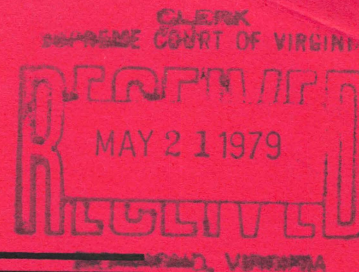


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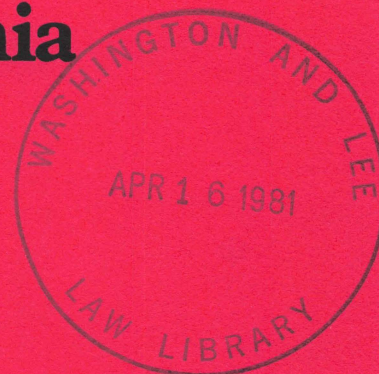


IN THE

**Supreme Court of Virginia**

AT RICHMOND

RECORD NO. 790016



ROANOKE COUNTY PUBLIC SERVICE AUTHORITY

Appellant

v.

BETSY HARR CHANEY

Appellee

JOINT APPENDIX

W. H. Jolly, Esq.  
JOLLY, FRALIN & CLEMENS  
208 North Main Street  
Galax, Virginia 24333

Counsel for Appellant

Charles B. Phillips, Esq.  
Robert P. Doherty, Jr., Esq.  
111 East Clay Street  
Salem, Virginia 24153

Counsel for Appellee



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MOTION FOR JUDGMENT

TO THE HONORABLE JUDGE OF SAID COURT:

The Plaintiffs, Betsy Marr Chaney and James Barksdale Chaney, hereby move this Court for judgment and award of execution against The Roanoke County Public Service Authority and against W. L. Rossie, Jr., Executive Director of the Roanoke County Public Service Authority, individually, and as Executive Director of the same, in the sum of Seventy Thousand and no/100 Dollars (\$70,000.00) actual damages and One Hundred Thousand and no/100 Dollars (\$100,000.00) punitive damages and the costs of this action for the following:

1. That the Plaintiffs own residential real estate in the County of Roanoke, Virginia, located at 2534 Willowlawn Street.

JUL 13 1977

2. That the Defendants contracted with the Plaintiffs to provide continuing sewage disposal services for the benefit of the Plaintiffs at their residence at 2534 Willowlawn Street.

3. That the Defendants have breached their continuing contractual obligations to the Plaintiffs in that as a result of the improper installation, construction and operation of the sewer lines running through and near the Plaintiffs' property, raw sewage has backed up into the Plaintiffs' home and yard flooding the same and damaging the property therein.

4. That sewage has backed up with such pressure and force in the lines so as to undermine the surrounding area and to further cause permanent damage to the foundation of the Plaintiffs' home.

5. That said sewage backup has caused a severe health hazard to the Plaintiffs; family and has forced them to abandon their home and live elsewhere for temporary periods of time.

6. That after contracting to furnish the continuing sewage disposal services, the Defendants have on repeated occasions caused unhealty, dangerous and undesirable conditions on the property of the Plaintiffs which can only be classified as a public nuisance, which nuisance should be immediately abated in order to preserve public health and sanitation.

7. That despite repeated requests to correct the situation, the Defendants have allowed the conditions to exist and have refused to render assistance to the Plaintiffs on all occasions except one, when the Defendants assisted the Plaintiffs in cleaning up after damage had occurred.

8. That despite requests to the local and state health departments, the Plaintiffs continue in their plight without relief.

9. That due to the conditions now present, the Plaintiffs' property has been damaged in the value thereof has been greatly decreased to the point that the residence is without market value and a liability rather than an asset creating damages in excess of a total loss.

10. That the Legislature has provided, by Section 15.1-1250 of the Code of Virginia, (1950) as amended, that said Authority such as the Defendants may sue or be sued and has thereby provided by statute for the relief now being sought by the Plaintiffs.

WHEREFORE, and in consideration of which the Plaintiffs move this Honorable Court for a judgment against the Defendants in the amount of \$70,000.00 compensatory damages and further move the Court for a judgment against the Defendants in the amount of \$100,000.00 punitive damages in order to deter the Defendants from committing like offenses in the future and the costs of this action, all of which are justly due and owing the Plaintiffs as a result of continued breaches of contract on the part of the Defendants.

BETSY HARR CHANEY and  
JAMES BANKSDALE CHANEY

BY Robert P. Doherty, Jr.  
Counsel

Charles B. Phillips  
and  
Robert P. Doherty, Jr.  
22 High Street  
Salon, Virginia 23153  
Counsel for Plaintiffs

**DEMURRER AND RESPONSIVE  
PLEADING OF DEFENDANTS**

**TO THE HONORABLE JUDGE OF SAID COURT:**

**DEMURRER**

Insofar as the Motion for Judgment filed against them herein purports to allege a cause of action entitling plaintiffs to punitive damages, the defendants demur thereto on the grounds that the allegations contained in said Motion for Judgment are insufficient in law to state a cause of action on the basis of which plaintiffs would be entitled to punitive damages.

**RESPONSIVE PLEADING**

Come now the defendants and for their Responsive Pleading to the Motion for Judgment filed against them and without waiving their Demurrer, the defendants now come and say:

1. As these defendants are not advised as to the truth or accuracy of the allegations of paragraph numbered 1, .

the same is neither admitted nor denied.

2. For answer to paragraphs numbered 2 through 9, the defendants deny any and all allegations contained therein which purport to allege any fault or liability on their part for any alleged damages, inconvenience or loss sustained by the plaintiffs herein. For further answer to said paragraphs, defendants deny any breach of contract with plaintiffs and deny that they in any way violated any duty owed to plaintiffs and deny any and all legal responsibility with reference to the allegations contained in said paragraphs of said Motion for Judgment. As a still further defense to said Motion for Judgment, defendants affirmatively allege that plaintiffs failed to exercise ordinary care and judgment insofar as the maintenance and operation of their sewer facilities are concerned and are themselves responsible for any problems encountered by them with reference to same.

3. While the defendants do not deny the accuracy of the allegations of paragraph numbered 10 of said Motion for Judgment, yet it is denied that the Legislature of this State has authorized any suit against a public service authority claiming punitive damages.

4. All allegations of said Motion for Judgment not specifically admitted are hereby denied.

And now having fully responded to said Motion for Judgment, these defendants pray to be hence dismissed with their proper costs in this behalf expended.

Respectfully submitted,

ROANOKE COUNTY PUBLIC SERVICE  
AUTHORITY

and

W. L. ROSSIE, JR.

Kime, Jolly & Clemens  
430 E. Clay Street  
Salem, Virginia 24153  
Counsel for Defendants

By \_\_\_\_\_  
Of Counsel

CERTIFICATE

The undersigned, of counsel for defendants, hereby certifies that, on this \_\_\_\_ day of July, 1977, a true and correct copy of the foregoing Demurrer and Responsive Pleading was mailed to Charles B. Phillips and Robert P. Doherty, Jr. 22 High Street, Salem, Virginia, counsel of record for plaintiffs.

---



**AMENDED  
MOTION FOR JUDGMENT**

**TO THE HONORABLE JUDGE OF SAID COURT:**

**Comes now the Plaintiffs, Betsy Harr Chaney and James Barksdale Chaney, by counsel, and files the following Amendments to their original Motion for Judgment:**

**1. That the Plaintiffs do hereby incorporate by reference as if more fully set out herein, all the allegations contained in paragraphs 1, 2, 3, 4, 5, 6, 8, 9, and 10, or the original Motion for Judgment.**

**2. That despite repeated requests to correct the situation, the Defendants have allowed the condition to exist and have refused to render assistance to the Plaintiffs on all occasions except one, when the Defendants assisted the Plaintiffs**

**ROBERT P. DOHERTY, JR.  
ATTORNEY AT LAW  
SALEM, VIRGINIA**

in cleaning up after damage had occurred. That the Defendants have willfully and consciously disregarded the rights of the Plaintiffs in failing to abate the public nuisance and the dangerous and unhealthy conditions as set forth above.

WHEREFORE, and in consideration of which the Plaintiffs move this Honorable Court for a judgment against the Defendants in the amount of \$70,000.00 compensatory damages and further moved the Court for a judgment against the Defendants in the amount of \$100,000.00 punitive damages in order to deter the Defendants from committing like offenses in the future, and the costs of this action, all of which are justly due and owing the Plaintiffs as a result of continued breaches of contract on the part of the Defendants and as a result of the willful and conscious disregard of the rights of the Plaintiffs on the part of said Defendants.

BETSY HARR CHANEY and  
JAMES BARKSDALE CHANEY

BY   
Counsel

Charles B. Phillips  
and  
Robert P. Doherty, Jr.  
22 High Street  
Salem, Virginia 24153  
Counsel for Plaintiffs

CERTIFICATE

I hereby certify that I have this 20<sup>th</sup> day of March, 1978, mailed a true copy of the foregoing Amended Motion for Judgment to W. H. Jolly, Esq., Kime, Jolly & Clemens, 430 East Clay Street, Salem, Virginia 24153, and to Dean Foster, Roanoke County Attorney, P. O. Box 1079, Salem, Virginia 24153, Counsel for Defendants.

008

  
Robert P. Doherty, Jr.

**RESPONSIVE PLEADING TO  
PLAINTIFFS' AMENDED  
MOTION FOR JUDGMENT**

**TO THE HONORABLE JUDGE OF SAID COURT:**

**COME NOW the defendants, The Roanoke County Public Service Authority and W. L. Rossie, Jr., and filed their responsive pleadings to the amended motion for judgment as follows:**

**1. That the defendants do hereby incorporate by reference all the responses contained in Paragraphs 1, 2, 3 and 4 of their initial response of pleading in answer to the allegations contained in Paragraph 1 of the plaintiffs' amended motion for judgment.**

**2. That the defendants deny all allegations contained in Paragraph 2 of the plaintiffs' amended motion for judgment.**

**3. That any and all allegations of said amended motion for judgment are hereby denied.**

**And now having fully responded to said amended motion for judgment, these defendants pray to be hence dismissed with their proper costs in this behalf expended.**

**Respectfully submitted,**

**ROANOKE COUNTY PUBLIC SERVICE  
AUTHORITY and W. L. ROSSIE, JR.**

**By** \_\_\_\_\_

**Of Counsel**

**Kime, Jolly & Clemens  
430 E. Clay Street  
Salem, Virginia 24153  
Counsel for defendants**

### CERTIFICATE

The undersigned, of counsel for defendants, hereby certifies that on this \_\_\_\_\_ day of March, 1978, a true and correct copy of the foregoing responsive pleading to plaintiffs' amended motion for judgment was mailed to Charles B. Phillips, Esq. and Robert P. Doherty, Jr., 22 High Street, Salem, Virginia, counsel of record for the plaintiffs.

---

The following cause came to be heard on  
this the 27th day of October, 1978 before the Honorable  
Lawrence L. Koontz, Jr., Judge of the Circuit Court for  
the County of Roanoke, sitting at Salem, Virginia and a  
Jury of seven, when the following proceedings were had.

Counsel made opening statements before  
the Court and Jury, after which the following proceedings  
were had in the presence of the Jury:

THE COURT: Thank you, Gentlemen. Mr.  
Phillips.

BETSY HARR CHANEY,  
a Plaintiff, having been first duly sworn to tell the  
truth, the whole truth and nothing but the truth, was  
examined and testified as follows:

DIRECT EXAMINATION

BY MR. PHILLIPS:

Q State your full name, please.

A Betsy Harr Chaney.

Q Mrs. Chaney, are you the sole title owner



2 of the real estate subject to this lawsuit?

3 A Yes.

4 Q What is the address?

5 A 2534 Willowlawn Street, Southwest, Roanoke  
6 County.

7 Q When did you purchase this real estate?

8 A July, 1972.

9 Q Did you move in at that time?

10 A Yes, sir.

11 Q And you have lived there ever since?

12 A Yes, sir.

13 Q Would you describe briefly to the Jury  
14 the type of house it is that I am talking about? Is it  
15 one-story, two-story, finished basement, and so forth?

16 A On the main floor it is a three-bedroom  
17 brick ranch with completed living area in the basement  
18 with another 24 by 26 rec room area, bedroom, utility  
19 room and bathroom.

20 Q What about the so-called basement area?

21 A That was completely paneled, tile floor.

22 It was a regular den area, one side den, one side rec  
23 room and finished bedroom, utility and closet.

24 Q What did you use that area for?

25 A Relaxation in the evening, well, before all

2 the problems we practically lived there. It was the den.  
3 We watched TV there, just relaxed there.

