last
11 paragraph of that paragraph, so prejudice is the key to
12 the case, the whole key to the case is prejudice, Your
13 Honor, and we intend to show that the company has never
14 been prejudiced by.

15 THE COURT: That's fine. You can proceed in
16 that way.

17
18 BY MR. MINOR:

19 Q Well, would you tell us how the case
20 happened?

21 A Yes.

22 MR. MINOR: That's what we want to show.
23 They weren't prejudiced, and the seven months didn't
24 hurt them. There was no defense to the case, even if
25 they had notice seven months prior.

1 MR. GRAY: I would object. I think the
2 burden is on him to show that this man, Edwards, against
3 whom they got the judgment, complied with the policy
4 and proceeded in that direction.

5 To take the fact that Mr. Minor is taking
6 would mean that in every case the Court would have to
7 review whether there was a valid defense to the case
8 or whether it could have been defended at all, or
9 whether the defense would have resulted in a lesser
10 verdict or whatever.

11 MR. MINOR: Your Honor, I think this was
12 first brought to my attention at a seminar, a liability
13 insurance seminar about the General Assembly changing
14 the law in '76, and it certainly was clear that the
15 intent of the General Assembly was that no longer could
16 a company come in and say that you haven't cooperated,
17 and I think what the General Assembly meant to do was
18 to show that the insurance company had to show that they
19 were prejudiced thereby, and that's what we intend to do,
20 to show that they haven't been prejudiced.

21 THE COURT: All right. I will let you go
22 ahead for now.

23 MR. GRAY: If I can find out one thing, this
24 law you are referring to was enacted after this
25 accident occurred?

1 MR. MINOR: No, sir. It was enacted after
2 the case - you are citing this 38.1-381 A, one is a
3 1976 change.

4 MR. GRAY: That was after the accident
5 happened. After the policy was written.

6 THE COURT: After the accident and also after
7 the judgment was entered.

8 MR. MINOR: I don't know whether it was
9 retroactive or not, Your Honor.

10 MR. GRAY: Judge, I don't want to cut
11 Mr. Minor off. I want a full hearing, so it's all right
12 if he wants to put it in.

13 MR. MINOR: Even before that, Your Honor,
14 lack of prejudice bearing on the materiality, and even
15 in the case of Shipp versus The Connecticut Indemnity
16 Company --

17 THE COURT: Let's get some facts before we
18 start talking so much law. I don't even know - except
19 for the opening statements, I have no idea what it's
20 all about.

21 MR. MINOR: All right, sir.

22 THE COURT: Anyhow, I am going to open it up
23 for you so we can get the complete picture.

24 MR. MINOR: All right, sir. Very well.
25

1 BY MR. MINOR:

2 Q Tell us how the accident happened.

3 A All right. The red light was on and I
4 stepped off after the red light was on, and the cars had to
5 stop for the red light, and I stepped off the curb right across
6 the street, and he come past and run the red light, and the driver,
7 he struck me.

8 Q About how fast -- do you know how fast he
9 was going?

10 A No. I don't.

11 Q Was he going at a normal rate of speed?

12 A He was going about thirty, about forty miles
13 an hour.

14 Q About forty miles an hour?

15 A Right.

16 Q And you say he ran the light?

17 A Ran the light, and I stepped out from the
18 curb. That's when he hit me.

19 Q Did he stop?

20 A No. He didn't stop. Two fellows ran him
21 down and stopped him after.

22 Q Did he give you any assistance at all?

23 A No.

24 Q Now, and you never saw him anymore until --
25 when did you see him again, when you came to Court?

1 A When we came to Court.

2 Q And that was in General District Court?

3 A Right.

4 Q And you did obtain a judgment against him?

5 A Right.

6 MR. MINOR: Your Honor, this is plaintiff's
7 first exhibit, which is a copy of the judgment.

8 THE COURT: All right. The copy attached to
9 the judgment obtained in this Court entered May 24, 1976
10 by George Lee Porter against William H. Edwards will be
11 received and admitted in evidence and identified as
12 plaintiff's exhibit 1.

13 MR. MINOR: Exhibit number what, Your Honor?

14 THE COURT: One.

15 (Whereupon, the aforementioned document was
16 received in evidence and identified as plaintiff's
17 exhibit number 1.)

18 MR. MINOR: Exhibit number 2 would be the --

19 THE COURT: Wait a minute. Hold up a second.

20 MR. MINOR: All right.

21 THE COURT: Now, the second exhibit will be
22 the execution that was levied on Edwards, and the
23 Sheriff marked it "No effects received". Admitted in
24 evidence and identified as plaintiff's exhibit 2.

25 (Whereupon, the aforementioned document was

received in evidence and marked as plaintiff's exhibit number 2.)

MR. GRAY: I would object to that. It has no relevancy.

MR. MINOR: You object to that?

MR. GRAY: Yes, I would, but you can bring it to his attention.

THE COURT: What's this?

MR. MINOR: That's a letter from Mr. Lyons, who -- he is here today, Your Honor. I don't think the defendant objects to it.

THE COURT: All right. Then the letter from Mr. Richard A. Lyons, claim specialist for State Farm Mutual Automobile Insurance Company dated June 27, 1975 to Mr. George Minor, Attorney at Law, with a non-waiver of reservation of rights letter, a copy thereof to Edwards will be received in evidence and identified as plaintiff's exhibit number 3.

(Whereupon, the aforementioned document was received in evidence and marked as plaintiff's exhibit number 3.)

MR. MINOR: Your Honor, as far as this witness is concerned, I would --

THE COURT: Wait a minute. All right, sir.

MR. MINOR: As far as this witness -- I will

1 see if Mr. Gray wants to ask him any questions.

2
3 CROSS-EXAMINATION
4

5 BY MR. GRAY:

6 Q Mr. Porter, as I understood what you said
7 about how the accident happened, you were at an intersection
8 which was controlled by a traffic light?

9 A Right.

10 Q And the light changed and you stepped off the
11 curbing?

12 A Right, on red.

13 Q And you were struck?

14 A Right.

15 Q You never saw the automobile that struck you
16 until after it struck you, did you?

17 A I saw, saw it coming, but I couldn't get back
18 in time enough.

19 Q How far away was it from you when you first
20 saw it?

21 A I would say about, little bit further from
22 me in front of that first bench there.

23 Q You are talking about this bench here?

24 A Yeah.

25 Q Or are you talking about this?

1 A Little bit further than that bench there.

2 Q Which one?

3 A The one further behind you.

4 Q You mean this one?

5 A Yes.

6 Q The car was about this distance from you when
7 you first saw it?

8 A Right. He was running -- he had done took off
9 before I saw him.

10 Q Would you agree with me that that is about
11 twenty feet?

12 A You mean from this wall to that?

13 Q No. From where you said that the automobile
14 was about the distance from where you are sitting to this first
15 bench when you first saw it, and would you agree that that is
16 about twenty feet, or is it more than that?

17 A Might be more than twenty feet because he had
18 done took off before I saw him.

19 Q Mr. Porter, maybe you don't understand my
20 question. I am trying to find out how far the automobile was
21 from you when you first saw it. I understood you to say that it
22 was about the same distance as from you to this first bench?

23 A Right.

24 Q And I suggested that that distance is about
25 twenty feet, but is that an incorrect estimate?

1 A Yeah, because he had done took off. Like I
2 said, he had done took off before I saw him.

3 Q He had taken off before you saw him?

4 A That's right, and before I could get back,
5 step back up on there, he had done hit me.

6 Q I am not really clear still, Mr. Porter. He
7 had taken off from where?

8 A From -- he run the red light. He didn't
9 never stop for the red light after the red light come on.

10 Q That's what I am trying to find out.

11 A He didn't stop for the red light. All the
12 rest of the cars was standing still at the red light.

13 Q What I am trying to find out from you is
14 how far he was away from you before you saw him, or was it you
15 didn't see him until after he had hit you?

16 A Well, I didn't see him coming. You know,
17 didn't see him coming.

18 Q Did you see him before he hit you?

19 A After some sailor stopped him. That's the
20 only thing I know.

21 Q So I take it, then, that the light changed
22 and you stepped off the curbing, and you didn't see him until
23 after he had hit you and gone on down the street?

24 A Right. Now, which light are you talking about,
25 the red light or the green light?

1 Q Either one.

2 A The red light was on, and when I stepped off
3 there, that's when he hit me, and the two sailors stopped him.

4 Q And it wasn't until after he had hit you?

5 A Right.

6 Q That you saw him?

7 A Right.

8 Q Now, before you stepped off the curbing, did
9 you look to see if any traffic was coming?

10 A Yeah. I looked to see if there was any
11 traffic coming.

12 Q And you didn't see any coming?

13 A No, but I noticed the thing - he was up
14 there.

15 Q And the first notice you had of him was when
16 he struck you?

17 A Right.

18 Q Now, you say the next time you saw him was
19 in the General District Court?

20 A Right.

21 Q Do you remember when that was?

22 A No.

23 Q When you were in the General District Court,
24 did you have your lawyer with you?

25 A Yes.

1 Q How long after the accident was it that you
2 hired Mr. Minor to represent you?

3 A I can't remember.

4 Q Was it a week, ten days or --

5 A I don't remember.

6 Q All right. Let's see if we can get at it in
7 another way. Did you have to go to the hospital?

8 A Yes. I stayed. I went to the hospital.

9 Q How long were you in the hospital?

10 A About three months. Stayed in the hospital
11 a little over three months.

12 Q Now, did you hire Mr. Minor before you got
13 out of the hospital or after you got out of the hospital?

14 MR. MINOR: Your Honor, I don't see what
15 relevance this has to do with this particular suit,
16 when I was hired.

17 MR. GRAY: I will be glad to state to the
18 Court the relevancy it has.

19 THE COURT: I think the examination is
20 proper. We have to get a complete picture here.

21
22 BY MR. GRAY:

23 Q Had you hired Mr. Minor to represent you
24 while you were in the hospital or after you got out of the
25 hospital?

1 A When I was in the hospital.

2 Q Say that again.

3 A When I was in the hospital.

4 Q You hired him when you were in the hospital?

5 A Right.

6 Q How long had you been in the hospital before
7 you hired him?

8 A About a week.

9 Q Now, you said something about two sailors
10 stopping the man that was driving the automobile that struck you?

11 A Right.

12 Q Do you know what their names are?

13 A No. I don't know the names.

14 Q Was it your understanding that these two
15 sailors had seen the accident?

16 A Right.

17 Q Do you know what the sailors did with the
18 man that they stopped?

19 A No. I don't know what they did with him.
20 He went all the way home, and the sailors stopped him right
21 after he got home, before he got out of the car, and that's all
22 I know.

23 Q The sailors stopped him after he got out of
24 the car at his home?

25 A Before he got out of the car. He was at home.

1 They said he was at home.

2 Q But your understanding is that these sailors
3 had seen the accident?

4 A Right.

5 Q Do you know whether any effort was ever made
6 to get the names of those two sailors?

7 A No. I don't.

8 MR. GRAY: I have no further questions,
9 Your Honor.

10 THE COURT: Did you ever talk with
11 William H. Edwards himself?

12 THE WITNESS: No.

13 THE COURT: You never talked to the man?

14 THE WITNESS: No. I never talked to him.

15 THE COURT: How about his wife, Rosalie?

16 THE WITNESS: No. I never talked with her.

17 THE COURT: Did you know these people?

18 THE WITNESS: I don't know them too good.

19 THE COURT: I mean, did you know them before
20 the accident?

21 THE WITNESS: Yeah. I knowed them before the
22 accident.

23 THE COURT: All right. Step down.

24 MR. MINOR: Just one question, Your Honor.
25

REDIRECT EXAMINATION

BY MR. MINOR:

Q You stated on one occasion you were about twenty feet away when you first saw William Edwards?

MR. GRAY: Your Honor, I don't think he can lead his own witness.

THE COURT: No.

MR. MINOR: I am trying to get clarification as to what was right. He kept saying twenty feet away. I am trying to clarify to see what he really meant, and apparently he is sort of easy to mislead, and I just want to clarify it.

MR. GRAY: I wasn't trying to mislead him. I gave him full opportunity to answer me.

THE COURT: He was asked by Mr. Gray if this is, from where he sits to the front bench, if he thought it was around twenty feet. What did you say to that? I believe you said it was about that distance?

THE WITNESS: Yeah. When I saw him, he was about that distance. Now, I don't know - he was already running. He weren't staying still because the red light was on - when I saw him, he was about that distance.

MR. MINOR: All right, sir. That's all I

1 have.

2 THE COURT: Well, now, but you say he was
3 about from where you are sitting to the back of the
4 front bench down here?

5 THE WITNESS: Right.

6 THE COURT: That's about the distance?

7 THE WITNESS: Yeah, and I don't know how far
8 that's when I saw him.

9 THE COURT: Well, actually from the
10 witness stand to the back of the front bench is
11 twenty-one feet eight inches.

12 MR. GRAY: I was just estimating it, Your
13 Honor. Let me get at this again.

14
15 RECROSS-EXAMINATION

16
17 BY MR. GRAY:

18 Q Now, when you say that you saw him and he
19 was about twenty feet or twenty-one feet eight inches from you,
20 was that before he struck you or after he had struck you?

21 A Can I say one thing?

22 Q You can say anything you want to.

23 A All right. When I saw him, he was still
24 rolling because the rest of the cars was standing still, and he
25 was about that distance when he hit me, but when he run the red

1 he didn't stop, didn't take right off, but he was bound to be
2 keeping on because the red light was on, and the rest of the cars
3 was stopped, and he was bound to have went past the cars because
4 when I glimpsed, he was about that far from me, I told you.

