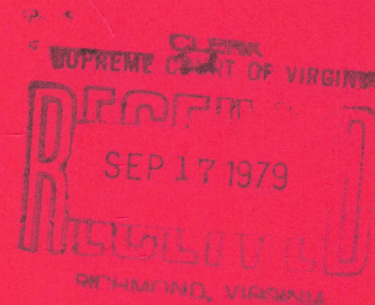


IN THE
SUPREME COURT OF VIRGINIA
At Richmond



RECORD NO. 790545

JESSE DAYE, JR.,
Plaintiff,

v.

THE CITY OF NEWPORT NEWS, VIRGINIA,
Defendant, (Circuit Court
and (No. 2414-WS
VIRGINIA ELECTRIC AND POWER COMPANY,
Appellant,

v.

K. F. WILSON, Individually and t/a K. F. Wilson, Contractor,
Appellee.

JAMES A. COLLINS,
Plaintiff,

v.

THE CITY OF NEWPORT NEWS, VIRGINIA,
Defendant, (Circuit Court
and (No. 2415-WS
VIRGINIA ELECTRIC AND POWER COMPANY,
Appellant,

v.

K. F. WILSON, Individually and t/a K. F. Wilson, Contractor.
Appellee.

APPENDIX

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*Exhibits omitted because they are contained elsewhere
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VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF NEWPORT NEWS

JESSE DAYE, JR.,

Plaintiff,

v.

VIRGINIA ELECTRIC AND POWER
COMPANY, a Virginia corporation,

K. F. WILSON, individually and
trading as K. F. WILSON CONTRACTOR,

and

THE CITY OF NEWPORT NEWS, VIRGINIA,
a municipal corporation,

Defendants.

AT LAW NO. 2414-B

MOTION FOR JUDGMENT

To: S. Brooks Robertson, Registered Agent
Virginia Electric and Power Company
700 East Franklin Street
Richmond, Virginia

To: K. F. Wilson, individually and trading as
K. F. Wilson Contractor
15 Fox Hill Road
Hampton, Virginia

To: Avery A. Thomas, Attorney for
The City of Newport News, Virginia
2400 Washington Avenue
Newport News, Virginia

The plaintiff, Jesse Daye, Jr., hereby moves this Court for a judgment against Virginia Electric and Power Company, K. F. Wilson, individually and trading as K. F. Wilson Contractor, and The City of Newport News, Virginia, the defendants herein, in the sum of TWO MILLION DOLLARS (\$2,000,000.00), and costs,

on account of personal injuries occasioned the plaintiff through the negligence of the said defendants, for the following reasons:

COUNT ONE

1. That on or about the 24th day of January, 1974, the plaintiff was employed by Ferguson Corporation, a Virginia corporation, and incident to his duties as an employee, he was engaged in the construction and installation of a new storm drain at or near the intersection of 26th Street and West Avenue in the City of Newport News, Commonwealth of Virginia.

2. That during the time mentioned herein, the defendant, Virginia Electric and Power Company, was and still is engaged as a utility company, which is the sole company in Virginia for the supply, sale, transport and furnishing of natural gas in Newport News. The said Virginia Electric and Power Company likewise solely supplies electricity and other forms of power in the City of Newport News, Virginia; and that the said Virginia Electric and Power Company has sole control of mains and supply pipes for the flow of the aforesaid gas in the public highways and streets in the City of Newport News, Virginia.

3. That during all of the times hereinafter mentioned, the said Virginia Electric and Power Company had, and still has, the exclusive franchise for the manufacture, sale and distribution of natural gas and/or gas for lighting, heating and illumination within the limits of the City of Newport News, Commonwealth of Virginia.

4. That the said Virginia Electric and Power Company laid gas mains and pipes in the public highway and/or city street of the City of Newport News, Virginia, at or near 26th Street and West Avenue in said city.

5. That the defendant, Virginia Electric and Power Company, at all times herein mentioned, owed a duty to the public and to the said Jesse Daye, Jr., to properly construct, maintain, manage, control, inspect and repair the

said gas pipes and mains and to guard against such danger therefrom, as can or ought to be anticipated or foreseen in the exercise of reasonable prudence, and was bound to use such care, diligence and watchfulness in protecting the public and the said Jesse Daye, Jr. against any danger that might arise from its negligent maintenance and in a degree commensurate with the inherent dangers connected with the commodity which it was manufacturing, selling and distributing, to-wit: natural or illuminating gas, and owed a duty to the public and to the said Jesse Daye, Jr. to see that said natural or illuminating gas did not escape from said pipes and mains, and did further owe a duty to the public and to the said Jesse Daye, Jr., in the event that the aforesaid gas had escaped from the said pipes and mains, to take reasonable measures to detect the presence of any of the said gas and to give reasonable warnings of any dangerous condition created thereby.

