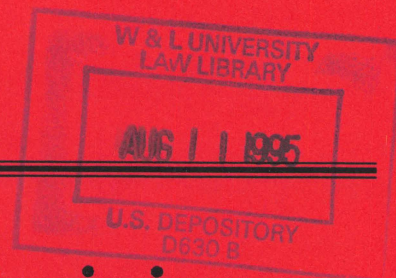


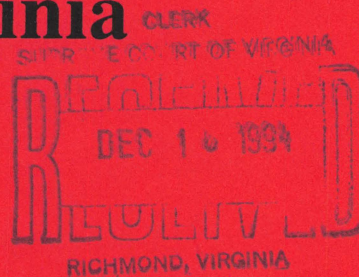
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IN THE  
**Supreme Court of Virginia**

RECORD NO. 940660



**GEORGIA ANNE SNYDER-FALKINHAM,**

*Appellant,*

V.

**BRUCE C. STOCKBURGER, et al.,**

*Appellees.*

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**JOINT APPENDIX  
VOLUME II**

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## DIRECT EXAMINATION

BY MR. MILLER:

Q Would you state your full name, please.

A Roger Earl Jenne.

Q And are you an attorney at law?

A I am.

Q You're headquartered in Tennessee?

A Correct.

Q Have you recently represented Georgia Anne Snyder-Falkinham, the plaintiff in this case?

A Yes.

Q And did you represent her in a certain claim against Bruce C. Stockburger of Gentry, Locke, Rakes & Moore?

A I did.

Q Mr. Jenne, did you receive a subpoena to bring certain documents to court with you today?

A I did, but I think it's at my office.

Q Did you bring certain documents to court?

A I brought -- I think it was a subpoena for some notes and memorandum, and I did bring what I had.

Q All right, sir. And they're in that briefcase you have?



1           A       Yes.

2           Q       Could you show those to Mr. Hodges.

3           THE COURT:   What's the purpose of this,  
4           Mr. Miller?

5           MR. MILLER:   He made some documents, if Your  
6           Honor please, that may refresh his recollection,  
7           and --

8           THE COURT:   Let's see if he needs them,  
9           first.

10          THE WITNESS:   What I would like to ask in  
11          this regard, Mr. Miller, is maybe an in camera  
12          inspection of my memorandum, because of the position  
13          I'm in here. I don't want to be involved in  
14          violating any confidences. I don't mind having the  
15          Court review this, and --

16          THE COURT:   I'm not sure what we're going  
17          into here.

18          MR. MILLER:   Let me ask a couple questions,  
19          Judge. Maybe I can lead up to it.

20          THE COURT:   All right.

21

22       BY MR. MILLER:

23           Q       Let's go through it in chronology, and we'll  
24          get to where we are. Did there come a point in time in

1 which you were negotiating settlement of the claims of Ms.  
2 Snyder-Falkinham against Stockburger and Gentry, Locke,  
3 Rakes & Moore and the others?

4 A Yes.

5 Q During that time period that you were  
6 negotiating a settlement, did you come to Richmond for a  
7 mediation conference?

8 A Yes.

9 Q And at the mediation conference did Ms.  
10 Snyder-Falkinham authorize you to speak for her?

11 A Yes.

12 Q Did she ever withdraw the authority to speak  
13 for her?

14 A No.

15 Q Did she ever challenge anything you said at  
16 the mediation?

17 MR. HORWATT: Your Honor, I'm going to have  
18 to object. He's asking really very relevant direct  
19 questions in a very leading way. I'm going to --

20 MR. MILLER: I'm not asking leading  
21 questions.

22 THE COURT: He asked whether or not; I think  
23 that's proper.

24 MR. HORWATT: I didn't hear it that way.

1 THE COURT: I understood him to say whether  
2 or not. In any event, if you didn't, do it.

3

4 BY MR. MILLER:

5 Q Did Ms. Snyder-Falkinham ever withdraw any  
6 authority she gave you --

7 MR. HORWATT: Object; leading.

8 THE COURT: "State whether or not" --

9 THE WITNESS: No, she did not.

10

11 BY MR. MILLER:

12 Q State whether or not Ms. Snyder-Falkinham  
13 ever withdrew any authority she gave you to act for her.

14 A No, she never did.

15 Q Did you execute a contract with Ms.  
16 Snyder-Falkinham in Tennessee?

17 A Yes.

18 Q Is that separate and apart from one executed  
19 by Mr. Rasnic?

20 A The same agreement, same contract.

21 Q That contract was executed in the state of  
22 Tennessee?

23 A Yes.

24 Well, when you say "executed," in September



1 of 1991, I met with Ms. Falkinham, Mr. Rasnic --

2 THE COURT: He just wants to know where it  
3 was signed, if you know.

4 THE WITNESS: That's where the agreement was  
5 made, and I think there was an agreement signed  
6 there in Sullivan County at that time that involved  
7 Carl McAfee, who at that time was associated with  
8 Mr. Rasnic. Shortly after that Mr. McAfee and  
9 Mr. Rasnic split ways; Mr. Rasnic redid the  
10 agreement and sent it to Ms. Snyder-Falkinham to be  
11 executed, signed, and I suppose that was done in  
12 Blacksburg.

13

14 BY MR. MILLER:

15 Q After the mediation agreement, was an order  
16 prepared dismissing the individual defendants?

17 A Yes.

18 Q In fact, that order was -- that's Exhibit --

19 MR. HORWATT: Your Honor, I really do object  
20 now. He is leading the witness.

21 THE COURT: He's asking whether or not  
22 something was prepared.

23 MR. HORWATT: I didn't hear it that way. I  
24 will refrain, Your Honor, but I'll make it a

1 continuing objection.

2 THE COURT: All right.

3

4 BY MR. MILLER:

5 Q Do you recall an order dismissing the  
6 individual defendants in this case?

7 A Correct. I'm not sure that that order was  
8 ever entered.

9 Q Did you endorse an order --

10 A There was an order prepared involving the  
11 individual named defendants, and I think I have a copy of  
12 it, but my copy is not signed --

13 THE COURT: They're in evidence, so I'm not  
14 sure you need to go through that.

15

16 BY MR. MILLER:

17 Q Would you state whether or not that's your  
18 signature.

19 A It is.

20 Q Did Georgia Anne Snyder-Falkinham authorize  
21 you to endorse that order?

22 A This is the order that I signed the morning  
23 of the 31st. I did not meet with her on the morning of the  
24 31st. On the 30th -- and I'm not sure how far I should

1 answer in this case, but on the 30th, when I last met with  
2 her, it was understood that these cases would be dismissed  
3 and that the case was settled.

4 Q All right. Let's go back a little bit. When  
5 did you first meet with Ms. Snyder-Falkinham on January 30,  
6 1994?

7 A To the best of my recollection, it was  
8 somewhere around 11:00 o'clock that morning.

9 Q Was that by telephone, or other means?

10 A No; she came to Mr. Rasnic's room at the  
11 Marriott, 109. I was staying in 125; your paralegal, Ms.  
12 Rucker, came down to go through some exhibits with our two  
13 paralegals, and I was basically evicted from my room. So Mr.  
14 Rasnic and I were working in his room when she came, and it  
15 was about 11:00 o'clock, I would think.

16 Q Did you receive a phone call from Mr. Mehler  
17 that day?

18 A No.

19 Q Was Mr. Mehler to be deposed that day?

20 A I did not receive the phone call. One of the  
21 paralegals, either Sherry Arthur or Pam Robbins, to my  
22 recollection, received a phone call from him that he had  
23 been iced in in Washington. He was supposed to fly down for  
24 his deposition, or supplemental deposition.



1 Q Did you then talk with defense counsel?

2 A That day?

3 Q Yes, sir.

4 A Yes.

5 Q And subsequent to that, concerning the  
6 depositions, the deposition of Mr. Mehler?

7 A I believe what happened is that Mr. Rasnic  
8 called from his room, 109, to either you or Mr. Hodges,  
9 advising that Mr. Mehler had been iced in and would not be  
10 available to be there for his deposition.

11 We also discussed that we had intended to  
12 take the supplemental deposition of Mr. Bill Rakes the same  
13 day; Mr. Rasnic and I had earlier discussed this and I think  
14 we had decided we did not need to depose him further.

15 Q Subsequent thereto, did Mr. Hodges come down  
16 and talk to you?

17 A He did.

18 Q Did you all discuss settlement?

19 A We did.

20 Q What did you discuss at that time?

21 And, Mr. Jenne, we have not discussed any  
22 amounts to this point.

23 A Mr. Hodges came to 125, which was my room.  
24 It was Mr. Hodges, Mr. Rasnic, and myself; we met for I

1 would guess an hour and a half; maybe even longer than that.  
2 At the time I went down there, Ms. Snyder-Falkinham, the two  
3 paralegals, and Joe Anthony were in Mr. Rasnic's room.

4 Mr. Hodges' basic position, what he told me,  
5 was that the earlier offer to settle -- the number they had  
6 was all the authority that they had from Virginia  
7 Reciprocal, and they did not know and could not represent  
8 that they would get any more authority, but he told me that  
9 Bill Rakes was a personal friend of the president of  
10 Virginia Reciprocal, as I recall, and that if another figure  
11 over and above what we had already rejected in settlement --  
12 if another figure would get the case settled, Rakes would  
13 make a personal call to his friend, the president of  
14 Virginia Reciprocal, and basically recommend that it be  
15 done.

16 And as I perceived this, it was not an offer  
17 on your part or Virginia Reciprocal's part to settle. He  
18 said that if it was going to be done, they wanted it done  
19 that day, before any jury was picked or any opening  
20 statements were made. And there were some conditions that  
21 you all were proposing that you wanted.

22 Q What conditions were proposed, Mr. Jenne, by  
23 Mr. Hodges?

24 A Can I refer to my note here?

1 Q Yes, sir.

2 A Is that okay?

3 THE COURT: Sure.

4 THE WITNESS: This is a notepad that I had, a  
5 hotel notepad, when I was talking with Mr. Hodges,  
6 and I listed these. Number one was --

7 MR. HORWATT: Excuse me. I'm going to object  
8 to this, and I'm going to object to it because of  
9 the fact that we repeatedly asked Mr. Jenne to  
10 provide us with the notes of these negotiations. At  
11 times we got responses back, and I'm not sure it was  
12 from him, that there were no notes, and we certainly  
13 never got any materials back.

14 We know that there have been discussions with  
15 Mr. Jenne and the defendants, either directly or  
16 indirectly, with defense counsel, and we have not  
17 had an opportunity to see these things, and he is  
18 her client.

19 THE COURT: You say he is her client?

20 MR. HORWATT: I misspoke, Your Honor. What I  
21 meant to say was Mr. Jenne was her attorney, and  
22 here he is coming into court for the defendants,  
23 speaking from notes that he never let us see so that  
24 we could protect her interests.



1                   And I'm not necessarily objecting to the fact  
2                   that he uses his notes or looks at them, but I sure  
3                   am objecting to his using them now when he never  
4                   gave us the opportunity to see them.

5                   THE COURT: Objection overruled.

6                   MR. HORWATT: Thank you, Your Honor.

7  
8 BY MR. MILLER:

9                   Q           You were about to tell us about the  
10                  conditions Mr. Hodges told you, about, sir.

11                  A           These are not comprehensive notes; they're  
12                  things that I jotted down when I was talking to Mr. Hodges  
13                  that I read to our client when I met with her.

14                               These conditions, number one -- and I  
15                  abbreviated this -- confidentiality; I've got it  
16                  "c-o-n-f-i-d."

17                               Number two, "Mike"; number three, "Stacey."  
18                  I knew what that meant, and that meant Mr. Hodges was  
19                  proposing that if a settlement was effected they wanted her  
20                  son, Mike Snyder, to sign a release; number three, that they  
21                  wanted Stacey to sign a release.

22                               Number four, I've got "Joe" down here; they  
23                  wanted Joe Falkinham, her husband, to sign a release.

24                               Number five, I've got "GASF"; that's Georgia

1 Anne Snyder-Falkinham, they wanted her to sign a release in  
2 all capacities.

3 Number six, "M Trust"; marital trust, they  
4 wanted the marital trust to sign a release.

5 Number seven, "R Trust," they wanted the  
6 residual trust to sign a release.

7 Number eight, "Snyder Company"; number nine,  
8 "Snyder Associates"; number ten, "Rich Hill Development  
9 Company."

10 This -- basically Mr. Hodges was saying if we  
11 can effect a settlement, we'd like to have all these people  
12 enter into a release. And he said these are the people we  
13 want to have you release, "Bruce," meaning Bruce  
14 Stockburger; "GLRM," Gentry, Locke, Rakes & Moore; next is  
15 "Glenn," Robert Glenn, which is another attorney who was the  
16 subject of an action, and then I've got "Firm," which is  
17 Glenn's firm.

18 The next notation I have is "Sale of RH stock  
19 to GASF," which is sale of Rich Hill Development Corporation  
20 stock to Georgia Anne Snyder-Falkinham, and the last item is  
21 "Withdrawal of trial brief."

22 These are the items that Mr. Hodges stated  
23 that he wanted done.

24 Q After you talked with Mr. Hodges about those

1 particular items, did you talk with Ms. Snyder-Falkinham?

2 A Yes, I did.

3 Q Was anyone else present at the time?

4 A Yes. Mr. Rasnic, cocounsel, was present;  
5 Sherry Arthur, who is my paralegal, and Pam Robbins, who is  
6 the paralegal for Mr. Rasnic, was present.

7 Q Where did this discussion take place?

8 A Room 109, Mr. Rasnic's room.

9 Q Approximately how long did this discussion  
10 take?

11 A I didn't write down a time, but I would think  
12 that it took an hour to an hour and a half before we called  
13 Mr. Hodges and you to come and meet with us again.

14 Q All right. State whether or not Ms.  
15 Snyder-Falkinham agreed to the various items you've just  
16 testified to.

17 A No, not all of them.

18 Q All right. To which items did she not agree?

19 A The confidentiality was agreed upon. We  
20 discussed that; I don't know that we need to go into detail.  
21 During the -- and again, I don't know where to stop or where  
22 to start, really, but during the course of this discussion  
23 with our client, she called her son Michael and talked with  
24 him on the phone; I talked with Michael on the phone; she

1 talked with him again on the phone; Mr. Rasnic talked with  
2 Michael on the phone.