5 Q What I am trying to find out from you,
6 Mr. Porter, is whether you saw him this twenty feet before he
7 struck you?

8 A No. I didn't see him before.

9 Q This twenty feet that you saw him was after
10 he struck you?

11 A Yeah, but he weren't standing still.

12 Q I understand that.

13 A Right.

14 Q In other words, the impact occurred and he
15 was about twenty feet, twenty-one feet from you and you saw him?

16 A Right.

17 MR. GRAY: All right. That's all I have.

18 THE COURT: You can step down.

19 MR. MINOR: I would like to call Mr. Lyons,
20 Your Honor.

21 THE COURT: Gentlemen, do you-all want to
22 adjourn for lunch at this time or do you want to go
23 through with the entire case?

24
25 (Whereupon, an off-the-record discussion was

1 held.)

2
3 (Whereupon, the hearing adjourned for luncheon
4 recess at 12:40 p.m. and the hearing resumed at
5 2:13 p.m.)
6

7 THE COURT: Where were we, gentlemen?

8 MR. GRAY: Mr. Minor had called Mr. Lyons
9 to the stand.

10 THE COURT: All right.
11

12 RICHARD A. LYONS, called as a witness, being
13 first duly sworn, was examined and testified as follows:
14

15 DIRECT EXAMINATION
16

17 BY MR. MINOR:

18 Q Would you state your name, please, sir?

19 A Richard A. Lyons.

20 Q And where are you employed?

21 A State Farm.

22 Q And how long have you been employed with the
23 defendant company?

24 A Nine-and-a-half years.

25 Q And you were so employed in '74 when this

1 accident occurred?

2 A Yes, sir.

3 Q Now, do you have your notes with you concerning
4 this particular accident?

5 A Yes, sir.

6 Q Do they reflect when you first were assigned
7 to this, the particular accident that occurred between Mr. Porter
8 and Mr. Williams?

9 A Yes, sir.

10 Q When were you first assigned?

11 A Upon receipt of your letter. Your letter was
12 dated June 19th, and we received it on June 23rd.

13 Q So that was the first time that you had
14 information - was when I wrote you a letter concerning this
15 accident?

16 A That's correct.

17 Q And I believe I also wrote you a letter on
18 June 22nd, did I not?

19 THE COURT: What year was this?

20 MR. MINOR: 1976.

21 THE WITNESS: Well, now, you are talking
22 about '76 or '75?

23 MR. MINOR: Oh, that's right. June 22, '76,
24 I wrote you a letter. Let me see if I can refresh his
25 memory.

1 THE WITNESS: Is it '76? I just haven't
2 gone that far in the file.

3 MR. MINOR: Yes, sir.

4 MR. GRAY: Your Honor, I object to the
5 introduction of this letter that counsel is now
6 referring to.

7 MR. MINOR: I don't know, Your Honor, I was
8 going to ask him some questions at this time.

9
10 BY MR. MINOR:

11 Q I want you to look at that letter. Would you
12 read that, please, sir?

13 MR. GRAY: Your Honor, this is what I am
14 objecting to. It has no materiality, relevance or
15 pertinence.

16 MR. MINOR: I have not asked any questions
17 about it yet.

18 MR. GRAY: I know, but I have read the letter
19 and it doesn't have any relevancy or pertinency on this
20 case. Having made my objection, the Court has to see
21 the letter, so I will stop.

22 THE COURT: Let me see the letter.

23 This is January, all right.

24 MR. MINOR: I wanted to ask him about that
25 letter, Your Honor.

1 THE COURT: I am going to let him ask it.

2 I want to get the full picture of this situation.

3 MR. GRAY: Judge, I am not waiving my
4 objection on that.

5 THE COURT: I understand.

6
7 BY MR. MINOR:

8 Q Did you receive that letter from me -
9 January, I believe it was January 20th. I was wrong about June.

10 THE COURT: January 22nd, isn't it?

11 MR. MINOR: Yes, sir, '76.

12 MR. GRAY: Your Honor, I think the letter
13 was sent certified, so I think if you have a receipt
14 from him, he is bound to have received it.

15 MR. MINOR: I just want to get from him what
16 he --

17 THE WITNESS: I am trying to find it in the
18 file. Right now, I don't see a copy of it, but I
19 haven't been through the entire file yet.

20 Yes, sir. I do have it in the file.

21
22 BY MR. MINOR:

23 Q So you did know about the second suit?

24 A I received this letter, yes, sir.

25 Q And with that letter a copy of the pleadings

1 in the second suit were sent to you?

2 A That's correct.

3 Q Now, there was an insurance policy that
4 covered the car operated by, that afforded, on the car that was
5 operated by William Edwards?

6 A That's correct.

7 Q And that policy was written in the name of,
8 was that of Rosalie Edwards?

9 A Rosalie Edwards.

10 MR. GRAY: Your Honor, I want to interpose
11 something here. When he asked the automobile operated
12 by Edwards, that assumes that the car was in fact
13 operated by Edwards, but the information that previously
14 the defendant had was that it was not operated by
15 Edwards, so I just want that understood.

16 MR. MINOR: I don't recall that.

17 MR. GRAY: Edwards gave Mr. Lyons --

18 THE COURT: Let's let the witness testify.

19 MR. GRAY: All right.

20
21 BY MR. MINOR:

22 Q Was that the wife of the defendant, William
23 Edwards?

24 A Yes, sir.

25 MR. MINOR: Your Honor, I would like to

1 introduce that letter as exhibit, I think it would be
2 4.

3 THE COURT: All right. The copy of the
4 letter of January 22, 1976 to Mr. Richard A. Lyons,
5 claims specialist, State Farm Mutual Automobile
6 Insurance Company from Mr. George Minor, Jr., will be
7 received and admitted in evidence and identified as
8 plaintiff's exhibit 4.

9 (Whereupon, the aforementioned document was
10 received in evidence and marked as plaintiff's
11 exhibit number 4.)
12

13 THE COURT: The wife's name was Rosalie,
14 wasn't it?

15 MR. MINOR: Yes, sir, Your Honor. I believe
16 that's right.

17 Is that right?

18 THE WITNESS: I don't know her middle name.
19 It was Rosa Edwards.

20 THE COURT: That's the way you have it listed
21 on the policy, Rosa?

22 THE WITNESS: That's right.

23 THE COURT: All right. Mr. Minor, you may
24 proceed.
25

1 BY MR. MINOR:

2 Q When did you first talk to Mr. Williams
3 in regards to this matter, Mr. William Edwards, I am sorry.

4 A The 23rd, I believe it was. Same day that I
5 received your letter.

6 THE COURT: All right. Now, are you speaking
7 of the 23rd of January, 1976?

8 THE WITNESS: Let me check to make sure.

9 THE COURT: That is important. We are
10 running over a period of three or four years with dates.

11 MR. GRAY: Your Honor, I happen to have --

12 THE WITNESS: It was June 23, 1975.

13 THE COURT: All right. Now, we are jumping
14 from '76 back into '75 now?

15 MR. MINOR: Yes, sir, Your Honor.

16 THE COURT: All right. Now, June 23, 1975.

17
18 BY MR. MINOR:

19 Q Now, Mr. Lyons, do I understand that you spoke
with William Edwards on that day?

21 A Yes, sir.

22 Q Did he cooperate with you then when you
23 talked to him?

24 A He gave me a statement, yes, sir.

25 Q And he was cooperative at that time?

1 A He told me he was not involved in the
2 accident.

3 Q Do you have a copy of the statement that he
4 gave you?

5 A (Witness points to his attorney.)

6 Q Did you talk to his wife?

7 A Yes, sir.

8 Q Did you get a statement from her?

9 A Yes.

10 THE COURT: Was she with him at the time?

11 THE WITNESS: No, sir.

12 THE COURT: But you talked to her the same
13 day?

14 THE WITNESS: Oh, at the home?

15 THE COURT: I don't know where.

16 THE WITNESS: I went to his home upon
17 receiving Mr. Minor's letter. She was there and he
18 wasn't. I called that afternoon and he was home, and
19 I obtained a recorded statement from both of them.

20

21 BY MR. MINOR:

22 Q Did you ever talk to anyone over at the
23 Central Insurance Agency where the policy was obtained?

24 A Yes, sir.

25 Q Did you ascertain whether she had called

1 Central Insurance Agency shortly after the accident happened?

2 A Yes. I did ascertain that information.

3 Q She had?

4 A No. She had not.

5 Q Your information is that she had not called?

6 A The information we have, yes, sir, that she
7 had not reported it.

8 Q Okay. Now, did you talk to anyone else
9 about this accident?

10 A Yes, sir.

11 Q Well, who else?

12 A Mr. Williams, who was a witness.

13 Q Anybody else?

14 A No one that I can think of. I am sure there
15 were some other people.

16 THE COURT: All right. Now, wait a minute.

17 Right at this point, who is Williams?

18 THE WITNESS: He was a witness to the
19 accident.

20 THE COURT: Did you speak to him in person?

21 THE WITNESS: No, sir, obtained a recorded
22 statement from him.

23 THE COURT: Well, now, explain that; recorded,
24 in what way are you speaking of?

25 THE WITNESS: Over the telephone.

1 THE COURT: You talked -- you did not know to
2 whom you were speaking, did you?

3 THE WITNESS: No, sir. I got the information
4 from Mr. Minor, the name and the phone number and so
5 forth, then called and talked to him.

6 THE COURT: Of a witness by the name of
7 Williams?

8 THE WITNESS: Yes, sir, Mr. James Williams.

9 THE COURT: Okay. All right. Now, do you
10 remember when you did that?

11 THE WITNESS: Yes, sir, July 11, '75.

12 THE COURT: July 11, '75? Okay, and you
13 still have the records of that conversation, I take it?

14 THE WITNESS: Yes, sir. I have a copy of
15 the recording right here.

16

17 BY MR. MINOR:

18 Q Now, in the statement, are there any extra
19 copies of these statements from the witnesses? Do you have
20 extras, more than one?

21 A I don't have extra copies with me, no, sir.

22 MR. MINOR: Your Honor, maybe we could --

23 I don't know if we can introduce these statements and
24 get copies of them at a later time, if His Honor is
25 interested in them.

1 MR. GRAY: I was going to introduce the one
2 which he is holding, the statement of William Edwards.

3 THE COURT: There is no problem about making
4 copies. We have a Xerox machine in the Clerk's Office.

5 MR. MINOR: You have no objection?

6 MR. GRAY: None. I was going to introduce it
7 myself.

8 MR. MINOR: We can introduce it at this time.

9 THE COURT: All right. This is the
10 statement. Now, what you have offered here, Mr. Minor,
11 at this time, is the transcript of Mr. Lyons'
12 interview with William Edwards?

13 MR. MINOR: On what date was that,
14 June 23rd, I believe he said of '75.

15 THE COURT: This said from the Koger
16 Executive Center. I thought you said you went to his
17 house?

18 THE WITNESS: Yes, sir. I did. I called the
19 home when I got back to my office and took it from my
20 office, and he was at his home.

21 THE COURT: You went there initially and the
22 wife was there?

23 THE WITNESS: Yes, sir.

24 THE COURT: Then you left?

25 THE WITNESS: Yes, sir.

1 THE COURT: Then you went to the Koger
2 Executive Center?

3 THE WITNESS: Yes, sir, that's my office.

4 THE COURT: That's where your office is?

5 THE WITNESS: Yes, sir.

6 THE COURT: Where is that, Norfolk?

7 THE WITNESS: Yes, sir.

8 THE COURT: Then from there you then
9 interviewed William Edwards after he got back to his
10 home?

11 THE WITNESS: Yes, sir.

12 THE COURT: Over the telephone?

13 THE WITNESS: Yes, sir.

14 THE COURT: Made a recording?

15 THE WITNESS: (Witness nods head affirmatively.)

16 THE COURT: And this is the transcript of the
17 recording?

18 THE WITNESS: Yes, sir.

19 THE COURT: Then this transcript will be
20 received and admitted in evidence and identified as
21 plaintiff's exhibit number 5.

22 (Whereupon, the aforementioned document was
23 received in evidence and identified as plaintiff's
24 exhibit number 5.)
25

1 MR. MINOR: I wanted to ask one question on
2 that, Your Honor, if I may look at it a second.

3

4 BY MR. MINOR:

5 Q Referring to page two --

6 A Mr. Minor, that's my copy. I am going to
7 have to look at that with you to answer any questions.

8 Q All right. Referring to page two, at the
9 bottom of that page, did William Edwards state that the plaintiff
10 was on the sidewalk when he went by?

11 A Yes, sir.

12 Q And he said when he went by he was lying on
13 the sidewalk, that's what he told you?

14 A I asked the question, "You say he was already
15 lying on the ground when you went by?"

16 "Yes. He was on the sidewalk."