6. That on or about January 22, 1974, gas lines and/or mains owned and controlled by Virginia Electric and Power Company were broken or ruptured at or near 26th Street and West Avenue in the City of Newport News, Virginia, and likewise, on or about January 23, 1974, the said gas lines and/or mains were broken or ruptured at or near 26th Street and West Avenue, and on both occasions the said Virginia Electric and Power Company had attempted to repair the said gas lines and/or mains, which said gas lines and/or mains were totally under its control and management.

7. That on or about January 24, 1974, as aforesaid, Jesse Daye, Jr., while lawfully engaged in his employment, was properly and lawfully within a newly constructed storm drain at or near 26th Street and West Avenue, adjacent to the aforesaid gas lines and/or mains, in the City of Newport News, Virginia, at which time there occurred an explosive fire wherein the said Jesse Daye, Jr. was severely burned by the said fire and sustained serious, permanent and progressive injuries to his body and person; that he incurred great mental

anguish, suffering and pain; that he was required to seek, and has incurred expenses for, medical, hospital and nursing care looking towards his cure, and verily believes he will continue to seek such care and incur such expenses looking towards his cure in the future; that he suffered a loss of income from his employment and will continue to do so in the future; that he has sustained a diminution of earning capacity or ability; that he was rendered lame, sore, sick and disabled; that he has sustained injuries to his nervous system, ligaments, tissues, nerves and bones; that he sustained great shock and has been forced to endure great pain and suffering in the past, as well as mental anguish, and will continue to endure great pain, mental anguish and suffering in the future, all of which occurred without any negligence on the part of the plaintiff herein.

8. That on or about January 24, 1974, and prior thereto, Virginia Electric and Power Company violated the duties set out in Paragraph 5 hereof, and negligently and carelessly controlled, managed and maintained the aforesaid gas lines and/or mains at or near 26th Street and West Avenue in the City of Newport News, Virginia, and did further fail to give warning of any dangerous condition and, as a result thereof, natural gas or illuminating gas, at all times mentioned herein, exploded and/or burned in the aforesaid storm drain occupied by the plaintiff, which resulted in the injuries and damages, as heretofore set out in Paragraph 7.

9. It is further alleged that at the time and place aforesaid, when the aforesaid explosive fire and injury occurred, the circumstances were such that, according to common knowledge and the experience of mankind, the explosive fire and resulting injury and damages could not have happened if the said Virginia Electric and Power Company had not been negligent.

WHEREFORE, the plaintiff asks judgment at the hands of the said Court against the defendant, Virginia Electric and Power Company, for its negligent

acts, in the sum of TWO MILLION DOLLARS (\$2,000,000.00), and his costs in his behalf expended in this proceeding.

COUNT TWO

1. That on or about January 22, 1974, agents, servants and employees of the defendant, K. F. Wilson, individually and trading as K. F. Wilson Contractor, while doing repair work in the area of West Avenue and 26th and 27th Streets, in the City of Newport News, Virginia, negligently and carelessly caused a rupture or breaking of natural or illuminating gas lines and/or mains in the street, and as a result thereof the said dangerous gas was caused to collect in a storm drain at or near 26th Street and West Avenue, in said city, which storm drain was lawfully occupied by the plaintiff herein, and thereafter said dangerous substance exploded and/or burned, causing the injuries and damages as hereinafter set out in COUNT ONE, Paragraph 7.

2. That the plaintiff herein was free of any negligence which caused or contributed to the aforesaid fire and/or explosion.

3. That the defendant, K. F. Wilson, individually and trading as K. F. Wilson Contractor, at all times herein mentioned, owed a duty to the public and to the said Jesse Daye, Jr., to use reasonable care in performing the duties for which he was employed, and to anticipate that gas pipes and/or mains may have been in the area in which they were working, and to guard against danger of rupturing said gas lines and/or mains, as such danger ought to have been anticipated or foreseen in the exercise of reasonable care.

4. That the said defendant, K. F. Wilson, individually and trading as K. F. Wilson Contractor, owed a duty to the public and to the said Jesse Daye, Jr., and ought to have foreseen that after negligently breaking the aforesaid gas lines and/or mains, gas therefrom might be deposited in the storm drain as aforesaid, and that thereafter said dangerous substance might explode.

5. That the defendant, K. F. Wilson, individually and trading as K. F. Wilson Contractor, had a duty to detect the presence of any of the said gas and to give reasonable warnings of any dangerous condition created thereby.

6. Plaintiff represents and alleges all of the allegations heretofore set out in COUNT ONE, Paragraph 7.

7. That the defendant, K. F. Wilson, individually and trading as K. F. Wilson Contractor, violated the duties, as heretofore set out, and as a result of his negligent and careless acts, the plaintiff was injured and damaged as aforesaid.

WHEREFORE, the plaintiff asks judgment at the hands of the said Court against the defendant, K. F. Wilson, individually and trading as K. F. Wilson Contractor, for his negligent acts, in the sum of TWO MILLION DOLLARS (\$2,000,000.00), and his costs in his behalf expended in this proceeding.