3 But we did not represent Michael Snyder and  
4 we did not represent Stacey Snyder in this particular cause  
5 of action, and could not speak for them, and she couldn't  
6 either.

7 Q Did Michael on behalf of himself and Stacey  
8 suggest that if additional consideration were paid, that  
9 they might be inclined to sign the release?

10 A Michael did not tell that to me, but after  
11 Mr. Rasnic and after Ms. Snyder-Falkinham got off the phone  
12 with Michael, they said that he would sign a release if he  
13 were paid X number of dollars, and that he thought his  
14 sister Stacey ought to have the same amount if they were  
15 going to sign the release.

16 So Ms. Snyder-Falkinham did not agree on  
17 their behalf, and we did not purport to agree on their  
18 behalf. As far as Joe, her husband Joe Falkinham, is  
19 concerned, as I recall she stated she had not discussed it  
20 with him, but she couldn't see why he would not, but she  
21 wasn't saying he would.

22 She stated she could not speak on behalf of  
23 the marital or residual trusts; we likewise communicated  
24 that.

1                   As far as signing the release as far as her  
2 various entities were concerned, she did agree to that.

3                   As far as the releasees, it was understood  
4 that --

5                   MR. HORWATT: Excuse me, I had trouble  
6 hearing you when you said about the trust. Could  
7 you repeat that?

8                   THE COURT: He said no, that she didn't agree  
9 to that.

10                  MR. HORWATT: Thank you.

11                  THE WITNESS: Insofar as the releasees, it  
12 was to be Bruce Stockburger and his law firm,  
13 Gentry, Locke, Rakes & Moore; Bob Glenn and his  
14 firm; I'm not sure the name of the firm. We agreed  
15 to withdraw the trial brief.

16                  With regard to the issue on the sale of Rich  
17 Hill stock, our position was, and we discussed this  
18 with her, that we were not going to do anything with  
19 Mr. Stockburger's stock that would overturn a  
20 December 1990 transaction that was created long  
21 before any of this came up that created some tax  
22 losses for her.

23                  I guess to amplify this a little bit, Mr.  
24 Hodges stated that Bill Rakes, the managing member

1 of this law firm, was insistent that Bruce  
2 Stockburger not have any of this Rich Hill stock.  
3 They wanted to completely divorce Mr. Stockburger,  
4 who is her former lawyer and business partner, and  
5 Ms. Snyder-Falkinham.

6  
7 BY MR. MILLER:

8 Q State whether or not there was any discussion  
9 at that time about satisfaction of the note running from Mr.  
10 Stockburger to Ms. Snyder-Falkinham in the amount of  
11 \$25,000.

12 A Yes. The note was to be marked paid.

13 Q Did Ms. Snyder-Falkinham agree to that?

14 A Yes.

15 Q That was in your first conversation with her  
16 after the meeting which ended at 2:00 o'clock with Mr.  
17 Hodges?

18 A Right. And with regard to the note, when we  
19 were discussing this, it wasn't a big issue, and Mr. Rasnic  
20 made the statement to her that he would buy the note from  
21 her for \$25,000 if that's what she wanted him to do.

22 His statement basically was that If  
23 everything else is agreeable to you, that should not be an  
24 impediment, and I think Mr. Rasnic's words about the stock

1 transfer of Mr. Stockburger's stock was to transfer it to  
2 the Easter Bunny; something to that effect.

3 Q Did you go back and meet with defense counsel  
4 after that meeting with Ms. Snyder-Falkinham?

5 A Yes.

6 Q Did you reach an agreement with defense  
7 counsel with respect to Michael and Stacey Snyder?

8 A When Mr. Rasnic and I, at the second meeting,  
9 we met you two, you and Mr. Hodges, back in Room 125, we  
10 told you at that time that we could not speak on behalf of  
11 the trust, on behalf of Joe, or on behalf of Mike and  
12 Stacey; that we were given to understand that if you wanted  
13 Mike and Stacey on the release, you were going to have to  
14 give them each X number of dollars, and we conveyed that  
15 amount to you.

16 And this was a big concern that you all had.  
17 You kept wanting to push that. You wanted to have them on  
18 this release too, and we made it clear what it would take to  
19 get them on the release. And we had a lot of discussions  
20 with you all about this, and as I recall, you all left and  
21 said, well, you would just have to get back with Reciprocal,  
22 and you will be back in touch.

23 Q Did Mr. Hodges and I get back with you?

24 A Yes. The third time, Mr. Hodges came by

1 himself. He came the first time by himself and the third  
2 time by himself.

3 Q What did Mr. Hodges advise you with respect  
4 to Stacey and Michael?

5 A On the third meeting with Mr. Hodges, he --  
6 I've got to be careful not to use the figures, but the  
7 amount of money that she had agreed to accept, he wanted us  
8 to escrow out of that pile of money enough to satisfy her  
9 son Michael for a year, to see if he was going to pursue a  
10 cause of action.

11 I think Mr. Rasnic frankly at first, because  
12 of that discussion, thought that basically the proposition  
13 was to pay her this amount plus an escrow amount, but in  
14 further discussion it was made clear that no, out of the  
15 amount that would be set aside for Michael -- it would come  
16 out of the lump sum amount we were talking about for Ms.  
17 Snyder-Falkinham.

18 Mr. Rasnic and I again told Mr. Hodges what  
19 it would take to satisfy him; that he was not a part of this  
20 lawsuit, and the basic position was that if that was going  
21 to be an impediment to this thing, then let's forget about  
22 it and try the case.

23 Mr. Hodges said, Give me a little more time  
24 to get back to Reciprocal and get back to you.



1 Q Did Mr. Hodges get back to you?

2 A He did by telephone.

3 Q What did he tell you?

4 A When he called on the telephone, he said, and  
5 I wrote this down at the time, he said that this is -- that  
6 they had gotten ahold of everyone in the Virginia Reciprocal  
7 committee -- as I understood it, there was a committee --  
8 every person except one person. He was out of pocket, and  
9 it was going to be later that evening before he could get  
10 them, but it was 98 percent sure. It was going to take  
11 three days to get the check; they would run the risk and  
12 Mike and Stacey; paperwork in the morning.

13 That's the note I made at that time.

14 Q Was it your understanding that the note  
15 executed by Bruce Stockburger dated December 15, 1990 was to  
16 be marked paid and returned to me?

17 A Yes.

18 Q Did Ms. Snyder-Falkinham agree to that?

19 A Yes.

20 Q Did you talk with Ms. Snyder-Falkinham after  
21 you talked with Mr. Hodges the last time?

22 A Yes.

23 Q Did she agree to all the terms of the  
24 settlement at that time?

1           A       Yes.

2           Q       Was there any reservation in her mind about  
3 the settlement at that time?

4           A       No.

5           Q       Did she go home?

6           A       She went somewhere, I don't know if she went  
7 home. She left and said she was going home.

8           Q       Did she make any phone calls from your room?

9           A       Most of the meetings with Ms.  
10 Snyder-Falkinham were in Mr. Rasnic's room, and she made  
11 several phone calls from there, some in my presence and some  
12 not in my presence.

13          Q       Did you hear her make any phone calls to her  
14 friends and relatives?

15          A       I know she was trying to get ahold of -- I'm  
16 not sure which relative it was, but she was trying to call  
17 these people to call them off, and she was having a hard  
18 time locating one of them. I'm not sure if it was her  
19 sister, or who.

20                   I remember her commenting I think her  
21 brother-in-law is a doctor, and she was trying to get ahold  
22 of him to tell him he wouldn't have to spend a couple days  
23 in court. He was going to be there for the trial.

24          Q       What did she tell her brother-in-law that you

1 can remember?

2 A The calls she made, and I'm not exactly sure  
3 who she was speaking with when she was making these calls,  
4 because at the same time we were -- myself and the  
5 paralegal, we were calling off witnesses we had scheduled  
6 for the first day, as well as a shadow juror we had lined  
7 up.

8 But after the telephone conversation with Mr.  
9 Hodges -- and in this conversation, there was conversation  
10 also about trying to reach the judge, but he was already on  
11 his way, apparently, and that you all had quit work on the  
12 case, we had quit work on the case, we were releasing our  
13 witnesses for the next day; this, that, and the other.

14 So after this telephone conversation with Mr.  
15 Hodges, went back to 109 and had this conversation with Ms.  
16 Falkinham and told her that they had reached everyone except  
17 one person, and told her that Mr. Hodges' figure was 98  
18 percent; that they had quit work on it, and we had quit work  
19 on it.

20 MR. HORWATT: Mr. Jenne, I'm having terrible  
21 trouble hearing you.

22 I'm sorry, Your Honor. He just said  
23 something that was very critical to me, and that was  
24 what Mr. Hodges said to my client, and I couldn't

1 hear it.

2 THE WITNESS: I'm sorry. I didn't mean to  
3 say that, if I did. Mr. Hodges never spoke to her,  
4 to my knowledge.

5 MR. HORWATT: Thank you.

6 THE COURT: I think his initial question was  
7 did you hear her make telephone calls to some of the  
8 proposed witnesses.

9 THE WITNESS: Yes, but I don't know who. I  
10 don't know who she talked to.

11 THE COURT: Okay.

12

13 BY MR. MILLER:

14 Q What was her mood after you told her you  
15 talked to Mr. Hodges and he was 98 percent sure that the  
16 money would come through that next day or the next night?

17 A She was happy. She was standing in the room  
18 there and I went over put my arm around her, and hugged her,  
19 she hugged me; I said, Go on home, get some sleep; we'll  
20 call you in the morning when the papers are ready to sign.

21 Q Did you call her the next morning?

22 A I did.

23 Q What time did you call her the next morning?

24 A According to the hotel record, it was 8:03.

1 Q a.m.?

2 A a.m.

3 Q Had you received a phone call that morning?

4 A You called me right about 7:30 and told me  
5 that you had got the call at 11:30 the night before; you  
6 didn't want to bother me. I got up and did a few things you  
7 do in the morning; brushed my teeth, washed my face, and  
8 went in and called her at her home.

9 Q What did you tell her at that time?

10 A I told her that I had just got a call from  
11 you, and to the effect -- I think I even used the words that  
12 you'd heard from the Apostle Paul, but it wasn't until 11:30  
13 the night before, and you didn't want to bother me late at  
14 night; you got ahold of the last committee member and it was  
15 a done deal, and as soon as we got the paperwork together,  
16 we would call her; there was no need for her to come up and  
17 sit around when we were going through this process.

18 Q Did you have the authority at this time --  
19 state whether or not you had the authority at this time to  
20 dismiss the action.

21 A Yes. I told her Tom was going to the  
22 courthouse.

23 Q Did you tell her that at 8:00 o'clock?

24 A Yes. We knew the judge was coming down from

1     Fairfax.

2                     As a matter of fact, I think you suggested  
3     that one attorney from each side needed to appear before the  
4     judge, and Mr. Rasnic went.

5             Q         And the action was dismissed?

6             A         I've seen the papers.   Yes.

7             Q         And you did receive the release?

8             A         Yes.

9             Q         And the release you first received contained  
10     signature lines for Central Fidelity Bank and for Joseph O.  
11     Falkinham?

12            A         That's correct.

13            Q         And did you later receive word that those two  
14     entities would not execute the release?

15            A         Never received word one way or the other with  
16     Joe Falkinham.   I did speak with him on the phone that  
17     Monday evening, probably about 9:00 o'clock, but he didn't  
18     say then that he would or he would not.

19                     When I got back, I think it's when I got to  
20     my office in Cleveland, I had a Fax transmission from Joe  
21     Anthony saying that he represented the trust, and that they  
22     weren't going to sign.   But they were not part of the deal  
23     to begin with.

24            Q         State whether or not the deal ever changed

1 after an agreement was reached late in the evening of the  
2 30th or early in the morning of the 31st with respect to  
3 Georgia Anne Snyder-Falkinham.

4 A No.

5 Q I show you Exhibit 9, Mr. Jenne, and I would  
6 ask you if that exhibit spells out the agreed settlement in  
7 this matter.

8 A To read through this entire -- it appears to  
9 be the agreement that she presented to us.

10 Q Did the agreement as presented to you by  
11 counsel for the defense spell out the entire agreement in  
12 all respects?

13 A Yes.

14 Q And did you have the authority from Ms.  
15 Snyder-Falkinham to enter into the settlement as spelled out  
16 in the agreement submitted to you?

17 A Yes, certainly.

18 Q Mr. Jenne, I hate to do it to you, but I  
19 would like for you to, if you could, to identify this as the  
20 agreement.

21 A This?

22 Q Exhibit 9.

23 THE COURT: If he has to read every word,  
24 it's going to take him a little while. Suppose we

1           eliminate that aspect of it at this point, and give  
2           him time after you all are through with him to  
3           review that, and let him come back and answer that  
4           one question.

5                   MR. MILLER: That's fine, Judge.

6  
7 BY MR. MILLER:

8           Q       Look if you would at Paragraph 7, Mr. Jenne.

9           A       All right.

10          Q       Did Ms. Snyder-Falkinham agree to Paragraph  
11       7?

12          A       Yes.

13          Q       Did you forward this release, or the release  
14       that was forwarded to you by defense counsel, to Ms.  
15       Snyder-Falkinham?

16          A       I did.

17          Q       Did you receive it back from her?

18          A       No.

19          Q       Mr. Jenne, do you have in your briefcase the  
20       check you received from defense counsel in satisfaction the  
21       agreed settlement?

22          A       I do.

23          Q       And who is it made payable to?

24          A       It's made payable to her and myself.



1 Q That check is in your briefcase today?

2 A Yes.

3 Q Do you have the telephone logs from the  
4 Marriott where you and Mr. Rasnic stayed?

5 A Yes.

6 Q Do those telephone logs indicate the outgoing  
7 telephone calls from your room and Mr. Rasnic's room on  
8 January 30 and January 31?

9 A Yes.

10 Q Could we have those, please, sir.

11 Room 109 was whose room?

12 A Mr. Rasnic's.

13 Q And Room 125 was whose room?

14 A My room.

15 Q All right.

16 MR. MILLER: I would ask this be marked  
17 Exhibit B.

18 MR. HORWATT: I'm going to object to it. I  
19 haven't seen it; I haven't had a chance to voir dire  
20 the witness on it. We asked for these things from  
21 the witness, and he never produced it.