17 Q And you say you have Mr. Williams' statement
18 with you?

19 A Yes.

20 Q May I look at that?

21 A (Witness complies.)

22 MR. MINOR: On this statement, I just want to
23 ask one question on here.

24

25

1 BY MR. MINOR:

2 Q Did William Edwards tell you that he had
3 pled guilty to hit and run?

4 A I don't know.

5 Q Do you want to look at the top of page four?

6 A (Witness complies.)

7 Q Did he tell you he had pled guilty to hit
8 and run?

9 A Right.

10 THE COURT: Let me see that a second.

11 All right. You want this exhibit back?

12 MR. MINOR: Yes, sir, Your Honor. I just
13 wanted to ask him one question on it.

14
15 BY MR. MINOR:

16 Q He did tell you that he pled guilty to hit
17 and run?

18 A I am not sure hit and run, but he said he
19 pled guilty to a charge. Does it say hit and run?

20 Q Top of page four.

21 A It doesn't actually say hit and run, but it
22 says that he pled guilty.

23 Q It does not say hit and run?

24 A The question was, "All right. What was the
25 final time you went? What did they finally decide?"

1 His answer was, "Well, after they -- I had
2 been told to go on and plead guilty. They decided they would
3 charge me two hundred and costs and a year's suspended."

4 If the charge was hit and run, that's what he
5 pled guilty to. I am not exactly sure what the charge was.

6 Q So you are saying whatever charge it was,
7 he did plead guilty to it?

8 A It might say earlier in the statement. I
9 just read what you told me to.

10 Q All right. Now, getting back to this man,
11 Williams, he told you he did see the accident, or you don't
12 remember?

13 A I think you took my statement.

14 Q Okay.

15 A Yes, sir.

16 Q And he said the man passed him at a high
17 rate of speed and ran the light?

18 A I am going to have to read the statement.
19 I really don't know what he said.

20 Q Page two.

21 A Mr. Williams said he was headed towards High
22 Street and this man come along speeding and passed me, and after
23 he -- just as the light was changing, he run through the light,
24 that's --

25 Q He ran through the light. Did he tell you

1 that the two sailors or two white fellows, he said in the
2 statement, apprehended the man, then later on, is that down there
3 later on in your statement?

4 A Yes.

5 Q So, apparently, according to him, that was the
6 man they apprehended?

7 A As far as he knows.

8 MR. GRAY: Your Honor, the statement speaks
9 for itself, and he said he didn't know who the man was.

10 MR. MINOR: I know.

11 THE COURT: Now, this is -- you haven't
12 introduced it.

13 MR. MINOR: I am sorry. I guess that would
14 be six, I suppose.

15 THE COURT: Then the transcript of the
16 telephonic communication between Mr. Lyons and a
17 James Williams is received and admitted in evidence as
18 plaintiff's exhibit 6.

19 (Whereupon, the aforementioned document was
20 received in evidence and marked as plaintiff's exhibit
21 number 6.)

22
23 BY MR. MINOR:

24 Q Mr. Lyons, I gather that when your company
25 writes a letter on non-waiver or reservation of rights, that in

1 effect, means that the company defends the case, they don't waive
2 any rights or any defenses that they might have insofar as
3 complying with the policy -- in other words, if the insurance
4 company defends the case on a non-waiver and reservation of
5 rights, then they don't waive any defenses or coverage and so
6 forth. Is that what you mean by your letter to me of June 27, 1975?

7 MR. GRAY: Your Honor, the meaning of one
8 of those letters is a legal thing. He is asking him
9 a legal conclusion.

10 THE COURT: I don't know that Mr. Lyons -
11 hasn't he been in this business for years? I am sure
12 he knows exactly what it means.

13 MR. GRAY: It is still asking a layman for a
14 legal opinion.

15 THE COURT: But a layman who is specialized
16 in the legal field, and I am sure understands the legal
17 intricacies.

18 THE WITNESS: My interpretation of it, it's
19 a statutory requirement in order for us to do any
20 further investigation without waiving our rights.

21
22 BY MR. MINOR:

23 Q In other words, if you choose to defend, you
24 still don't waive your rights; you still don't waive any rights
25 that the insurance company might have?

1 A If I understand you right, yes.

2 Q Did your insurance company defend this suit?

3 A No.

4 Q Did you defend the second suit?

5 A No.

6 Q Was that your decision or someone elses in

7 the company?

8 A That was not my personal decision, no, sir.

9 THE COURT: What was that that you just
10 asked, if that was his decision?

11 MR. MINOR: Yes.

12 THE COURT: Once it gets to trial, that's
13 beyond your realm?

14 THE WITNESS: Yes, sir.

15 THE COURT: You simply report to other
16 authorities?

17 THE WITNESS: Yes, sir.

18 MR. MINOR: That's about all I would ask of
19 him, Your Honor.

20

21

22

23

24

25

CROSS-EXAMINATION

BY MR. GRAY:

Q Mr. Lyons, the policy that had been issued to Rosa Edwards, is this a sample or specimen policy like that issued to her?

A Yes, sir.

MR. GRAY: Your Honor, I would like to introduce this as an exhibit.

THE COURT: It's not the policy, but is identical to the one that this Rosa Edwards had?

MR. GRAY: Yes, sir.

THE COURT: Then this policy will be received and admitted in evidence and identified as defendant's exhibit number 1.

(Whereupon, the aforementioned document was received in evidence and marked as defendant's exhibit number 1.)

THE COURT: Let me ask you one thing, Mr. Lyons --

THE WITNESS: Yes, sir.

THE COURT: I don't think - there is no question about the fact that the policy was in force as far as premiums paid?

1 THE WITNESS: No, sir. There is no question
2 on that issue.

3 THE COURT: All right.
4

5 BY MR. GRAY:

6 Q Mr. Lyons, with reference to a suit filed
7 by George Lee Porter against William H. Edwards on February 21, 1975,
8 Docket Number L-75-122, were those suit papers ever delivered to
9 the defendant, State Farm, by Mr. Edwards or by anyone?

10 A No, sir.

11 Q Mr. Lyons, it is indicated that on or about
12 June 12, 1975 William H. Edwards appeared in the office of the
13 attorney for the plaintiff, George Lee Porter, and gave his
14 deposition. Did William H. Edwards ever inform the defendant,
15 State Farm, that he had received notice of the taking of his
16 deposition or that he would appear to give his deposition in the
17 office of the attorney for the plaintiff?

18 A What was that date?

19 Q June 12, 1975.

20 A I don't believe that's the right date.

21 We didn't know about it, but I believe it happened before that.

22 Q All right. Do you have anything in your file
23 which you have learned from later that it was a different date?

24 A I think that the statement that I obtained
25 from him mentioned it. That's already been in evidence, I think.

1 Q Look at that and see.

2 A I have a memo here that is dated
3 September 16th, which is to my superintendent, which says that it--
4 I will read it. It says, "As I discussed with you, Attorney Minor
5 says he filed suit before we were ever involved in it. The
6 insured says they never received any papers except for the ones
7 to go to the attorney's office for the deposition, and they are
8 claiming at that time they still didn't have any suit papers."
9 That was in September, September 5th, but I was under the
10 impression that the deposition took place prior to our knowledge
11 of the case.

12 Q That's what I am saying, on June 12, '75?

13 A Yeah.

14 Q Perhaps the file would show. We can get
15 that, I guess, from that file.

16 A I don't have the date of the deposition, but
17 I know it was prior to our involvement in it, but I thought it
18 was closer to the same time -- I am sure Mr. Minor knows.

19 Q In any event, State Farm never had any notice
20 that his deposition would be taken in that suit?

21 A No, sir.

22 Q And as I understand it, the first notice
23 State Farm had was when you received a letter from Mr. Minor on
24 or about June 23, 1976?

25 A Yes, sir, that's correct.

1 Q And William H. Edwards did not get in touch
2 with you -- I am sorry, it was '75, June of '75. I said '76,
3 but I meant '75.

4 William H. Edwards did not get in touch with
5 you, you had to get in touch with him, is that correct?

6 A Yes, sir.

7 Q After receiving this notice or talking to
8 Edwards some seven-and-a-half months after the accident, was
9 State Farm prejudiced by his failure to notify it of the accident
10 timely?

11 MR. MINOR: Your Honor, I would think that
12 was an ultimate fact. He can state specific things he
13 can show, but the ultimate question of fact is for Your
14 Honor to decide as to prejudice.

15 THE COURT: I am inclined to think that
16 Mr. Lyons is not in a position to testify to that.

17 MR. GRAY: Well, the Court said awhile ago
18 that he was a specialized person in the claims field.

19 THE COURT: Well, he is to some degree, but he,
20 himself, has said that once he makes his report, then
21 this matter goes to higher authorities as to whether to
22 defend the suit. You don't make that decision, do you?

23 THE WITNESS: No, sir.

24 MR. GRAY: All right. We will restrict it to
25 the matter of claims.

1 BY MR. GRAY:

2 Q Mr. Lyons, how beneficial is it for the
3 insurance company to be notified immediately after the happening
4 of an accident involving one of its insured or a claim being made?

5 A Well, it's almost essential in order to
6 conduct a proper investigation.

7 Q What effect does reporting an accident some
8 seven-and-a-half months have on the interview of witnesses?

9 MR. MINOR: Your Honor, I would object to that
10 question, the general question. He can ask him
11 specifically.

12 MR. GRAY: This specific case. Well, it would
13 be the same thing. It would be true for any case. What
14 effect would it have on the interviewing of witnesses?

15 MR. MINOR: I would like him to confine it
16 to this case.

17 THE COURT: I am only interested in this case.

18 THE WITNESS: It changes things in that there
19 were several witnesses we were never able to talk to. For
20 one thing, we weren't even apprised that they were
21 there. For example, the two sailors that allegedly
22 came along and, of course, there is no physical
23 evidence that you can investigate or skid marks or
24 point of impact or anything of that nature seven months
25 later, and you don't have the opportunity to talk to your

insured, advise him or ask him specific questions that he would remember right after the accident and, of course, you don't have the opportunity to go to any type of civil hearings or anything that might arise.

BY MR. GRAY:

Q Let's see if I can pick those off then. You were not aware of these two witnesses that Mr. Porter testified to, these two sailors?

A No, sir.

Q And no way of determining after seven-and-a-half months who they were?

A That's right.

Q Were you able to take pictures of the scene of the accident and know that it was exactly as it was when the accident happened?

A No, sir. There was some question as to whether it happened at an intersection or the middle of a block. Seven-and-a-half months later there is no way to tell.

Q Was there any opportunity to take pictures of such physical evidence such as the vehicle or any tire marks on the street?

A The vehicle was still there. Of course, it had several dents in it, so you didn't really know which came from which but, no, sir, you couldn't take any of the skid marks

1 of the scene itself.

2 Q Not having any notice of this particular
3 accident or claim, did State Farm have anyone present at the
4 hearing of the traffic case in the General District Court or did
5 State Farm have a chance to have a transcript made of any
6 testimony given therein?

7 A No.

8 Q Was there any opportunity for State Farm to
9 make any measurements at the scene, that is, any measurements
10 which would be important or reflective of anything connected with
11 the accident?

12 A No, sir.

13 Q Not being informed of this particular
14 accident, was there any opportunity by State Farm to consult with
15 the driver or the alleged driver, Edwards, and have the attorney
16 advise him in connection with any suits that might be instituted or
17 what the effect of any guilty plea would have on the civil suit?

18 A No, sir.

19 Q Not being informed of the accident, was there
20 any opportunity to interview or take a statement from the claimant
21 before the claimant had engaged an attorney?

22 A No, sir.

23 Q Not having talked to Edwards before the case
24 in the General District Court, the traffic case, was there any
25 opportunity afforded to State Farm to inform him of what the effect

1 of a guilty plea would have on any civil action, and particularly
2 with the guilty plea not being true, according to what he told you?

3 A No, sir.

4 Q Now, when Mr. Porter, by Mr. Minor, filed the
5 suit in January, 1976, L-75 -- excuse me, L-76-56, were any suit
6 papers turned over to State Farm by William H. Edwards?

7 A No, sir.

8 Q A copy of the suit papers, I understand was
9 sent to you by Mr. Minor?

10 A On the original suit of January?

11 Q No, sir, on the second suit.

12 A Okay. Now, the second suit, Mr. Minor sent
13 a copy of the suit papers, yes, sir, but I went by Mr. Edwards'
14 home on four or five occasions and left word for him to contact
15 me. He never did, and he never gave us any suit papers. In fact,
16 said he never received any.

17 Q You say after you got this second suit from
18 Mr. Minor, you went by Edwards' home?

19 A Yes, sir.

20 Q How many times?

21 A I don't know exactly, but it was more than
22 once. Four or five I would say.

23 Q And Edwards denied ever having received suit
24 papers?

25 A Well, I never talked to Mr. Edwards. Again,

1 I talked to Mrs. Edwards and she said that they had never
2 received anything, and I asked her to have him call me, and he
3 never did.

4 MR. GRAY: Your Honor, do you have the file
5 there of L-76-56?

6 THE COURT: I think the deputy clerk went
7 for it.

8 MR. GRAY: Your Honor, I would ask the Court
9 to take judicial notice of its own file which, under
10 the law, you can do with that particular file.

11 THE COURT: Very well.

12
13 BY MR. GRAY:

14 Q Do you know what happened to Edwards or why
15 he never got in touch with you after you left word with his wife
16 or anything at all?

17 A No, sir.

18 MR. GRAY: Judge, bear with me a minute. I
19 think I have gotten to the end of the line, but I just
20 want to be sure.

21 THE COURT: When was your first knowledge of
22 this accident?

23 THE WITNESS: It was upon receipt of
24 Mr. Minor's letter. His letter was dated June 19th, and
25 the best I can establish, our office received it on

1 June 23rd of '75.

2 THE COURT: June 19th of '75?

3 THE WITNESS: Yes, sir.

4 THE COURT: And that's when you received
5 Mr. Minor's letter?

6 THE WITNESS: That's the date of his letter.
7 I believe it was received in our office on the 23rd of
8 June of '75.

9 MR. GRAY: I have no further questions,
10 Your Honor.

11 MR. MINOR: Your Honor, I just have one
12 question.

13
14 REDIRECT EXAMINATION

15
16 BY MR. MINOR:

17 Q Would your notes reflect a conversation you
18 had with me as to inquiring about the name of the court reporter
19 who took the deposition in my office? Do you recall that or
20 would your notes show?