COUNT THREE

1. That on or about January 23, 1974, agents, servants and employees of the defendant, The City of Newport News, Virginia, while doing repair work in the area of West Avenue and 26th and 27th Streets, in the City of Newport News, Virginia, negligently and carelessly caused a rupture or breaking of natural or illuminating gas lines and/or mains in the street, and as a result thereof the said dangerous gas was caused to collect in a storm drain at or near 26th Street and West Avenue, which storm drain was lawfully occupied by the plaintiff herein, and thereafter said dangerous substance exploded and/or burned, causing the injuries and damages as hereinafter set out in COUNT ONE, Paragraph 7.

2. That the plaintiff herein was free of any negligence which caused or contributed to the aforesaid fire and/or explosion.

3. That the defendant, The City of Newport News, Virginia, at all times herein mentioned, owed a duty to the public and to the said Jesse Daye, Jr. to use reasonable care in performing the duties for which it was employed, and to anticipate that gas pipes and/or mains may have been in the area in which its agents, servants and employees were working, and to guard against danger of rupturing said gas lines and/or mains, as such danger ought to have been anticipated or foreseen in the exercise of reasonable care.

4. That the defendant, The City of Newport News, Virginia, owed a duty to the public and to the said Jesse Daye, Jr., and ought to have foreseen that after negligently breaking the said gas lines and/or mains, gas therefrom might be deposited in the storm drain as aforesaid, and that thereafter said dangerous substance might explode.

5. That the defendant, The City of Newport News, Virginia, had a duty to detect the presence of any of the said gas and to give reasonable warnings of any dangerous condition created thereby.

6. Plaintiff represents and alleges all of the allegations heretofore set out in COUNT ONE, Paragraph 7.

7. That the defendant, The City of Newport News, Virginia, violated the duties as heretofore set out, and as a result of its negligent and careless acts, the plaintiff was injured and damaged, as aforesaid.

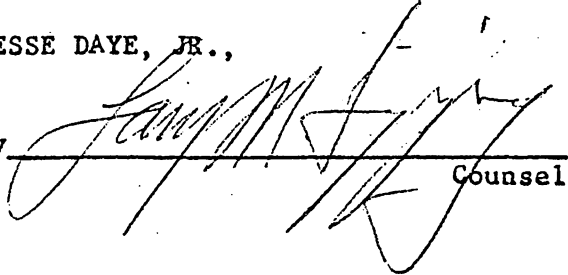
WHEREFORE, the plaintiff asks judgment at the hands of the said Court against the defendant, The City of Newport News, Virginia, for its negligent acts, in the sum of TWO MILLION DOLLARS (\$2,000,000.00), and his costs in his behalf expended in this proceeding.

WHEREFORE, the plaintiff asks judgment at the hands of the said Court against the defendants, Virginia Electric and Power Company, K. F. Wilson,

individually and trading as K. F. Wilson Contractor, and The City of Newport News, Virginia, jointly and severally, for their negligent acts, in the sum of TWO MILLION DOLLARS (\$2,000,000.00), and his costs in his behalf expended in this proceeding.

JESSE DAYE, JR.,

By


Counsel

LARRY M. TOPPING, p.q.
426 F & M Building
2600 Washington Avenue
Newport News, Virginia 23607

VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF NEWPORT NEWS

JESSE DAYE, JR.,

Plaintiff,

v.

VIRGINIA ELECTRIC AND POWER COMPANY,
et al.,

Defendants.

AT LAW NO. 3414-B

GROUND OF DEFENSE ON BEHALF OF
DEFENDANT VIRGINIA ELECTRIC AND POWER COMPANY

Defendant Virginia Electric and Power Company, for its Grounds of Defense to the Motion for Judgment served upon it in this action on January 14, 1976, says:

COUNT ONE

1. This defendant is without information as to the allegations of Paragraph 1 of Count One of the Motion for Judgment and accordingly calls for strict proof.

2. This defendant admits that it was and is engaged as a public utility for the supply, sale, transport and furnishing of natural gas and electricity in the City of Newport News, Virginia, but this defendant denies the remaining allegations of Paragraph 2 of Count One of the Motion for Judgment.

3. This defendant admits the allegations of Paragraph 3 of Count One of the Motion for Judgment.

4. This defendant admits the allegations of Paragraph 4 of Count One of the Motion for Judgment.

5. This defendant denies the allegations of Paragraph 5 of Count One of the Motion for Judgment.

6. This defendant admits that on or about January 22, 1974, its gas lines and mains were broken at or near 26th Street and West Avenue in Newport News, Virginia, and that it repaired them, but this defendant denies the remaining allegations of Paragraph 6 of Count One of the Motion for Judgment.

7. This defendant denies the allegations of Paragraph 7 of Count One of the Motion for Judgment.

8. This defendant denies the allegations of Paragraph 8 of Count One of the Motion for Judgment.

9. This defendant denies the allegations of Paragraph 9 of Count One of the Motion for Judgment.

COUNT TWO

This defendant denies all the allegations of Count Two of the Motion for Judgment to the extent that they pertain to it.