22 THE COURT: I sustain your objection. I  
23 think it's hearsay, if you're objecting on that  
24 basis.

1 MR. HORWATT: I object.

2

3 BY MR. MILLER:

4 Q Mr. Jenne, did you prepare a memorandum on  
5 the sequence of events that took place on January 30 and 31?

6 A Starting about 1:30 on the 31st, after I'd  
7 had a telephone conversation with her, with my small hand  
8 recorder I dictated some events.

9 Q So they were not contemporaneous dictation;  
10 you had past recollection recorded starting 1:30 p.m. on  
11 January 31?

12 A Yes.

13 Q Do you have that with you?

14 A I do. This is what I mentioned that I  
15 thought maybe the Court should inspect prior to --

16 MR. MILLER: Would Your Honor like to see  
17 that before we ask it be identified?

18 THE COURT: I assume you object to it.

19 MR. HORWATT: I sure do.

20 THE COURT: I would sustain the objection at  
21 this point. If there are questions you want to ask  
22 him, you can go ahead and ask him.

23 MR. HORWATT: Not only that, Your Honor, I'd  
24 like it produced pursuant to our subpoena.

1                   THE WITNESS: I've never received a subpoena  
2                   from him.

3                   THE COURT: I'm not sure you have a valid  
4                   subpoena.

5

6 BY MR. MILLER:

7                   Q           When did you first learn Ms. Snyder-Falkinham  
8                   might not be agreeable to the settlement spelled out in  
9                   Exhibit 9?

10                  A           It was on the 31st at or about 12:50 when I  
11                  telephoned her to tell her to come to Roanoke to sign the  
12                  papers.

13                  Q           What did she tell you then?

14                  A           Well, actually I had my paralegal put the  
15                  call in. I was packing up boxes and exhibits and things; I  
16                  simply asked her to call Georgia Anne and tell her to get  
17                  her on her way.

18                               When I did, the paralegal said, She wants you  
19                  to Fax this to her first, and when she did that I just  
20                  picked up the phone and told Georgia Anne we'd met with you  
21                  all; we had gone over a draft; it was being worked on; by  
22                  the time she got up there or she and Joe got up there we  
23                  would have it ready to execute. And she said she wanted it  
24                  Faxed to her; that she was still thinking about it.

1 Q Did she indicate what she was thinking about?

2 A I think she simply said she was still  
3 thinking about it. And I acted, or reacted, "What do you  
4 mean, you're still thinking about it?" You know; this  
5 deal's been settled, it's over with; we need you to get up  
6 here and get the paperwork completed.

7 She became very angry and upset; I became  
8 angry and upset. She told me that she had talked with Barry  
9 Mehler, who was serving as an expert witness for us, and  
10 that she had damages of X number of dollars, and that --

11 MR. HORWATT: Your Honor, excuse me. I'm  
12 going to object to any discussions with Mr. Mehler  
13 as hearsay at this point.

14 MR. MILLER: If Your Honor please, I --

15 THE COURT: He wasn't quoting Mr. Mehler, he  
16 was quoting your client.

17 MR. HORWATT: I'm sorry. This is her talking  
18 to him?

19 THE COURT: That's what I understand.

20 MR. MILLER: Yes.

21 THE WITNESS: That's correct. That's what  
22 she told me, and she said that Mr. Mehler had told  
23 her that we were not prepared to fight the case for  
24 her, and that she was not going forward with it at

1           this point, and that we would be hearing from her  
2           new lawyer from Washington, D.C. after 2:00 o'clock,  
3           and that he could handle us, and that she -- it  
4           looks like she might have to sue us now, or  
5           something to that effect.

6                     This conversation lasted maybe 10, 15  
7           minutes. I was pretty taken aback by the whole  
8           thing, and that was the end of the conversation.

9                     At that time we called you guys and had you  
10          come down and told you that we had had this  
11          conversation with the client and she was not going  
12          forward with the settlement.

13

14       BY MR. MILLER:

15                    Q           Mr. Jenne, how long have you been practicing  
16          law?

17                    A           I graduated December of '66. I became  
18          licensed in February of '67 and I have practiced ever since.

19                    Q           Have you ever had a client renege on you  
20          before?

21                    A           No.

22                    MR. MILLER: Thank you, sir. Mr. Hodges may  
23          have questions.

24                    THE COURT: Let's recess a little while for

1 lunch, but before we do recess, let me ask you a  
2 couple of questions, Mr. Jenne, to be sure I  
3 understood what you testified to earlier.

4 You indicated with your initial conversation  
5 -- or not your initial conversation, but with your  
6 conversation with Ms. Snyder-Falkinham that she  
7 agreed to the confidentiality of the settlement;  
8 that is, the amount, and she did not agree to have  
9 my Mike and Stacey sign the release, because she  
10 didn't have the authority?

11 THE WITNESS: That's correct.

12 THE COURT: So far as the marital trust, the  
13 release of Central Fidelity Bank, she indicated she  
14 didn't have the authority to do that?

15 THE WITNESS: That's correct.

16 THE COURT: So far as the various entities  
17 that you referred to, I understood you to say that  
18 she did not agree to that; did I understand you --

19 THE WITNESS: No, that's incorrect. She did  
20 agree on behalf of the Snyder Company, Snyder  
21 Associates, and Rich Hill Development, in her  
22 capacity with Rich Hill Development.

23 THE COURT: And the trial brief she agreed  
24 that would be withdrawn?

1 THE WITNESS: Yes.

2 THE COURT: So far as the stock that Mr.  
3 Stockburger was to transfer back to her, at least  
4 the proposal of that, she did not agree to that?

5 THE WITNESS: That's correct.

6 THE COURT: And she did agree to have the  
7 note marked paid and canceled, that is the  
8 Stockburger note directed to her?

9 THE WITNESS: Correct.

10 THE COURT: Suppose we recess at this point  
11 for lunch. It's about ten after 1:00 now; if you  
12 all don't mind taking a little bit shorter lunch  
13 hour than you maybe normally would, and we'll try to  
14 reconvene at 2:00 o'clock.

15 Would you please tell your witnesses not to  
16 discuss the case. It's all right for the lawyers to  
17 talk with them, but they're not to talk about the  
18 case with anybody else.

19

20 (The lunch recess was taken.)

21

22

23 THE COURT: Mr. Hodges, I think we're ready.

24 MR. HODGES: I understood Mr. Miller had one

1 more question of this witness.

2

3 BY MR. MILLER:

4 Q Mr. Jenne, have you had an opportunity to  
5 review Exhibit 9?

6 A I have.

7 Q Is Exhibit 9 is a memorialization -- state  
8 whether or not Exhibit 9 is a memorialization of the  
9 settlement terms agreed to on the evening of January 30,  
10 1994.

11 A It is.

12 Q Did Georgia Anne Snyder-Falkinham voice any  
13 opposition to executing this in terms of her position as the  
14 cotrustee of the marital trust and the residual trust  
15 created under the will of Peter C. Snyder?

16 A No.

17 MR. MILLER: Thank you, sir. That's all I  
18 have.

19 THE COURT: All right. Mr. Hodges?

20

21 DIRECT EXAMINATION (continued)

22

23 BY MR. HODGES:

24 Q When we recessed for lunch, Mr. Jenne, at



1     least according to my notes, the Court had asked a series of  
2     questions that appeared to me at least to be based on the  
3     listing of conditions you gave us; that is, the  
4     confidentiality, et cetera, et cetera.

5                     There's one of those conditions I want to  
6     follow up, because perhaps the Court has already resolved it  
7     in the Court's mind, but I'm not sure the record is clear.

8                     You may remember that there were conditions  
9     originally that the plaintiff, Georgia Anne  
10    Snyder-Falkinham, sign the release in all of her capacities,  
11    I think are the words you used; then you made reference to  
12    signing on behalf of the marital trust and the residual  
13    trust?

14                    A       All right.

15                    Q       Now, my question is when you, Mr. Rasnic, and  
16    your client, Ms. Snyder-Falkinham, reviewed all of these  
17    conditions by the time you got through in your conversations  
18    with Ms. Snyder-Falkinham, had she agreed to sign in her  
19    capacity, sign the release in her capacity as a beneficiary  
20    under the marital trust?

21                    A       Yes.

22                    Q       Had she agreed to sign the release in her  
23    capacity as beneficiary under the residual trust?

24                    A       Yes.

1           Q       Had she agreed to sign in her capacity as a  
2 cotrustee for those trusts?

3           A       Yes. If you --

4           Q       Yes?

5           A       I guess I don't need to add.

6           Q       Is there any question in your mind?

7           A       A part of the discussion, and you attorneys  
8 may remember this, the Court may remember it, but one of the  
9 motions to amend that we made that you gentlemen resisted  
10 was to bring this action not only in her individual capacity  
11 but in her capacity as a beneficiary of that trust, and  
12 that's -- I mean, the Court allowed the amendment over your  
13 objection, but that was one of the reasons that you  
14 presented that to us, and that's the reason we were  
15 discussing it with her.

16           Q       And you covered the \$25,000 note, covered the  
17 Rich Hill Development.

18                   What I would ask you next is at the time on  
19 the morning of January 31, 1994, when you endorsed each of  
20 the two orders, that is, the order taking out all of the  
21 individual defendants and the order -- final order of  
22 dismissal with prejudice in which you and Mr. Rasnic  
23 endorsed the order as, quote, "We ask for this," end quote,  
24 what was your authority and direction from your client as of

1 the time you were putting pen to paper with regard to  
2 bringing this case to a conclusion?

3 A That it was settled, and that all of her  
4 claims were dismissed with prejudice.

5 Q And what was the basis upon which you held  
6 that position and that understanding with your client?

7 A Her direction to us.

8 MR. HODGES: Thank you, sir.

9 THE COURT: All right. Mr. Horwatt?

10

11

CROSS EXAMINATION

12

13 BY MR. HORWATT:

14 Q Mr. Jenne, what time did Ms. Snyder-Falkinham  
15 arrive at the Marriott?

16 A On Saturday or Sunday?

17 Q I'm sorry; on Sunday.

18 A As I stated earlier, I believe it was right  
19 around 11:00 o'clock.

20 Q And do you recall that during that day, that  
21 there were three sessions that you had with counsel, defense  
22 counsel?

23 A Yeah, I believe that's what I testified to  
24 earlier.

1 Q And the first session went from about 12:00  
2 to 2:00?

3 A It was my recollection that the session  
4 started a little bit before 12:00, and I thought it was  
5 before 2:00 o'clock, shortly after lunch, because I remember  
6 when I went back to Room 109, Ms. Snyder-Falkinham and the  
7 other two girls had ordered lunch and they were having  
8 sandwiches there.

9 Q What time would you say it was?

10 A Approximately 1:30, I would guess.

11 Q Do you have the pad with the conditions on  
12 it?

13 A Uh-huh.

14 Q May I see that, please.

15 A Certainly.

16 Q Now, this pad doesn't have a date on it, does  
17 it?

18 A No.

19 Q And it doesn't have the time on it, does it?

20 A No.

21 Q Isn't it a fact when you came back the first  
22 time from your first meeting that was at 1:30 or 2:00  
23 o'clock, that you had a higher settlement figure, which we  
24 won't state here, than the one that you had previously had

1 on the table, when you came back?

2 A I'm not sure I understand the question.

3 THE COURT: They eventually increased their  
4 offer, as I understood your previous testimony.

5 THE WITNESS: Yes. As I stated previously,  
6 there wasn't an offer saying, We're going to  
7 increase it from X number of dollars to X number of  
8 dollars; it was, If this will get it done, this is  
9 what we'll do to try to get it settled.

10

11 BY MR. HORWATT:

12 Q Wasn't the first thing you talked about a  
13 dollar figure; didn't you focus on the dollar figure  
14 initially? Would she take this increased amount that had  
15 been offered, wasn't that the focus initially?

16 A I don't think it was a focus. I think we  
17 explained to her, exactly as I testified earlier, what their  
18 position was; this is what they were going to propose, this  
19 was the amount of money, and these were the conditions they  
20 would like us --

21 Q Isn't it a fact that when you came back from  
22 the first meeting, that the only conditions you had were the  
23 confidentiality condition, the condition that her son and  
24 daughter sign, and that she sign?

1           A       No.

2           Q       Are you saying that every one of these  
3 conditions that you have on this pad were conditions that  
4 you brought to her after you left the first session between  
5 12:00 and 2:00?

6           A       Yes, when we came back and explained this to  
7 her, explained again it was not an offer; this was what they  
8 want us to agree to; these are who they want released, and  
9 these are the entities and the people that they want to sign  
10 the release.

11                   We laid it out to her exactly as Mr. Hodges  
12 had laid it out to us.

13           Q       When you went back a second time --

14           A       Went back which way, to talk to Mr. Hodges or  
15 to talk to her?

16           Q       Went back to talk to them.

17           A       Okay.

18           Q       You told them that you had to have a higher  
19 amount; you wouldn't take their increased offer, correct?

20           A       No.

21           Q       You didn't tell them that?

22           A       No. What I told them when we went back the  
23 second time was that she would take the amount of money that  
24 they were proposing, but if they wanted Mike and Stacey to

1 join in the release, they were going to have to have more  
2 money for Mike and Stacey, and we told them how much would  
3 be involved for Mike and Stacey.

4 Q That's a higher amount, isn't it? It's a  
5 higher amount?

6 THE COURT: Don't argue with him. It's a  
7 different amount.

8 THE WITNESS: It wasn't a higher amount for  
9 her, Mr. Horwatt. We made it clear --

10 MR. HORWATT: It's a higher amount to settle  
11 the case.

12 MR. MILLER: I object.

13 THE COURT: I think you guys are being kind  
14 frivolous about it, really.

15 MR. HORWATT: I apologize, Your Honor. I'll  
16 move on.

17 THE COURT: All right.

18

19 BY MR. HORWATT:

20 Q Now, when -- you also knew that there was a  
21 tax question; you said that?

22 A A tax question about this December 1990  
23 transaction?

24 Q Yes.

1           A           Well, we knew that we were not going to do  
2 anything in this settlement to upset that.

3           Q           Well, you knew that she objected to the  
4 transfer of the stock back to her, which was one of the  
5 conditions that the defendants had made as a basis for this  
6 proposed settlement; isn't that correct?