21 A I don't recall it, Mr. Minor, and I don't,
22 from reading through my notes, I don't remember anything in here
23 about it.

24 MR. MINOR: Your Honor, in order that the file
25 would be complete, I would like to tender - I would like

1 to offer the deposition that was taken in my office
2 to show what happened. If Mr. Gray wants a chance to
3 look it over, it's okay with me. I just wanted to be
4 in all honesty and fairness to the Court as to whether
5 that would have any prejudice.

6 THE COURT: That was June 12th of '75?

7 MR. MINOR: Yes, sir.

8 THE COURT: That you go hold of
9 William Edwards. Is that when you learned about the
10 insurance?

11 MR. MINOR: About the insurance. That's the
12 only thing, I believe, essentially that I asked, but
13 he can look. I would like to move that it be
14 introduced into evidence.

15 MR. GRAY: Your Honor, without even looking
16 at it, I don't see what relevance it has, but at least
17 the Court has to have it to make that decision.

18 THE COURT: Well, it's part of the overall
19 picture, I think.

20 MR. GRAY: Yes, sir. Bear with me a minute,
21 then.

22 THE COURT: Hand this to Mr. Lyons a second
23 and have him check for me the cooperation clause in
24 this contract without me wading all the way through it.

25 THE WITNESS: It's in the back, near the end.

1 MR. GRAY: Your Honor, I put little pencil
2 check marks. I marked three paragraphs.

3 THE COURT: I got you, the conditions,
4 paragraph 1, 2 and 15.

5 MR. MINOR: As far as I am concerned, Your
6 Honor, Mr. Lyons can step down.

7 THE COURT: Wait a minute. We may want to
8 ask him something else.

9 MR. MINOR: All right. Your Honor, I would
10 just like to introduce this as plaintiff's exhibit
11 number 7.

12 THE COURT: This is the transcript of
13 William H. Edwards taken at Mr. Minor's office on
14 June 12, 1975?

15 MR. MINOR: Yes, sir, Your Honor.

16 THE COURT: This transcript will be received
17 and admitted in evidence and identified as plaintiff's
18 exhibit number 7.

19 (Whereupon, the aforementioned document was
20 received in evidence and marked as plaintiff's exhibit
21 number 7.)

22
23 MR. MINOR: I am through with Mr. Lyons for
24 this minute.

25 MR. GRAY: I am too.

1 THE COURT: I want to ask him some questions.

2
3 (Whereupon, discussion among counsel and the
4 Court was had.)

5
6 MR. MINOR: Your Honor, we can argue that.
7 I think I have a case on that point, but I wanted -- I
8 had one other witness that I wanted to put on.

9 MR. GRAY: You have got another witness?

10 MR. MINOR: Yes, that has not been sworn.

11 MR. GRAY: Have they been sitting in the
12 courtroom?

13 MR. MINOR: This witness is for a very
14 limited purpose.

15 MR. GRAY: I asked if any of them were
16 witnesses and you said no.

17
18 (Whereupon, an off-the-record discussion was
19 held.)

20
21 THE COURT: Now, I just wanted to ask a couple
22 of questions of Mr. Lyons.

1 BY THE COURT:

2 Q Now, Mr. Lyons, you are, what? I believe your
3 official title is claims supervisor?

4 A No, sir, claims specialist.

5 Q Now, as claims specialist, when you are
6 first notified of a claim, do you, yourself, get initial
7 information from the witnesses and so forth and the insured?

8 A Yes, sir. I handle the entire investigation.

9 Q You handle the investigation. Now, do you,
10 yourself, actually attempt to settle a case?

11 A Yes, sir.

12 Q With the party, injured parties, say, or the
13 plaintiff prior to actually their getting counsel in the case?

14 A Yes, sir.

15 Q Now, when you finally, after somewhere in the
16 neighborhood of six or seven months were notified of the
17 accident, now, did you make any effort to locate, obtain the
18 names of those two sailors?

19 A I can't honestly say whether I did or not.
20 I don't have anything in the file that says I did.

21 Q Well, surely you would remember, though,
22 whether or not you made an effort to locate them?

23 A Yes, sir. I don't remember doing anything,
24 no, sir.

25 Q Now, you knew, I believe of the fact that this

1 man, Edwards, with whom you spoke and had an interview, that
2 although he told you that he didn't hit the plaintiff and the
3 plaintiff was lying on the ground when he went by, at the same
4 time, he pled guilty in Court?

5 A Yes, sir.

6 Q And do you know whether or not he was
7 represented by counsel?

8 A Yes, sir. He was.

9 Q Did you ever contact his counsel?

10 A Yes, sir. I vaguely remember talking to him,
11 yes, sir.

12 Q And do you recall who that counsel was?

13 A It was either Richard or David Levin. I am
14 not sure which one it was.

15 Q Now, do you recall whether or not you made any
16 inquiry from them concerning these two sailors?

17 A I don't remember my conversation with them,
18 no, sir. I don't believe that the names were available from any
19 source.

20 Q Did you ever check on the police report to
21 see if their names and addresses were there?

22 A Yes, sir.

23 Q You did check the police report?

24 A Yes, sir.

25 Q And you did not see their names?

1 A No, sir. They were not listed, and I believe
2 that in Portsmouth the police officers will not discuss the case
3 with you unless it goes through the attorney. I think I tried to
4 call them and they wouldn't talk to me, so that kind of ends that.
5 Most cities you can talk to the police officers and they will
6 discuss it. In Portsmouth, they won't.

7 Q Well, after your conversation with Edwards,
8 did you ever talk to him again, and I am speaking of the
9 conversations where you took the telephonic transcript?

10 A Yes, sir. I can't remember ever talking to
11 him again, no, sir.

12 Q And that was June 23, 1975?

13 A Yes, sir.

14 Q And the second suit was filed January 22, '76,
15 and that's the one that Mr. Minor sent you, I believe?

16 A Yes, sir.

17 Q Now, what did you do from that point forward?

18 A I went to Mr. Edwards' home. He wasn't
19 there. His wife -- I talked to a daughter one time, and I
20 assume it was a daughter, a younger lady, and left word for him to
21 contact me. Then I went back several other times and talked to
22 Mrs. Edwards, and each time, it was each time we will have him
23 call you today or tomorrow, so I checked the records here to see
24 if service had been obtained and found out it had been obtained
25 and that the daughter had signed for it. Service was on the

1 daughter on 2/25/75 -- excuse me, that was on the first thing.

2 So I asked that the daughter contact me too.
3 This was in regards to the first suit, not the second one, so I
4 could ask her about those, since we never got those, and I never
5 heard from either one of them.

6 Q The first one, I understand you didn't get,
7 but the second one you did?

8 A We got it from Mr. Minor, yes, sir.

9 Q You knew the suit existed?

10 A Oh, yes, sir.

11 Q Well, now, at what point -- was there a time
12 when you turned this matter over to your legal department? Now,
13 I don't mean Mr. Gray locally.

14 A Mr. Gray is our legal department locally.

15 Q Do you deal, from your investigations,
16 directly with Mr. Gray, is that what it is?

17 A I report to a supervisor who is with State
18 Farm, who is not an attorney, and then he makes the decision --
19 well, he would send it on to Mr. Gray. I would send it to him
20 and he would send it to Mr. Gray.

21 Q Well, did you send the information that you
22 had to your supervisor?

23 A Yes, sir.

24 Q And from thereon out, I take it you don't
25 know what happened?

1 A No, sir.

2 Q Well, were you at all satisfied with Edwards'
3 denial that he hit this person in light of your other investigations?

4 A Well, it didn't really make any difference
5 whether he denied it since he had already pled guilty to it in
6 Court. It was a matter of law, I assume, and I really didn't --
7 I don't know whether I believed him or not, to be honest with you.

8 Q Now, I notice now when you talked to the
9 old man, the eighty-one year old witness, James Williams, that
10 you questioned him concerning where the accident took place,
11 whether it was at the intersection or the middle of the block
12 and -- now I remember, referring to page two of your conversation
13 with the witness, and you asked him the question - well, you
14 asked him about seeing all the accident. Without reading all
15 this, then you said, "Where did the car go?"

16 And the answer was, "Somebody, I don't know
17 who -"

18 Then you have "Who", but they must mean two,
19 "Stopped the man. He was supposed to be hit and run and they
20 stopped him. So a little later the law come and took him in the
21 car, but I didn't get to see the man, who he was. I didn't know
22 who he was. I didn't know his name or nothing. Nothing. I
23 didn't ask nobody's name."

24 Question: "Would you know him if you saw him?"

25 Answer: "Well, I wouldn't have knowed him if

1 I saw him unless he would have - they carried him to the Court
2 or something. Maybe I might have noticed him then, but other
3 than that, I wouldn't have knowed who he was to start with."

4 Then you asked him, you say,

5 Question: "You don't know if they got the
6 right man or not, do you?"

7 No, sir. He says, "No, sir. I wouldn't
8 have. If the man arrested him, if the man had him in the car,
9 but I couldn't see him."

10 Question: "But I mean you didn't even know
11 if they went and got the right man. It could have been absolutely
12 somebody else that they went and got, is that correct?"

13 "That's correct."

14 So in your line of questioning this man over
15 the telephone, from this it seems as though you were trying to
16 elicit from him the fact that he didn't know whether this man was
17 the one that the others had said was the one or not?

18 A Yes, sir.

19 Q Tie it in right behind the testimony as to
20 him seeing the accident?

21 A (Witness nods head affirmatively.)

22 Q So we don't know -- it was like examining
23 him along the lines like he wasn't too good a witness, this
24 fellow, because I gathered you were trying to elicit from him
25 the fact that he didn't know if it was Edwards or not and if it

1 wasn't Edwards, it was somebody else who went there, which would
2 tie it in with what Edwards told you?

3 A Yes, sir. We definitely did.

4 Q Now, that brings in the fact of the grave
5 importance of, I think of the other witnesses too and, of course,
6 you had the plaintiff himself?

7 A (Witness nods head affirmatively.)

8 THE COURT: Do you have anything further?

9 MR. GRAY: Not from him, Your Honor.

10 MR. MINOR: Not from him, Your Honor. I do
11 have one matter.

12 THE COURT: Do you have another witness?

13 MR. MINOR: Your Honor, I would like to
14 preface this, when I came here this afternoon I was
15 called in the hall, and for the first time I learned
16 that the plaintiff, Mr. George Porter, had recently
17 just gotten out of, was it Central State, and that I
18 can put a witness on just to, for whatever bearing that
19 might have on his condition or his testimony.

20 THE COURT: What's that got to do with this
21 testimony right now?

22 MR. MINOR: From what I gather, he had first
23 said that the man was twenty feet away when he first
24 saw him.

25 THE COURT: All that trial is over - I mean,

1 regardless. I tried that case and --

2 MR. MINOR: I was just talking about his
3 testimony here today. It might explain --

4 THE COURT: I don't think that has any
5 probative value here today.

6 Do you have another witness, Mr. Gray?

7 MR. GRAY: I had one, but it doesn't respond
8 to anything that has been put on. There is no need for
9 me to put on another witness. The only thing I don't
10 have which I think ought to be in evidence before the
11 Court is an abstract from the General District Court of
12 the plea of guilty that Edwards apparently made, and it
13 would show the date of that. I thought perhaps
14 Mr. Minor might have it, but he doesn't, and I would
15 like to - save introducing that into evidence, I rest.

16 THE COURT: Let's get it over here. Do you
17 have it yourself?

18 MR. GRAY: No, sir. I don't have it. I would
19 have to go over there and get it, if I may.

20 THE COURT: All right. We will take a short
21 recess.

22
23 (Whereupon, a recess was taken at 3:45 p.m.,
24 and Court reconvened at 4:20 p.m.)
25

1 MR. GRAY: Your Honor, I apologize for the
2 delay, but what happened, I went over there to the
3 General District Court, and it turned out that the man
4 was convicted over here in the Circuit Court, your own
5 Court. Judge McMurran, I believe heard it, and I have
6 the file here and, of course, the Court can take
7 judicial notice of its own files and the file, that
8 portion of it which I am interested in having in
9 evidence in the case here is that Edwards was charged
10 with failure to stop at the scene of an accident and
11 render the information required by law and failure to
12 render the reasonable assistance to the injured person
13 as required by law as against the peace and dignity of
14 the Commonwealth of Virginia and cited as Virginia Code
15 Section 46.1-176, 177, and the notations in the file
16 of April 2, 1975 is that the defendant appeared with his
17 own attorney, Richard Levin.

18 The defendant was arraigned and pled guilty
19 as charged. Witnesses were sworn and the evidence was
20 heard and the defendant was found guilty as charged.

21 Then it proceeds on to the sentencing and
22 punishment, and I am not interested in introducing that.
23 I am merely interested in the fact that the defendant,
24 Edwards, pled guilt to being involved in the accident
25 with George Porter and failed to stop at the scene.