COUNT THREE

This defendant denies all the allegations of Count Three of the Motion for Judgment to the extent that they pertain to it.

Further answering, this defendant says:

1. Any injuries plaintiff may have sustained at the time and place alleged in the Motion for Judgment were caused

by the negligence of the plaintiff himself in failing to exercise due care for his own safety or the negligence of third parties over whom this defendant had no control.

2. Plaintiff assumed the risk of any injuries he may have sustained at the time and place alleged in the Motion for Judgment.

3. The Motion for Judgment fails to state a claim against this defendant upon which relief can be granted because it is insulated from liability by the Workmen's Compensation laws of the State of Virginia.

4. This defendant denies that plaintiff was injured in the manner or to the extent alleged in the Motion for Judgment.

WHEREFORE, having fully answered, this defendant prays that the Motion for Judgment served upon it in this action be dismissed, with costs.

VIRGINIA ELECTRIC AND
POWER COMPANY

By Lewis T. Booker
Of Counsel

Lewis T. Booker
Rand A. Mirante
HUNTON, WILLIAMS, GAY & GIBSON
P. O. BOX 1535
Richmond, Virginia 23261

Counsel

CERTIFICATE

I certify that I have mailed a copy of the foregoing Grounds of Defense to Larry M. Topping, Esquire, 426 F&M Building, 2600 Washington Avenue, Newport News, Virginia 23607, counsel for plaintiff, and to codefendants K. F. Wilson Contractor, 15 Fox Hill Road, Hampton, Virginia, and City of Newport News, Virginia, c/o Avery A. Thomas, Esquire, 2400 Washington Avenue, Newport News, Virginia, this 3rd day of February, 1976.

Lewis T. Booker

2-2-16 | 11

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PLEA OF THE WORKMEN'S COMPENSATION ACT

Now comes K. F. Wilson, individually and trading as K. F. Wilson Contractor, and states that the plaintiff cannot maintain this action by reason of the Workmen's Compensation Act which bars any proceeding against this defendant.

K. F. WILSON, individually and
trading as K. F. WILSON CONTRACTOR

By James B. Howard
Of Counsel

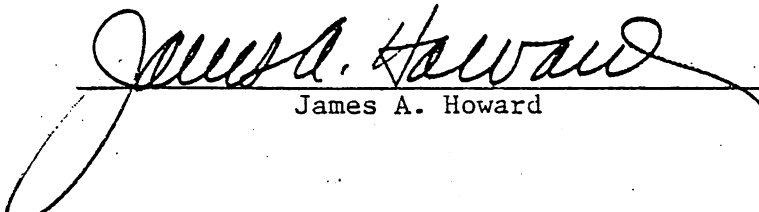
Of Counsel

Breeden, Howard & MacMillan
1530 Virginia National Bank Building
Norfolk, Virginia 23510

I hereby certify that on the 3rd day of February, 1976, the original of this pleading was mailed to the Clerk of the Court aforesaid, with a copy being mailed on the same date to Larry M. Topping, Esq., 426 First & Merchants.

NOTED FEB 09 1976 E.M.F.

Bank Building, 2600 Washington Avenue, Newport News, Virginia, 23607, attorney for the plaintiff; Avery A. Thomas, attorney for the City of Newport News, Virginia, 2400 Washington Avenue, Newport News, Virginia, and to S. Brooks Robertson, Registered Agent for Virginia Electric and Power Company, 700 East Franklin Street, Richmond, Virginia, 23219.

A handwritten signature in cursive script, reading "James A. Howard", written over a horizontal line.

James A. Howard

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NEWPORT NEWS

JESSE DAYE, JR.,

Plaintiff,

v.

VIRGINIA ELECTRIC AND POWER
COMPANY, a Virginia corporation,

K. F. WILSON, individually and
trading as K. F. WILSON CONTRACTOR,

and

THE CITY OF NEWPORT NEWS, VIRGINIA,
a municipal corporation,

Defendants.

AT LAW

NO. 2414-WS

O R D E R

The Plea of the Workmen's Compensation Act of K. F. Wilson, individually and trading as K. F. Wilson Contractor, filed in this cause being argued and considered by the Court, said Plea is hereby sustained, and it is ORDERED that this matter be dismissed against the said K. F. Wilson, all pursuant to an opinion rendered in this cause on April 23, 1978.

Be it further ORDERED that the transcript of the proceedings of the hearing on the Motions to Dismiss by reason of the application of the Workmen's Compensation Act become a part of the record when the transcript is filed in the office of the Clerk.

Enter: 7-11-78

/s/ J. Warren Stephens

J. Warren Stephens, Judge

A COPY TESTED BY GEORGE D. BUSHAW, CLERK

I ask for this:

James A. Howard
James A. Howard, attorney for
K. F. Wilson, individually and
trading as K. F. Wilson Contractor

Seen and Excepted:

Larry M. Topping
Larry M. Topping, attorney for
Jesse Daye, Jr.