4 Q What type of furniture and appliances  
5 would you keep there?

6 A Sofa, reclining chairs, television set,  
7 stereo, ping pong table and utility room, washer, dryer,  
8 freezer.

9 Q Is your furnace there?

10 A Yes, sir.

11 Q Hot water heater?

12 A Hot water heater.

13 Q Where are you employed?

14 A Roanoke County School System.

15 Q I think you are at Andrew Lewis Junior  
16 High School?

17 A Yes, as a guidance counselor.

18 Q So you are away from home during the day?

19 A Most every day.

20 Q Your husband works and he is away from  
21 home during the day?

22 A Yes, he is.

23 Q When did you first experience any backup  
24 problem, Mrs. Chaney?

25 A For me it was May 29, 1973.

2 Q Now, you explain to this Jury how it  
3 occurred in layman language, what you saw.

4 A Well, I was asleep and I heard all kinds  
5 of gurgling sounds like outside the bedroom window and  
6 my dog started barking and I walked through the house and  
7 he stopped at the door and water just seemed to be rising,  
8 so I immediately called the Cave Spring Fire Department,  
9 and my sister and I were there alone and they said not to  
10 go into it unless we had on rubber shoes or boots; and on  
11 that one they said begin stuffing anything we could find  
12 into the commode where it was coming out very rapidly.

13 My sister started that. The force of that  
14 was so strong that it threw her from the commode. She  
15 was standing in it and it threw her out.

16 The Fire Department came and began pumping.

17 Q Do you know Mr. Ron Edwards of the - -

18 A I became very good friends with the Cave  
19 Spring Fire Department. They were very, very kind to me  
20 in coming to pump the basement.

21 Q What was the depth, what did it consist  
22 of?

23 A Water and sewage every time, in some cases  
24 the way the basement is sloped it would be five feet, three,  
25 four in others.

2 Q Five feet?

3 A I know on that particular time they pumped  
4 two days and a night.

5 Q Were you up?

6 A Oh, yes; it was exciting, nerve-racking.

7 Q You were there with them?

8 A Yes, my first husband at that time came in  
9 later on the 30th and my sister was there the whole time.

10 Q Did you notify the Public Sewer Authority  
11 on this occasion?

12 A Yes.

13 Q How did you do that?

14 A I called to register or give them the  
15 information on what had occurred and asked them if they  
16 would come out and look at the situation and advise me.

17 Q Did someone come?

18 A Yes, sir; they called me at school and told  
19 me they would meet me there at a certain time. I was told  
20 it was a County engineer.

21 He went down in the basement; he looked at  
22 the pipes from which the water and sewage had come and  
23 looked at me and told me - -

24 MR. JOLLY: I object to what he told you.

25 MR. PHILLIPS: Mr. Jolly does not want you

2 to tell that, so don't tell that.

3 THE COURT: That is not admissible.

4 MR. PHILLIPS: I was trying to explain to  
5 my client why she could not go on. The main point  
6 is you notified the Public Sewer Authority?

7 THE WITNESS: Yes.

8  
9 BY MR. PHILLIPS:

10 Q Was anyone down to help you from the Public  
11 Service Authority at that time?

12 A No, well, I can't say that.

13 Q Did they help you? Answer yes or no.

14 A No.

15 Q When did you have your next problem with  
16 an overflow?

17 A I felt somewhat, well, I felt somewhat  
18 reassured from what I had learned, and so I didn't have a  
19 problem the rest of that year and in 1974 the rains weren't  
20 that heavy.

21 It wasn't a real good test but we did have  
22 some minor flooding and sewage in 1974 in April and May,  
23 but no damage occurred. It was just the actual cleaning  
24 of it.

25 Q So you had an overflow in April?



2 A I considered them light.

3 Q I am asking if you had them?

4 A Yes, I had them.

5 Q How do you remember about the April, 1974  
6 overflow?

7 A It started coming in as I was preparing  
8 for an examination in May, graduate class at college and I  
9 was scheduled to leave for that examination and I had to  
10 take my examination so I left and my sister took care of  
11 that.

12 Q Did you see what came in on that occasion?

13 A Oh, yes; I saw what was coming in.

14 Q What was it?

15 A Water and sewage.

16 Q Was this raw sewage?

17 A Raw sewage.

18 Q That was cleaned up?

19 A Yes.

20 Q Were they notified on that occasion, the  
21 PSA?

22 A I hadn't notified every time. It's hard  
23 to say what times I have notified them.

24 When I found out I was getting nowhere, I  
25 said I want you to know this happened again, and they said

2 they would make a note of it and I became angry and said  
3 I am tired of you making notes. I want some help.

4 Q Up to this point there had been three  
5 overflows, May of '73, April of '74 and May of '74?

6 A Right.

7 Q When was your next problem?

8 A March 9, 1975.

9 Q All right, what occurred then?

10 A Well, it was - - I suppose it was the most  
11 nerve-racking one for me because that was the day my  
12 husband also left me, and I had water and sewage coming in  
13 and him leaving on the other end, so I didn't feel I could  
14 cope with all that happening on that particular day so I  
15 left and my sister took care of that for me.

16 Q Did you observe where the water and sewage  
17 came in on that occasion?

18 A Oh, yes, you can always see it.

19 Q So it comes in where?

20 A It comes in in anyplace there is an opening.  
21 It starts in the commode in the bathroom in the basement,  
22 in the rec room area and then it begins to come through  
23 the floor drains which did have plugs, and the outside  
24 floor drain which did have a plug also.

25 Q But it comes on through anyway?

2 A Oh, it pops them out and they hit the  
3 ceiling, the plugs.

4 Q What about March 14 of 1975?

5 A That was another reoccurrence that week. It  
6 has to subside in the drains and when it begins happening  
7 sometimes you can look at the drain and tell when it is  
8 going to happen, so we were able to prepare.

9 We knew just about the minute it was going  
10 to start coming in, but March 14 the Fire Department did  
11 come.

12 Q So they helped pump out on each occasion?

13 A Oh, yes.

14 Q Did you have any problem in May of 1975?

15 A May of '75, no.

16 Q When was your next backup problem then  
17 from March 14, 1975?

18 A April of '75.

19 MR. JOLLY: April 15?

20 THE WITNESS: Yes, of 1975.

21

22 BY MR. PHILLIPS:

23 Q What happened on that occasion?

24 A Just the usual format, it seemed like it  
25 was becoming a regular pattern at that time and this was

2 when I became really concerned.

3 It did not happen from March of '73. There  
4 was a whole year there and April was very minor, and then  
5 I started getting it seems like a signal, I am going to get  
6 it March, April and May, so, you know, regular flooding.

7 Q Then after April of 1975 and March when  
8 was your next backup?

9 A April 1976 I had a flooding and at that  
10 time, see, I was living there with my sister and I decided  
11 I have to do something about this.

12 I have to get some help, so at that time  
13 I think I wrote letters to Mr. Rossie or the County Public  
14 Service Authority and also Mr. William Clark asking him  
15 to advise me on what action I could take to rectify the  
16 problem or what they could do or I could do.

17 I needed some help so I took that route.

18 Q So you wrote Mr. Rossie?

19 A I think I wrote the Public Service Authority  
20 or the County Engineer because the County Engineer had  
21 been to my home and based on what he told me I felt like  
22 I needed to get him back.

23 Q You realized you were dealing with the  
24 Public Service Authority?

25 A Oh, yes.

2 Q Did you have any problem in May of 1976?

3 A That was about a month after I had written  
4 that letter and it began flooding and it was a good one  
5 because it was a two-day ordeal and at that time I felt  
6 like since I had made contact with Mr. Clark and Mr. Rossie,  
7 because Mr. Clark's response to me was that he was going  
8 to ask Mr. Rossie to look into it, personally, on that  
9 night, I think a Sunday night, I told him - - I identified  
10 myself and told him I had written to him and I would really  
11 appreciate it if he would come to my home and see what I  
12 was experiencing because I don't think I could make them  
13 understand that in my letter.

14 Q Let me ask you, this seems to be one of  
15 the more serious backups. What time did this commence  
16 happening on the 29th, what time of day?

17 A On the 29th, in the early afternoon - - no,  
18 it was the early evening.

19 Q Now, you got in touch with Mr. Clark?

20 A I got in touch with him. He was watching  
21 a movie because I told him I hoped I wasn't inconveniencing  
22 him and he said he was watching a movie.

23 Q Did you have the Fire Department out there  
24 at that time?

25 A Yes, they had been contacted by radio.



2 Q I asked you if you had them out there?

3 A Yes, sir.

4 Q What were they doing?

5 A Pumping the basement.

6 Q Do you know what depth the water and sewage  
7 got on this occasion?

8 A Probably three, four, five feet in some  
9 places, but they told me they were pumping 250 gallons  
10 a minute with one pump and they were running two pumps.

11 Q Did Mr. Rossie and Mr. Clark come to your  
12 house on the night of the 29th?

13 A Right, and they had also sent another worker  
14 prior to Mr. Rossie's arrival. I could not reach Mr. Rossie.  
15 Mr. Clark reached Mr. Rossie.

16 Q Did Mr. Rossie come to your place?

17 A Yes, sir.

18 Q What time did he get there?

19 A It was after one.

20 Q One a.m.?

21 A Yes.

22 Q In the morning?

23 A Yes.

24 Q Did you have any discussion with him about  
25 the problem?

2 A Not that day, the next day I did. I talked  
3 with him that night. They spent - - that was the first  
4 time they had come and actually tried to do anything, like  
5 they righted the rings, they examined the manholes and  
6 things like that.

7 That was the first time that had occurred.

8 Q I asked you if you had a conversation with  
9 them.

10 A On the following day, we had conversations  
11 throughout, but I was talking to Mr. Rossie and at that  
12 time he had said it would help the situation if you would  
13 put in a backtrap valve and I explained all the procedures  
14 I had gone through trying to get someone to put a backtrap  
15 valve on there for me, and I said is that really going to  
16 solve the problem and he said no, it would help but it would  
17 not cure it.

18 The storm lines cannot carry the flow.

19 Q He knew at that time the storm drains were  
20 connected to the sewage lines and the storm lines would not  
21 carry it?

22 A Yes, sir.

23 Q Did you have occasion to take pictures of  
24 the 1976 floods?

25 A Those are the pictures that you have. They

2 are the ones made May 29 and 30, 1976, when Mr. Rossie was  
3 there.

4 MR. PHILLIPS: You have seen these?

5 MR. JOLLY: Yes, sir.

6 MR. PHILLIPS: These are pictures which  
7 I will introduce and ask the Court to mark.  
8

9 BY MR. PHILLIPS:

10 Q Do these depict the general conditions of  
11 your rec room on this occasion?

12 A Right.

13 Q Now, here is a picture of a commode over-  
14 flowing. Is that one of the spots?

15 A That is the primary spot.

16 Q This is your furniture and so forth; is that  
17 correct?

18 A Right.

19 Q What is this picture (indicating)?

20 A The television set.

21 Q That is a TV set?

22 A Yes.

23 MR. PHILLIPS: If it please the Court, I  
24 would like to offer these as Plaintiff's Exhibit  
25 One and ask the Court to permit the Jury to take

2 a look at the pictures.

3 THE COURT: All right, sir.

4 (Whereupon, the pictures were  
5 marked and received by the Court as  
6 Plaintiff's Exhibit One and entered into  
7 the Record.)

8

9 BY MR. PHILLIPS:

10 Q Mrs. Chaney, how long did the Fire Department  
11 stay in your home on this occasion, the 29th and 30th?

12 A They would come in shifts, but they pumped  
13 two days and nights so I would say around 30, 36 hours.

14 It was a two-day job.

15 Q Did you participate in all the cleanups  
16 I have spoken of so far?

17 A I was sick at one time and I had to hire  
18 someone another time and my sister helped and the neighbors  
19 helped.

20 Q What about this occasion after the 29th and  
21 30th? What has to be done after they pumped?

22 A That was the only occasion the PSA helped.  
23 They sprayed the basement the next day and did a brush-up  
24 job.

25 Q Did you come in after that?

2

A We used gallons and gallons of Clorox after that.

3

4

Q How did you go about cleaning, what type of cleaning did you do?

5

6

A First we would go in and spray it just as they did to finish getting the sewage off the floor to get into an area where you could clean.

8

9

Then we would proceed to scrub down the walls and the floors and even the ceilings at times with mixtures of Clorox and Spic and Span and whatever.

11

12

Q So after the 30th of May when you finally got this particular incident cleaned up did anyone from the Public Sewer Authority come out and talk to you or did they promise to?

15

16

A They told me that day on the 30th that I would hear from them no later than the following Monday on what I could do or they could do or what we could do to help this situation.

19

20

Q "They," doesn't mean much. Who said that?

21

A Mr. Rossie said I would hear from him the following Monday on what he could do and what I could do to help alleviate the problem there.

23

24

25

I received one letter that they were doing some testing, but I have heard nothing since.