1 THE COURT: It was hit and run, then?

2 MR. GRAY: Yes, sir.

3 THE COURT: All right, sir.

4 Gentlemen, anything further?

5 MR. GRAY: I have no further evidence,
6 Your Honor.

7 MR. MINOR: We have no further evidence.

8 THE COURT: Do you have anything in rebuttal?

9 MR. MINOR: Have nothing in rebuttal. I
10 would just like to be heard at the proper time.
11

12 (Whereupon, counsel argued the case and the
13 following opinion by the Court was had:)

14 THE COURT: Well, now, a little brief review
15 of this situation as I see it and understand it, the
16 situation here is that after the accident, which took
17 place on November 3rd of 1974, that Mr. Minor
18 initially filed a suit for the plaintiff against
19 Edwards, William Edwards, and he didn't know whether
20 there was any coverage or anything, and as time went on,
21 he finally took some depositions and he learned that
22 there was. Then he took the course of dismissing the
23 first suit, rather than amending the motion for
24 judgment and adding the insured who was the wife of
25 Williams, her name being Rosalie, then brought a suit

1 against both of them.

2 Now, the company was notified by this time,
3 not by William Edwards, but by counsel himself sending
4 information and a copy of the motion for judgment and
5 so forth to Mr. Richard A. Lyons, who then as now is
6 a claims specialist for State Farm, the defendant in
7 this matter, and from that point, as Mr. Lyons testified,
8 he subsequently went to the home of the Edwards, and
9 William wasn't there at the time but he did talk to
10 Rosalie, who was actually the company's insured.
11 Then he left, then later he took by telephonic
12 communication a recorded statement or statements which
13 are in evidence here, and he talked with Edwards
14 about the situation and he, at that time, apparently
15 denied having anything to do with the accident in spite
16 of the fact that he went to Court with counsel and
17 entered a plea of guilty to the charge of hit and run.

18 I am trying to consider all these things
19 together. At this point I feel that Mr. Lyons could
20 have and should have gotten the point across to the
21 insured of how important this situation was.

22 Now, the time passes on -- well, it was
23 June 23, 1975 when Mr. Lyons spoke with Mr. Edwards and
24 Rosalie, then he also talked with the other witness,
25 an eighty-one year old man, I believe his name was

1 James Williams, who was a witness to the accident.

2 I can understand the difficulty of contacting
3 the sailors who actually were the ones that brought this
4 man's arrest about so quickly.

5 Now, all of these other things you say are
6 true. Well, it was on July 11, '75 that Mr. Lyons
7 talked with this man, Williams, and a telephonic
8 communication was recorded.

9 Now, looking at it from the plaintiff's
10 standpoint of trying to consider this thing fairly from
11 both sides, we have got a situation where a person, for
12 some strange reason, it's extremely hard to understand
13 because the policies of the premiums are paid. The
14 policy is in force. No question about that, but the
15 man who was actually involved in the accident and the
16 husband of the insured apparently was taking something
17 of a belligerent stand, and I just feel like the
18 position should have been recognized and that in some
19 way - I feel like you are even getting into the area of
20 public policy where individuals can be seriously
21 injured and the people who are insured for some reason
22 or other, knowing they have nothing and nothing can be
23 collected from them, and even though they would not be
24 hurt in any way take a position which may ultimately
25 mean that the plaintiff is blocked completely for any

1 recovery for his pain and suffering and special damages
2 and all of the various matters concerned.

3 Now, everything that Mr. Gray has pointed out,
4 which normally a person involved in an accident
5 immediately makes a point to do, get all the information
6 he can to his carrier for his own protection, and much
7 of this was done, but when I look at this thing and
8 consider the long period of time involved, and from the
9 time it was almost a year, almost a year. It was in
10 June of '75 that the company did have notice of
11 everything. They refused to do anything. They didn't
12 come to Court on a non-waiver or anything else. They
13 just, their whole position was, it looks to me like it
14 was a completely enveloped position, and I can't help
15 feeling that it in itself is contrary to public
16 policy.

17 I don't believe there is really any real
18 prejudice in the extent that from the overall outlook
19 from the evidence that we do have in this case, that the
20 end result could have been any different. I mean, if
21 the sailor boys, the two young sailors, I say young,
22 if they had been located in some way, through some
23 diligence, they could have, but I am not criticizing
24 Mr. Lyons there, but if they could have, it seems to
25 me that from the evidence, as I see it, and having

1 tried the case, the civil action for personal injuries,
2 that they would have been of no help to the insurance
3 company's position. They are the ones that ran the
4 man down and brought him to justice, in the sense of
5 the word, to answer for what he had done.

6 The only thing that would appear contrary,
7 which is this guy Edwards' statement that he didn't
8 have anything to do with it, but he went ahead and pled
9 guilty anyhow, and this suit was originally for
10 \$50,000.00, and I know the amount sued for doesn't
11 mean anything, but still it was a suit brought for
12 \$50,000.00.

13 I just feel that the defendant, insurance
14 company, in this case sat on its hands to a great
15 extent. That even though this William Edwards wasn't
16 very cooperative and he didn't come when Mr. Lyons
17 told him he should have and he didn't give him the
18 initial notice, and I feel that more effort should have
19 been made towards the insured herself to see that
20 certain information, certain actions were taken in
21 compliance with the request of Mr. Lyons.

22 I feel that the judgment should be entered
23 for the plaintiff for \$5,000.00 plus interest at
24 8 percent annum until paid from this date plus court
25 costs.

1 MR. GRAY: Your Honor, note my objection and
2 exception to the ruling of the Court and the intention
3 of the defendant to file notice of appeal to the
4 Supreme Court, and that judgment is as of today?

5 THE COURT: As of today. All right, sir.

6 (Whereupon, the hearing was completed at
7 5:00 p.m.)

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

2
3 GEORGE LEE PORTER,

4 Plaintiff,

5 v

LAW NO. L-75-122

6 William H. Edwards,

7 Defendant.

8
9 Depositions of witnesses, taken before Paul R.
10 Huggins, a Notary Public for the State of Virginia at
11 Large, pursuant to notice, at the law office of Mr. George
12 Minor, Jr., 605 Green Street, Portsmouth, Virginia, at
13 3:00 p.m., June 12, 1975, to be used in the trial of the
14 above-entitled cause, pending in the Circuit Court of the
15 City of Portsmouth.

16
17 -----oOo-----

18
19 APPEARANCES: Mr. George Minor, Jr.,
20 attorney for the plaintiff.

21 No appearance for the defendant.

22 Case No. L-77-487

23 Plaintiff's Exhibit 4

24 Date 10/19/75

25 Judge [Signature]

1 MR. MINOR: Let the record show, Mr. Reporter,
2 that these depositions are being taken pursuant
3 to notice and subpoena, and they're the
4 depositions of the defendant, William H. Edwards,
5 and his wife, Rosa Lea Edwards.

6 Will you raise your right hand, please,
7 ma'am. Do you swear that the testimony you shall
8 give in this case shall be the truth and nothing
9 but the truth so help you God?

10 THE WITNESS: Let me say this. I don't know
11 what it's true about.

12 MR. MINOR: Do you swear that the testimony
13 will be true in this case?

14 THE WITNESS: I really don't know what it's
15 going to be about.

16 MR. MINOR: It's concerning the accident.

17 THE WITNESS: I don't know nothing about the
18 accident.

19 MR. MINOR: But I am talking about the
20 statements you make will be true.

21 THE WITNESS: I don't know no statements.

22 MR. MINOR: But the answers to questions
23 will be truthful. You know what the truth is.

24 THE WITNESS: Right.

25 MR. MINOR: You will tell us the truth today.

1 THE WITNESS: I tell you if I know something.

2 MR. MINOR: So you swear you will tell us
3 the truth.

4 THE WITNESS: Right.

5 MR. MINOR: Under oath.

6 THE WITNESS: Right.

7 MR. MINOR: You got that, Mr. Reporter?

8 THE REPORTER: Right.

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

11
12 ROSA LEA EDWARDS, called as a witness, having
13 been first duly sworn, was examined and testified as follows:

14
15 EXAMINATION BY MR. MINOR:

16 Q Would you state your name, please.

17 A Rosa Lea Edwards.

18 Q Is it Rosa Lea Edwards?

19 A I just use that.

20 Q How do you spell your maiden name?

21 A Demory, D-E-M-O-R-Y.

22 Q Is that what they have at the Division of
23 Motor Vehicles?

24 A Yes.

25 Q Do you know what your driving plate license

R. L. Edwards

4

1 number is on your automobile?

2 A Uh-huh. AVH-567.

3 Q AVH-567?

4 A Uh-huh.

5 Q And is your car licensed in the State of
6 Virginia?

7 A (The witness nodded affirmatively.)

8 Q Is that yes? If you answer yes or no, we
9 can get it on the record, instead of shaking your head.

10 A Yes.

11 Q Is that yes?

12 A Yes.

13 Q And what kind of car do you have?

14 A Sixty-eight Ford Galaxie 500.

15 Q Galaxie 500?

16 A Uh-huh.

17 Q Did you own that car on the 3rd day of
18 November, 1974?

19 A Yes.

20 Q And did it have the same license plate
21 number on that particular day?

22 A Yes.

23 Q And that's AVH-567?

24 A Yes.

25 Q And it's the 1968 Ford Galaxie.

1 A Uh-huh.

2 Q What color is it?

3 A Brown and black vinyl top.

4 Q Brown?

5 A And black vinyl top.

6 Q Now, did someone have your car on the 3rd day
7 of November, 1974? Was someone driving it?

8 A That morning my husband was.

9 Q Your husband was driving your car that
10 morning. And what is your husband's name?

11 A William H. Edwards.

12 Q And does -- do the two of you live at
13 1303 Elm Avenue in Portsmouth, Virginia?

14 A Yes.

15 Q And did you so reside there on the 3rd day
16 of November, 1974?

17 A Yes.

18 Q Did your car meet with an accident on that
19 day?

20 A No, it didn't. So they say.

21 Q So who say?

22 A I don't know the people on that day -- what's
23 his name? George Porter down the street from my house. So
24 they say. I was at church and -- well, I don't know that
25 much about it because I was at church; and they say my car

R. L. Edwards

6

1 hit them, and I know it didn't:

2 Q Someone told you.

3 A Some guy told the police my car look like
4 the car. They impounded my car from November the 2nd until
5 sometime in January when I got my car back.

6 Q November, 1974, to January --

7 A I don't know the date.

8 Q -- 1975.

9 A Yeah. I don't know the date.

10 Q And did you go to court?

11 A No, I didn't go to court.

12 Q Did your husband go to court?

13 A Yes.

14 Q Did you go to court with him?

15 A No.

16 Q You didn't go to court when he went to court?

17 A No.

18 Q Did he go to court for hit-and-run?

19 A That's what they had him charged with.

20 Q He was charged with hit-and-run; is that
21 right?

22 A I know they charged him with hitting that
23 man.

24 Q George Lee Porter, is that the man that
25 lived down the street?

R. L. Edwards

7

1 A Yeah.

2 Q Okay. About what time did your husband
3 bring your car home?

4 A I was in church.

5 Q Do you recall talking to me on the phone --

6 A Right.

7 Q -- about this --

8 A Right.

9 Q -- accident?

10 A Right.

11 Q Do you remember telling me you had an
12 insurance policy?

13 A Right.

14 Q And that you would talk to your insurance
15 company.

16 A I didn't tell you I would talk to my
17 insurance company.

18 Q Did you talk to your insurance company?

19 A No.

20 Q Do you have an insurance policy?

21 A Yes.

22 Q Does it cover your car?

23 A Yes.

24 Q Did you get a subpoena to bring that
25 insurance policy?

R. L. Edwards

8

1 A I don't have that insurance policy.

2 Q Did you get a subpoena to bring the insurance
3 policy to let me see it?

4 A I don't know that.

5 Q I didn't ask you that. I asked you did you
6 get a subpoena from the court.

7 A Yeah, I got --

8 Q The answer is yes?

9 A Yes.

10 Q And the subpoena requested that you bring
11 the insurance policy.

12 A I don't know. I don't have it with me.

13 Q I asked did the subpoena ask you to bring
14 the insurance policy for me to inspect or copy. Is that
15 what the subpoena said?

16 Did you hear what I asked you?

17 MR. EDWARDS: Let her read it.

18 THE WITNESS: Wait a minute, please. I
19 didn't come in here for arguing. I come in here
20 for you to ask me questions. Wait a minute. I
21 don't have the policy.

22
23 BY MR. MINOR:

24 Q What company has your insurance policy?

25 MR. EDWARDS: State Farm.

R. L. Edwards 9

1 BY MR. MINOR:

2 Q And what's the number of your insurance
3 policy?

4 A I don't know the number.

5 Q Is it a liability policy?

6 MR. EDWARDS: Sure.

7 MR. MINOR: Just let your wife answer. She's
8 under oath right now.

9
10 BY MR. MINOR:

11 Q Is it a liability policy?

12 A Yes.

13 Q Now, did the subpoena ask you to --

14 A I don't have it.

15 Q Did the subpoena ask you to bring the policy
16 here today?

17 A I don't have the policy.

18 Q That was not the question.

19 A I am just telling you what I don't have.

20 Q Did the subpoena ask you to bring the policy
21 here today, the subpoena duces tecum? Didn't you get more
22 than this instrument here? Didn't you get a subpoena that
23 was served -- according to the court's record -- served on
24 you requesting you and ordering you to bring your insurance
25 policy to the office -- wait a minute. Off the record.

1 (Off-the-record discussion.)