Robert M. Boylance
for Avery A. Thomas, City Attorney,
City of Newport News

Lewis T. Booker
Lewis T. Booker, attorney for
Virginia Electric and Power Company

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NEWPORT NEWS

JESSE DAYE, JR.,

Plaintiff,

v.

VIRGINIA ELECTRIC AND
POWER COMPANY, et al.,

Defendants and
Third-Party Plaintiff,

AT LAW NO. 2414-WS

v.

K. F. WILSON, Individually and
t/a K. F. WILSON CONTRACTOR,

Serve: K. F. Wilson
15 Foxhill Road
Hampton, Virginia

Third-Party Defendant.

THIRD-PARTY MOTION FOR JUDGMENT

Defendant, Virginia Electric and Power Company (Vepco), pursuant to Rule 3:10 of the Rules of the Supreme Court of Virginia, moves the Court for a judgment against the third-party defendant, K. F. Wilson, Individually and t/a K. F. Wilson Contractor (Wilson), for such sum as Vepco may be held liable to the plaintiff, Jesse Daye, Jr. (Daye), and in support thereof states as follows:

1. On or about January 13, 1976, plaintiff, Daye, filed a Motion for Judgment against Vepco, Wilson, and the City of Newport News (Newport News), seeking to recover a money judgment for alleged damages in the amount of \$2,000,000

arising out of an alleged fire and gas explosion and consequent personal injuries to the plaintiff on or about

January 24, 1974, in Newport News, Virginia. A copy of the Motion for Judgment is attached as Exhibit A.

2. The Motion for Judgment alleges that the negligence of all three defendants was the proximate cause of the plaintiff's injuries.

3. On or about February 3, 1976, Wilson and Newport News filed Special Pleas alleging that the plaintiff's action was barred by reason of the Workmen's Compensation Act.

4. This Court, by way of a Memorandum Opinion, dated April 28, 1978, and by subsequent Order, has dismissed the Plea filed by Newport News and has sustained the Plea filed by Wilson.

5. Vepco alleges that even if it is negligent as alleged in the Motion for Judgment, which is denied, then such negligence was passive in nature only, and Wilson was guilty of active negligence which proximately caused or efficiently contributed to Daye's alleged injuries.

6. Vepco alleges that even if it was guilty of negligence or wrongdoing as alleged in the Motion for Judgment, which is denied, then Wilson was guilty of joint and concurring negligence which proximately caused or efficiently contributed to Daye's alleged injuries.

7. By reason of the foregoing, if judgment is rendered against defendant and third-party plaintiff, Vepco,

the third-party defendant, Wilson, will be obligated to indemnify or pay contribution to Vepco for all or part of any such judgment against Vepco.

WHEREFORE, Vepco demands judgment against Wilson for any and all sums which may be judged against it by virtue of the cause of action alleged in the plaintiff's Motion for Judgment and for all its attorneys' fees, court costs and other expenses incurred in connection with its defense of that action or, in the alternative, Vepco asks that Wilson be ordered to contribute a ratable amount towards the satisfaction of any judgment which plaintiff may recover against it.

VIRGINIA ELECTRIC AND POWER COMPANY

By _____
Of Counsel

Lewis T. Booker
Gregory N. Stillman
Hunton & Williams
Post Office Box 1535
Richmond, Virginia 23212

Counsel

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF NEWPORT NEWS

JESSE DAYE, JR., :

Plaintiff, :

v. :

VIRGINIA ELECTRIC AND
POWER COMPANY, et al, :

AT LAW NO. 2414-WS

Defendants and
Third-Party Plaintiff, :

v. :

K. F. WILSON, Individually and
t/a K. F. WILSON CONTRACTOR, :

Third-Party Defendant. :

PLEA OF THE WORKMEN'S COMPENSATION ACT

Now comes K. F. Wilson, individually and trading as K. F. Wilson Contractor, and states that Virginia Electric and Power Company, defendant and third-party plaintiff, cannot maintain this action by reason of the Workmen's Compensation Act which bars any proceeding against this defendant.

DEMURRER AND MOTION TO DISMISS

Now comes K. F. Wilson, individually and trading as K. F. Wilson Contractor, by counsel, and demurs to the third-party action by Virginia Electric and Power Company, and moves the Court to dismiss such action on the grounds that Virginia Electric and Power Company has no substantive right on which it can base a claim against K. F. Wilson either on the basis of contribution or indemnity, and until any such substantive right comes into

creation, Virginia Electric and Power Company's impleader is improper and premature.

Therefore, K. F. Wilson moves the Court to dismiss Virginia Electric and Power Company's third-party action.