7           A           That was not an initial objection. I'm  
8 not a tax attorney, Mr. Rasnic is not, obviously Ms.  
9 Snyder-Falkinham is not. We did not know how, or in what  
10 way, if anything, it would impact her to have Mr.  
11 Stockburger's stock transferred back to her.

12                       So to that end, we called Mr. Anthony, Joe  
13 Anthony, who is a tax attorney; discussed it with him. He  
14 and I were initially talking about if she took his stock in  
15 cancellation of the \$25,000 note, would that give her a  
16 \$25,000 basis in that stock so she could take an additional  
17 loss.

18           Q           Mr. Jenne, my question to you is this: She  
19 told you she had a problem with that condition, didn't she?

20           A           No. She didn't know.

21           Q           She told you she would not accept that  
22 condition unless and until she was satisfied that it would  
23 not cause tax problems to her?

24           A           No. We told her that we were not going to



1 involve that stock transaction, and she agreed. You know,  
2 she did not want anything to upset that December 1990  
3 transaction; we didn't either.

4 Q Now, the note was part of the stock  
5 transaction, wasn't it; it was part of the total transaction  
6 in 1990?

7 A Mr. Stockburger still had a \$25,000  
8 outstanding note to her.

9 Q It was part of the transaction?

10 A I did not put the transaction together. I  
11 guess, if you want to use it in that term.

12 Q And the question of what happened to the  
13 note, you knew, didn't you, was just as much of a concern to  
14 Mr. Anthony and to her CPA as the stock was?

15 A No. I never discussed that.

16 Q You didn't know?

17 A (Witness shakes head).

18 Q You didn't hear them tell you that?

19 A If I hear your question correctly, I wasn't  
20 told that.

21 May I have my notes back?

22 Q Well, I have some more questions I have to  
23 ask you about these notes.

24 A Okay. I just want to make sure they don't

1 get shuffled in with your papers.

2 Q Fine. How long had you been working on this  
3 case?

4 A I first met Ms. Falkinham in the summer of  
5 1991; started working on this case in the fall of 1991.

6 Q You have a lot of hours in the case?

7 A Yes.

8 Q And you had a 40 percent contingency riding  
9 on the outcome of this case, did you not?

10 A Yes. That was our fee basis.

11 Q Now, I notice here, "Paperwork in the  
12 morning." When you talked with Ms. Snyder-Falkinham, did  
13 you mention that there was going to be some paperwork she  
14 was going to have to sign?

15 A I told her the next morning when all the  
16 attorneys were present that we were going to do the release  
17 documents, and we would sign them right there so we wouldn't  
18 have to mail them around.

19 Q So you told Ms. Snyder-Falkinham that all of  
20 the different points, all of these different ten points,  
21 were going to be done on a handshake, and --

22 A No, no, no.

23 Q You didn't tell her that?

24 A No.

1 Q Did you tell her --

2 A No, because those ten points were not a part  
3 of the agreement.

4 Q Well, let me ask you something. Let's go to  
5 Exhibit 8.

6 MR. HORWATT: You've got one, and I'll just  
7 take a copy so you can look on, Your Honor.

8 MR. MILLER: I don't think there's an Exhibit  
9 8.

10 THE COURT: I don't have an Exhibit 8 either.

11 MR. HORWATT: I'm looking for the first  
12 settlement agreement --

13 THE COURT: You mean the release?

14 MR. HORWATT: Yes.

15 THE COURT: That's Exhibit 6, the first one.

16 MR. HORWATT: Your Honor, I'm sorry. I  
17 apologize.

18

19 BY MR. HORWATT:

20 Q Now, I'd like to ask you about Exhibit 6, and  
21 I'd like to ask you whether there is a confidentiality  
22 provision in that exhibit --

23 THE COURT: Well, Mr. Horwatt, it speaks for  
24 itself. You can argue from that later on, if you

1           want to.

2                   MR. HORWATT: Well, Your Honor, I'm merely  
3           trying to -- I'm sorry.

4

5 BY MR. HORWATT:

6           Q       Can you tell me whether or not the  
7           confidentiality agreement was, in your view, part of the  
8           entire settlement?

9           A       Yes.

10          Q       And when the order was entered, that  
11         confidentiality agreement became part of the order, did it  
12         not?

13          A       Yes.

14          Q       If the order was violated, it was punishable  
15         by contempt; correct?

16          A       I assume.

17          Q       Well, you read the order.

18          A       Yes.

19          Q       I mean, that's an important point, isn't it?

20          A       Well, it is an important aspect of the  
21         settlement that it be confidential, and we agree to it being  
22         confidential. We discussed all the ramifications of it, and  
23         it was a part of the agreement and part of the order.

24          Q       It is important if a client violates an

1 agreement and it is punishable by contempt, isn't it?

2 A I think it is.

3 Q Given the fact that that was important, did  
4 you have an actual provision that you went over with her  
5 about the terms and conditions of that confidentiality  
6 agreement?

7 A We didn't have anything in writing, but we  
8 explained it to her, and discussed it.

9 Q Well, when you explained it to her and  
10 discussed it, did you tell her that if she showed the  
11 agreement to anybody that wasn't an attorney of record, that  
12 it might be a violation of the confidentiality agreement?

13 A I don't think we said it in those terms on  
14 Sunday evening. When we talked to her about the  
15 confidentiality, she wanted to know, Well, what does this  
16 mean, because in the past month she had been talking about  
17 writing a book about this. And Mr. Rasnic or myself said,  
18 Well, this means there's no book. And I think I said that,  
19 that it would just have to be maintained a secret; we could  
20 not disclose that information.

21 Mr. Rasnic made the comment it wouldn't be a  
22 bestselling book anyway; there's no sex or murder involved.  
23 We talked about the fact it would have to be confidential;  
24 if there was a breach of the agreement, she'd be subject to

1 some liabilities as a result of that. And that didn't seem  
2 to bother her.

3 Q Let me ask you about the provision regarding  
4 the trust. As I understand it, the trust was included in  
5 the first agreement, was it not; in the agreement you have  
6 there, included as a signatory?

7 A Right, they put Central Fidelity on as a  
8 signatory.

9 Q Therefore that was part of the conditions you  
10 went over with her; is that right?

11 A No. It was not a condition to settlement.  
12 As I stated, or I meant to state earlier, that's what these  
13 gentlemen wanted. We explained to these gentlemen that we  
14 did not represent Central Fidelity, just like we didn't  
15 represent Joe Falkinham; we did not represent the children.

16 We said we can present that to them, and if  
17 they want to sign it, that's fine, but it's not part of the  
18 agreement.

19 Q Do you think that what goes in a final  
20 agreement that is embodied -- embodies all the terms and is  
21 signed by all the parties is an important document?

22 A I do.

23 Q And consequently, do you consider it as a  
24 reasonable and prudent attorney important for you to go over

1 each and every provision of that agreement with your client?

2 A Yes.

3 Q And would you agree that when documents are  
4 reduced to writing, that issues, questions, meanings,  
5 connotations, come to the surface that may not have come to  
6 the surface during oral discussions?

7 A No, I don't agree that that always occurs.  
8 It certainly may occur.

9 Q Indeed, one of the reasons why written  
10 agreements are used by parties is because of their  
11 recognition that sometimes oral understandings don't capture  
12 all of the nuances and all of the terms and all of the  
13 conditions; isn't that right?

14 A I suppose that's possible.

15 Q And in this transaction, in this settlement,  
16 you anticipated all through this, did you not, that  
17 ultimately there was going to be a document like this;  
18 correct?

19 A Yes.

20 Q In fact, one of the major points --

21 A When you say "a document like this," I don't  
22 know what you held up. We anticipated that there would be a  
23 settlement like Exhibit 9, a settlement document.

24 Q Or 8?

1 MRS. SNYDER-FALKINHAM: 6.

2 THE COURT: You mean 6.

3 MR. HORWATT: Or 6; I'm sorry.

4 THE WITNESS: There was going to be a  
5 settlement document signed, yes.  
6

7 BY MR. HORWATT:

8 Q Now, you even went through who was going to  
9 sign the document and who was going to be released in the  
10 document, didn't you, with her?

11 A Yes.

12 THE COURT: Mr. Horwatt, we keep on going  
13 over the same thing. I assume what you're getting  
14 at, or maybe what you're getting at, is the  
15 difference between 6 and 9, and why 6 was submitted  
16 the way it was. Is that one of your concerns?

17 MR. HORWATT: Well, Your Honor, I'm concerned  
18 because there are diametrically different versions  
19 of what happened in terms of what was agreed to --

20 THE COURT: Between your client and Mr.  
21 Jenne.

22 MR. HORWATT: Yes. And I'm concerned because  
23 of the fact that Agreement 6, that says that it's an  
24 integration and says that all of the material



1 provisions are included, is signed by Mr.  
2 Stockburger, and then another agreement comes out  
3 which is different from this agreement.

4 And I'm concerned, and I'm trying to develop  
5 a record to establish that it was impossible for  
6 there to be an agreement that incorporated all the  
7 essential terms that was complete and signed off on,  
8 given the flow of these events.

9 And that's what my cross-examination is  
10 about, and I apologize to the Court if it's tedious.

11 THE COURT: Well, it's not necessarily  
12 tedious, I'm just not sure we're accomplishing  
13 anything by doing this. I thought originally what  
14 you were doing is trying to distinguish between 6  
15 and 9, to bring about why these things were in  
16 Number 6 that were not agreed to.

17 MR. HORWATT: Well --

18 THE COURT: And you might tell me why that  
19 didn't come about, why the things that were in  
20 Number 6 --

21 THE WITNESS: As I stated earlier, Your  
22 Honor, these gentlemen, Mr. Hodges, Mr. Miller,  
23 wanted these conditions. We told they we could not  
24 speak for Mike, we could not speak for Stacey, we

1           could not speak for Central Fidelity, nor for Joe  
2           Falkinham.

3                   We said we could present it to them, and if  
4           they want to sign it and join into it, fine, but we  
5           can't speak for them, and it's just not part of the  
6           deal.

7                   THE COURT: Then you did talk to Mrs.  
8           Snyder-Falkinham about it, and she indicated no she  
9           was not agreeable to that; then Exhibit Number 9 was  
10          prepared and eventually submitted. Is that correct?

11                   THE WITNESS: She never has to this day told  
12          me her husband wouldn't sign it, but I assume from  
13          the silence he would not. So we just had them take  
14          out those provisions.

15  
16          BY MR. HORWATT:

17                   Q           As a matter of fact, on the evening of the  
18          30th, did she not make a telephone call and ask her husband  
19          whether he would sign, and didn't she tell you or Mr. Rasnic  
20          that he would sign?

21                   A           That's a double-barreled question. I don't  
22          know if she called him or not. We suggested during the day  
23          that she call him, when this was going on. She said he was  
24          at a Super Bowl party and she did not want to bother him.

1                   When we mentioned that they wanted Joe  
2 Falkinham to sign, her statement was, "I don't know why he  
3 wouldn't."

4                   Q       And you don't recall that she actually called  
5 him that evening before she left?

6                   A       I do not.

7                   Q       Do you recall that -- Let me ask you, who  
8 drafted these agreements?

9                   A       Mr. Miller.

10                  Q       And when did Mr. Miller draft the agreements?

11                  A       I assume it was Monday morning.

12                  Q       So it's certainly correct that she never saw  
13 these agreements on Sunday?

14                  A       That's correct.

15                  Q       Or any version of them?

16                  A       That's correct. Except the oral version.

17                  Q       The oral version. She didn't see a version  
18 before you had Mr. Rasnic go to court and move to dismiss  
19 the case?

20                         THE COURT: Mr. Horwatt, you're asking the  
21 same thing. He said she didn't see it.

22                         MR. HORWATT: Thank you, Your Honor.

23

24

1 BY MR. HORWATT:

2 Q What does the "RHDC payables" mean here?

3 A This is a note on the morning of the 31st,  
4 after I had called Ms. Falkinham at 8:03, I got a call from  
5 Joe Anthony.

6 I guess I should back up a minute. When I  
7 talked with Ms. Snyder-Falkinham at 8:03 and told her about  
8 this phone call and that the paperwork would be ready later  
9 on that morning, she told me the night before when she had  
10 gotten home she had talked to Joe Anthony and he had told  
11 her it would be better for her to transfer her stock to Mr.  
12 Stockburger rather than Mr. Stockburger transferring his  
13 stock to her. That's when she told me.

14 I told her the Stockburger stock was going to  
15 a third person, so it was not a problem -- Q  
16 Let me stop you there. Was there any agreement on who that  
17 third person would be?

18 A No.

19 Q Was there any agreement on what the  
20 conditions of that third-party transfer would be?

21 A Well, there was no conditions, just it would  
22 be transferred out of Mr. Stockburger's name.

23 Q But there wasn't any terms and conditions  
24 with respect to the disposition of Mr. Stockburger's stock

1 to anyone other than himself; right?

2 A Well, that it would be transferred to  
3 whoever, some third person that was not connected to her.  
4 And if you let me finish my answer, just a moment ago, you  
5 asked me about this.

6 Mr. Anthony followed up with a telephone call  
7 to me and made the statement that he had done a little  
8 research Monday morning, and that he thought it would be  
9 better -- same thing she said -- for her stock to go to  
10 Stockburger, because he was concerned that there was some  
11 payables by Rich Hill Development Corporation; that is, that  
12 they were claiming that this corporation still owed money to  
13 Gentry, Locke for legal services, and also to Glenn,  
14 Flippin.

15 And when Mr. Anthony started telling me this  
16 I started making notes, and I said, Joe, it's not going to  
17 be a problem; it's going to be a mutual release. Glenn and  
18 Glenn, Flippin and Stockburger and Gentry, Locke, will be  
19 releasing her; these outstanding bills are not going to be  
20 an issue.

21 Q Again, you had to go back to Gentry, Locke  
22 and talk to them about legal fees?

23 A No.

24 Q You never had to do that?

1           A       On Sunday when we were talking to these  
2 fellows here, a part of the deal was they were releasing her  
3 as well, and we discussed this with Ms. Snyder-Falkinham.