2 Q When did you have your next backup?

3 A October 9, 1976.

4 Q Will you describe that and I know this gets  
5 repetitious?

6 A Water and sewage came in the same holes and  
7 the Fire Department came and they began pumping. If the  
8 Fire Department got there on time they could get there and  
9 keep it at a level and it wouldn't rise up on the furniture,  
10 and at that time we had already arranged stilts and things  
11 of that nature so damages were minimal on that particular  
12 one.

13 Q Do you remember the hours spent or how long  
14 it took to pump it on the ninth?

15 A We never spent less than 24 hours pumping  
16 it out because it comes in very fast, as fast as you pump  
17 it out and it is a good 24-hour job hauling away the debris.

18 Q Did you ever sleep during this time?

19 A At times off and on, but most of the time  
20 I was up.

21 Q October 9 you went through this same  
22 procedure cleaning up sewage and so forth?

23 A Right.

24 Q When was your next backup then after  
25 October 9, 1976?

2 A That one really surprised me because we  
3 had never had one in the winter. It was late January and  
4 it was perhaps the worst one to clean because it was so  
5 cold.

6 You didn't have heat in the house during  
7 that time. You have to turn off all the circuit breakers  
8 and that type of thing, so it was one of the more miserable  
9 cleaning.

10 Q It was January 1977?

11 A Yes.

12 Q Did the Fire Department help with this?

13 A Yes, they helped until recently.

14 Q Did they help pump again?

15 A Right.

16 Q Now, at that time Mr. Chaney, your present  
17 husband, I think - - were you all married at that time or  
18 dating?

19 A We were married in 1976.

20 Q Did he participate in helping cleaning this  
21 up?

22 A He took care of the rest of them. I helped.

23 Q You helped some?

24 A I think I was worn out at that point. I  
25 helped.

2 Q When did you have your next backup?

3 A March 1977.

4 Q Can you remember whether or not the Fire  
5 Department helped pump on this one?

6 A Yes, they helped.

7 Q And you had the same sewage water and so  
8 forth?

9 A Right.

10 Q After March 1977 when was your next backup?

11 A It was another two days, April 4th and 5th,  
12 1977.

13 Q Two days?

14 A Two days, yes.

15 Q Again, I will ask you if the Fire Department  
16 assisted?

17 A The Fire Department assisted.

18 Q What kind of pumps did they use?

19 A Creek pumps, they used a creek pump and a  
20 sump pump, and they ran everything they had.

21 Q How would they run the pump line?

22 A Gasoline.

23 Q No, where would they pump it to?

24 A They pumped it to the lawn.

25 Q They were pumping it out the window?

2 A They would take it up the stairwell if the  
3 lines were long enough and go directly to the end of the  
4 lot.

5 Q Okay, so April 4th and 5th?

6 A Right.

7 Q When was your next backup?

8 A November 1977, that was the last one the  
9 Fire Department came to.

10 Q I believe Mr. Chaney - -

11 A We rented the pumps.

12 Q You rented pumps?

13 A After that; the Fire Department came at that  
14 time.

15 Q They came at that time?

16 A Right.

17 Q Do you remember specifically November 6,  
18 1977?

19 A Do I remember specific items?

20 Q You remember that backup, of course?

21 A Right.

22 Q And the same procedure took place in the  
23 cleaning up and draining it out and cleaning it up?

24 A Right.

25 MR. JOLLY: Was that in November or October?

2 THE WITNESS: It was late October, November.

3 MR. PHILLIPS: It should be November 5 on  
4 your list.

5  
6 BY MR. PHILLIPS:

7 Q So you are telling this Jury that you had  
8 one, two, three, four, five, six, seven, eight, nine, ten,  
9 11, 12, 13 separate backups from May of 1973 to November of  
10 1977?

11 A Yes.

12 Q Did you have any more contact with the Public  
13 Service Authority? I called it the Public Sewer Authority  
14 which is wrong. It is the Public Service Authority.

15 A No, the only contact I had was the letter  
16 I received from Mr. Rossie in 1976, and I haven't heard  
17 from them.

18 Q Mr. Rossie in his letter did he promise to  
19 do anything?

20 A Well, they told me what they were doing.

21 MR. JOLLY: If you have the letter wouldn't  
22 that be the best evidence?

23 MR. PHILLIPS: Here is a letter dated  
24 May 7, 1976 entitled, "In Re your letter to William  
25 Clark, County Executive."

2 THE WITNESS: Do you want me to read this  
3 to the Jury?

4  
5 BY MR. PHILLIPS:

6 Q No, I want you to tell me who Mr. Clark is.

7 A I had written to Mr. Clark asking for his  
8 help. He was the County Executive.

9 Q Go ahead and read the letter to the Jury.

10 A "Dear Ms. Harr: The Roanoke County Public  
11 Service Authority has been investigating the situation  
12 referred to in your previous letter.

13 "It is anticipated that this work will  
14 involve visual inspection, smoke testing, FC specs and  
15 grouting, if necessary, and recommendations will be made  
16 as a result of this investigation as soon as this work is  
17 completed.

18 "We will advise you of what corrective  
19 action can be taken and what recommendations can be made  
20 to improve the existing condition.

21 "We must objectively analyze the total  
22 situation in relation to the physical facilities under  
23 various flow conditions prior to contacting you with  
24 regard to any corrective actions.

25 "In the meantime if there are any corrections

2 or if you wish to discuss this situation with us, please  
3 feel free to stop by our offices at 516 Main Street, Salem."

4 Q This letter is dated what?

5 A May 16, 1976.

6 MR. PHILLIPS: I would like to introduce  
7 this.

8 THE COURT: Plaintiff's Exhibit Two.

9 (Whereupon, the letter from  
10 Mr. Clark to Mrs. Chaney dated May 16, 1976  
11 was marked and received by the Court as  
12 Plaintiff's Exhibit Two and entered into  
13 the Record.)

14  
15 BY MR. PHILLIPS:

16 Q You have related to the Jury that on  
17 May 29 of 1976 you had a serious backup and he was out there  
18 after that?

19 A (The witness nodded her head affirmatively.)

20 Q Did he ever contact you any more?

21 A No, I haven't heard from him.

22 Q You haven't heard from him at all?

23 A (The witness shook her head negatively.)

24 Q So you sought legal help after not hearing  
25 from him?

2 A I said I am getting no assistance and I  
3 live here by myself and I can't handle it. I have to have  
4 some assistance and I will have to have an attorney.

5 Q You have related to this Jury the 13 over-  
6 flows, some of them two days, with counting the two days  
7 as one, as far as the commencement and cleanup procedure  
8 and so forth, do you have a list of hours spent, work hours  
9 spent per each backup?

10 A Yes, I tried to be accurate on that.

11 Q Will you relate that to the Jury by months?

12 MR. JOLLY: Could I inquire as to who  
13 spent these hours?

14

15 BY MR. PHILLIPS:

16 Q Tell the Jury who spent the hours in the  
17 cleanup and the pumping and so forth and the work at the  
18 house, and then when we are finished what you charged per  
19 hour or what you are asking per hour in this work.

20 A In May 1973, two days and one night of  
21 pumping for 36 hours and any cleaning job would be - - 12  
22 hours is what we have tried to come up with, some more, maybe  
23 a little less, probably more.

24 Q Now, you have to go a little slower and  
25 take each one item by item.



2 A The Fire Department, of course, did the  
3 pumping.

4 Q They did not charge you?

5 A They did not.

6 Q Was it necessary for you to be there?

7 A I felt it necessary to be there. It is my  
8 property.

9 Q That is what I want to know.

10 A Twelve hours of cleaning at that time that  
11 I did. My sister helped in this case.

12 Q You are talking about cleaning raw sewage?

13 A Yes.

14 Q That is 48 hours on that particular occasion.

15 A April 1974, may I just say the Fire Department  
16 did all of this on the pumping.

17 MR. JOLLY: As to the cleaning, to save  
18 time, was all the cleaning done by you or your  
19 sister or your husband?

20 THE WITNESS: No, I hired - -

21 MR. JOLLY: Then I need to know who you  
22 hired.

23 THE WITNESS: I only hired a lady on two  
24 occasions. May 1973 a lady was hired.

25

1

2

BY MR. PHILLIPS:

3

Q What did you pay her?

4

A I paid her \$40 for the afternoon.

5

Q Tell the Jury who she was.

6

A Her name?

7

Q Yeah, I don't know whether you remember her

8

name.

9

A She was from Rocky Mount.

10

Q And she did this for you?

11

A Yes, her name was Salinda Judd. April, 1974,

12

pumping 24 hours, cleaning, 12; total 36 hours, and my

13

sister did the cleaning at this time.

14

May 1974, pumping 24 hours, cleaning 12

15

hours; March 9, 1975, 24 hours pumping, 12 hours cleaning;

16

36 hours.

17

Q Did you do the cleaning?

18

A No, my sister did the cleaning and March 14

19

both of us and sometimes a neighbor would help. Pumping 12

20

hours, cleaning 12 hours and all of the rest of theses,

21

April 1975, 12 hours of pumping, 12 hours of cleaning.

22

I did the cleaning. April 1976, pumping

23

24 hours, cleaning 12 hours; 36 hours.

24

May 29 and 30th, 36 hours of pumping, 12

25

hours of cleaning. That is when the PSA came and helped

2 to clean initially.

3 October 9, 1976, 24 hours of pumping, 12  
4 hours of cleaning, and I did the cleaning.

5 January 27, 1977, 24 hours of pumping and  
6 12 hours of cleaning and my husband did the cleaning on  
7 this one. I was sick at that time.

8 March 1977, pumping 24 hours, cleaning 12  
9 hours; 36 hours total, and my husband did the cleaning or  
10 both of us did the cleaning.

11 April 4th and 5th, 1977, 24 hours pumping,  
12 12 hours cleaning and we both did the cleaning there.

13 November 6, 1977, 24 hours pumping, 24  
14 hours cleaning; 48 hours total.

15 Four hundred eighty man hours spent and I  
16 am looking at \$10 an hour sometimes for two people.

17 Q When did the Fire Department stop coming  
18 out?

19 A They stopped coming after November 6, 1977.  
20 When it flooded the next time the following January in '78  
21 when we called they said they really understood the problem  
22 but they had other people.

23 Q They were nice enough to help you all this  
24 time?

25 A Oh, yes, fantastic.

2 Q But they did eventually stop coming?

3 A Right.

4 Q Your husband, did he ever operate any of  
5 the pumps, himself?

6 A Yes, he always assisted them and he ran them,  
7 himself, after we did it ourselves.

8 Q He ran the pump when you all had to rent  
9 it?

10 A Yes.

11 Q What type of problem, if any, did you have  
12 with odor?

13 A Well, it is still there. It smells like an  
14 out house, if that is accurate. It is still there and it  
15 remains for months and months, even running a dehumidifier  
16 and scrubbing and cleaning and polishing, the odor remains.

17 Q Where is the odor, Ms. Chaney? Where is  
18 the odor in the house?

19 A Well, at first a couple days after the  
20 flooding you could smell it all over the house, upstairs,  
21 downstairs.

22 With airing out you could block off the  
23 rec room area. You can close the door and we have stuffed  
24 a towel or something under it and it will keep the odor  
25 from the upstairs portion fairly well, but the odor is still

2 there.

3 Q Were you able to use your so-called rec  
4 room den after the backup commenced?

5 A Well, I still have a washer and dryer there,  
6 but we do not use it for living.

7 Q You don't watch the TV and general relaxation?

8 A No.

9 Q Have you been able to since 1973?

10 A Yes, in 1974 we did. I felt like we didn't  
11 have a problem.

12 Q When did it get to the place where you could  
13 not?

14 A I would say '76, '74 and '75, those weren't  
15 major but '76 was major.

16 Q This is paneling halfway up?

17 A I don't know the exact kind, it is chair  
18 rail type and one wall is completely paneled.

19 Q Have you noticed anything that occurred to  
20 the panels?

21 A It would pop out and go back in and water  
22 would continue seeping out from that. It is mildewed and  
23 white at this point.

24 Q It is what now?

25 A I think it had mushrooms at one time.

2 Q Is there any line?

3 A Any what?

4 Q A line mark?

5 A You can see all the line markings.

6 Q Which represents what?

7 A The level of the water.

8 Q That occurred at different times?

9 A Right.

10 MR. PHILLIPS: Judge, this witness has been  
11 on the stand for some time. Could we take a one-  
12 minute break?

13 THE COURT: We can take a five-minute  
14 break.

15 (Whereupon, Court adjourned for a five-  
16 minute break and the Jury was returned to the  
17 Courtroom and the following proceedings were  
18 had in the presence of the Jury.)

19  
20 MR. PHILLIPS: We were right at the end  
21 of the hours spent about from the time the sewer  
22 backed up until you got it cleaned up.