K. F. WILSON, Individually and
t/a K. F. WILSON CONTRACTOR

By

James A. Howard

Of Counsel

James A. Howard
Breedon, Howard & MacMillan
1700 First Virginia Bank Tower
101 St. Paul's Boulevard
Norfolk, Virginia 23510

I hereby certify that the original of the above was mailed to the Clerk of the Court aforesaid on the 7th day of September, 1978, with a copy being mailed on the same day to Larry M. Topping, Esq., 426 F & M Building, 2600 Washington Avenue, Newport News, Virginia, 23607, attorney for the plaintiff, to Gregory M. Stillman, Esq., Post Office Box 1535, Richmond, Virginia, 23212, attorney for Virginia Electric and Power Company, and to Robert M. Roylance, Esq., 2400 Washington Avenue, Newport News, Virginia, 23607, attorney for the City of Newport News.

James A. Howard

Attorney

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NEWPORT NEWS

JESSE DAYE, JR.,

Plaintiff,

v.

VIRGINIA ELECTRIC AND
POWER COMPANY, et al.,

Defendants and
Third-Party Plaintiff,

v.

K. F. WILSON, Individually and
t/a K. F. WILSON CONTRACTOR,

Third-Party Defendant.

AT LAW NO. 2414-WS

ORDER

This day came Virginia Electric and Power Company, by counsel, and moved the Court for leave to file its Third-Party Motion for Judgment against K. F. Wilson, Individually and t/a this day tendered K. F. Wilson Contractor/ And it appearing to the Court that such Motion should be granted, it is hereby

ORDERED that ~~Virginia Electric and Power Company may~~ said
~~have to and including this day to file its proposed/Third-Party~~

Motion for Judgment be and the same hereby is filed and the plea, demurrer and motion to dismiss of the third-party defendant heretofore filed herein be taken as responsive thereto.

ENTERED: 9 / 18 / 78

/s/ J. Warren Stephens
Judge

I ask for this:

George D. DeShazor
Counsel for Virginia Electric
and Power Company

A COPY. TESTE: GEORGE D. DeSHAZOR, Clerk

BY Peggy Foster D. G.

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF NEWPORT NEWS

JESSE DAYE, JR.,

Plaintiff,

v.

VIRGINIA ELECTRIC AND
POWER COMPANY, et al.,

Defendants and
Third-Party Plaintiff,

v.

K. F. WILSON, etc.,

Third-Party Defendant.

LAW NUMBER 2414-WS

JAMES A. COLLINS,

Plaintiff,

v.

VIRGINIA ELECTRIC AND
POWER COMPANY, et al.,

Defendants and
Third-Party Plaintiff,

v.

K. F. WILSON, etc.,

Third-Party Defendant.

LAW NUMBER 2415-WS

ORDER

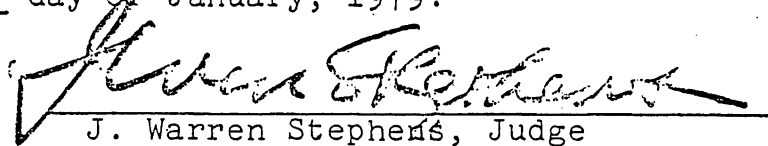
The Plea of the Workmen's Compensation Act of K. F. Wilson, individually and trading as K. F. Wilson Contractor, filed in this cause as against the third-party motion for judgment filed by Virginia Electric and Power Company being

argued and considered by the Court, said Plea is hereby sustained, and it is ORDERED that this matter be dismissed against the said K. F. Wilson.

Be it further ORDERED that the transcript of the proceedings of the hearing on the Motions to Dismiss by reason of the application of the Workmen's Compensation Act become a part of the record when the transcript is filed in the office of the Clerk.

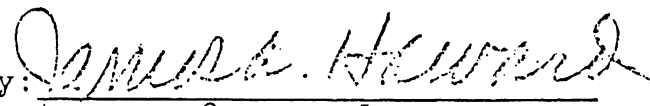
This is a final order as to K. F. Wilson for purposes of any appeal to the Supreme Court of Virginia.

Enter this the 9th day of January, 1979.


J. Warren Stephens, Judge

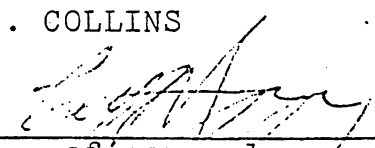
I ask for this:

K. F. WILSON, etc.

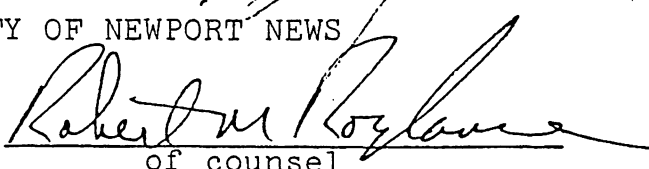
By: 
of counsel

Seen and excepted:

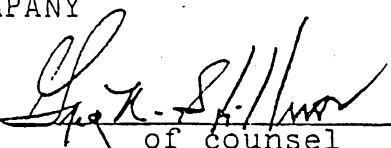
JESSE DAYE, JR.
and
JAMES A. COLLINS

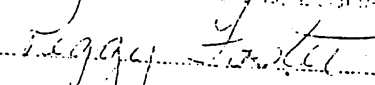
By: 
of counsel

CITY OF NEWPORT NEWS

By: 
of counsel

VIRGINIA ELECTRIC AND POWER
COMPANY

By: 
of counsel

A COPY TO THE CLERK OF THE COURT
BY:  D. C.