4           Q       Do you recall discussing the issue of  
5 releasing the fees with Mr. Anthony?

6           A       Yes.

7           Q       Did you not go back and discuss that issue on  
8 Monday morning with Gentry, Locke?

9           A       No. That was taken care of on Sunday.

10          Q       Is there anywhere in this agreement, either  
11 Number 6 or Number 9, that the dollar figure is recited?

12          A       No.

13          Q       Is there anyplace in writing that the dollar  
14 figure is recited?

15          A       On the check that they sent.

16          Q       That's the only place it's recited?

17          A       Right. Well, you say is it recited; I have  
18 it on my note here, too, but I don't guess that's what  
19 you're talking about.

20          Q       That's not what I'm talking about. Was there  
21 any kind of written instrument that was delivered by the  
22 Virginia Reciprocal that it had waived any policy  
23 reservation that it may have had?

24          A       In the mediation hearing in Richmond, in

1 exchange for letting these individual named defendants out  
2 of the case, they agreed to withdraw their reservation of  
3 rights letter that pertained to the law firm, because they  
4 were defending not only the law firm but Stockburger under  
5 reservation of rights.

6 Q And my question to you is was there any  
7 withdrawal of that -- was there any instrument that was  
8 delivered to you that said the Virginia Reciprocal  
9 officially advises you that there has been a withdrawal of  
10 the policy reservation?

11 A Well, I'd have to look at the mediation  
12 notation to see exactly what was said, but at the mediation  
13 hearing this was accomplished, and there were two  
14 representatives from Virginia Reciprocal there that  
15 verbalized that, and I understood would follow up with a  
16 letter.

17 Q Did you ever see it?

18 A It never got to that point.

19 Q Did you ever see it?

20 A No.

21 Q So although Virginia Reciprocal said that  
22 they would waive, you never got a letter or anything  
23 delivered to you indicating that that had actually been  
24 accomplished?

1           A           Unless it was on the mediation form. That's  
2 the only thing that I've seen.

3           Q           Now, I'd like you to look at the last page of  
4 both Exhibit 6 and Exhibit 9.

5           A           I have 9 before me, I guess.

6           Q           Let me take you back to Provision Number 10.  
7 Now, Provision Number 10 on Exhibit Number 9, if you would  
8 look at this one, is a -- what we call an integration  
9 provision, isn't it?

10           THE COURT: What's your question about it?

11           MR. HORWATT: Well, my question is --

12           THE WITNESS: I don't know what you call an  
13 integration provision.

14           THE COURT: Go ahead and ask him the question  
15 you want to ask him.

16

17 BY MR. HORWATT:

18           Q           My question is this document, according to  
19 you, does not contain all of the terms and conditions that  
20 the parties arrived at in settling this case; is that right?

21           A           No. It does.

22           Q           It does? Well, does it contain the items  
23 that you referred to in the mediation agreement?

24           A           Well, that wasn't a part of the settlement.



1                   Q       It wasn't?

2                   A       The settlement, Mr. Horwatt, was that they  
3       were going to pay X number of dollars; she was going to  
4       accept that amount of money, and she was going to release  
5       the people mentioned here; that she was going to cancel the  
6       \$25,000 note, and it was going to be confidential. That was  
7       the settlement.

8                   Q       So the mediation agreement is not a binding  
9       agreement?

10                  A       No, it is a binding agreement, but that was,  
11       the mediation -- when we got to Roanoke and ready to try  
12       this case and got into this negotiation situation, that  
13       mediation agreement, as far as I was concerned, was history.

14                               We had attempted to go through mediation. We  
15       felt we had accomplished a little bit on behalf of our  
16       client by getting the reservation of rights letter lifted,  
17       as to the law firm, and we thought that was binding, on them  
18       as well as us.

19                  Q       So the agreement you had in the mediation  
20       conference is a part of the settlement; the oral conditions  
21       arrived at is part of the settlement, and this isn't part of  
22       the settlement, is that right? Is that what I'm hearing?

23                  A       I don't think that's what I'm saying.

24                               THE COURT: I don't think you're following,

1 Mr. Horwatt. I think what he's saying in effect is  
2 that when they had the arbitration hearing in  
3 Richmond, that they were bound by the final results  
4 of that and the notations that were made by the lady  
5 who was the arbitrator, or whoever the lady was that  
6 made those notations.

7 When they finally got to the settlement of  
8 the case, that in effect superseded and was the  
9 final result, taking into consideration the  
10 arbitration agreement, and in effect would make the  
11 arbitration -- the results of the arbitration  
12 hearing more or less moot, is the impression I've  
13 gotten.

14 THE WITNESS: That's better than I can sum it  
15 up.

16 THE COURT: Maybe I haven't expressed it very  
17 well, but that's impression I've got.

18 MR. HORWATT: Very well, Your Honor.

19  
20 BY MR. HORWATT:

21 Q Then do I understand that this is, this  
22 Exhibit 9, is the entire agreement?

23 A Yes.

24 MR. MILLER: Mr. Horwatt, that's my copy of

1           Exhibit 9. I sort of don't want to lose it. Thank  
2           you, sir.

3           MR. HORWATT: Thank you.

4           THE COURT: Any more questions?

5           MR. HORWATT: Yes.

6

7 BY MR. HORWATT:

8           Q           You received a number of requests from your  
9           client prior to this hearing and after your discussion on  
10          the 31st --

11           MR. MILLER: If Your Honor please, I'm going  
12          to object to this as being irrelevant and  
13          immaterial. He's obviously trying to set up  
14          proceedings beyond these, and they obviously don't  
15          relate to the issues here.

16           THE COURT: Let's hear the question. Go  
17          ahead with the question.

18

19 BY MR. HORWATT:

20           Q           -- asking you to produce all of your notes,  
21          memoranda, and other documents relevant to the negotiations,  
22          didn't she?

23           A           I received a couple of letters from her or  
24          from you. I don't know who drafted it. It says some lawyer

1 did; she did not. She wanted all of her files that we had  
2 been working on --

3 Q Let me stop you. I'd like to you answer my  
4 question, because my question was, didn't she ask you for  
5 your notes and memoranda and other documents and your  
6 recollections related to the conduct of the negotiations?

7 A If you show me the letter, I can tell you  
8 exactly what she asked me.

9 MR. MILLER: Your Honor, I would object on  
10 grounds of relevancy.

11 THE COURT: I would agree with you. The  
12 objection is sustained.

13 MR. HORWATT: Pardon?

14 THE COURT: The objection is sustained. I  
15 don't think that's relevant as to whether they had  
16 an understanding initially.

17 MR. HORWATT: Your Honor, I think why we are  
18 introducing it is for the purpose of showing there  
19 was not a willingness on the part of this attorney  
20 to share with us his records, and therefore he is in  
21 control --

22 THE COURT: That could easily be, but that  
23 doesn't have anything to do with what we're here for  
24 today.

1 MR. HORWATT: Very well, Your Honor.

2

3 BY MR. HORWATT:

4 Q I want to show you Exhibit 6, Paragraph  
5 Number 8, and ask whether you ever showed Ms.  
6 Snyder-Falkinham that provision.

7 A I think I testified earlier that she didn't  
8 see any of this.

9 Q But did you show her that provision in terms  
10 of even any kind of -- any kind of writing; any kind of --  
11 any kind of explanation, in memoranda or any other way,  
12 other than the oral discussion about it?

13 A Only the oral discussion, and Mr. Rasnic's  
14 comment that he would buy the note if that's what she  
15 wanted.

16 Q Did Mr. Rasnic and Mr. Crabbs discuss the tax  
17 implications with you of the stock and of the note?

18 A Mr. Rasnic and Mr. Crabbs?

19 Q I said Mr. Rasnic; I apologize. Did Mr.  
20 Anthony and Mr. Crabbs discuss with you the tax implications  
21 of the note and the stock?

22 A No.

23 Well, it was two questions. We discussed the  
24 stock; the note was not discussed.

1           Q       Did Mr. Hodges and Mr. Miller discuss the tax  
2 implications of the stock transfer with you?

3           A       Yes, to the extent that -- I think it was Mr.  
4 Miller, I believe, was the one that said that they had  
5 talked to an accountant or a CPA and were given to  
6 understand that that December 1990 transaction would not be  
7 affected even if the stock transferred from Mr. Stockburger  
8 to Ms. Snyder-Falkinham. But we were not willing to take  
9 that chance, so that wasn't a part of the deal.

10          Q       Did they know that that was not something  
11 that Ms. Snyder-Falkinham was willing to take a chance  
12 about?

13          A       That she wasn't going to have the stock  
14 transferred to her name?

15          Q       Yes.

16          A       Yes.

17          Q       Did they know that she had a concern about  
18 whether or not that transaction in 1990 would be disturbed  
19 in any way? You told them about that, didn't you?

20          A       I don't know that they knew. She had a  
21 concern; they knew that Mr. Rasnic -- it was the feeling of  
22 Mr. Rasnic and myself that that transaction was tenuous from  
23 its inception, but we weren't going to do anything to  
24 disturb that. It was going to have to stand on its own

1 bottle, and if the Internal Revenue ever disallowed that, it  
2 wasn't going to be because of something we did or failed to  
3 do.

4 Q Did it occur to you that the payment of the  
5 note, or the marking of it paid and canceled did affect the  
6 transaction because that note was part of the transaction?

7 A To my knowledge, it would not affect the  
8 transaction.

9 Q But you were aware that the note was part of  
10 the transaction, were you not?

11 A The note was included in the consideration,  
12 yes. The payment of the note was included in the  
13 consideration.

14 Q Did you make a statement to Ms.  
15 Snyder-Falkinham about 8:00 o'clock in the morning, "You're  
16 not going to let this kill the deal, are you?"

17 A No.

18 Q You never said that?

19 A Absolutely no.

20 MR. HORWATT: May I have the Court's  
21 indulgence one moment.

22 I've concluded my cross-examination.

23 THE COURT: Any redirect?

24 MR. MILLER: We have none, sir.

1 THE COURT: You may step down, Mr. Jenne.

2 MR. MILLER: May Mr. Jenne be excused?

3 THE COURT: As far as I'm concerned.

4 MR. MILLER: You may sit in the courtroom,  
5 Mr. Jenne. Mr. Rasnic will be our next witness.

6 MR. HORWATT: I may have to recall him.

7 THE COURT: Then if you wouldn't mind  
8 standing outside, Mr. Jenne.

9

10 THOMAS L. RASNIC

11 was called as a witness, and after having first been duly  
12 sworn to tell the truth, the whole truth and nothing but the  
13 truth, was examined and testified as follows:

14

15 DIRECT EXAMINATION

16

17 BY MR. MILLER:

18 Q Would you state your full name, please.

19 A Thomas Lee Rasnic.

20 Q Are you an attorney?

21 A I'm a lawyer, yes, sir.

22 Q How long have you practiced law?

23 A I've been practicing -- I was licensed to  
24 practice in the state of Tennessee in I believe April of



1 '67; I was licensed to practice in the Commonwealth of  
2 Virginia in June of '77.

3 Q Have you practiced continuously in Virginia  
4 since 1977?

5 A My practice actually includes Commonwealth of  
6 Virginia, the Commonwealth of Kentucky, and the state of  
7 Tennessee, so I have practiced in Virginia, yes, since '77.

8 Q Did you become associated with Roger Jenne in  
9 the handling of claims for Georgia Anne Snyder-Falkinham?

10 A Yes, I did.

11 Q Did you two work as cocounsel throughout the  
12 handling of the matter?

13 A We did.

14 Q Did there come a time when the case was set  
15 for trial on January 31, 1994?

16 A Yes, it was.

17 Q Was or was not the case settled on the  
18 evening of January the 30th?

19 A It was settled on Sunday evening. I believe  
20 that was January the 30th.

21 Q Did you have any discussions with  
22 Ms. Snyder-Falkinham that day?

23 A Yes; we had discussions with her on several  
24 occasions.

1 Q Did she agree to settlement on all terms?

2 A She did.

3 Q And did the settlement include or part of the  
4 consideration being paid on behalf of the defendant  
5 Stockburger include payment of a note dated December 15,  
6 1990, from defendant Stockburger to Georgia Anne  
7 Snyder-Falkinham?

8 A That was part of the entire package.

9 And I can elaborate as to --

10 THE COURT: No; just answer his questions.

11 THE WITNESS: I'm sorry. Yes.

12

13 BY MR. HODGES:

14 Q And did Ms. Snyder-Falkinham agree to that  
15 part of the package?

16 A Yes, sir.

17 Q And she told you the case was -- she agreed  
18 that the case was settled?

19 A Mr. Miller, when we came back to you and  
20 Mr. Hodges after we had been approached by Mr. Hodges and  
21 had a several-hour discussion, I made it very clear to  
22 Ms. Snyder-Falkinham that I wanted -- she had to make the  
23 decision as to whether or not to settle the case; that I did  
24 not recommend -- I never recommended the settlement to her;

1 didn't tell her one way or the other what she should do or  
2 not do.

3 And she told me, because I asked her  
4 specifically, Do you agree to accept the amount of money --  
5 as I've understood, you all have agreed not to mention the  
6 amount -- but this amount of money? And she agreed that she  
7 did.

8 Q Did you make any notes on the settlement?

9 A No, I did not.

10 Q Did you rely on Mr. Jenne to do that?

11 A Well, at the time, Mr. Miller, I was prepared  
12 to go to trial. I had returned to my home on Friday evening  
13 after spending a week working -- well, actually two  
14 weeks --

15 THE COURT: I think his question was did you  
16 rely on Mr. Jenne to do that.

17 THE WITNESS: I did not rely on any notes. I  
18 did not keep any notes, no, sir. I did not.

19

20 BY MR. MILLER:

21 Q You went to court to see Judge Jennings on  
22 Monday morning, did you not?

23 A I did.

24 Q Did you have the authority of your client to

1 go to court?

2 A I don't know that I had her specific  
3 authority to go to court, no. I don't know that I needed  
4 her authority to go to court.

5 Q Did she agree that the case was settled?

6 A She did.

7 Q Did you hear her talking about the case being  
8 settled on Sunday night?

9 A Yes.

10 Q And who did she talk to?

11 A She made calls to several people on the  
12 telephone, in my presence, and advised them that the case  
13 was settled. There's no question in my mind she knew the  
14 case was settled.