23  
24 BY MR. PHILLIPS:

25 Q Each time what were the total hours?

2 A Approximately 480 hours.

3 Q You are asking the Court \$10 an hour, split  
4 \$5 a person, and you are not talking about anything for  
5 the Roanoke County Fire Department?

6 A No.

7 Q That would be \$4,800?

8 A Right.

9 Q When did you first commence paying sewer  
10 service rates to the Public Service Authority?

11 A July 1972.

12 Q When you first moved in?

13 A Right.

14 Q Have you paid your sewer fee, service  
15 fee, each month thereafter?

16 A Yes, I have.

17 Q Until the present day?

18 A Yes, paid in full.

19 MR. JOLLY: We will stipulate that.

20 MR. PHILLIPS: I thought I had to get that  
21 in.

22  
23 BY MR. PHILLIPS:

24 Q Now, I have intimated to the Jury in my  
25 opening statement that you had claims for certain personal

1

Chaney - Direct

\*37

2

had in the presence of the Jury.)

3

4

THE COURT: All right, Mr. Phillips, the  
Jury is seated.

5

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11

12

CROSS EXAMINATION

13

14

BY MR. JOLLY:

15

16

17

Q Mrs. Chaney, these problems that happened  
at your home always happened during periods of very heavy  
rain; did they not?

18

19

A Usually after two days of constant rain  
like three inches.

20

21

Q And when you had a couple of days of hard  
rain then you had problems; is that correct?

22

23

24

25

A Correct.

Q If you didn't have the hard rains you didn't  
experience any difficulty with the sewer backing up; is  
that correct?



2 It worked perfectly except when you had  
3 these unusually hard rain periods?

4 A Right.

5 Q Now, you purchased this property from  
6 Mr. Deack, Mr. Eugene Deack, I believe his name was?

7 A Right.

8 Q And you moved in in July of '72, about the  
9 first of July?

10 A Yes, sir.

11 Q Do you recall the flood that we had in the  
12 Roanoke Valley on June 21st, 1972?

13 A Yes, I do.

14 Q And it flooded out the Rowe Furniture and  
15 several things in town?

16 A I did some flood relief work at that time  
17 and we also went to that house at that time.

18 Q What did you find at the house at that  
19 time?

20 A We didn't find water; we thought it would  
21 be a good time to check it because she had asked the owner  
22 and the realtor and they said no, so when it did flood,  
23 we went to the home to check it and we didn't find water.

24 Q When did you go?

25 A We went during the flood.

2 Q You didn't know Mr. Deact<sup>K</sup> had called the  
3 Public Service Authority and reported six feet of water  
4 during that general period of time?

5 A No.

6 Q Did you know Mr. Deact<sup>K</sup> had had any problem  
7 with flooding?

8 A We asked specifically and in May of '73 I  
9 called the realtor. I told her we had asked the former  
10 owner and they said no problem.

11 Q You didn't know that the Public Service  
12 Authority had been out there on different occasions at  
13 Mr. Deact's request?

14 A I had no reason to know that.

15 Q And you weren't there until May of 1973?

16 A Right.

17 Q Was that the first hard rain you had had?

18 A It rained hard, but not for days.

19 Q Was that the first rain you had for days  
20 since you moved in?

21 A All I know is that was the first problem  
22 I had. I don't know how much it rained.

23 Q The problems you had resulted from a two or  
24 three-day rain?

25 A Right.

2 Q You called the Authority on several occasions.  
3 Would you call the Fire Department first? You didn't call  
4 the Authority every time, as I understand it, that you had  
5 a problem?

6 A I didn't call every time; most every time.

7 Q But you always called the Fire Department?

8 A Right.

9 Q And they would promptly come out and start  
10 pumping?

11 A Right.

12 Q Did you know that the Service Authority  
13 came out and checked the main line to see that it wasn't  
14 ~~crossed~~ <sup>logged</sup> up?

15 A Yes, sir; they came on May 30.

16 Q I am talking about other occasions?

17 A They met me after it was cleaned out. They  
18 came and inspected it and on May 30 they came and routed  
19 the line and they have been out a couple times since, but  
20 not talking directly to me.

21 Q Do you know whether they came out and  
22 checked the main line while the Fire Department was pumping?

23 A They would ride by; I didn't notice them  
24 checking.

25 Q You didn't know whether they did or didn't?

2 A No.

3 Q On May 29 and 30, incidentally, Mr. Rossie  
4 came out; and he is a party to this suit. You have sued  
5 him, personally, in addition to the Authority. You are  
6 aware of that?

7 A Yes, sir.

8 Q So anything he told you is admissible  
9 because he is a party.

10 A Okay.

11 Q So he came out on that occasion and  
12 suggested to you that you put a backwater valve on your  
13 line; did he not?

14 A Yes, and my response to him was, "How do  
15 you know there is not one on it?"

16 I said, "Would that really take care of  
17 the problem because I have had three plumbers out here  
18 and I can't get anyone, and I ask you to recommend a  
19 plumber to do this. If that is the answer I will do it,  
20 but get someone that will tell me that will take care of  
21 it."

22 Q He suggested that you put a backwater  
23 valve on?

24 A Well, he suggested that I do that.

25 Q And you said, as I recall your testimony a

2 few moments ago, you asked him would that solve the  
3 problem and he said no, not completely?

4 A Right.

5 Q Because the foundation drains are hooked  
6 into the sewer?

7 A He said the storm drains and the sewer lines  
8 are not capable of carrying this load and I said, "Well,  
9 can't someone do something about that?"

10 And he said it would cost me hundreds of  
11 dollars, or something like that.

12 Q Didn't you know your foundation drains  
13 were hooked into your sewer lines?

14 A I asked him to put me back on the septic  
15 tank. I don't know where my sewer lines are connected.

16 Q Do you know now that your foundation  
17 drains are hooked into your sewer lines? Did you know  
18 that?

19 A I don't know.

20 Q I am asking you do you know?

21 A I don't know.

22 Q Nobody has told you that your foundation  
23 drains on your house are hooked into your sewer line?

24 A They haven't told me anything, Mr. Jolly.

25 Q And you couldn't find any plumber that would

2 put a backwater valve on there?

3 A My first husband's plumbers came. We were  
4 told we would be able to maintain it, so he suggested an  
5 inside backtrap, and I said where can I get that.

6 He didn't know; since then we have gone to  
7 other plumbers. They said there is no way we can maintain  
8 the backtrap valve. It has to be dug up and checked, and  
9 the only other suggestion was a backflow valve in the man-  
10 hole.

11 Q Haven't you been told that wouldn't keep  
12 the foundation drains from flooding your own basement?

13 A No, sir; I was told that it would help.

14 Q It would help but it wouldn't solve the  
15 problem because of your own house's foundation drains. Is  
16 that all news today, the first time you have heard that?

17 A No, sir; the way you are saying is different  
18 from the way I have heard it.

19 Q And you say you could see the water marks  
20 and you can because I have seen them.

21 A Yes, sir; you did.

22 Q Yes, I certainly did and it is a mess. You  
23 can see the water marks on the wall?

24 A Yes.

25 Q Was the basement redone by Mr. Deact before

2 you bought it?

3 A There weren't water marks; it was painted  
4 when we moved in, but no water marks.

5 Q But he had it painted before you moved in;  
6 is that correct?

7 A Yes.

8 Q Now, just a question for my own information,  
9 on your testimony here about 480 hours at \$10 an hour, as  
10 I compute 312 of those hours at \$10 an hour were the hours  
11 that the Fire Department pumped; is that correct?

12 A Well, we helped; we would assist. Someone  
13 would assist. Paul, my first husband, would either stay  
14 with them or Jim would stay with them.

15 Q But those were the hours that the Fire  
16 Department was there and pumped?

17 A Right, they were there.

18 Q Those are the hours they were there?

19 A Yes.

20 Q And they made no charge?

21 A No, sir.

22 Q That is not correct?

23 A No, sir; they made no charge.

24 Q Now, the other charges you made were either  
25 you cleaning or your sister or the lady from Boones Mill or

2 Rocky Mount that you have testified about?

3 A Right.

4 MR. JOLLY: I think that is all; thank you,  
5 ma'am.

6 MR. PHILLIPS: Let me ask you something  
7 along the lines of Mr. Jolly's questions.

8

9 REDIRECT EXAMINATION

10

11 BY MR. PHILLIPS:

12 Q I am interested in whether they were pumping.  
13 I am talking about the benevolent Roanoke County Fire  
14 Department. I mean that sincerely, when they were pumping  
15 and helping did you and your husband do anything during  
16 those hours in the cleaning-up process?

17 A Oh, yes.

18 Q What were you all doing? Were you sleeping  
19 or working?

20 A With hip boots on we would try to get things  
21 out of the way, try to salvage. I was trying to keep  
22 coffee ready for the firemen, things of that nature.

23 MR. PHILLIPS: All right, does that bring  
24 up any questions, Mr. Jolly?

25 MR. JOLLY: None whatsoever.



MR. PHILLIPS: Thank you, ma'am.

(Witness excused.)

RONALD S. EDWARDS,

having been first duly sworn to tell the truth, the whole truth and nothing but the truth, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. PHILLIPS:

Q State your full name and occupation.

A Ronald S. Edwards; Captain, Roanoke County Fire Department and Volunteer, Cave Spring Volunteer Fire Department.

Q All right, sir, during May of 1973 did you all keep records of calls and so forth and addresses where you go to assist in pumping out basements and so forth?

A Most of the time; there are times when the records have not been kept. We do have a partial record throughout the years of the places we have been pumping.

Q Commencing in 1973, if you will, could you

2 relate to the Jury in '73 were you at the Chaney residence  
3 which was initially the Harr, H-A-R-R, residence?

4 A I have a record for 5/28/73 that we pumped  
5 basements from 3:04 a.m. to 8:00 p.m., but I don't have that  
6 particular address.

7 Q During this period of time did you all keep  
8 addresses or just calls?

9 A No, we just indicated we had been pumping  
10 basements on that particular day at several locations.

11 Q Excuse me, what were those hours?

12 A On that particular day 5/28, it was 3:04 a.m.  
13 to 8:00 p.m.

14 Q Thank you, sir.

15 A Understand that would be in several different  
16 locations in the Cave Spring area.

17 Q How many people would you all send out on  
18 those calls?

19 A Well, depending on people available, you  
20 understand 99 percent of this pumping was done by the  
21 volunteer members of the Cave Spring Fire Department.

22 Q What about May 14, 1975; did you have any  
23 record of pumping done on that day?

24 A Yes.

25 Q Would you relate it to the Jury what your

2 notes show?

3 A We started 3/14/75 at 8:20 a.m. According  
4 to the record it ceased at 6:00 p.m. We have the address  
5 of Paul Harr, H-A-R-R, 2434 Willowlawn.

6 Q Do you know this to be the address of  
7 Mrs. Chaney?

8 A Yes, it is.

9 Q What about May 29, 1976?

10 A This indicates that we started at 4:51 and  
11 it also indicates that we were called from the Chaney  
12 residence at 5:27 that same afternoon.

13 Q Did you all pump the basement or rec room?

14 A Yes, we have on several occasions.

15 Q I mean on this particular occasion on the  
16 29th?

17 A Yes.

18 Q Were you there personally on that occasion,  
19 the 29th?

20 A Twenty-ninth, I believe that I was; yes.

21 Q What about October 9, 1976?

22 A Do you want the time we responded to this?

23 Q Yes.

24 A This was a copy of the record, and it is  
25 not too clear at this point, but we started around midnight

2 and the ending time was 5:00 o'clock the next day, I believe.

3 Q P.M. or a.m.?

4 A P.M. because I have about three full sheets  
5 of places that we pumped on that particular occasion and  
6 the Willowlawn address is the second one on the list.

7 Q What about April 4 or 5, 1977; did you go  
8 to the residence on that occasion?

9 A Yes, we did.

10 Q Can you tell the Jury - -

11 A We went out at 12:40 p.m. and cleared at  
12 5:24 a.m., that would be the next morning and I was on  
13 that particular call.

14 Q You were; what about November 6, 1977?

15 A We do have a call sheet at 11:00 a.m. and  
16 they cleared at 11:31 a.m. I was not present on that call.  
17 I believe at that time they may have taken a pump to the  
18 location and left it for Mr. Chaney to use.

19 Q For some reason which I don't want to go  
20 into and I think it is immaterial, did you all stop assisting  
21 the Chaney's in pumping the overflow?

22 A Yes, we have.

23 Q Would you describe to the Jury, Mr. Edwards,  
24 the best you can what you observed when you were there?

25 A On the numerous occasions that I was there

2 strictly as a volunteer with the Cave Spring, I want to  
3 make that clear, that when we arrived the water was  
4 anywhere from two to five feet or four feet deep up to  
5 four feet deep.