VIRGINIA: Circuit Court of the City of Newport News, Wednesday, the
24th day of January, 1979.

PRESENT: Judge J. Warren Stephens.

Jesse Daye, Jr.,)
Plaintiff,

Vs)

Virginia Electric and Power) Law #2414-WS
Company, et al.,
Defendants and
Third-Party Plaintiff,

Vs)

K. F. Wilson, Individually and)
t/a K. F. Wilson Contractor,
Third-Party Defendant.

James A. Collins,)
Plaintiff,

Vs)

Virginia Electric and Power) Law #2415-WS
Company, et al.,
Defendants and
Third-Party Plaintiff,

Vs)

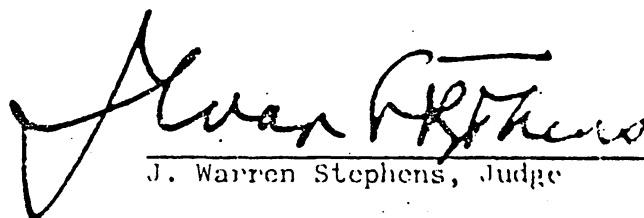
K. F. Wilson, Individually and)
t/a/ K. F. Wilson Contractor,
Third-Party Defendant.

ORDER

It appearing to the Court(i) that Virginia Electric and Power
Company by order entered on September 18, 1978 filed a Third-Party Motion for
Judgment and K. F. Wilson, individually and trading as K. F. Wilson Contractor
was the third-party defendant, and (ii) that K. F. Wilson, individually and
trading as K. F. Wilson Contractor did on September 8, 1978 file a Plea of the
Workman's Compensation Act and Demurrer and Motion to Dismiss, it is

ORDERED that the Plea of the Workman's Compensation Act and Demurrer and Motion to Dismiss be and hereby are taken as being responsive to the Third-Party Motion for Judgment filed September 18, 1978.

Enter this nunc pro tunc, September 18, 1978, this 24th day of January, 1979.


J. Warren Stephens, Judge

A COPY TESTED: GEORGE D. DUBOZON, Clerk

BY  D. C.

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NEWPORT NEWS

JESSE DAYE, JR.,

Plaintiff,

v.

VIRGINIA ELECTRIC AND POWER COMPANY, et al.,

Defendants and
Third-Party Plaintiff,

v.

K. F. WILSON, Individually and
t/a K. F. Wilson Contractor,

Third-Party Defendant.

AT LAW NO.
2414-WS

JAMES A. COLLINS,

Plaintiff,

v.

VIRGINIA ELECTRIC AND POWER COMPANY, et al.,

Defendants and
Third-Party Plaintiff,

v.

K. F. WILSON, Individually and
t/a K. F. Wilson Contractor,

Third-Party Defendant.

AT LAW NO.
2415-WS

STATEMENT OF FACTS AND OTHER
INCIDENTS PURSUANT TO RULE 5:9(c)

1. Plaintiffs, Jesse Daye, Jr., and James A. Collins
have filed separate Motions for Judgment, seeking damages for

personal injuries, against Virginia Electric and Power Company (Vepco), K. F. Wilson, Individually and t/a K. F. Wilson Contractor (Wilson), and the City of Newport News, Virginia (Newport News).

2. Both actions allege that the negligence of all three defendants was the proximate cause of the plaintiffs' injuries. Although the actions have not been formally consolidated, they are companion cases which present similar issues of liability.

3. On or about February 3, 1976, Wilson and Newport News filed special pleas alleging that the plaintiffs' action was barred by reason of the Workmen's Compensation Act.

4. The Court, by way of Memorandum Opinion, dated April 28, 1978, and by subsequent Order, dismissed the Plea filed by Newport News and sustained the Plea filed by Wilson.

5. On or about September 7, 1978, Vepco filed its Third-Party Motion for Judgment against Wilson alleging Wilson's obligation to indemnify or pay contribution to Vepco for all or part of any judgment obtained by the plaintiffs against Vepco. A copy of the Third-Party Motion for Judgment is attached as Exhibit A.

6. On or about September 7, 1978, Wilson filed another special plea alleging that Vepco's Third-Party Motion for Judgment was barred by reason of the Workmen's Compensation Act. A copy is attached as Exhibit B.

7. On January 9, 1979, the Circuit Court of the City of Newport News entered a final Order sustaining Wilson's Plea

of the Workmen's Compensation Act and dismissing Vepco's Third-Party Motion for Judgment against Wilson, to which action of the Court Vepco noted its exception.