15 Q And she knew she wasn't going to court the  
16 next day?

17 A She knew she wasn't going to court the next  
18 day, certainly.

19 Q Did you all tell her we had put our pencils  
20 down and you had put your pencils down?

21 A I don't --

22 Q Maybe not those words?

23 A She was aware that you all had quit working  
24 on the case and that we had quit working on the case, by I'm

1 going to say -- well, at least by halftime of the  
2 Superbowl.

3 Q Was there any doubt in anybody's mind that  
4 the case was settled at that time?

5 A None.

6 MR. HORWATT: I object to that, Your Honor.

7 THE COURT: I sustain the objection. But so  
8 far as you know, was there any doubt?  
9

10 BY MR. MILLER:

11 Q Can you state whether there was any doubt in  
12 anybody's mind?

13 MR. HORWATT: I'm going to object to that  
14 question. How can he talk about what was in  
15 somebody else's mind?

16 THE COURT: I'll sustain the objection.

17 MR. HORWATT: Thank you.  
18

19 BY MR. MILLER:

20 Q Was there any question in your mind that the  
21 case was settled?

22 A There was absolutely no question in my mind,  
23 as a trial lawyer of 27 years, Mr. Miller, that the case was  
24 settled. Otherwise I would have been down there the next

1 morning ready to go pick a jury.

2 Q Have you ever had a client renege on you  
3 before?

4 A Never.

5 Q Never in 27 years?

6 A Never in 27 years.

7 Q When did you first find out that  
8 Ms. Snyder-Falkinham was reneging on you?

9 MR. HORWATT: I'm going to object to that  
10 question, Your Honor.

11 THE COURT: Restate your question.

12

13 BY MR. MILLER:

14 Q When did you first find out that  
15 Ms. Snyder-Falkinham was not agreeing to the settlement?

16 A It was sometime after noon on Monday, January  
17 the 31st.

18 Q Did that come about -- did she talk to you or  
19 did she talk to Mr. Jenne?

20 A She was originally called by Mr. Jenne's  
21 paralegal, Sherry Arthur, and I heard -- I was sitting right  
22 across from Sherry and I heard Sherry make a couple of  
23 statements and I motioned to Roger to get on the phone,  
24 which he did. I heard some statements made by him and then

1 I got on the extension.

2 Q And listened to the conversation?

3 A Listened to part of the conversation, not all  
4 of it.

5 MR. MILLER: That's all I have right now,  
6 Judge. Mr. Hodges has some.

7

8 DIRECT EXAMINATION (continued)

9

10 BY MR. HODGES:

11 Q Mr. Anthony -- excuse me; Mr. Rasnic, you  
12 were present at the time of the mediation session on January  
13 25, 1994 in Richmond?

14 A Yes, I was.

15 Q At that time would you state whether or not  
16 it was accurate that your then-client Ms. Snyder-Falkinham  
17 made the statement during those proceedings that you and  
18 Mr. Jenne were her attorneys and were authorized to speak  
19 and act for her?

20 A Yes, Mr. Hodges. And the reason that came up  
21 was because we had discussed it previously, and we were to  
22 be her spokesmen.

23 Q Now, from the time that you folks concluded  
24 the mediation session in Richmond until the time you were

1 before the Court on Monday morning, January 31, 1994 in  
2 Roanoke, at which time you endorsed and helped to present  
3 the order to the Court for entry -- that is, two orders --  
4 had Ms. Snyder-Falkinham at any time stated to you -- state  
5 whether or not at any time Ms. Snyder-Falkinham indicated to  
6 you a revocation of your authority to act on her behalf.

7 MR. HORWATT: Your Honor, I object to the  
8 question, again on the ground that there has been no  
9 foundation established that Mr. Rasnic or Mr. Jenne  
10 had authority to go to court and to dismiss her case  
11 with prejudice, and therefore a question as to  
12 whether she had revoked it assumes a fact not in  
13 evidence.

14 And secondly, he could not under the law of  
15 Virginia assume that he had authority unless he got  
16 it, not whether it was retracted; she had to give it  
17 to him, and she had to give it to him in no  
18 uncertain terms, and therefore I object to the  
19 question on those grounds.

20 THE COURT: Objection overruled.

21 THE WITNESS: Let me see if I can recall your  
22 question: Did she revoke any authority she had  
23 given us in that session? No, sir, she did not.

24



1 BY MR. HODGES:

2 Q At any time between the mediation session in  
3 Richmond on the 25th and the time you and I were before the  
4 Court in Roanoke on the morning of January 31, 1994, had  
5 Ms. Snyder-Falkinham made any statement or reference to you  
6 indicating you and Mr. Jenne were not authorized to act on  
7 her behalf with regard to settlement of the entire case?

8 A No, she had not.

9 Q I think the record is clear on this, and I  
10 beg the Court's indulgence, but on the chance there is some  
11 confusion even in the record about why two orders were  
12 proposed on the 31st as opposed to just one final order,  
13 what was the purpose of the order that addressed the subject  
14 of the twelve individual defendant attorneys?

15 A The mediation session had resulted in an  
16 agreement by the parties based upon certain considerations  
17 being given by Virginia Reciprocal that the individual named  
18 partners would be dismissed from the lawsuit.

19 Q Would you state whether or not there was a  
20 benefit to your client as a result of that agreement on  
21 January 25.

22 A Absolutely. At the time of the mediation  
23 session, according to testimony that we had obtained during  
24 the course of discovery, Virginia Reciprocal was defending

1 the entire case under a reservation of rights, which our  
2 client was well aware of, and as a result of that mediation  
3 session, Virginia Reciprocal withdrew that reservation of  
4 rights as to the legal -- as to the partnership of Gentry,  
5 Locke.

6 Q Would you state to the Court whether or not  
7 the order addressing the individual defendants, that is  
8 everyone except Mr. Stockburger, and addressing the  
9 dismissal of the punitive claim was absolutely consistent  
10 with the agreement of January 25.

11 MR. HORWATT: I'm going to object to that  
12 question as leading and argumentative.

13 THE COURT: Objection overruled.

14 THE WITNESS: Mr. Hodges, the agreement of  
15 January 25, with the Court's indulgence, speaks for  
16 itself. I don't have a copy of it here, I'm sure  
17 someone does, but my recollection was that the  
18 plaintiff agreed to drop the individual partners  
19 from the lawsuit, and Virginia Reciprocal agreed to  
20 provide coverage to the partnership of Gentry,  
21 Locke; not to Mr. Stockburger individually, but to  
22 the partnership.

23 Now, I would state that I -- my recollection  
24 is that the -- in the mediation session, the

1           partners were to be dropped by a nonsuit as opposed  
2           to a dismissal with prejudice; okay? That would  
3           have been the difference.

4

5       BY MR. MILLER:

6           Q           Okay.

7           A           But when the settlement -- that didn't make  
8           any difference. That's a perfunctory motion or order to  
9           dismiss a case.

10          Q           During the settlement negotiations of Sunday,  
11          January 30th, would you state whether or not at any time you  
12          or Mr. Rasnic or --

13          A           You mean Mr. Jenne.

14          Q           Excuse me, Mr. Rasnic, I'll restate that.  
15          During the settlement discussions on January 30th, that is,  
16          Sunday, did you, Mr. Jenne, or in your presence either of  
17          the defense attorneys incorporate or attempt to incorporate  
18          any aspect of what had been agreed to in the mediation  
19          session?

20          A           The agreement proposed to Mr. Jenne by you  
21          was that all parties would be released as far as the lawyers  
22          were concerned. Not -- there's a case pending involving the  
23          CPA; nothing was done about that.

24                       But all parties would be released; she would

1 release the lawyers, the lawyers would release her, and the  
2 case would be dismissed with prejudice -- both cases, by the  
3 way; the case involving Gentry, Locke and the case involving  
4 the other lawyer's law firm -- in addition to the  
5 confidentiality and the note business.

6 Q Mr. Rasnic, would you state whether or not at  
7 any occasion with your discussions with your then-client  
8 Ms. Snyder-Falkinham on Sunday, January 30th, you made any  
9 statement about your purchase of the note from  
10 Ms. Snyder-Falkinham, if that was her choice; that is, the  
11 \$25,000 note?

12 A Well, I don't -- before I answer that, I  
13 would like to inquire of the Court as to whether or not the  
14 Court would consider that confidential information. I  
15 personally don't, but --

16 THE COURT: There's been evidence to it  
17 already.

18 THE WITNESS: All right.

19  
20 BY MR. HODGES:

21 Q That's the reason I asked.

22 A When we discussed this matter with  
23 Ms. Snyder-Falkinham, she had a question, as we had proposed  
24 during the entire time that we'd had negotiations, from the

1 very beginning, that nothing was to be done which might  
2 upset the December 1990 transaction.

3 We understood that; we told you all that; I  
4 assumed that you all understood that. There was discussion  
5 about the \$25,000 note, and I made -- I told her at that  
6 time, I said, "If that is the only problem you have with  
7 this settlement, I'll buy the note from you. You can sell  
8 it to me, it's a negotiable instrument, and I'll buy it."

9 And I meant it then, I mean it today, and  
10 I'll mean it next week. I don't have a bit of problem with  
11 that.

12 THE COURT: I think you answered it.

13 THE WITNESS: Okay.

14

15 BY MR. HODGES:

16 Q What was her response to your statement?

17 A She didn't have any problem with that. I  
18 don't know that there was an affirmative response or a  
19 negative response; my recollection is she just -- you know,  
20 there was no response one way or the other.

21 MR. HODGES: Thank you. Mr. Rasnic, your  
22 witness.

23 MR. HORWATT: I think the attorneys have been  
24 doing quite a job today misnaming each other. You

1           called him Mr. Anthony, you just called me  
2           Mr. Rasnic; I've done the same thing.

3           THE COURT: Let's don't add another problem  
4           to this.

5           MR. HORWATT: I meant it as a joke, Your  
6           Honor, not an accusation.

7           THE COURT: I appreciate your humor, I  
8           guess. But let's go ahead.

9

10                           CROSS EXAMINATION

11

12       BY MR. HORWATT:

13           Q       I know that you would not consider yourself a  
14       tax expert; correct?

15           A       I don't do my own.

16           Q       Pardon?

17           A       I don't do my own taxes. I don't consider  
18       myself a tax expert.

19           Q       I can share the view.

20           A       I don't consider myself an SCC expert,  
21       either.

22           Q       When you said it was your objective not to do  
23       anything to disrupt the transaction, I take it that that  
24       meant that anything that was done in the way of a settlement

1 was intended not to cause a threat to her tax position; is  
2 that right?

3 A That's an overly broad question, sir, because  
4 what is her tax position? Because as I understand it, if  
5 she -- if we went to court and recovered a sizable verdict  
6 or we settled the case, that could have tax consequences. I  
7 don't know.

8 Q Let me rephrase the question.

9 It's my understanding that you and Mr. Jenne  
10 had as an objective which you communicated to Mr. Hodges and  
11 Mr. Miller that you did not want to do anything in the  
12 settlement that would -- I think the word was "upset" the  
13 tax transaction in 1990.

14 A Correct.

15 Q And as I understand it, there were  
16 discussions with Mr. Anthony and there were discussions with  
17 her CPA about this?

18 A I don't know.

19 Q You don't know personally?

20 A I was not privy to those conversations, so I  
21 don't know.

22 Q And I take it, then, that you didn't have --  
23 let me restate the question.

24 Do you know whether you or Mr. Jenne ever

1       went over each and every provision of this settlement  
2       agreement with the tax attorney or with the CPA to find out  
3       whether it would upset the tax consequences of the 1990  
4       transaction?

5               A           I never went over anything with the tax  
6       attorney or with the CPA because I was trying a legal  
7       malpractice case. And as you told me on the phone, asked me  
8       on the phone whether I had contacted Mr. Mehler, I didn't  
9       know that I was supposed to.

10               No, sir. I don't consult with tax lawyers  
11       and CPAs about settlements.

12               THE COURT: Mr. Rasnic, don't make a speech,  
13       just "yes" or "no."

14               THE WITNESS: No, I didn't consult with  
15       anybody about a settlement of a legal malpractice  
16       case, sir.

17  
18       BY MR. HORWATT:

19               Q           I take it you personally did not go over each  
20       and every condition of the settlement that was ultimately  
21       arrived at, as you claim, with Ms. Snyder-Falkinham; that  
22       Mr. Jenne did it?

23               A           Mr. Jenne made a list of items on a piece of  
24       paper at the Marriott, which I've seen --



1 Q Did you see him make the list?

2 A Yes, I did.

3 Q Do you know what time he did that?

4 A It was at the first meeting. I don't know  
5 what time it was; it was sometime -- it was sometime between  
6 11:00 and 1:00, or 2:00. Somewhere in there.

7 Q All right.

8 A Because I didn't pay any attention to it.

9 Q Did you yourself go through each and every  
10 one of those conditions on the list with  
11 Ms. Snyder-Falkinham?

12 A I was present with Mr. Jenne when he went  
13 through the list.

14 Q You were there for all of the discussion  
15 related to each one of those items?

16 A I was there during our discussion with her  
17 concerning what they were asking and what the settlement was  
18 about. Now, whether or not I was there when everything was  
19 said, I can't tell you that, because I do recall I went to  
20 the bathroom one time. But that was after he had gone over  
21 the entire list with her.

22 Q What do you understand was in the  
23 settlement? Did you understand that the payment of the note  
24 was in the settlement?

1           A       Yes.

2           Q       Did you understand that the release of the  
3 trusts was in the settlement?

4           A       Release of the trusts?

5           Q       Of the marital and residual trusts, the Peter  
6 C. Snyder marital and residual trusts?

7           A       I understood that they wanted to have the  
8 trustees sign a release, and we advised both Mr. Hodges and  
9 Mr. Miller that we didn't represent the trustee of Central  
10 Fidelity Bank, that we didn't represent Joe Falkinham, and  
11 therefore we could not agree that they would sign a release,  
12 and they knew that.

13          Q       Did you talk with Mr. Falkinham that night?

14          A       I did not.

15          Q       When you went to court on Monday, did you --  
16 Let me go back to Sunday night.

17                   On Sunday night, did you say at any time to  
18 Ms. Snyder-Falkinham, "I'm going into court Monday morning  
19 and we are going to dismiss your case with prejudice"?