6 We would set the pump at the top of the  
7 basement steps and pump from that location, and when we  
8 could go down into the basement we usually found it coming  
9 out of the commode, itself.

10 Q What did this substance consist of?

11 A It is water and raw sewage.

12 MR. PHILLIPS: Okay, your witness.

13

14 CROSS EXAMINATION

15

16 BY MR. JOLLY:

17 Q Mr. Edwards, the times you were there the  
18 main source of the water and sewage or whatever it was,  
19 was coming up out of the commode?

20 A Yes, sir; and when we got it down low enough  
21 to see it was coming through the drains outside the basement  
22 door.

23 Q That is the areaway drain?

24 A Yes, and of course there was another drain  
25 in the laundry room, these three areas, but mainly the

2 commode area was where we could see it.

3 Q Did you know the foundation drains are hooked  
4 to the sewer line at that house?

5 A No, sir.

6 Q Let me expand a little bit on these items  
7 on the May entry, 3:04 a.m. to 8:00 p.m., was all of that  
8 time at the Chaney house or did I understand that was total  
9 pumping time in the whole Cave Spring area?

10 A That was total pumping time related to  
11 the record. That was what was put on the record.

12 Q Does that relate to the Chaney house or  
13 your whole area?

14 A That was the entire operation on that  
15 particular day.

16 Q So how long were you at the Chaney house?  
17 Your records don't show?

18 A No.

19 Q But there was no pumping done before 3 a.m.  
20 and after 8 p.m.?

21 A There is a possibility that the pump was  
22 left there overnight and it may not show on the record. It  
23 may show in the logbook on the later years, the last couple  
24 years, because the logbook was not kept prior to that  
25 station log I am speaking of.

2 Q Was it your custom to leave the pump there  
3 occasionally?

4 A Yes, sir; the first few times we went  
5 we did not. We kept somebody with it continuously, but  
6 the work load got so bad that we had, in later times,  
7 because of other basements to be pumped we would take a  
8 pump to the house and leave it and Mr. Chaney would run it  
9 and we would pick it up.

10 Q But the first several visits you didn't  
11 do that?

12 A No, sir.

13 Q So that May visit was the first time and  
14 you would not have left the pump?

15 A You are speaking of 1973?

16 Q Yes, sir.

17 A We would have stayed with it. I believe  
18 I did.

19 Q Mrs. Chaney testified it was pumped for  
20 36 hours on that occasion, and your records show 3:04 a.m.  
21 to 8:00 p.m. and then in March the next one you testified  
22 about was March which was approximately correct, 12 hours;  
23 it was ten hours and then in May you testified 4:51 to  
24 5:27. Was that just a-half hour?

25 A Well, as I stated before, I believe that

2

they probably took a pump to the location, set it up and left it.

3

4

5

6

Q You all were pretty busy during those heavy rains? There are a whole lot of basements that flood when it rains a lot?

7

A Yes, sir.

8

Q You, personally, have had that experience?

9

A Yes, sir.

10

11

REDIRECT EXAMINATION

12

13

BY MR. PHILLIPS:

14

15

Q Do you have a record on May 29, 1976, pumping of the Chaney residence?

16

A Yes, I do.

17

18

Q Do you have the gallons or anything to show the gallons?

19

20

A No, sir; I can tell you the pumps that we used, what they would pump.

21

Q What would they pump?

22

23

24

A We use what we call a portable pump, a gasoline engine with a pump attached to it. It is rated at 250 gallons per minute.

25

We have also on occasion used standard



2 home-type sump pumps that we adapt to the house that we  
3 have on the fire service.

4 I cannot give you the gallons that that  
5 pumps, I just don't know. It is so much per hour, but I  
6 don't know what it is.

7 MR. PHILLIPS: Okay, thank you, sir.

8 (Witness excused.)

9  
10  
11 JAMES BARKSDALE CHANEY,  
12 a Plaintiff, having been first duly sworn to tell the  
13 truth, the whole truth and nothing but the truth, was  
14 examined and testified as follows:

15  
16 DIRECT EXAMINATION

17  
18 BY MR. PHILLIPS:

19 Q State your full name, please.

20 A James Barksdale Chaney.

21 Q I think you married into this situation,  
22 didn't you?

23 A Absolutely.

24 Q When did you commence dating, I will call  
25 her Betsy, Mrs. Chaney, here?

2 A I believe it was March of 1976.

3 Q Around March of '76?

4 A Right.

5 Q And you became acquainted with the problems  
6 she was having with her house?

7 A Yes.

8 Q Which we have been through, so we won't  
9 bore the Jury or go through it all again, but did you, in  
10 fact, assist in the pumping and cleaning up on different  
11 occasions when this would occur?

12 A Yes.

13 Q Before and after you were married?

14 A Yes.

15 Q I think after you were married you bore  
16 the bulk of the load in this; is that correct?

17 A Yes.

18 Q I draw your attention to May 29th and 30th,  
19 1976. Were you at that particular house that had the over-  
20 flow?

21 A Yes.

22 Q And you were there when Mr. Rossie came out?

23 A Yes.

24 Q Did you talk to him at all about the problem?

25 A No.

2 Q But you did see him there?

3 A Yes.

4 Q Did you assist in cleaning up and pumping  
5 and so forth?

6 A Yes.

7 Q On those occasions when the pumping was  
8 taking place for the purpose of getting the water out, what  
9 would you all be doing while the pumping was going on?

10 A Maintaining order, more or less, of this  
11 stuff floating around, keeping drains, the suction pipes  
12 on pumps clear so that water could continue to go out.

13 Q Did you assist the volunteer people?

14 A Yes.

15 Q You did not go to bed and let them do the  
16 work for you?

17 A No.

18 Q Did you stay up all night?

19 A Yes, sir.

20 Q And I will ask you, to save time, if  
21 Counsel will permit I will go down the list and ask the  
22 dates commencing with the 9th of May - - what about October 9,  
23 1976; were you there then?

24 A Yes.

25 Q When were you all married?

2 A September 11.

3 Q Of 1976?

4 A Right.

5 Q So you were living there?

6 A Right.

7 Q 27th of January, 1977?

8 A Yes.

9 Q March of 1977?

10 A Yes.

11 Q April 4th and 5th, 1977?

12 A Yes.

13 Q November 6, 1977?

14 A Yes.

15 Q When you first commenced dating Mrs. Chaney  
16 did you all use the rec room area and den much?

17 A Yes.

18 Q Were you forced to stop using it?

19 A Oh, yes; we didn't use it but just very  
20 briefly and then the flood took place.

21 Q Well, you had several backups, didn't you?  
22 Which backup stopped you from using it?

23 A The first one after March; we started dating  
24 in March and the one thereafter.

25 Q She has testified that she had a couple in

2 April of '76. When are you speaking of?

3 A Well, when it flooded the first time in  
4 April we cleaned everything out, or primarily everything  
5 out that was down low.

6 Q That was not as serious as the other one  
7 you are talking about, the one in May?

8 A Yes.

9 Q You didn't view that area since that time  
10 as a den and rec room?

11 A Not until I guess it was in 1977 we put  
12 everything permanent such as television, on 18-inch blocks.  
13 At that time I worked out a system whereby we could put  
14 the major things elevated and when the flood came we would  
15 block up such things as couches, chairs and this type of  
16 thing.

17 Q Did you bring some furniture into the  
18 marriage?

19 A Yes, that is why it was down there. We  
20 didn't have furniture elsewhere.

21 Q Would you explain to the Jury what you did  
22 when you could see the backup starting if you were home at  
23 that time?

24 A First off, nothing. I would keep check on  
25 the manholes that preceded the house and the ones after

2 the house, and I could tell by the sounds or sights when  
3 the basement or approximately when the basement was going  
4 to flood so subsequently I would watch the drains in the  
5 basement and the water would begin to come up soon thereafter  
6 in the basement and I would call the Fire Department or  
7 go get pumps, myself, trying to locate pumps.

8 Q What would this backup consist of?

9 A Raw sewage and water.

10 Q And you have assisted, of course, from  
11 time to time, in cleaning it up on many occasions. How  
12 did you clean it up, the sewage?

13 A When the water was receded through the  
14 normal drainage in the house it would leave, oh, in some  
15 places, an inch, if I might be very raw, on some occasions  
16 maggots, raw sewage, I mean this is not in the form of  
17 processed sewage or anything like this.

18 This was raw sewage like you would flush  
19 down the commode, toilet paper, gravels, just all kind of  
20 small debris; we would have to wash it down and if it is  
21 too much of it, we would have to rake it into piles and  
22 pick it up in piles and dump it in the back lot in the  
23 woods and then we would get the bulk of it and wash it  
24 down and scrub and wash it down, and we would go back with  
25 anywhere from two to five gallons of Clorox and scrub the

2 walls down and the floors down and rinse it off; and I  
3 might add periodically during this process the Clorox,  
4 the fumes from the Clorox, you would have to vacate yourself  
5 from the basement in order to survive the cleanup procedure.

6 Q Would this leave any smell aftermath,  
7 sewage smell in the upper part of the house from time to  
8 time?

9 A Yes, but the Clorox smell would be prevalent  
10 for a day or so until the Clorox vacated and then the smell  
11 would come back through the paneling and this type thing.

12 Q Did you do anything yourself about the  
13 backtrap or plugs?

14 A We did quite a bit of investigation  
15 concerning the valve and we were told that a backtrap valve  
16 is not the answer to our problem.

17 Because of the characteristics of the  
18 backtrap valve it is a mechanically-operated unit.

19 Q What is your occupation at this point?

20 A I am - - at the point of the flood or at  
21 present?

22 Q At the point of the flood?

23 A At the point of the flood I was an engineer.

24 Q What type of engineer?

25 A Not exactly related to storm drains and

2 drainage but I worked extensively with hydraulic dredging  
3 and this sort of thing.

4 Q Do you have any building experience?

5 A Yes.

6 Q Have you observed what effect that has had  
7 on the building, the paneling?

8 A The paneling, the studs, the door facing,  
9 the tiling that has come in contact with the water and  
10 above water level because of the humidity that has been  
11 involved in it, it is ruined.

12 MR. PHILLIPS: Your witness.

13

14 CROSS EXAMINATION

15

16 BY MR. JOLLY:

17 Q Mr. Chaney, what type of engineer are you,  
18 sir?

19 A I might add here also if I may elaborate  
20 just a little bit - -

21 Q I would rather you just answer my question,  
22 if you would. What type of engineer are you?

23 A I design and build feed mills.

24 Q You don't have an engineering degree?

25 A No, I don't.



2 Q Are you aware of the fact, that since you  
3 have had some experience in building, that the foundation  
4 drains of this house are hooked into the sewer line?

5 A Yes.

6 Q And that has the effect of taking all the  
7 water that would otherwise stand around the foundation and  
8 put it into the sanitary sewer?

9 A Yes, if it exists.

10 Q You just said you are aware of it?

11 A I am aware that the drains are around the  
12 house, which is Law.

13 Q You must have misunderstood my question.  
14 What I intended to ask you, were you aware of the fact  
15 that those drains, which are Law, are unlawfully hooked  
16 to the sewer? Did you know that?

17 A Yes, I know they are unlawfully hooked to  
18 the sewer.

19 MR. JOLLY: Thank you, sir.

20 MR. PHILLIPS: Okay, step aside.

21 (Witness excused.)

22

23

24

25

the Courtroom and the following took place out of the presence of the Jury.)

MR. PHILLIPS: Counsel for Defense has agreed for the purpose of saving time on the list of personal property damage that Mrs. Chaney, if she were on the stand, would testify that her loss on the personal property would be \$4,400; is that correct?

MR. JOLLY: That she would testify to that, right.

MR. PHILLIPS: It would be \$4,400 as to her personal property loss.

THE COURT: All right, sir, anything else?

MR. PHILLIPS: We rest, Your honor.

MR. JOLLY: May it please the Court, at the conclusion of the evidence for the Plaintiff the Defendants both for the Public Service Authority and Rossie in his own right and individually, move the Court for Summary Judgment against the Plaintiff on the ground that the Plaintiff has failed to introduce evidence, even a scintilla of evidence, in support of the Plaintiff's Motion for Judgment.

(Whereupon, opposing Counsel argued the Motion to the Court.)

1  
2 THE COURT: I think at this point you have  
3 established the contractual relationship between  
4 the parties and I think there is a Jury issue.

5 I will overrule your motion as to the  
6 Authority, but I don't see any contractual  
7 relationship with Mr. Rossie, himself; and I will  
8 sustain your motion as to him.

9 MR. JOLLY: We respectfully except to the  
10 ruling of the Court as far as the motion is  
11 overruled.

12 One other question, they sued for punitive  
13 damages in this case and I would respectfully  
14 move the Court that any claim for punitive damages  
15 for Summary Judgment, as to any punitive damages,  
16 there has not been any evidence to show punitive  
17 damages at all.