2 MR. MINOR: Back on the record.

3
4 BY MR. MINOR:

5 Q You have an insurance policy with what
6 company now?

7 A It's Central.

8 Q Central.

9 A Uh-huh.

10 Q What's the address?

11 A It's on Court Street.

12 Q Was that -- is that an agency that handles
13 several insurances?

14 A I know it's Central Insurance.

15 Q And you did not pay an uninsured motorist
16 fee, is that correct, because you had insurance?

17 A Right.

18 Q And it protects you on liability.

19 A Sure, I got liability.

20 Q Have you reported this accident to your
21 insurance company?

22 A I haven't had an accident.

23 Q So you have not reported anything to them.

24 A Right.

25 Q Can you find that in the -- when did you

R. L. Edwards

11

1 last pay your insurance?

2 A My insurance -- I done paid it up for a year.

3 Q When did you pay it?

4 A The insurance is paid up for a year when it's
5 time to renew again.

6 Q When is it due again?

7 A Excuse me. I don't think --

8 MR. EDWARDS: Listen. I understand this
9 now. See, I know what this is. You understand
10 me? This is because Mr. Porter is trying --
11 is putting in a suit.

12 MR. MINOR: Wait a minute. Your time will
13 come.

14 MR. EDWARDS: I don't think you should ask
15 her all them questions.

16 MR. MINOR: Well, you can go back to the
17 court and complain if you don't like the questions,
18 and the court will make a ruling on it. The
19 court orderered you here today and ordered you
20 to bring certain documents here.

21 MR. EDWARDS: Does she have to answer them
22 questions?

23 MR. MINOR: If you don't want to answer
24 any of these questions, you're going to have to
25 complain to the court. The court required you to

1 come here and answer. If there is something on
2 here you don't like, you have the right to go to
3 court and complain about it; otherwise, you have to
4 answer the questions because you're subpoenaed to
5 come here and answer. It will be up to the judge
6 to decide whether I should ask the question.
7

8 BY MR. MINOR:

9 Q So, when is your insurance due on your
10 insurance policy?

11 A Look. Okay. I told you the date. That
12 ain't none of your business, right?

13 Q When did you last pay your insurance?

14 A I'm paid out until I renew. I don't know.

15 Q When did you pay?

16 A I take my insurance by the year.

17 Q When did you last pay? Do you see Central
18 Insurance Company on here, the one you're insured by? I see
19 330 County Street. Is that the one?

20 A That's it.

21 Q That's where you go to pay your insurance at,
22 330 County Street.

23 A I don't know. Let me see. Here it is.
24 Here's Central Insurance.

25 Q Is that where you pay insurance, 330 County

1 Street?

2 A I don't know. I'm asking you where it is.
3 Is it here near the bus station?

4 Q Yeah, that's near the bus station.

5 A That's it then.

6 Q When did you last pay it? Was it this
7 month you paid? Did you pay it in June?

8 A Let's see. Probably August when I renew.

9 Q It will be August when you renew.

10 A It's already paid up.

11 Q So you paid it last August, 1974.

12 A No, I just paid it. I takes mine out --
13 I paid it out for the year.

14 Q You pay every month?

15 A I paid it monthly until I paid it up.

16 Q And you had paid it before the accident last
17 November the 3rd, 1974.

18 A I don't know. I hadn't finished paying it
19 up then.

20 Q You had?

21 A I don't know whether I had or not. I don't
22 know when my last payment was. I don't know.

23 Q You don't know what your last payment was.

24 A But I know I paid it up.

25 Q Okay. Now, where is your insurance policy

R. L. Edwards

14

1 now?

2 A I don't know. I haven't had the insurance
3 policy -- I don't know.

4 Q Do you know the number of it?

5 A Huh-uh. Probably have to check it from them.

6 Q You pay on the -- every month, you say; is
7 that right?

8 A Until I pay it up.

9 Q When was the last month you paid on it?

10 A I don't know. I paid it out.

11 Q When was that?

12 A I don't know, I keep telling you.

13 Q Two months ago, three months ago?

14 A I don't know, three months or what.

15 Q Did you pay it last month?

16 A I was paid up for last month.

17 Q And you have no idea how many months since
18 you paid on it.

19 A Since I paid it out for the year, the full
20 time, no.

21 Q But you paid it for the full year.

22 A Right. It's time almost to renew it.

23 Q Do you know the person you dealt with at
24 Central Insurance Company?

25 A No, I just go down there.

R. L. Edwards

15

1 Q You don't know anybody down there.

2 A No. Just go and pay the bill.

3 Q Wait just one minute. It's in your name.

4 A It's my car.

5 Q So the policy is in your name.

6 A That's right.

7 Q Okay. Just a minute.

8 Okay. Back on the record.

9 What time did your husband get home on
10 November the 3rd?

11 A I was in church.

12 Q You were in church on that day.

13 A Right.

14 Q And what time did you get home?

15 A I got home about a little after 1:00 when
16 I got home.

17 Q Was your husband home then?

18 A No.

19 Q Was the car there?

20 A Yes.

21 Q Did you see the car?

22 A Yes.

23 Q Did you look at it?

24 A Yes.

25 Q Was anything unusual on the car?

1 A No.

2 Q Did the police come and pick the car up?

3 A That afternoon.

4 Q And how long did they keep it?

5 A From the 3rd until sometime in January.

6 Q When you got it back, was anything unusual --
7 did you see any marks or dents or anything when you got it
8 back?

9 A No.

10 Q Did you tell the police officer that you
11 had insurance?

12 A They didn't ask me no questions.

13 Q They never asked you whether you had
14 insurance or not?

15 A No, they just come and got the car.

16 Q Okay. And you're saying you never went to
17 court to -- with your husband concerning this case at all.

18 A No.

19 Q Okay. And you're saying you don't know
20 where the insurance policy is; is that right?

21 A Right.

22 Q You said you think it's State Farm.

23 A No, Central Insurance. I took it out with
24 Central.

25 MR. EDWARDS: State Farm carries it.

1 THE WITNESS: I took it out with Central.
2 I know it's Central, you know. The place -- if
3 you call down there, they know.

4 MR. MINOR: All right.

5 (The deposition of Mr. William H. Edwards
6 was taken.)
7

8 BY MR. MINOR:

9 Q You have been ordered to bring a copy of
10 your insurance policy down here for me to inspect by the
11 court. Have you been to the insurance agency that you pay
12 your insurance to try to get a copy of your insurance
13 policy?

14 A No, I told you.

15 Q Now, if I continue this case, will you go
16 down there and try to get a copy of that insurance policy
17 so you can comply with the order of the Circuit Court of the
18 City of Portsmouth, Virginia?

19 Answer the question.

20 A I haven't hit nobody.

21 Q Will you comply with the order of the court?
22 Will you go down there and try to get a copy of that policy?

23 A I'll try.

24 Q And when are you going to do that?

25 A I don't know.

1 I have read the foregoing deposition, and the same
2 is true and correct.

3
4 _____
5 Deponent
6

7 -----oOo-----
8

9 MR. MINOR: All right. Let's ask your
10 husband some questions here.

11 MR. EDWARDS: Now, just before you start
12 asking me questions, I'm going to tell you
13 something before that you ask me too many
14 questions. When I go down to the courthouse, I
15 carry a lawyer to answer the questions for me.
16 If I don't think I should answer, I am going to need
17 to have me a lawyer before I answer.

18 MR. MINOR: Would you raise your hand,
19 please, sir. Do you swear that the testimony
20 you shall give in this case shall be the truth
21 and nothing but the truth so help you God?

22 MR. EDWARDS: Uh-huh. Yes.
23

24 -----oOo-----
25

1 WILLIAM H. EDWARDS, the defendant, called as a
2 witness, having been first duly sworn, was examined and
3 testified as follows:
4

5 EXAMINATION BY MR. MINOR:

6 Q What's your name, sir?

7 A William Edwards.

8 Q Is that William H. Edwards?

9 A Right.

10 Q And do you live at 1303 Elm Avenue,
11 Portsmouth, Virginia?

12 A Yeah.

13 Q How old are you, sir?

14 A Thirty-nine.

15 Q Thirty-nine. Did you live at 1303 Elm Avenue,
16 Portsmouth, Virginia, on November 3rd, 1974?

17 A Yes.

18 Q Were you driving a 1968 Ford on that day?

19 A Yes.

20 Q And were you traveling on Elm Avenue?

21 A Yes.

22 Q Did you meet with an accident on that day?

23 A No.

24 Q Were you charged with having met with an
25 accident?

W. H. Edwards

~~20~~

1 A Yes.

2 Q And did they arrest you for hit-and-run?

3 A Yes.

4 Q Was the person that you were supposed to
5 have hit one George Lee Porter? Was that the person named?

6 A Yes.

7 Q And did you go to the high court, to the
8 Circuit Court on that?

9 A Sure.

10 Q And they found you guilty of hit-and-run. *
11 So they found you guilty of that. Did you hear the
12 question?

13 A Yes, I heard it.

14 Q Did you -- did they find you guilty of
15 hit-and-run?

16 A Yes.

17 Q And what did they do? What was the sentence?

18 A I don't remember.

19 Q Did you ever report this accident to the
20 insurance company?

21 A No.

22 Q You heard your wife say you do have an
23 insurance -- the car was covered. Is it covered?

24 A Sure, the car is covered.

25 Q Do you pay the insurance yourself on occasions?

W. H. Edwards

-21

1 A We pay our bills. Don't make no difference
2 who pay them.

3 Q Do you pay them yourself on occasion? Do you
4 pay the premiums on the insurance?

5 A No, I don't pay the insurance.

6 Q Your wife pays the premium; is that right?

7 A Yes.

8 Q Do you go with her?

9 A I don't go with her to pay all the bills.

10 Q Did you go with her to pay the insurance?

11 A No.

12 Q You never been with her. Have you ever
13 seen the policy?

14 A Yes, I seen the policy.

15 Q Well, what's the name of the company that
16 has the policy?

17 A It was taken out with Central Insurance,
18 and State Farm is the one that put -- is the insurance
19 company.

20 Q State Farm is the insurance company; is
21 that right?

22 A Right.

23 Q Do you know what the policy number is?

24 A No.

25 Q Is it a liability insurance policy?

1 A It's a liability policy.

2 Q Was there any reason why you didn't tell
3 the company that you were being sued for hit-and-run on
4 this particular date, any reason why you didn't report this
5 to the insurance company?

6 A Yes, because it's -- I've had no way of
7 knowing that I was being sued. I haven't been to court,
8 and I haven't been down here before they said that I was
9 being sued.

10 Q Didn't you get a copy of the papers, the
11 suit papers suing you?

12 A When?

13 Q You didn't get a copy of these suit papers
14 that were filed several months ago back in about January?
15 You didn't get a copy of the papers?

16 A Not to my knowledge.

17 Q You never knew you were being sued?

18 A Huh-uh.

19 Q Well, do you know it now?

20 A Well, I should know. I'm sitting here
21 looking at you. You're the one doing it.

22 Q And you are being sued. So you got that
23 subpoena and -- about a week or so ago to come here, didn't
24 you?

25 A Right.

1 Q And you still didn't go to the insurance
2 company.

3 A No, I haven't been to the insurance company.

4 Q All right. Now, about what time did you get
5 home on November 3, 1974?

6 A I don't have no idea. My memory is not
7 that long.

8 Q You don't know what time you got home. What
9 time did you leave home?

10 A I don't remember.

11 Q Where had you been on that particular day?

12 Did you hear that particular question, sir?
13 Did you hear that question, sir?

14 A I'm trying to think. On this particular day,
15 my brother came around my house, and I took my brother home
16 and came back home.

17 Q What's your brother's name?

18 A Walter Edwards.

19 Q And where does he live?

20 A He lives on Edwards Street.

21 Q Is that in the City of Portsmouth?

22 A Right.

23 Q Do you know his number?

24 A No.

25 Q Did he come early in the morning?

1 A Yes, he came about --

2 Q About what time did he come?

3 A About 8:00 or 9:00.

4 Q Eight or 9:00?

5 A Uh-huh.

6 Q About how long did he stay at your house?

7 A I don't know how long he stayed. When he
8 left, I took him home.

9 Q Would it have been about an hour?

10 A I don't know.

11 Q About two hours?

12 A I don't remember how long he stayed.

13 Q You don't know whether it was fifteen
14 minutes or an hour or two.

15 A It was over -- more than fifteen minutes.
16 Whether it was two hours, three hours or what --

17 Q And did you stay around his house a while
18 when you went around to take him home?

19 A No, I put him out.

20 Q Sir?

21 A No, I said I just put him out.

22 Q Did you turn around and come straight --
23 immediately straight back?

24 A No, I didn't come straight back home.

25 Q Where did you go?

1 A I can't tell where I went then.

2 Q You don't recall where you went?

3 A After I left there, I just rode around. I
4 didn't go no particular place.

5 Q Did you mean in the City of Portsmouth?

6 A Sure, in the City of Portsmouth.

7 Q Did you stop and make any other stops?

8 A Just rode around, talked to friends, different
9 friends.

10 Q Well, who did you stop and talk to?

11 A I can't name all those people I stopped and
12 talked to that morning.

13 Q Do you recall any of them?

14 A No.

15 Q Do you recall any of the streets you went
16 on?

17 A The way it was, see, we stopped -- I stopped
18 along the street, and guys that I knew and probably haven't
19 seen since then -- I kill up some time with them and talk
20 and go ahead on and --

21 Q What street?

22 A Some of them I --

23 Q What street did you stop on?

24 A I was over in Newtown. I was probably on
25 two or three streets. I don't remember where I was as long

1 as it's been. I don't remember.