20          A       No.

21          Q       When you were at the mediation conference,  
22 there was a writing, as I understand it, and the writing  
23 listed a number of elements in it, and one of them was that  
24 there would be a nonsuit of the individual partners of the

1 Gentry, Locke firm; correct?

2 A That's correct. That's my recollection.

3 Q Okay. And I don't know whether that's in  
4 evidence or not, I've lost track --

5 MR. MILLER: Exhibit A, Your Honor.

6

7 BY MR. HORWATT:

8 Q If I could, I don't want to put him at a  
9 disadvantage. I'd like to show you --

10 THE COURT: Go ahead and ask him the  
11 question. If he needs it, we'll find it.

12

13 BY MR. HORWATT:

14 Q Can you tell me whether or not the provisions  
15 related to the nonsuit of the individual partners with  
16 prejudice -- Let me restate that.

17 Can you tell me whether the agreement at the  
18 mediation conference contained express language stating that  
19 there would be a nonsuit with prejudice of the individual  
20 partners?

21 A I do not believe that the mediation session  
22 said that there would be a nonsuit with prejudice. It  
23 wouldn't be a nonsuit, it would be a dismissal. In fact,  
24 the reason that it was to be a nonsuit, and we specifically

1 made this a part, and she understood this, was that if we  
2 had to take a nonsuit of the entire case at some point in  
3 time, we wanted to have the ability to bring all of the  
4 partners back in.

5 Q So when you were talking about -- in the  
6 mediation conference, when you spoke of a nonsuit, you spoke  
7 of a nonsuit so that if things didn't work out and there  
8 wasn't a total settlement, you had protected your client's  
9 interest and it was then possible to bring those individual  
10 partners back into the case?

11 A No, sir.

12 Q Say it for me again, then. What --

13 A The reason that we agreed to a nonsuit  
14 without prejudice in the mediation session, as opposed to a  
15 dismissal with prejudice was because if sometime during the  
16 entire proceeding, the trial that was getting ready to start  
17 on January 31st, we felt like, as trial lawyers, and our  
18 client agreed, that we needed to take a nonsuit of the case,  
19 which we have the right to do in Virginia law, as you well  
20 know, then we would still be in a position to bring back all  
21 of the defendants.

22 Q Well, you were in a position to bring back  
23 all of the defendants, and I understand the tactical  
24 position, and you were trying to preserve an option for your

1 client that if during the trial you decided you had to take  
2 a nonsuit, that you could do it and bring it back; that's  
3 what you're saying?

4 A Yes.

5 Q Okay. Now, if you were going to be able to  
6 take a nonsuit and bring it back, then the nonsuit had to be  
7 without prejudice, didn't it?

8 A Well, nonsuits are usually without prejudice,  
9 yes.

10 Q Right, they are. They are. And indeed, in  
11 order to achieve the very tactical objective that you very  
12 competently were seeking to protect here, which was that you  
13 wanted the option of taking the nonsuit during the trial if  
14 you needed to do it, that to do it, that nonsuit had to be  
15 without prejudice?

16 A Correct.

17 Q You are in the same contingency agreement as  
18 Mr. Jenne; correct? The two of you have one agreement?

19 A Yes.

20 Q And that's a 40-percent agreement?

21 A Yes.

22 Q And you are aware, are you not, that in that  
23 engagement agreement, her consent is required to any  
24 settlement?

1           A           In both the agreements and in all of my  
2 contingency agreements, the client is required to provide  
3 their consent to any settlement. In both of them, if you  
4 will read them, they both say that.

5           Q           I won't go into it, because it's not  
6 necessary now, but I assure you --

7           THE COURT: Let's leave it.

8           THE WITNESS: The answer is yes, it does  
9 require consent.

10

11 BY MR. HORWATT:

12           Q           When you went before Judge Jennings on the  
13 31st, did you tell Judge Jennings that there had been a  
14 settlement?

15           A           I don't know whether I told Judge Jennings or  
16 Mr. Hodges told Judge Jennings or we told Judge Jennings  
17 that there had been a settlement. But in fact we,  
18 collectively, individually, advised the Court that the case  
19 had been settled.

20           Q           Did you tell the Court the terms of the  
21 settlement?

22           A           No. He didn't ask, and we wouldn't have  
23 provided it to him anyway. I've never had a judge ask about  
24 any kind of conditions or anything about a settlement,

1 unless you're involved with a minor or an incompetent.

2 MR. HORWATT: I need a copy of Exhibit 4,  
3 Your Honor.

4 MR. HODGES: I can give him mine, if it would  
5 speed it up.

6 THE COURT: No, it's here.  
7

8 BY MR. HORWATT:

9 Q Would you read these underlines, right here.

10 A All right.

11 Q Would you read that out loud.

12 A "Since Judge Jennings had traveled from  
13 Fairfax, it was necessary for an appearance to be made by  
14 counsel on January 31, 1994. Tom was chosen to appear  
15 before Judge Jennings since he is local counsel and was  
16 accompanied by Ron Hodges. Judge Jennings had the  
17 settlement explained to him and entered the Order of  
18 Dismissal with Prejudice. This Order was entered because of  
19 your agreement to the settlement."

20 Q So in this letter it states that you did  
21 explain the terms of the settlement.

22 A Did I write that letter?

23 Q I'm sorry. This is a letter that you wrote  
24 on February 1st. Why don't you take a look at it.

1           A        Okay. Mr. Jenne I think was the primary  
2 author on that, and I signed off on it.

3           Q        Okay.

4           A        I do not believe Judge Jennings was explained  
5 the details about the settlement.

6           Q        Notwithstanding what you have in this letter?

7           A        What does it mean? I don't know. What does  
8 it say, that the settlement was explained to Judge Jennings?

9           Q        "Judge Jennings had the settlement explained  
10 to him and entered the order of dismissal" --

11          A        We explained to him that the case was  
12 settled. My recollection is, and of course the Court has as  
13 good a recollection of it, I think that he asked or  
14 indicated something about the amount, and I believe both  
15 Mr. Hodges and I responded that it was a confidential  
16 matter, and that was the end of it.

17          Q        In your letter, you wrote, and I'm quoting,  
18 "After discussing the matter with Joe Anthony and you, we  
19 advised Mr. Miller that neither Mr. Anthony or anyone in  
20 your behalf would accept the transfer of this stock. We  
21 suggested that he could either transfer it to a charity,  
22 the Easter Bunny, or anyone else of his choice, but it would  
23 not be returned to you in any way. It was clear to  
24 Mr. Miller and Mr. Hodges that the settlement that we had



1 worked out with you was not to affect the December 1990  
2 transaction."

3 I believe you said you made it clear to  
4 Mr. Hodges and Mr. Jenne that nothing could be done that  
5 would affect the 1990 transaction?

6 A Mr. Hodges and Mr. Miller knew, as we had  
7 explained to them, that we did not intend to do anything  
8 that would upset the December 1990 transaction any more so  
9 than it probably was already upset, because she had received  
10 a letter from her CPA way back when we filed the suit that  
11 it could have been upset.

12 So insofar as doing anything to upset that --  
13 and the only thing that could be done to upset it, as I  
14 understood it, was something involving the transfer of the  
15 stock. And I made it very clear to them it didn't make any  
16 difference what they did with the stock, they could give it  
17 to the Easter Bunny, I could buy it and give it to the  
18 Easter Bunny, or whoever, but she wasn't receiving it and  
19 didn't intend to, and they understood that.

20 Q With respect to the \$25,000 note -- do I have  
21 that amount right?

22 A Yes.

23 Q -- did you go over what the tax consequences  
24 to the transaction might be if that note were returned paid

1 and satisfied?

2 A If I bought the note, I could mark it paid or  
3 anything else, and that's what I offered to do, buy the  
4 note, if she had any problem with that.

5 Q I understand that you offered to buy the  
6 note.

7 A Okay.

8 Q But what I'm asking you is whether this was  
9 reviewed with either Mr. Anthony or Mr. Crabbs in terms of  
10 what the tax consequences were from their perspective.

11 A Mr. Anthony and I have not discussed anything  
12 since Mr. Anthony blew up on me back in December.

13 Q So you really weren't in a position, were  
14 you, yourself, to know whether or not the transfer of that  
15 note would or would not affect the December 1990  
16 transaction; correct?

17 A I was dealing on January 30, 1994 with a  
18 legal malpractice case, not with the \$25,000 note.  
19 Therefore -- that transaction, as far as a legal malpractice  
20 case is concerned, is very, very minuscule, insofar as  
21 how -- I could not see, and no one has yet been able to  
22 explain to me, why I couldn't buy that note, and I think I  
23 could, and I still think I can, because if I buy it --

24 THE COURT: Let me interrupt you. Again, I

1 think we're getting far afield from what we're  
2 really concerned with here. I think his question is  
3 did you advise her as to the tax consequences of  
4 this \$25,000 note, regardless of what you did with  
5 it.

6 I understand you said you did not, you were  
7 not a tax expert; let's leave it at that.

8 THE WITNESS: I did not discuss it with  
9 Mr. Anthony or Mr. Crabbs.

10

11 BY MR. HORWATT:

12 Q Did you hear Ms. Snyder-Falkinham say  
13 anything before she left, to anyone that she telephoned,  
14 about "This case has been settled"?

15 A I heard Ms. Snyder-Falkinham call several  
16 people, and one person in particular, and I don't know -- I  
17 don't know who she called, okay, but I remember her saying,  
18 very pleasantly, "The case has been settled."

19 Q Okay.

20 A And it was.

21 Q I want to show you a document that is marked  
22 as Exhibit 6 and ask you to look at that document and tell  
23 me whether, based on your representation of  
24 Ms. Snyder-Falkinham, that was the entire agreement of

1 settlement.

2 A I have not read this document. After the  
3 Monday conversation, these documents have come in, and I've  
4 referred most of them to Mr. Jenne.

5 Q Okay.

6 THE COURT: Your question to him is are you  
7 familiar --

8 MR. HORWATT: Was it the entire agreement.

9 THE COURT: I guess he has said he really  
10 hasn't gone over it.

11 THE WITNESS: I'll go over it if you want me  
12 to.

13 THE COURT: I don't see any point in that. I  
14 don't think it's necessary.

15 THE WITNESS: I can tell you this --

16 THE COURT: No, no. Don't volunteer.

17 THE WITNESS: I'm sorry.

18 MR. HORWATT: I have no further questions,  
19 sir.

20 THE COURT: Any redirect?

21 MR. MILLER: No questions. May this witness  
22 be excused?

23 MR. HORWATT: Your Honor, I may have to  
24 recall him.

1 THE COURT: If you wouldn't mind waiting  
2 outside, and of course don't discuss your testimony.

3  
4 (The witness stepped down.)

5  
6 MR. MILLER: Sherry Arthur.

7  
8 SHERRY ARTHUR  
9 was called as a witness, and after having first been duly  
10 sworn to tell the truth, the whole truth and nothing but the  
11 truth, was examined and testified as follows:

12  
13 DIRECT EXAMINATION

14  
15 BY MR. MILLER:

16 Q Would you state your full name, please.

17 A Sherry Arthur.

18 Q Where do you live?

19 A Cleveland, Tennessee.

20 Q By whom are you employed?

21 A Roger Jenne, with Jenne, Scott & Bryant.

22 Q For how long a period of time have you been  
23 employed by Mr. Jenne?

24 A I've been employed -- it will be five years

1 in October.

2 Q And you're a paralegal?

3 A This is correct.

4 Q Did you do any work on the case that  
5 Mr. Jenne and Mr. Rasnic filed on behalf of Georgia Anne  
6 Snyder-Falkinham against Bruce Stockburger and Gentry,  
7 Locke, Rakes & Moore?

8 A Yes.

9 Q What sort of work did you do on that case?

10 THE COURT: I don't think you need to go  
11 through what exactly you did. You might ask her  
12 specific questions.

13

14 BY MR. MILLER:

15 Q Did you spend any time with Ms. Georgia Anne  
16 Snyder-Falkinham in working on the case?

17 A Yes, sir.

18 Q Did you spend some time with her in  
19 Blacksburg?

20 A Yes, sir.

21 Q How much time did you spend in Blacksburg  
22 with her?

23 A We spent a week in January and then part of  
24 another week again in January, and some time also in

1 Roanoke.

2 Q Did you feel like you got to know her?

3 A Yes.

4 Q Were you around in Roanoke on Sunday,  
5 January 30, 1994?

6 A Yes.

7 Q Were you around at a time when you were told  
8 that the case was settled?

9 A Yes, I was.

10 Q Who told you the case was settled?

11 A She did.

12 Q Ms. Snyder-Falkinham?

13 A Yes.

14 Q And where were you when she told you?

15 A We were in Mr. Rasnic's room.

16 Q Is that Room 109?

17 A 109.

18 Q And did Ms. Snyder-Falkinham make any phone  
19 calls from that room?

20 A Yes, she did.

21 Q Who did she call?

22 A She called some family members, I believe her  
23 sister; also Bobbie Carr. She called to let them know the  
24 case was settled.

1 Q Ms. Carr is her bookkeeper?

2 A That's correct.

3 Q Did you hear her use the word "settle"?

4 A Yes.

5 Q What was her mood after the case settled?

6 A She made the comment to me that she was glad  
7 to get back to her normal life. She seemed happy and  
8 relieved.

9 Q Was there any doubt in your mind that the  
10 case was settled?

11 A No, sir.

12 Q Was there any doubt in her mind the case was  
13 settled?

14 MR. HORWATT: I object to that, Your Honor.

15 THE COURT: Sustained.

16

17 BY MR. MILLER:

18 Q Did you make a phone call to  
19 Ms. Snyder-Falkinham on Monday morning?

20 A Yes, sir.

21 Q Approximately what time was this?

22 A Actually it was close to noon, I believe.  
23 Around lunchtime. I think Mr. Jenne made the initial call.

24 Q Did you talk with Ms. Snyder-Falkinham?



1 A Yes, I did.

2 Q What was the purpose of your phone call?

3 A I called to have her get on her way to  
4 Roanoke. I asked her to bring her husband, and they needed  
5 to come and look over the papers.

6 Q And sign them?

7 A And sign them.

8 Q What did she say?

9 A She made the comment to me that she was still  
10 thinking about it, and she wanted us to Fax the release to  
11 her, and that was when -- I repeated what she said, and  
12 Mr. Jenne took the phone.