18 (Whereupon, opposing Counsel argued the  
19 motion to the Court.)

20 THE COURT: I will sustain the motion for  
21 punitive damages.

22 (Whereupon, Court and Counsel returned to  
23 the Courtroom and the following proceedings were  
24 had in the presence of the Jury.)  
25

1  
2 THE COURT: All right, Mr. Jolly.

3  
4 JOHN ROBERT HUBBARD,  
5 having been first duly sworn to tell the truth, the whole  
6 truth and nothing but the truth, was examined and testified  
7 as follows:

8  
9 DIRECT EXAMINATION

10  
11 BY MR. JOLLY:

12 Q State your full name, please, sir.

13 A John Robert Hubbard.

14 Q By whom are you employed?

15 A Roanoke County Public Service Authority.

16 Q What is your educational background? Will  
17 you please tell the Court and Jury very briefly, sir?

18 A Yes, B.S. Degree in Engineering from VPI.

19 Q When did you graduate from VPI?

20 A 1974.

21 Q How long have you been with the Roanoke  
22 County Public Service Authority?

23 A Approximately one year.

24 Q Have you had occasion to review a staff  
25 report which was prepared on July 27, 1977 relative to the

sewer line which services the Chaney property?

A Yes, sir.

Q Have you verified the computation made in that report?

A Yes, sir.

Q Explain to the Court and the Jury what size that sewer line is?

A It is an eight-inch line.

Q And is that the line that was located behind the Chaney property?

A It is an eight-inch line that is between, well, it runs through the Chaney property.

Q Is that the line that services the Chaney residence?

A Yes, sir.

Q What is the capacity of that line?

A That capacity is 480,000 gallons per day.

Q If you will face the Judge and speak up, it is 480,000 gallons per day?

A Yes, sir.

Q How many residential connections are presently hooked up to that line?

A There are 133 at the time of this report.

Q Is that accurate today as far as you know,

sir?

A Yes, sir.

Q How many gallons do you figure per residential connection in designing a sewer line?

A We figure 400 gallons per connection.

THE COURT: I can't hear you.

THE WITNESS: You figure 400 gallons per connection and you have a peak factor of four times that, making it 1,600 gallons per connection, peak flow.

BY MR. JOLLY:

Q Who determines these criteria that you are testifying about?

A We use the State Health Department Design Criteria, Virginia State.

Q Now, this eight-inch line using that criteria, how many gallons per day will it accommodate from these residential connections?

A Six hundred eighty thousand gallons per day.

Q How much would come from the <sup>133</sup>~~eighty-three~~ residential connections using the peak factor of four times 400 gallons per connection?

A Two hundred twelve thousand eight hundred gallons per day for 133 connections.

Q How many townhouses are connected to that line?

A Thirty-three townhouse units connected.

Q What is the design criteria for townhouses?

A They are designed at 3.5 people per unit at 100 gallons per person, which totals 350 gallons per day per unit.

Q Is a peak factor built into that also?

A Yes, sir; that is peaked by four also.

Q So how many gallons a day would you have from those 33 townhouses?

A I would have 46,200 gallons per day.

Q All right, sir, what else is hooked into that? Are those the only connections on there?

A Yes, sir.

Q What is the total capacity or what is the total usage of that line based on your criteria that you have testified about?

A There are presently <sup>259,000</sup>~~205,000~~ gallons per day in that line at present.

Q These peak factors, what does that mean really?

A The peak factor is used in the case in which all the fixtures are used at one time in one house. It would be the most it would handle at one time.

Q If all the faucets were running and everything was flushed all at the same time?

A Yes, sir.

Q So you have <sup>257</sup>~~205~~,000 gallons based on this standard design criteria and the capacity of that line is 480,000 gallons?

A Yes, sir.

Q Then capacity in that line for sanitary sewage purposes is not being used?

A Two hundred twenty-one thousand gallons per day remaining capacity.

Q So that line is designed for and could accommodate another 221,000 gallons of sewage per day; is that your testimony?

A Yes, sir.

MR. JOLLY: Your witness.

#### CROSS EXAMINATION

BY MR. PHILLIPS:

Q You don't take into consideration any other



surface water, any other liquid substance coming into that line other than straight sewage from the houses and so forth?

A No, sir; the 400 gallons include infiltration, inflow allowable per connection.

Q On an eight-inch line?

A Yes, sir.

Q Do the records show when the townhouses were built?

A I don't have that information, no, sir.

Q You don't know when they were built?

A No.

Q Does it show when the last hookups took place?

A No, sir; I don't have that with me.

Q What information do you have?

A I reviewed the report that was given, that the former engineer had done.

Q Who was that?

A Mr. Don Chappell.

Q Is he gone?

A Yes.

Q And you took his place?

A Yes, sir.

Q When did you come?

A November 17, 1977.

Q And you just reviewed some figures he had in his file about this area?

A I made the counts, the number of connections I reviewed all of his data.

Q Have you worked in this field in this sewage service field before you came here?

A Yes, sir.

Q Where?

A Henrico County, Virginia.

Q Is there anything in that report about Mrs. Chaney, her problem?

A Yes, sir; it mentions her property is all, no problem.

Q No problem?

A No, sir.

Q You heard the testimony here today about the backups?

A Yes, sir.

REDIRECT EXAMINATION

BY MR. JOLLY:

Q You personally verified these figures and

calculations; did you not, sir?

A Yes, sir.

MR. JOLLY: That's all.

(Witness excused.)

LEONARD GEORGE LEASK,

having been first duly sworn to tell the truth, the whole truth and nothing but the truth, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. JOLLY:

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

A Leonard George Leask.

Q By whom are you employed, sir?

A Roanoke County Public Service Authority.

Q How long have you been so employed?

A Since July, 1965.

Q What is your present situation with the Authority? What is your position?

A I am Assistant Executive Director.

Q What is your background, education-wise,

2 Mr. Leask?

3 A Mine is not an engineering degree. I am a  
4 Liberal Arts Major.

5 Q How long have you been involved in this  
6 type of work?

7 A Since 1965, 13 years.

8 Q What do your duties generally consist of as  
9 Executive Director of the Authority?

10 A I am in charge of Operations and Maintenance,  
11 water and sewer.

12 Q This line that is involved here in the  
13 Chaney property, who constructed that line? Did the Authority  
14 construct it?

15 A No, Aaron J. Connor, the contractor.

16 Q Is this the normal way most of the lines are  
17 done by the developers?

18 A Yes, sir.

19 Q What does the Authority do? Does it inspect  
20 the lines and take over the operations and maintenance?

21 A Yes, sir.

22 Q What sort of maintenance program do you have  
23 here with this Authority?

24 A We have various equipment to clean sewers;  
25 we make visual inspections by walking lines, raising manholes.

2 We have the grouting machines, hydraulic  
3 jet cleaners, smoke testing equipment, various other tools  
4 for taking care of the sewers.

5 Q How many miles of sewer, roughly, would you  
6 say the Authority takes care of?

7 A Well over 300 miles.

8 Q Over 300 miles; and is the routine inspection,  
9 cleaning out and so forth, is that an ongoing program of  
10 any - -

11 A Daily.

12 Q - - - of any entity that has sewer lines  
13 under its jurisdiction?

14 A Yes, sir.

15 Q What is the policy or practice of the  
16 Authority with reference to lateral lines on private property?

17 What do you do, if anything, with reference  
18 to those?

19 A We have no jurisdiction over those. We  
20 are only operating the public right-of-way; that is the  
21 roadway's or public utility easements where the sewer  
22 lines are located.

23 The private property is the homeowners'  
24 property and it comes under the jurisdiction, generally,  
25 of the Plumbing Department of the County.

Q Do you go onto private properties and install valves and this sort of thing or into homes and do plumbing work for individuals?

A No, sir.

Q You are concerned only with the public sewer lines?

A Yes, sir.

Q You heard Mr. Hubbard testify and you are familiar with it anyway, that this line here in question has an unused capacity of 221,000 gallons per day; that's correct, is it not?

A That's right, just about half the use.

Q You have also heard testimony here today that this line apparently is full and in periods of extreme moisture and heavy rains, overflows?

A Yes, sir.

Q Is that correct?

A That's right.

Q From your 13 years' experience - -

MR. PHILLIPS: I think, Your Honor, I would like for that question - - I think I know what is coming up and I would like for that question to be submitted to the Court so I can see it before he asks it.

It may be too damaging for me to object after he starts an answer.

MR. JOLLY: Well, I was going to ask him about a backwater valve. Do you want that submitted to the Court?

MR. PHILLIPS: Okay, if that is what you are going to ask him.

BY MR. JOLLY:

Q From your 13 years of experience are you familiar with what is known as a backwater valve?

A Yes, sir.

Q Could you describe that generally to the Court and the Jury?

A Well, there is various sizes but generally speaking there is a flapper-gate valve or combination to where it is on a hinge and in your line which flows downhill it works this way (indicating), as the water flows out it will be lifted to prevent, to allow the liquid to pass.

If there is backflow, it will close from the pressure of the water trying to get back in and will not allow it.

Q Are these commonly in use?

A Yes, sir.

2 Q What are they designed to prevent?

3 A To prevent the backflow of sewage or whatever  
4 purpose you want it. If you have not hooked it to something  
5 else, to prevent the backflow of it.

6 Q Are they commonly used to prevent the back-  
7 flow of sewage?

8 A Yes, sir; there is a good many on South  
9 Park Circle below Mrs. Chaney's house. Most of them have  
10 it down there.

11 Q Have you had any reports of sewage backing  
12 up into the house?

13 A Apparently we checked; no, it does not back  
14 up. It backs up and closes the valve and they do not get  
15 sewage backed up in their basements.

16 Q Is there anything complicated about the  
17 installation of such a valve?

18 A Any licensed plumber can put it in.

19 Q Approximately what would it cost to install  
20 a valve such as you describe?

21 A Well, it used to cost about 13 dollars.  
22 It probably costs 30 to 50 depending on what you get. Some  
23 are quite intricate with separate hand valves on them.

24 Let's say anywhere from 150 to 200 dollars  
25 to put it in; that is with concrete blocks so you can get



access to it to maintain it and check it.

Q This is a very common sort of device that is used for this purpose?

A In cases subject to backflow along low-lying areas it is.

Q How would you describe the area in which Mrs. Chaney's house was built?

A Marshy ground, some springs there, too.

Q Are you familiar with the plumbing codes applicable in Roanoke County?

A Yes, sir; not all of the plumbing codes, but where it applies here.

Q As far as it applies to sewers, are you familiar with those codes?

A Yes, sir.

Q Is there any prohibition in the plumbing code of Roanoke County that was enforced and in effect back in the early seventies or late sixties that prohibited the connection of foundation drains from a residence to a sanitary sewer line?

A Yes, sir.

Q Is it still prohibited to make such a connection?

A Yes.

2 Q Was it then?

3 A Yes, sir.

4 Q Why is that, sir? What is the reason for  
5 that?

6 A Because a sanitary sewer is designed only  
7 for sanitary sewer just as a sewage treatment plant is  
8 designed for sanitary sewage.

9 There is no way you can take a storm line.  
10 That would take all the surface.

11 Q To your knowledge are there foundation  
12 drains and area-way drains that are hooked into the sanitary  
13 sewer lines in Roanoke County?

14 A Yes, sir.

15 Q Do you know the Chaney house has been so  
16 connected?

17 A It has been reported to me.

18 MR. PHILLIPS: That is hearsay, I object.  
19

20 BY MR. JOLLY:

21 Q What is the effect of having area-way  
22 drains or foundation drains or downspouts where they are  
23 connected to a sanitary sewer, what happens?

24 A It will overload the sewer.

25 Q And if it gets overloaded then what happens

2 to it?

3 A It has to go somewhere. It comes out of  
4 the manholes or backs up into the service connections of  
5 the house.

6 Q Would periods of excessive rain aggravate  
7 the situation or cause it to exist?

8 A Yes, sir.

9 Q Do you know Mr. Deack who owned this  
10 property before Mrs. Chaney?

11 A Yeah, I knew Mrs. Deact.

12 Q You knew the property?

13 A Yes.

14 Q Do the records of the Authority indicate - -  
15 MR. PHILLIPS: I object to leading questions.  
16 MR. JOLLY: That is not a leading question.  
17 THE COURT: I do not think that is a leading  
18 question.

19  
20 BY MR. JOLLY:

21 Q Do the records of the Authority indicate  
22 any problems with overflowing of this line when the Deacts  
23 owned the house?

24 A Yes, they had many similar floodings of  
25 the same.

2 Q What is the policy of the Authority if you  
3 have a call and somebody's basement is flooding, backing  
4 up from the sewer? What, if anything, does the Authority  
5 do?

6 A We dispatch men first to see if there is  
7 any cause, perhaps a stoppage in the main line; and if there  
8 is, we unstop it.