2 Q You don't know what street you stopped on.
3 Did you go into any houses?

4 A I just told you, no.

5 Q You stopped on the street. Did you get out
6 of the car?

7 A I can't remember from way back then. It's
8 been too long for me to remember. I don't remember whether
9 I got out the car or not.

10 Q And you do not have any idea what time you
11 got home.

12 A No, I don't.

13 Q And when you got home, did somebody come
14 to your house?

15 A Sure, the policeman came there.

16 Q Anybody come before then?

17 A I don't know.

18 Q And when the policeman came, did any other
19 citizens come with him, any other persons with the police?

20 A Like what?

21 Q Did you see other people there that were not
22 police officers who came there to your house with the
23 police?

24 A No.

25 Q Did the police officer look at your car?

1 A Sure.

2 Q Did he have a conversation with you?

3 A Sure.

4 Q Did he ask you anything about your car?

5 A No, he didn't ask me nothing about the car.

6 Q What conversation did you have with him?

7 A The police officer came to my house and said
8 that somebody had said that my car had been involved with
9 an accident, and then he asked me would I go back down to
10 the accident with him, and that's what I did.

11 Q What did you tell him?

12 A I told him that my car hasn't hit anyone.

13 Q And you went back down to the scene of the
14 accident; is that right?

15 A That's what I just told you, right.

16 Q And what did the police officer then do?

17 A He took me to jail.

18 Q Took you to jail and charged you with
19 hit-and-run; is that right?

20 A Yes.

21 Q And you've already testified that you were
22 convicted of hit-and-run; is that right?

23 A Yes, I was convicted.

24 Q Do you know George Lee Porter?

25 A No, no more than just seeing him around.

1 Q You had seen him before the day of this
2 accident?

3 A Yes. Everybody sees him. He's in the
4 street drunk every day. I see him in the street, walk
5 across the street drunk every day.

6 Q You did know him; is that right?

7 A Yes.

8 Q But you had not seen him on that particular
9 day.

10 A No.

11 Q And you deny being in an accident on that
12 particular day.

13 A Rephrase that question.

14 Q Do you deny being in an accident, being
15 involved in an accident on November 3, 1974? Do you deny it?

16 A Sure, I deny it because I didn't.

17 Q Okay. And you still say that you have not
18 reported this matter to the insurance company; is that right?

19 A I already answered that no.

20 Q Okay. Now, do you know of any other
21 witnesses as to your whereabouts on that particular day,
22 November the 3rd, 1974?

23 A Do I know of what?

24 Q Any other witnesses as to where you were.

25 A No.

1 Q You had seen him before the day of this
2 accident?

3 A Yes. Everybody sees him. He's in the
4 street drunk every day. I see him in the street, walk
5 across the street drunk every day.

6 Q You did know him; is that right?

7 A Yes.

8 Q But you had not seen him on that particular
9 day.

10 A No.

11 Q And you deny being in an accident on that
12 particular day.

13 A Rephrase that question.

14 Q Do you deny being in an accident, being
15 involved in an accident on November 3, 1974? Do you deny it?

16 A Sure, I deny it because I didn't.

17 Q Okay. And you still say that you have not
18 reported this matter to the insurance company; is that right?

19 A I already answered that no.

20 Q Okay. Now, do you know of any other
21 witnesses as to your whereabouts on that particular day,
22 November the 3rd, 1974?

23 A Do I know of what?

24 Q Any other witnesses as to where you were.

25 A No.

1 Q In other words, you don't know of anybody who
2 can verify that you stopped on the street to talk to them.

3 A No.

4 Q And you don't know of anybody right offhand
5 who could verify that you did not meet with an accident or
6 know anything about it that would help your testimony.

7 A Well, I didn't when I went to court; and I
8 know if I had some then, I would have had them.

9 Q Who are they?

10 A I told you, I didn't have any.

11 Q You don't have any now, any other witnesses,
12 right, that would add anything to --

13 A No, I don't know of any that add anything.
14 I know some that could, but they -- otherwise they didn't
15 get involved with it.

16 Q What's their name?

17 A I don't know. I wouldn't put them involved
18 in it. They didn't when I was down in court.

19 MR. MINOR: All right, sir. Off the record.

20 (Off-the-record discussion.)

21
22 BY MR. MINOR:

23 Q Do you think you could get a copy of your
24 insurance policy from the insurance company, from Central,
25 where you pay your insurance?

1 A Like I said to that --

2 Q Sir?

3 A All I can say is I can try.

4 Q And will you try?

5 A Sure, I'll try.

6 Q And will you bring that down here to me?

7 A I just said that I would.

8 MR. MINOR: Well, we're going to continue
9 this case for two weeks to give you a chance to
10 comply with the court order.

11 MR. EDWARDS: When I come back, I'll have
12 a lawyer. You won't be asking me these questions
13 because anybody is capable of an attorney when
14 somebody is asking them a lot of questions.

15 MR. MINOR: Can you be here on the 24th at
16 three o'clock?

17 MRS. EDWARDS: 24th of what?

18 MR. MINOR: Of June.

19 MRS. EDWARDS: What time?

20 MR. MINOR: At three o'clock.

21 We're going to continue it until three
22 o'clock the 24th.

23 MR. EDWARDS: You saying --

24 MR. MINOR: Get that on the record.

25 All right, sir. Go ahead.

1 MR. EDWARDS: I say look like that you was
2 the judge of this court. Now, did I have the
3 right to appeal this if I wanted to?

4 MR. MINOR: You have a right to get an
5 attorney, sir.

6 MR. EDWARDS: I see.

7 MR. MINOR: You have a right to get an
8 attorney, and he will explain this matter to you.
9 We are through right now, so you can go talk to
10 your lawyer, and he will fully explain your
11 rights to you, sir.

12 MR. EDWARDS: Why wouldn't you explain my
13 rights before this ever started instead of just
14 coming here, me and her?

15 MR. MINOR: We're through for the day.

16 MR. EDWARDS: Why wasn't it?

17 MR. MINOR: You had the right to get any
18 lawyer you wanted to. I had nothing to do with
19 your not obtaining a lawyer.

20 MR. EDWARDS: I thought once you go in a
21 court your rights was given to you before you
22 first enter that court.

23 MR. MINOR: That's a question for you and
24 your lawyer to find out.

25 MR. EDWARDS: You say you're through?

1 MR. MINOR: Yes, sir.

2 MR. EDWARDS: I'll find out.

3 MR. MINOR: You have a right to see --
4 Mrs. -- just a minute. You have a right to come
5 back and look at this testimony on the depositions
6 that he has taken here, or you can waive your
7 signature now. You want to come back and read
8 what he has down here?

9 MRS. EDWARDS: Come back and read it when?

10 MR. MINOR: Whenever he gets it transcribed.
11 He will put it in a little booklet.

12 MRS. EDWARDS: I don't know what you're
13 doing.

14 MR. MINOR: Do you want to come back and
15 read it, or do you want to waive it?

16 MRS. EDWARDS: I'll leave it to him.

17 What do you want?

18 MR. EDWARDS: I'll come back and read it.

19 MR. MINOR: Well, they will read it.

20
21 I have read the foregoing deposition, and the
22 same is true and correct.

23
24
25

Deponent

This is Dick Lyons interviewing William Edwards from the Koger Executive Center on the 23rd of June, 1975, at his home on Elm Street in Portsmouth, Virginia. This interview concerns an alleged accident of November 3, 1974 on Elm Street, Portsmouth, Virginia.

Q. What is your name?

A. William Henry Edwards

Q. And what's your address Mr. Edwards?

A. 1303 Elm Avenue

Q. And what is your age?

A. My age is 39

Q. And you're married?

A. Yes I am

Q. You're aware that I am recording this statement?

A. Yes I am

Q. Do you remember the date of the alleged accident we're talking about?

A. Well, no, not exactly the date

Q. Do you remember what time of year it was? January, February, November, April?

A. Uh, it was - oh my god, I don't remember for sure, but it was November or December

Q. Okay, and about what time of day did it take place?

A. Well, I was - really, I can't say exactly the time

Q. Afternoon, night, what?

A. Well uh - it was - it could have been after 12

Q. In the afternoon or midnight?

A. It was during the day

Q. Was it light you know when you went by the scene of the accident, was it daylight?

A. Yes it was

Q. Daylight?

A. Yes, it was daylight

Q. Okay, this accident allegedly took place in front of 1407 Elm Street, is that correct?

A. Right

Q. What is Elm Street here, just two lanes, one in each direction?

A. Right

Case No. L-77-487
Plaintiff's Exhibit # 5
Date 10/19/78
Judge [Signature]

- 2 -

Q. Are there any stop lights or (Inaudible) where the accident allegedly took place?

A. Uh, just - just cross the light

Q. What street is that?

A. It was Duke and Elm

Q. Duke and Elm. All right now, were you in your car by yourself?

A. Yes I was

Q. Now, do you want to tell me what, you know, when you went by the scene, what you saw, what you know happened, and you know then what happened after that?

A. Well, when I came by the uh - came by, there was a girl was uh standing out there by this man. Well, she was on the sidewalk

Q. What was he doing, standing on the sidewalk or -

A. No, he was laying on the sidewalk

Q. Uh-huh

A. So, when I got to the house, I asked my daughter who had got hit down there. So she said she didn't know, and so I came on to the house and I sat here in the front room and about five or ten minutes I guess, the policeman came here, and they asked me had I been involved in an accident, and I told them no. So, he asked me to go back with them down to the accident and uh check. And so they took me in the car and I went with them back down there and so when I got back down there, it was uh some girl said that I was the one that hit the man.

Q. Did she recognize you (Inaudible) that what she said?

A. Well, the girl that said she did - she just told the policeman that I was the one.

Q. So what did they do then?

A. They took me downtown

Q. Put you in jail?

A. Yes

Q. Okay, did you hit the person?

A. No, I didn't

Q. You say he was already laying on the ground when you went by?

A. Yes, he was on the sidewalk

- Q. Was there anybody else around besides this girl?
- A. Well uh seemed like some people were coming from uh across the street, but really as I was coming pass, they wasn't there that long, I just coming by you know.
- Q. When you got back, had the officer taken the man to the hospital or what?
- A. Well, I think they had. Yes, they had.
- Q. Do you know what injuries he received?
- A. No, I did hear somebody say that he had uh a arm injury, he had a broke arm or something
- Q. You never saw the guy, you don't know whether he was drinking or what uh?
- A. Well, uh this guy stays drunk all the time.
- Q. So, you know who he is uh?
- A. Uh?
- Q. You know who he is
- A. You know, I didn't know him personal but by me living right here close I see him at all times and you know, anytime you know
- Q. How old a fellow was he, young fellow, old fellow, or what?
- A. Well, I say he was 50 or 60
- Q. You say he stays drunk all the time uh?
- A. Uh-huh
- Q. And you say you weren't involved in the accident so you don't know anything about it, what part of your car was suppose to hit him or anything. Your car was impounded by the police, is that right?
- A. Right
- Q. And they didn't find anything wrong with it?
- A. They found nothing - the policeman testified in court that he found no part of my car had - he could find nothing that the car had been hit - hit anybody.
- Q. And you say you went to court. How many times did you go to court?
- A. Oh uh I think I went to court two or three times
- Q. All right, the first time was in lower court. What happened there? Did they find you guilty or not guilty?
- A. Well uh really it seemed like uh I believe because I went there with the lack of witnesses or something
- Q. All right, what was the final time you went - what did they finally decide?

- 4 -

- A. Well, after they uh - I had been told to go on and plead guilt, they decided they would charge me 200 in cost and a year suspended
- Q. And what made you decide to plead guilty if you never hit the guy?
- A. Uh?
- Q. What made you decide to plead guilty if you had never hit the man?
- A. Well, well I was trying - well, well, what it was see, I was uh I was trying to hold my job because I knew I couldn't keep on being off from my job and uh trying to take care of my family and my wife she stays in the hospital all the time and I'm the only income at the time, you know, that has and what I was trying to do was keep working so that uh I could take care of my family.
- Q. Uh-huh
- A. And I didn't want to get no time cause I knew my family was suppose to be - I mean had to be supported
- Q. Oh, did somebody tell you that if you pleaded guilty you wouldn't get any time?
- A. Uh?
- Q. Did somebody you wouldn't get any time if you plead guilty?
- A. Well, they told me to take that plea
- Q. Who told you that?
- A. Get it all over
- Q. Who told you that?
- A. My lawyer
- Q. What's your lawyer's name?
- A. Mr. uh uh Levin
- Q. Richard Levin?
- A. Uh-huh
- Q. So, he told you to plead guilty and you wouldn't have to go to jail?
- A. Uh-huh
- Q. So, that's what you did uh?
- A. Yeah
- Q. Okay, what kind of work are you doing?
- A. Uh I work for Hampton (Inaudible), construction work
- Q. You still over there?
- A. Yes, we're on strike now. I'm still with them.

Q. What type of worker are you?

A. Uh (Inaudible) welder

Q. So, you're on strike now uh?

A. Uh-huh

Q. All right, what kind of ticket did you get, hit and run?

A. Yes

Q. And you plead guilty and was fined \$200 and a year suspended sentence, right?

A. Right

Q. Do you know of anybody that saw the accident or anybody that saw you go by and knew you didn't hit this man, do you know anybody on your side?

A. Really, no.

Q. Okay, had you been drinking that day?

A. No

Q. Did the police check you to see if you had been drinking?

A. No

Q. Did they ask you?

A. Well, no. They just come and got me - well, he knew I hadn't been drinking so I think that's the reason they didn't ask for it. He just come and ask me to go with him back down to the accident.