VIRGINIA ELECTRIC AND POWER COMPANY

By _____
Of Counsel

Lewis T. Booker
Gregory N. Stillman
L. Neal Ellis, Jr.
Hunton & Williams
Post Office Box 1535
Richmond, Virginia 23212

Counsel

CERTIFICATE OF SERVICE

I certify that on the 9th day of February, 1979, I caused a copy of the foregoing Statement of Facts And Other Incidents Pursuant to Rule 5:9(c) to be mailed to Larry M. Topping, Esq., 426 First & Merchants Bank Buidling, 2600 Washington Avenue, Newport News, Virginia 23607, counsel of record for plaintiffs; Robert M. Roylance, Esq., First Assistant City Attorney, City of Newport News, 2400 Washington Avenue, Newport News, Virginia 23607, counsel of record for City of Newport News; and to James A. Howard, Esq., Breedon, Howard & MacMillan, 1700 First Virginia Bank Tower, 101 St. Paul's Boulevard, Norfolk, Virginia 23510, counsel of record for K. F. Wilson.

Gregory N. Stillman

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF NEWPORT NEWS

JESSE DAYE, JR.,

Plaintiff,

v.

VIRGINIA ELECTRIC AND POWER COMPANY, et al.,

Defendants and
Third-Party Plaintiff,

v.

K. F. WILSON, Individually and
t/a K. F. Wilson Contractor,

Third-Party Defendant.

AT LAW NO.
2414-WS

JAMES A. COLLINS,

Plaintiff,

v.

VIRGINIA ELECTRIC AND POWER COMPANY, et al.,

Defendants and
Third-Party Plaintiff,

v.

K. F. WILSON, Individually and
t/a K. F. Wilson Contractor,

Third-Party Defendant.

AT LAW NO.
2415-WS

NOTICE

PLEASE TAKE NOTICE that defendant, Virginia Electric and Power Company, by counsel, on Monday, February 26, 1979, at 2:00 p.m., or as soon thereafter as counsel may be heard will

present to the Court for its consideration an endorsement of a Statement of Facts And Other Incidents Prusuant to Rule 5:9(c) of the Rules of the Supreme Court of Virginia.

VIRGINIA ELECTRIC AND POWER COMPANY

BY _____
Of Counsel

Lewis T. Booker
Gregory N. Stillman
L. Neal Ellis, Jr.
Hunton & Williams
Post Office Box 1535
Richmond, Virginia 23212

Counsel

CERTIFICATE OF SERVICE

I certify that on the 20th day of February, 1979, I caused a copy of the foregoing Notice to be mailed to Larry M. Topping, Esq., 2600 Washington Avenue, 426 First & Merchants Bank Building, Newport News, Virginia 23607, counsel of record for plaintiffs; Robert M. Roylance, Esq., First Assistant City Attorney, City of Newport News, 2400 Washington Avenue, Newport News, Virginia 23607, counsel of record for City of Newport News; and to James A. Howard, Esq., Breedon, Howard & MacMillan, 1700 First Virginia Bank Tower, 101 St. Paul's Boulevard, Norfolk, Virginia 23510, counsel of record for K. F. Wilson.

Gregory N. Stillman

Supreme Court of Virginia

Virginia Electric and Power Company,

Appellant,

against

Record No. 790545

Circuit Court Nos. L-2414-WS and L-2415-WS

K. F. Wilson, individually and trading as
K. F. Wilson, Contractor,

Appellee.

From the Circuit Court of the City of Newport News

Certificate

Pursuant to Rule 5:30 of the Rules of the Supreme Court of Virginia, I, Allen L. Lucy, Clerk of the said Court, do hereby certify that on July 18, 1979, an appeal was awarded from a judgment rendered by the court below on January 9, 1979, in the suits therein depending under the short styles of Jesse Daye, Jr. v. Virginia Electric and Power Company, et al. and James A. Collins v. Virginia Electric and Power Company, et al.

Appeal bond is required in the penalty of \$500 in conformity with Code § 8.01-676.

This certificate, constituting the summons on appeal, was this day mailed to the court below and to

Lewis T. Booker, P.O. Box 1535, Richmond, Virginia 23212

Gregory N. Stillman, P.O. Box 1535, Richmond, Virginia 23212

L. Neal Ellis, Jr., P.O. Box 1535, Richmond, Virginia 23212

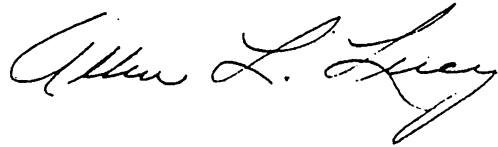
Counsel for Appellant

James A. Howard, 1700 First Virginia Bank Tower, 101 St. Paul's Boulevard,
Norfolk, Virginia 23510

Andrew C. Mitchell, Jr., 1700 First Virginia Bank Tower, 101 St. Paul's
Boulevard, Norfolk, Virginia 23510

Counsel for Appellee

Given under my hand this 19th day of July , 1979.

A handwritten signature in cursive script, reading "Allen L. Lucy".

Clerk