9 We check the lines up and down to make sure  
10 it is not caused by some foreign object in the sewer, and  
11 then we generally help them by pumping on similar occasions  
12 to what Mrs. Chaney had.

13 Q Do the records of the Authority indicate  
14 times when Mrs. Chaney has called?

15 A Yes, sir.

16 Q And on those occasions do the records show  
17 that men were dispatched to the Chaney property?

18 A Yes, sir.

19 Q Did they do what you have indicated they do?

20 A Yes, sir.

21 Q If you go and examine a main line how can  
22 you tell if it is stopped up or not stopped up?

23 A If you look, say in this particular manhole  
24 the lines all flow downhill, they are all gravity, you look in  
25 the manhole.

If it is full of fluid and water you go to the next one and there is just the normal flow, then something must be stopping it between the two manholes.

Q Suppose they are full of water and there is water coming out of both manholes?

A You continue downstream until you can find a stoppage. If there is not, then you could make some efforts to see if there is something else.

Q It is reasonable to assume there is no stoppage where they are full of water?

A Yes, sir.

Q Have you personally been out to the Chaney residence?

A Probably the last time I was out there was when Deact had it, perhaps '68.

Q You have been out to the house; you know the house?

A Yes.

Q The occasion you went out there when Deact had it, was there water in the basement?

A The water had gone down.

Q Was there indication there had been water in the basement?

A Yes.

Q Do your records show any complaints? Do the records of the Authority show any complaints by Mr. Deact at the big flood in June of '72?

A Yes, sir; June 21st, 1972 we have on the record that there was six foot of water in the basement and within one-half foot of reaching the living room.

The Deacts were connected to the sanitary sewer. They never had a septic tank.

Q I meant to ask you that. I noticed Mrs. Chaney testified she was going to unhook and hook back to the septic tank. There is no septic tank?

A No.

Q According to the records - -

A There was no septic tank when the house was constructed. In 1964, according to the records there was no septic tank.

MR. JOLLY: Mr. Phillips, if I could see you and the Court for just a second?

(Whereupon, Court and Counsel conferred out of the hearing of the Jury.

After conferring, the following proceedings were had in the presence of the Court and Jury.)

BY MR. JOLLY:

Q Mr. Leask, we are talking about a line here that has 220-some gallons, thousand gallons of capacity that is not being used, and if in fact liquid is coming up out of the manholes and backing up and it is full, from your experience what would you reasonably assume made up the difference?

A It was from leaking basements where the water is pouring into the basement and down the drains or foundation drains are connected to the sewer or downspouts, water getting into the home.

Q As to this particular line in connection with your routine maintenance and inspection has this line been inspected time and again during say from the late 1960's through 1977?

A Yes.

Q Routinely inspected?

A Yes.

Q ~~Is~~ <sup>TV</sup> and smoke tested?

A Yes, more recently with the <sup>TV</sup> we spent roughly \$33,000 to have it <sup>TV</sup> TCed and grouted in 1977.

Q From those inspections that have been made from time to time was there any indication of any breaks in the line or any imperfections in the line that would

2 account for this tremendous volume of excess liquid in there?

3 A No.

4 MR. JOLLY: Your witness.

5  
6 CROSS EXAMINATION

7  
8 BY MR. PHILLIPS:

9 Q Mr. Leask, when was the last time you went  
10 to the address subject to this suit?

11 A I have never been to the house since the  
12 Chaney's owned it. I have driven by and checked the manholes  
13 below.

14 Q You depended on some of your employees, I  
15 guess, to do this work?

16 A Yes, sir.

17 Q Because your title is what?

18 A Assistant Executive Director.

19 Q As such what are your primary functions?

20 A Operations and Maintenance.

21 Q Do you take calls and direct people?

22 A Are you talking about during flooding?

23 Q During general day-to-day duties?

24 A I confer with the Utility Superintendent  
25 and talk about what they are going to do.



Q You were not at Mrs. Chaney's on the 29th of May, 1976?

A No.

Q You weren't over there then? Now, what is Mr. Rossie's education experience as an engineer in sewer lines and so forth?

A He has been with the State Health Department for 18 years prior to coming as Executive Director of the Public Service Authority.

Q Since when?

A Roughly 18 years.

Q Would you say he knows more or less about the operations of the sewer lines than you do?

A I would say he knows more.

Q And you heard Mrs. Chaney testify as to what he told her about any backtrap being installed? It wouldn't cure the problem?

A Yes, but he was talking about - -

MR. PHILLIPS: Wait a minute - -

MR. JOLLY: I object; let him answer the question. He is interrupting the witness. He asked him a question and I want him to answer.

MR. PHILLIPS: I asked him if he heard that. That is all I asked him. He is going to start

assuming what Mr. Rossie was thinking, and he can't do that.

THE COURT: Try to be responsive to the precise question.

MR. JOLLY: Ask the question over.

BY MR. PHILLIPS:

Q Did you hear what Mrs. Chaney said about Mr. Rossie saying the backtrap would not be the answer?

A Right.

Q Do you recognize that other downspout water and all getting into your lines, do you recognize that?

A Yes.

Q How long have you recognized this?

A Precisely since 1977 when we took care of grouting all joints in the lines.

Q What about in '72 when you said Mr. Deact had a backup problem and you answered that you can reasonably assume, since you all have so much capacity on these eight-inch lines for all these people over in southwest County, it has to be from downspouts.

Did you recognize it then?

A Yes, and we told the Deacts.

Q Are other people over there having the same

problem?

A The ones that have backwater valves don't.

Q I wonder why these people were going to the Volunteer Fire Department pumping out basements.

A Others in the Cave Spring area, certainly.

Q Now, if you know, do you admit that you owe a service duty to the Chaney's to give her reasonable sewer service if you take her money each month?

A Yes, sir.

Q Do you recognize the fact if you owe her that duty and you know as an expert that other water comes into your line, you may need more capacity to come by her house to keep her from having a backup?

A You can't handle storm water. There is no way.

Q You are saying it is illegally connected. Don't you have a County Attorney to eliminate these problems so these people won't be hurt?

A You mean have the County Attorney apply the Code to make them take their connections off?

Q Yes.

A Yes, sir; we have tried that.

Q If you know you owe them the service don't you think you owe a duty to stop that? Why didn't you stop?

A It is very simply to stop the downspout, but not a foundation drain.

Q You haven't stopped it yet?

A No.

Q And you owe a duty of reasonable service?

A Yes, sir.

MR. PHILLIPS: All right, thank you, sir.

REDIRECT EXAMINATION

BY MR. JOLLY:

Q Why wouldn't the installation of a backwater valve be a complete answer to Mrs. Chaney's problem?

A Because she has the foundation drain stopped in, and if you put a valve in to stop the sewer from backing into the basement it will flood her just as quickly.

So the problem is she has two problems.

Q And the problem of the foundation drain - -

MR. PHILLIPS: I object to your leading questions. He is testifying.

BY MR. JOLLY:

Q I think I have already asked you, is it legal to connect foundation drains to sanitary sewers?

A No, sir.

Q Is it against the plumbing Code in Roanoke County?

A Yes, sir.

Q Does the Public Authority have any power to enforce the County Code?

A No, sir.

MR. JOLLY: Your witness.

RE CROSS EXAMINATION

BY MR. PHILLIPS:

Q Are you saying you have no authority, no legal way to stop people from draining their drains and water into your lines?

A As I said, it is very easy for someone to take a downspout off. They will do that but to tell them to take the foundation drains off, it would require some legal assistance and we have tried with the County Attorney to get them to do that.

Q So if you haven't done that, that is your fault; it is not Mrs. Chaney's fault?

MR. JOLLY: I object to that. It has already been proven Mrs. Chaney is in violation of the Law.

2 MR. PHILLIPS: I may want to ask one  
3 question, but I want to ask the Judge, I would like  
4 to approach the Bench with you for a second.

5 (Whereupon, opposing approached the Bench  
6 and conferred with the Court out of the hearing  
7 of the Jury.

8 Court and Counsel retired from the Courtroom  
9 and the following proceedings were had out of the  
10 presence of the Jury.)

11  
12 THE COURT: All right, Mr. Phillips.

13 MR. PHILLIPS: I won't want to ask the  
14 question in all due respect to Mr. Jolly.

15 THE COURT: We are now in the absence of  
16 the Jury.

17 MR. PHILLIPS: I would respectfully ask  
18 the Court to permit me to ask Mr. Leask, since he  
19 has testified as to the capacity and so forth of  
20 these lines which seem to be twice the capacity  
21 as what they need and even at the peak use, I would  
22 like to ask him then why was it necessary for him  
23 to go down below the Chaney's' house in July of '78  
24 and install a new line, new sewer line.

25 If what he says is so true, that they have

no sewer problem out there I would like to ask him why, as an expert which he says he is, why was it necessary to go out to the Chaney's right down below their property and put in a new line.

MR. JOLLY: I would object to that. May it please the Court, on the Record that that was part of settlement negotiations between Counsel for the Chaney's and myself as Counsel for the Authority looking toward a possible settlement of this litigation which proved to be, unfortunately, unsuccessful.

(Whereupon, opposing Counsel argued the objection to the Court.)

THE COURT: Gentlemen, I don't know if there is anything in the Record other than your statement, and I think it ought to be in there.

Do you agree this was put in in the context of settling this case, that the sewer line was constructed?

MR. JOLLY: Yes, for the purpose of settling the aspects of the damage to the entire building, itself, so hopefully, they would not have to even be tempted to fabricate the fact about

having the water problem.

THE COURT: On that basis, I will not permit you to ask it and I note your exception.

(Whereupon, Court and Counsel returned to the Courtroom and the following proceedings were had in the presence of the Jury.)

THE COURT: All right, Mr. Jolly.

MR. JOLLY: Thank you, sir; I call Mr. Paitsel.

DALTON J. PAITSEL,  
having been first duly sworn to tell the truth, the whole truth and nothing but the truth, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. JOLLY:

Q State your full name, please, sir.

A Dalton Junior Paitsel.

Q And by whom are you employed, Mr. Paitsel?

A Roanoke County Public Service Authority.

Q How long have you been so employed?

A Since 1960.



Q What are your duties with the Authority?

A Construction Supervisor.

Q What do you do as Construction Supervisor?

A I install new sewer laterals in the trunk lines and I also maintain them; and anywhere it is an eight-inch sewer line or some parallel line, it all depends on the cost of it, I do that.

Q So during the 18 years you have been with the Authority since 1960 you have been involved in the construction and maintenance of the sewer lines?

A Yes, sir.

Q In Roanoke County?

A Yes, sir.

Q Are you familiar with the house owned by Mrs. Chaney and the sewer line there and the lateral and so forth?

A I am.

Q About when did you first go out there on that property; do you remember?

A I don't have no dates, but it has been several years back I know when Harr, not Harr, but Deacts owned it, it was my first experience.

I was over there one night when it had about six foot of water in it.

Q Do you remember when that was?

A It was back in the early seventies or '69;

I done forgot when. You have my records.

Q Was that when the big flooding occurred in the Roanoke Valley?

A Yes, sir.

Q Now, have you been out there since at all?

A Yes, sir; I have.

Q Have you been out there since Mrs. Chaney owned the property?

A Yes.

Q Did you have occasion to examine the foundation drains on the Chaney property?

A Yes, sir; I have.

Q Are they connected to the sanitary sewer?

A Yes, sir; they are in the area-way drain.

Q In the area-way drain?

A Yes, sir.

Q Now where is that?

A The area-way drain is the landing going  
into your basement or recreation room, or what you might  
call it; that is called an area-way drain to take away the  
surface water and the rain from the roof and going into the  
sanitary sewer.

Q Is that always connected to the sanitary sewer, the area-way drain?

A Yes, sir.

Q And the foundation drain?

A Yes, sir.

Q Are you familiar with backtrap valves?

A Yes, sir.

Q Are they a very common type installation?

A Yes, sir; very active, they work perfectly if you install them properly. They will do the job. They will keep the flow back and let the flow from the lavatories go out.

Q Are they, to your knowledge, in use in many places in Roanoke County?

A (The witness nodded head affirmatively.)

Q In Roanoke County do you have a lot of sewage backing up in times of heavy rain? Is that a very unusual thing?

A No, sir; it is not. We have a lot of it all over the County where it is low areas.

Q Is this a low area where we are talking about?

A Yes, sir; it is.

MR. JOLLY: Your witness.

2

## CROSS EXAMINATION

3

4

BY MR. PHILLIPS:

5

6

Q Have you ever seen a backtrap valve not work or whatever you are talking about?

7

8

A Backwater valve, yes, sir. I have seen one one time that didn't work.

9

10

11

Q Are you telling this Court where this lady said she had five feet of water May 29, 1976, if she had that valve she could have flushed her commode?