Q. Okay, and you say there was no damage on your car. Nothing, anything that they could have thought came from the accident or anything?

A. No

Q. And so it's just - as far as you know, somebody that was there saw you go by and said you were the one that hit him and that's why they arrested you?

A. Right

Q. All right, is there anything you want to add to this statement?

A. No

Q. This statement was recorded with your knowledge and permission and is true to the best of your knowledge?

A. Yes

Q. This concludes the recorded statement between Dick Lyons and William Edwards.

BN/07-11



State Farm Mutual Automobile Insurance Company

June 27, 1975

TIDEWATER SERVICE CENTER

P.O. Box 12549

6371 Center Drive

Norfolk, Virginia 23502

Tel. 804-461-4651

Mr. George Minor, Jr.
Attorney at Law
605 Green Street
P. O. Box E
Portsmouth, Virginia 23705

Re: Our Policyholder: Rosa Edwards
Our Driver: William Edwards
Policy Number: A027 206 46 01
Date of Accident: 11/3/74
Our Claim Number: 46 A006 534

Dear Mr. Minor:

This is to notify you, as attorney for George L. Porter, a potential claimant under the above, that we are handling this accident under a non-waiver and reservation of rights, upon which we intend to rely. A copy of that non-waiver and reservation of rights is attached.

Very truly yours,

STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY

Richard A. Lyons

By: Richard A. Lyons
Claim Specialist

2/05

Enclosures

cc: Supt. Curtis Estes

Case No. L-77-487
Plaintiff's Exhibit # 3
Date 10/19/78
Judge [Signature]

June 27, 1975

Mr. William Harvey Edwards
1303 Elm Avenue
Portsmouth, Virginia

Re: Our Insured: Rosa D. Edwards
Policy Number: A027 260 46 01
Our Claim Number: 46 A006 534

Dear Mr. Edwards:

We wish to call your attention to the fact that we specifically reserve our right to deny coverage to you under the above cited policy, or any policy, for the following reasons:

"It is questionable whether the Conditions of the policy have been violated by reason of delay in written notice to the Company concerning the accident, by or on behalf of the insured."

"It is questionable whether there has been compliance with the Conditions of the policy requiring the assistance and cooperation of the insured, by reason of allegations or evidence of the insured's giving false or conflicting information to the Company."

Any action taken by State Farm Mutual Automobile Insurance Company in investigating, adjusting, or defending any claims or litigation arising from the accident on November 23 1974 at the 1400 block of Elm Avenue, Portsmouth, Virginia, shall not be construed as a waiver of the right of said Company to deny any and all liability under any policy or policies of insurance issued to the above policyholder, nor shall receipt of this letter waive any rights which you may have under said policy or policies.

If we do not hear from you to the contrary, we will assume it is acceptable for us to continue to handle the case on these terms.

Very truly yours,

Richard A. Lyons
Claim Specialist

LAW OFFICES
GEORGE MINOR, JR.
605 GREEN STREET
P. O. Box E
PORTSMOUTH, VIRGINIA 23705

108

COMMISSIONER IN CHANCERY
CIRCUIT COURT OF THE
CITY OF PORTSMOUTH, VIRGINIA

January 22, 1976

399-6389
399-6380
AREA CODE 804

CERTIFIED MAIL

Mr. Richard A. Lyons
Claim Specialist
State Farm Mutual Insurance Company
P. O. Box 12549
Norfolk, Virginia 23502

Re: George Lee Porter v. William H. Edwards
and Rosa Lee Edwards

Dear Mr. Lyons:

Herewith enclosed is a Motion for Judgment which I have filed for George Lee Porter against William H. Edwards and Rosa Lee Edwards. Also enclosed is an Order showing that I have dismissed Mr. Porter's suit against William H. Edwards.

Should you have any question concerning this matter, please let me know.

Very truly yours,

George Minor, Jr.
George Minor, Jr.

GMJr:dc
Enclosures

Case No. L-77-487
Plaintiff's Exhibit # 4
Date 12/19/75
Judge [Signature]

Page 7 of Defendant's Exhibit #1

accident arises out of the operation thereof and if benefits therefor are in whole or in part either payable or required to be provided under any workmen's compensation law;

(l) under division 2 of coverage C, to bodily injury to or sickness, disease or death of an insured sustained while in or upon or while entering into or alighting from an automobile owned by any insured;

(m) to injury, sickness, disease, death or loss due to war, whether or not declared, civil war, insurrection, rebellion or revolution, or to any act or condition incident to any of the foregoing.

(1) with respect to expenses under Insuring Agreement II(b) (3) or under coverage C, or

(2) under coverages D, E, G and H;

(n) under coverages D, E, G and H, if the automobile is or at any time becomes subject to any bailment lease, conditional sale, purchase agreement, mortgage or other encumbrance not specifically declared and described in this policy;

(o) under coverages D, E, G and H, to any damage to the automobile which is due and confined to wear

and tear, freezing, mechanical or electrical breakdown or failure, unless such damage is the result of other loss covered by this policy;

(p) under coverages D, E, G and H, to robes, wearing apparel or personal effects;

(q) under coverages D, E, G and H, to tires unless damaged by fire or stolen or unless such loss be coincident with and from the same cause as other loss covered by this policy;

(r) under coverages D and E, to loss due to conversion, embezzlement or secretion by any person in possession of the automobile under a bailment lease, conditional sale, purchase agreement, mortgage or other encumbrance;

(s) under coverage G, to breakage of glass if insurance with respect to such breakage is otherwise afforded;

(t) under coverages D, E, G and H, to loss due to confiscation by duly constituted governmental or civil authority.

CONDITIONS

Conditions 20 to 25 inclusive apply to all coverages.

Conditions 1 to 19 inclusive apply only to the coverage or coverages noted thereunder.

✓ 1. Notice of Accident—Coverages A, B and C. When an accident occurs written notice shall be given by or on behalf of the insured to the company or any of its authorized agents as soon as practicable. Such notice shall contain particulars sufficient to identify the insured and also reasonably obtainable information respecting the time, place and circumstances of the accident, the names and addresses of the injured and of available witnesses.

✓ 2. Notice of Claim or Suit—Coverages A and B. If claim is made or suit is brought against the insured, the insured shall immediately forward to the company every demand, notice, summons or other process received by him or his representative.

3. Limits of Liability—Coverages A, B and C. The limit of bodily injury liability stated in the declarations as applicable to "each person" is the limit of the company's liability for all damages, including damages for care and loss of services, arising out of bodily injury, sickness or disease, including death at any time resulting therefrom, sustained by one person as the result of any one accident; the limit of such liability stated in the declarations as applicable to "each accident" is, subject to the above provision respecting each person, the total limit of the company's liability for all damages, including damages for care and loss of services, arising out of bodily injury, sickness or disease, including death at any time resulting therefrom, sustained by two or more persons as the result of any one accident.

The limit of property damage liability stated in the declarations as applicable to "each accident" is the total limit of the company's liability for all damages arising out of injury to or destruction of all property of one or more persons or organizations, including the loss of use thereof, as the result of any one accident.

The limit of liability for medical payments stated in the declarations as applicable to "each person" is the limit of the company's liability for all expenses incurred by or on behalf of each person, including each insured, who sustains bodily injury, sickness, disease or death as the result of any one accident.

4. Severability of Interests—Coverages A and B. The term "the insured" is used severally and not collectively, but the inclusion herein of more than one insured shall not operate to increase the limits of the company's liability.

5. Action Against Company—Coverages A and B. No action shall lie against the company unless, as a condition precedent thereto, the insured shall have fully complied with all the terms of this policy, nor until the amount of the insured's obligation to pay shall have been finally determined either by judgment against the insured after actual trial or by written agreement of the insured, the claimant and the company.

Any person or organization or the legal representative thereof who has secured such judgment

Page 9 of Defendant's Exhibit #1

(1) the actual cash value of the automobile, or if the loss is of a part thereof the actual cash value of such part, at time of loss or

(2) what it would then cost to repair or replace the automobile or such part thereof with other of like kind and quality, with deduction for depreciation, or

(3) the applicable limit of liability stated in the declarations.

The company may pay for the loss in money or may repair or replace the automobile or such part thereof, as aforesaid, or may return any stolen property with payment for any resultant damage thereto at any time before the loss is paid or the property is so replaced, or may take all or such part of the automobile at the agreed or appraised value but there shall be no abandonment to the company.

13. Payment for Loss; Action Against Company—Coverages D, E, G and H. Payment for loss may not be required nor shall action lie against the company unless, as a condition precedent thereto, the named insured shall have fully complied with all the terms of this policy nor until 30 days after proof of loss is filed and the amount of loss is determined as provided in this policy.

14. No Benefit to Bailee—Coverages D, E, G and H. The insurance afforded by this policy shall not inure directly or indirectly to the benefit of any carrier or bailee liable for loss to the automobile.

✓ 15. Assistance and Cooperation of the Insured—Coverages A, B, D, E, G and H. The insured shall cooperate with the company and, upon the company's request, shall attend hearings and trials and shall assist in effecting settlements, securing and giving evidence, obtaining the attendance of witnesses and in the conduct of suits. The failure or refusal of the insured to cooperate with or assist the company which prejudices the company's defense of an action for damages arising out of the operation or use of an automobile shall constitute non-compliance with the requirements of the policy that the insured shall cooperate with and assist the company. The insured shall not, except at his own cost, voluntarily make any payment, assume any obligation or incur any expense other than for such immediate medical and surgical relief to others as shall be imperative at the time of accident.

16. Subrogation—Coverages A, B, D, E, G and H. In the event of any payment under this policy, the company shall be subrogated to all the insured's rights of recovery therefor against any person or organization and the insured shall execute and deliver instruments and papers and do whatever else is necessary to secure such rights. The insured shall do nothing after loss to prejudice such rights.

17. Other Insurance—Coverages A, B, D, E, G and H. If the insured has other insurance against a loss covered by this policy the company shall not be liable under this policy for a greater proportion of such loss than the applicable limit of liability stated in the declarations bears to the total applicable limit of

liability of all valid and collectible insurance against such loss; provided, however, under coverages A and B the insurance with respect to temporary substitute automobiles under Insuring Agreement IV or other automobiles under Insuring Agreement V shall be excess insurance over any other valid and collectible insurance.

18. Other Insurance—Coverage C. Under division 1 of coverage C, the insurance with respect to temporary substitute automobiles under Insuring Agreement IV or other automobiles under Insuring Agreement V shall be excess insurance over any other valid and collectible automobile medical payments insurance.

Under division 2 of coverage C, the insurance shall be excess over any other valid and collectible automobile medical payments insurance available to an insured under any other policy.

19. Limit of Liability—Coverage H. The company's liability shall not exceed \$25.00 for each disablement.

20. Definitions. As used in this policy:

(a) "hazardous properties" include radioactive, toxic or explosive properties;

(b) "nuclear material" means source material, special nuclear material or byproduct material;

(c) "source material", "special nuclear material" and "byproduct material" have the meanings given them in the Atomic Energy Act of 1954 or in any law amendatory thereof;

(d) "spent fuel" means any fuel element or fuel component, solid or liquid, which has been used or exposed to radiation in a nuclear reactor;

(e) "waste" means any waste material

(1) containing byproduct material and

(2) resulting from the operation by any person or organization of any nuclear facility included within the definition of nuclear facility under paragraph (i) or (ii) thereof;

(f) "nuclear facility" means

(i) any nuclear reactor,

(ii) any equipment or device designed or used for

(1) separating the isotopes of uranium or plutonium,

(2) processing or utilizing spent fuel, or

(3) handling, processing or packaging waste,

(iii) any equipment or device used for the processing, fabricating or alloying of special nuclear material if at any time the total amount of such material in the custody of the insured at the premises where such equipment or device is located consists of or contains more than 25 grams of plutonium or uranium 233 or any combination thereof, or more than 250 grams of uranium 235,

(iv) any structure, basin, excavation, premises or place prepared or used for the storage or disposal of waste.

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF PORTSMOUTH, ON
THE 19TH DAY OF OCTOBER, 1978.

GEORGE LEE PORTER,
Plaintiff

)

vs

)AT LAW NO L-77-487

STATE FARM MUTUAL AUTOMOBILE INSURANCE CO.,
Defendant.

)

)

At this day came the parties by their Attorneys and
neither party requiring a jury, the Court proceeded in lieu of
a jury to determine the whole matter of law and fact; whereupon,
evidence being heard, it is considered by the Court that the
plaintiff recover of the defendant the sum of Five Thousand Dollars
(\$5000.00) Dollars with interest thereon to be computed at the
rate of eight per cent per annum from the 19th day of October,
1978, till paid and costs; whereupon, the defendant, by counsel ,
noted his exception.

A COPY, TESTE: WALTER M. EDMONDS, CLERK

BY: *[Signature]*

D.C.

ASSIGNMENTS OF ERROR

1. The lower court erred in ruling that proof of prejudice was required to allow State Farm to avoid coverage because of William H. Edwards' breach of Conditions 1 and 2 of the policy, Defendant's Exhibit #1.

2. The lower court erred in ruling that William H. Edwards' breach of Conditions 1, 2 and 15 of the policy, Defendant's Exhibit #1, did not prejudice State Farm within the meaning of the proviso in Section 38.1-381(a1) of the Code of Virginia, "if such failure or refusal prejudices the insurer in the defense of an action for damages arising from the operation or use of such motor vehicle."