12

13

A I didn't say that.

14

15

16

Q What did you say then?

A I said that the backwater valve would work but it would not take care of storm water around your foundations.

17

18

If you have a normal rain or flow it will take it out.

19

20

Q You recognize that some storm water is connected straight to your sewer lines?

21

22

23

A Like basement drains, yes, they are.

Q How long have you been aware of that?

24

25

A I have been aware of it a good many years, but I am not allowed on private property to do nothing about it.

Q Does your supervisor know that?

A Yes, sir; we all work together.

Q They knew that?

A Yes, sir.

MR. PHILLIPS: That's all.

REDIRECT EXAMINATION

BY MR. JOLLY:

Q Did you ever recommend to the owners of this property that they put in such a valve?

A To the Deacts; yes, sir, I did.

MR. PHILLIPS: What about the Chaney's?

THE WITNESS: No, I have never talked to Mrs. Harr as I know of.

Mr. Chaney was <sup>at</sup> ~~in the~~ present ~~to~~ when I was out there.

MR. JOLLY: Thank you, sir.

(Witness excused.)

EDWARD A. RAST,

having been first duly sworn to tell the truth, the whole truth and nothing but the truth, was examined and testified as follows:

103

2 DIRECT EXAMINATION

3  
4 BY MR. JOLLY:

5 Q State your full name, please, sir.

6 A Edward A. Natt.

7 Q What is your profession, Mr. Natt?

8 A I am an Attorney.

9 Q At one point in time were you the Attorney  
10 for Roanoke County?

11 A I was.

12 Q How long did you serve in that capacity?

13 A Approximately four and a-half years.

14 Q During the time that you were County Attorney  
15 did there come a time when your opinion was requested by  
16 the Authority as to its jurisdiction to go upon private  
17 property and make changes in foundation drains and other  
18 connections to the sanitary sewer system?

19 A I remember several discussions with the  
20 Authority concerning the extent of their authority as to  
21 requiring connections and repairs to drainage systems; yes,  
22 sir.

23 Q What advice did you give to the Authority  
24 as to their authority?

25 A It is my general recollection that I,

throughout the term that I was in, that office was of the opinion that the Authority, the Roanoke County Public Service Authority, had no authority to go onto private individuals' property to force repairs or any work to be done to any water or sewer system.

MR. JOLLY: Thank you.

#### CROSS EXAMINATION

BY MR. PHILLIPS:

Q Is it your opinion as a County Attorney, we will revert you back, as an expert in Municipal County Law, that the Public Service Authority that owns the lines cannot control what comes into their own lines?

A I don't understand the question, Mr. Phillips.

Q Well, is it your opinion that the Public Service Authority who controlled their own lines and operates a sewage service to their customers, has no right to control what other source of liquid comes into their lines?

A That is a complex question. The Authority, it has some regulatory procedures, as I remember it, and you must remember it has been several years, but wherein they work together with Roanoke County and I believe the County Ordinances, I believe if you want to go back further,

the water and the sewage contract between the City and the County defines what may or may not be put into the drainage system.

That was a joint contract into which all the parties entered.

Q Is it permitted for storm drains to be hooked to the sewer line?

A Under the new Code it is not permitted, but that is a Code that is adopted by the Board of Supervisors and enforced by the County through its Plumbing and Building Department.

Q All right, when was that enacted?

A Oh, again, I am speaking - -

Q Was that the Law when you became the County Attorney?

A No, as of that time it was the old Southern Standard Building Code.

Q Then could foundation lines be hooked to the sewer lines?

A I cannot answer that without reviewing the Code.

Q If some information on the source of water was coming into the sewer line, you wouldn't tell the Sewer Authority that they had no right to stop that, would you,



if they own it?

MR. JOLLY: If they own what?

MR. PHILLIPS: If they own the sewer line.

MR. JOLLY: Into which the foreign substance is being injected?

MR. PHILLIPS: Yes.

MR. JOLLY: They don't own that; that is on Mrs. Chaney's property.

MR. PHILLIPS: I am talking about the sewer line, which they own.

THE WITNESS: Into the sewer mains in the streets?

MR. PHILLIPS: Yes.

THE WITNESS: I believe that the Authority would have the power to say what types of material can be put into those systems, but they cannot control the individual laterals, in my opinion, on the property.

MR. PHILLIPS: Okay, all right, sir.

REDIRECT EXAMINATION

BY MR. JOLLY:

Q Does the Authority have any jurisdiction

2 to enforce the Plumbing Code in Roanoke County?

3 A No, sir.

4 MR. JOLLY: Thank you, sir.

5 (Witness excused.)

6  
7 MR. JOLLY: The Defendant rests.

8 THE COURT: Anything else, Mr. Phillips?

9 MR. PHILLIPS: I would like to call Mr.

10 Leask.

11 Mr. Jolly, I am calling Mr. Leask to ask  
12 him some questions about the so-called Deact-  
13 Chaney house.

14  
15 LEONARD GEORGE LEASK,  
16 recalled as a witness having been previously sworn to tell  
17 the truth, the whole truth and nothing but the truth, was  
18 examined and testified as follows:

19  
20 DIRECT EXAMINATION

21  
22 BY MR. PHILLIPS:

23 Q Do your records reflect when this house  
24 was built? You have testified a lot about - -

25 A According to our records it was built in

1964.

Q You have testified it was built in 1964?

A Hooked onto the sewer and built, it was a combination. The sewer line was put through and the Deacts were hooked on and the agreement was with T. D. Steele and Sky K Corporation.

Q Would they have been built before the sewer?

A There is no record of that.

Q They could have a septic tank in their backyard?

A I am almost 99 percent sure there wasn't. Let's put it this way: Deacts had been on the sewer since '64.

Q But you don't know how long the house had been built?

A Not exactly; I didn't look at the building permit.

Q That was what I wanted to know. I didn't understand your testimony about that.

Do the storm drains at any area within the area of the sub-division we are talking about come into your sewer line?

A No.

Q Storm drains?

A No, you are talking about the Virginia Department of Highways' storm drains.

Q No.

A They don't interconnect with our line.

Q At any point in that area?

A No, we have no sewer lines like that, no storm water is to go into the sanitary sewer. That is what is overloading the treatment plant is storm waters.

CROSS EXAMINATION

BY MR. JOLLY:

Q Did the Southern Standard Building Code, the predecessor to the BOCA Code, did that prohibit the connection of foundation drains to sanitary sewer?

A That's right.

MR. JOLLY: Thank you, sir.

MR. PHILLIPS: We rest, Your Honor.

THE COURT: All right, Gentlemen; let's take a recess to consider instructions.

(Whereupon, Court and Counsel adjourned from the Courtroom and the following proceedings were had out of the presence of the Jury.)

MR. JOLLY: At the conclusion of all the

evidence Counsel for the Defendant renews its motion to strike the Plaintiff's evidence and enter Summary Judgment for the Defendant.

(Whereupon, opposing Counsel argued the motion to the Court.)

THE COURT: The Court overrules your motion based on the reason previously given.

The Court is confused on Instruction A. It is not, in its opinion, a fair statement of the Law applicable, and the point covered by the Instruction is adequately covered by other instructions by the Court.

MR. JOLLY: To which action the Counsel on behalf of the Defendant respectfully excepts.

(Court and Counsel returned to the Courtroom and the Court read the Instructions as given to the Jury after which Mr. Phillips argued to the Jury on behalf of the Plaintiff and Mr. Jolly argued to the Jury on behalf of the Defendant.)

(At 5:18 p.m. the Jury retired to their room to deliberate over the verdict and returned

to the Courtroom at 6:15 p.m. whereupon the following took place before the Court and Jury.)

THE COURT: Ladies and Gentlemen, have you reached your verdict?

JURY FOREMAN: We have. We the Jury on the issues joined find in favor of the Plaintiff, Minnie Harri Chaney and James Barksdale Chaney, and assess her damages at \$7,500.

THE COURT: Is this your verdict so say you all?

(Whereupon, the Jury responded unanimously in the affirmative.)

THE COURT: All right, Gentlemen, do you desire that the Jury be polled?

MR. PHILLIPS: No, sir.

MR. JOLLY: No, Your Honor.

(Whereupon, the Jury was dismissed from the Courtroom.)

THE COURT: Gentlemen, is there anything else?

MR. JOLLY: Yes, Your Honor, may it please

1  
2 the Court on behalf of the Defendant we move to  
3 set aside the verdict and enter Final Judgment  
4 for the Defendant for the reasons heretofore  
5 assigned; or in the alternative, to grant a new  
6 trial for the errors which we respectfully submit  
7 have been committed in the giving of Instructions  
8 in this case.

9 THE COURT: Do you want to say anything  
10 about that, Mr. Phillips?

11 (Whereupon, opposing Counsel argued the  
12 Motion to the Court.)

13 THE COURT: I will overrule your Motion,  
14 Mr. Jolly, for the reasons previously stated and  
15 enter Judgment based on the Jury's verdict.

16 Mr. Phillips, you will prepare the order?

17 MR. PHILLIPS: Yes, sir; I will.

18 MR. JOLLY: We respectfully except to the  
19 Court's ruling.

20 (Whereupon, the proceedings were concluded  
21 and Court was adjourned at 6:28 p.m.)  
22  
23  
24  
25

O R D E R

This cause came on to be heard on the 27th day of October, 1978, pursuant to papers formerly filed herein; upon a jury being impanelled for the purpose of hearing said evidence; upon evidence submitted on behalf of plaintiff and upon motion by counsel for defendant to strike W. L. Rossie, Jr., as defendant in this cause and to further strike the evidence of the plaintiffs both as to punitive and compensatory damages and to enter summary judgment on behalf of defendants; the Court having sustained the motion of defendants regarding W. L. Rossie, Jr., and as to any claim for punitive damages and the Court does dismiss W. L. Rossie, Jr., as a defendant and sustains said motion as to punitive damages; however, the Court does overrule the motion on behalf of defendant to strike plaintiff's evidence and to enter summary judgment on behalf of defendant as to compensatory damages and the defendant having objected and excepted to said ruling.

Upon evidence presented on behalf of defendant and upon defendant thereafter renewing its motion to strike plaintiff's

LLK jr



evidence and enter summary judgment on behalf of defendant, The Roanoke County Public Service Authority, the Court denying defendant's motion to strike the evidence of plaintiff and to enter summary judgment on behalf of defendant. The Court being of the opinion that all matters should be submitted to a jury; upon consideration of the matters by the jury impanelled for the purpose of hearing this action, and the jury having returned a verdict in favor of Betsy Harr Chaney in the sum of \$7,500.00, it is hereby ORDERED that Betsy Harr Chaney do have and recover a judgment in the amount of \$7,500.00 plus her taxable Court costs against the remaining defendant, The Roanoke County Public Service Authority.

WHEREUPON, the defendant move the Court to set aside said verdict as being contrary to the law and the evidence and on the further grounds that the Court erred in failing to sustain its previous motions to strike plaintiff's evidence and enter summary judgment for the defendant and for the refusal of the Court to give to the jury an instruction submitted by the defendant which motion the Court overruled and the defendant, by counsel, duly excepted.

And the defendant having indicated its intention to appeal to the Supreme Court of Virginia, said defendant moved the Court to suspend the execution of such judgment so long as the defendant timely prosecutes said appeal and thereafter so long as the matter is under consideration by the Supreme Court of Virginia; provided that the defendant shall file an appeal bond in the Clerk's office of this Court within 14 days from the entry of this Order with corporate surety in the penalty of \$8,500.00 dollars, which bond shall be conditioned to perform and satisfy the judgment granted herein together with all damages,

costs, and fees which may be awarded against the defendant in its appeal to the Supreme Court and all actual damages incurred in consequence of the suspension, and it is so ORDERED.

AND IT IS FURTHER ORDERED, that the transcript of the hearing held on October 27, 1978, shall become a part of the record herein when the same is filed in the office of the Clerk of this Court provided the same is filed within 60 days after the entry of this Order; and nothing further remaining to be done herein, it is ORDERED that this matter be stricken from the docket of this Court.

Enter this 18 day of November, 1978.

Lawrence L. Koontz, Jr.

Judge

I request the entry of this Order:

Robert P. Doherty, Jr.

Counsel for Plaintiff

A Copy Teste: Elizabeth W. Stokes, Clerk  
Circuit Court, Roanoke County, Va.

By

Clarence H. Keller  
Deputy Clerk

I object to entry of this Order  
on grounds heretofore stated in  
open Court:

W. H. Jolly  
Counsel for Defendant

ASSIGNMENTS OF ERROR

1. The Court erred in overruling the motion made by the Authority at the conclusion of Chaney's evidence to strike the same and enter summary judgment for the Authority.
2. The Court erred in overruling the Authority's renewal of said motion at the conclusion of all of the evidence.