13 Q Was that a change from the night before?

14 A Yes.

15 Q A big change?

16 A A big change.

17 MR. MILLER: Thank you, ma'am, very much.

18 MR. HODGES: No questions, Your Honor.

19 MR. MILLER: Mr. Horwatt may have some.

20

21 CROSS EXAMINATION

22

23 BY MR. HORWATT:

24 Q I take it that you have been working on this

1 case for a pretty long time yourself?

2 A Yes.

3 Q How long?

4 A Mr. Jenne has been working on this case for  
5 like two and a half years.

6 Q And if this case settled, and as it settled  
7 that night, you were going to get some special compensation,  
8 were you not?

9 A I wasn't going to get any special  
10 compensation any more than I do on any other case that we  
11 handle, settled or tried or any other way.

12 Q But if there's a recovery you get some  
13 special compensation?

14 A If there's a recovery or not a recovery, the  
15 conditions I was working, and being away from home,  
16 Mr. Jenne --

17 Q Didn't you tell Ms. Snyder-Falkinham that you  
18 were going to get a cruise if this case settled?

19 A A cruise? I don't recall saying that, no,  
20 sir.

21 Q You don't recall saying that?

22 A No, sir, I don't.

23 Q What compensation were you going to get?

24 A Mr. Jenne, if -- and this is the same -- This

1 is just a thing with our office. If a case is tried, if  
2 it's settled, it doesn't matter; if we spend a lot of time  
3 working on something, you know, there's --

4 He usually gives us some sort of a bonus,  
5 and -- it's not based on settlement, it's based on the time  
6 involved. It's based on our special work on it, based on  
7 being away from home.

8 Q Let me ask you this. Was there any  
9 discussion that you had with Mr. Jenne about what the amount  
10 of the settlement would be in this case? The bonus; I'm  
11 sorry.

12 A The amount of the bonus, no. I mean, I don't  
13 recall discussing the amount of a bonus.

14 Q You don't recall discussing it?

15 A No, I don't recall discussing the amount of a  
16 bonus.

17 MR. HORWATT: All right. I have no further  
18 questions.

19 MR. MILLER: May this witness be excused?

20 THE COURT: All right. You can step down.

21

22 (The witness stepped down.)

23

24 MR. HODGES: Pam Robbins.

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24

PAM ROBBINS

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

DIRECT EXAMINATION

BY MR. MILLER:

Q Ms. Robbins, you've got to speak up so all of us can hear you. Can you do that?

A Yes.

Q Would you state your full name, please.

A Pamela Robbins.

Q Where do you work?

A I work for Tom Rasnic.

Q Where do you live?

A I live in Jonesville, Virginia.

Q How long have you worked for Mr. Rasnic?

A Eleven years.

Q In what capacity have you worked for him?

A I handle the litigation cases that come through the office.

Q In what capacity?

1           A       As a paralegal.

2           Q       How long have you done this?

3           A       About the last six years.

4           Q       Did you work on the case that Mr. Rasnic and  
5 Mr. Jenne filed against Bruce Stockburger and Gentry, Locke,  
6 Rakes & Moore on behalf of Georgia Anne Snyder-Falkinham?

7           A       Yes, sir.

8           Q       Did you spend some time with  
9 Ms. Snyder-Falkinham in Blacksburg?

10          A       Yes, sir.

11          Q       And you came to Roanoke?

12          A       Yes, sir.

13          Q       And you were here the weekend before trial?

14          A       Yes, sir.

15          Q       Do you remember being here on Sunday night?

16          A       Yes, sir.

17          Q       January 30th, the night of the Superbowl?

18          A       Yes, sir.

19          Q       Anything happen that night?

20               THE COURT: Well, you might ask her  
21 specifically.

22

23 BY MR. MILLER:

24          Q       Did the case settle that night?

1           A       Yes, sir.

2           Q       Who told you the case was settled?

3           A       Ms. Snyder-Falkinham.

4           Q       And what did she say about the case being  
5 settled?

6           A       She said to settle the case.

7           Q       Was she happy that the case was settled?

8           A       Yes.

9           Q       Did you get pizza and everything?

10          A       We had pizza, yes.

11          Q       Did she buy the pizza?

12          A       Yes, sir.

13          Q       Did she call any of her relatives?

14          A       She made some phone calls.

15          Q       Did you hear her talking to people?

16          A       I heard her talk to someone, but it was not a  
17 relative.

18          Q       Did she make any comments to the people she  
19 called about whether or not the case was settled?

20          A       Yes, sir.

21          Q       What did she say?

22          A       Well, the one particular conversation that  
23 stands out to me because I heard the name was to Bobbie.

24               MR. HORWATT: To who?

1 THE WITNESS: Bobbie.

2

3 BY MR. MILLER:

4 Q Bobbie Carr?

5 A I assume Bobbie Carr. Bobbie.

6 Q What do you remember about the conversation  
7 with Bobbie?

8 A Do you want me to tell?

9 Q Yes.

10 A She was over like on the phone, I was  
11 standing at the end of the table, and she called and she  
12 said, "Bobbie, I want to let you know, we don't have court  
13 tomorrow, the case has settled." And I was standing very  
14 close to her.

15 Q Did she make more calls than to Bobbie?

16 A I don't know. I know she made that one,  
17 because I heard that particular conversation. I know she  
18 made other calls, but as far as me saying she made a call to  
19 this person or that person, I cannot. But I do know she  
20 called Bobbie, and that is what she said.

21 Q Did you and Sherry call the witnesses off?

22 A The only witness I called was Mr. Mehler.

23 Q Did you tell him the case was settled?

24 A Yes, I did.

1 Q Did you call him from the Marriott?

2 A I called him from Mr. Jenne's room.

3 Q Where was Ms. Snyder-Falkinham making her  
4 calls?

5 A She was down in Tom's room.

6 Q 109, Room 109?

7 A Yes, 109.

8 Q Your husband was in town that night, wasn't  
9 he, in Roanoke?

10 A Yes, sir.

11 Q When did you and your husband go back to  
12 Jonesville?

13 A We left on Monday morning.

14 Q So at the time you left on Monday -- did you  
15 leave early Monday morning?

16 A 10:00 o'clock.

17 Q You ate breakfast?

18 A Yes, we ate breakfast and then left.

19 Q Did you talk with Ms. Snyder-Falkinham on the  
20 morning of the 31st?

21 A No, sir, not on Monday morning.

22 Q Have you talked with her since then?

23 A No, sir.

24 MR. MILLER: Thank you. That's all I have.



1           Mr. Horwatt may have some questions.

2

3

CROSS EXAMINATION

4

5       BY MR. HORWATT:

6           Q       I understand you all had pizza?

7           A       Yes, sir.

8           Q       You had pizza for dinner, didn't you?

9           A       They brought it for the Superbowl. We had --  
10 we were all sitting around in the room, and it was like, it  
11 was past suppertime; we were like, "What are we going to do  
12 for supper?" We called Domino's, because they deliver.

13          Q       About what time was that?

14          A       I could not tell you the time. I just know  
15 it was later, because it was to the point it was like, Whew,  
16 we're getting hungry.

17          Q       Were you on any kind of bonus or compensation  
18 arrangement if this case were to settle, or there was a  
19 recovery?

20          A       The way it's handled in our office, I am not  
21 promised any particular thing. I get compensated for my  
22 hours away from my family. When I'm out of town and have to  
23 put in extra hours at work, I am compensated for that time.

24          Q       Is that compensation purely on an hourly

1 basis, or is it some kind of bonus?

2 A It's just how Mr. Rasnic decides to do it.

3 Q Did he talk about any kind of figure in this  
4 case?

5 A No, not really.

6 Q Well, when you say "not really," did he  
7 mention a figure even in jest?

8 A No.

9 Q Never mentioned --

10 A Well, it was at certain times they would joke  
11 and say something like, "This will be a five-dollar bonus  
12 for you," in a joke.

13 Q Did you ever hear a figure of \$10,000?

14 A Not from him; from me. You have to  
15 understand that after I've been there for eleven years, I've  
16 been like, "This is worth \$10,000 to me." Whether  
17 Mr. Rasnic agrees with me or not --

18 Q As good as you are, you probably deserve it.

19 A I don't know about that.

20 MR. HORWATT: Thank you.

21 MR. MILLER: May this witness be excused?

22 THE COURT: You're free to go or you can stay  
23 in the courtroom.

24

1 (The witness stepped down.)

2

3 MR. MILLER: Ronnie Robbins.

4

5 RONNIE L. ROBBINS

6 was called as a witness, and after having first been duly  
7 sworn to tell the truth, the whole truth and nothing but the  
8 truth, was examined and testified as follows:

9

10 DIRECT EXAMINATION

11

12 BY MR. MILLER:

13 Q Would you state your full name, please.

14 A Ronnie Lynn Robbins.

15 Q Where do you live, Mr. Robbins?

16 A Jonesville, Virginia.

17 Q What is your occupation?

18 A Schoolteacher.

19 Q What grade do you teach in school?

20 A Fifth grade.

21 Q How long have you been a fifth-grade  
22 schoolteacher?

23 A I've been a schoolteacher for 20 years; been  
24 a fifth-grade schoolteacher for five.

1           Q       I believe you have your own little ones to  
2 teach, too, don't you?

3           A       Yes, sir.

4           Q       Were you here in Roanoke during the weekend  
5 of January 30th, Superbowl night?

6           A       Yes, sir.

7           Q       In fact, you and your children were up here  
8 the whole weekend, were you not?

9           A       Yes, sir.

10          Q       Did you spend some time that weekend with  
11 Ms. Snyder-Falkinham, the plaintiff in this case?

12          A       A short time, yes.

13          Q       Did you spend some time with her on Sunday  
14 night?

15          A       Yes.

16          Q       Did you hear her make any comments on Sunday  
17 night about whether or not the case had settled?

18          A       She said to me -- we were in the room alone.  
19 She said, "You know, Ronnie," she said, "the legal system  
20 really sucks." She said, "Those people knew the case was  
21 going to settle three or four months ago, and they are  
22 dragging it out as long as they can because they are on a  
23 ticker."

24                   What that meant --

1           Q       Who was she talking about? Was she talking  
2 about me?

3           A       I assume she was talking about the opposing  
4 counsel, which was --

5           Q       Me and Mr. Hodges?

6           A       Yes, sir.

7           Q       Did you hear her say the case was settled?

8           A       Not specifically, but -- the case was never  
9 mentioned to me, in talking back and forth or anything.

10          Q       But she said they knew the case would settle  
11 three months ago?

12          A       Yes, she did say that.

13          Q       You went back home on Monday morning, didn't  
14 you?

15          A       Yes.

16                   MR. MILLER: Thank you.

17                   MR. HODGES: No questions.

18                   MR. HORWATT: No question.

19                   THE COURT: You're free to go or you can stay  
20 in the courtroom.

21                   MR. MILLER: Ronnie, you and Pam and Sherry  
22 can all stay in the courtroom if you'd like to.

23                   Nanette Pointin.

24

1                                   NANETTE POINTIN

2       was called as a witness, and after having first been duly  
3       sworn to tell the truth, the whole truth and nothing but the  
4       truth, was examined and testified as follows:

5  
6                                   DIRECT EXAMINATION

7  
8       BY MR. MILLER:

9               Q       Would you state your full name, please.

10              A       Nanette Pointin.

11              Q       By whom are you employed?

12              A       The Virginia Insurance Reciprocal.

13              Q       Does the Virginia Insurance Reciprocal  
14       provide any professional liability insurance to the law firm  
15       of Gentry, Locke, Rakes & Moore?

16                               MR. HORWATT: I can't hear a thing.

17                               THE COURT: The attorney sitting on your  
18       right has to hear you too, so if you could keep your  
19       voice up, or look at me where he could hear you,  
20       too.

21                               THE WITNESS: Yes, it does.

22  
23       BY MR. MILLER:

24              Q       And it insured them in a case brought by

1 Georgia Anne Snyder-Falkinham?

2 A Correct.

3 Q Were you at the mediation on January 25,  
4 1994?

5 A Yes, I was.

6 Q And were you at the mediation when the  
7 agreement was made by the Reciprocal to withdraw the  
8 reservation of rights?

9 A Yes.

10 Q Is this the letter withdrawing the  
11 reservation of rights?

12 A Yes.

13 Q And that was sent to the insured?

14 A Yes, it was.

15 Q On what date?

16 A January 28, 1994.

17 Q And signed by?

18 A Anne Sinnenberg.

19 Q The lady sitting here on the right?

20 A Director of the Lawyers Professional  
21 Liability Department.

22 MR. HORWATT: Would you mind if I saw that  
23 document, Counsel.

24 MR. MILLER: Be happy to show it to you. The

1 reason you didn't see it earlier was it went to the  
2 insured and not the claimant.

3 THE COURT: Do you have other questions?

4 MR. MILLER: I have.

5

6 BY MR. MILLER:

7 Q Did the Reciprocal comply with all agreements  
8 it made in the mediation session on January 25, 1994?

9 A Yes, we did.

10 Q And it issued its draft in settlement of the  
11 case on January 31, 1994?

12 A Yes.

13 Q And forwarded it to me?

14 A Right.

15 MR. MILLER: That's all I have. Mr. Horwatt  
16 may have a couple questions.

17 THE COURT: Do you have any questions,  
18 Mr. Horwatt?

19 MR. HORWATT: If I could, Your Honor, this is  
20 the first I have seen this. I'd like a minute to  
21 look at it. It's a letter of January 25th.

22 THE COURT: I'm not sure that really has much  
23 to do with the case.

24 MR. MILLER: We brought it in because they



1 brought up the issue of whether or not the  
2 Reciprocal had withdrawn the reservation of rights.

3 MR. HORWATT: Thank you.

4 I don't have any questions of this witness.

5 MR. MILLER: May this witness be excused?

6 THE COURT: You're free to go if you like, or  
7 stay in the courtroom.

8 MR. MILLER: Steve Agee.

9 THE COURT: Would you mind stepping out and  
10 asking Mr. Agee to come in, please.

11 MR. MILLER: He's in the treasurer's office,  
12 I think, doing some work.

13 THE COURT: You mean he's the Wythe County  
14 treasurer?

15 MR. MILLER: No, he's just doing some law  
16 work downstairs.

17 THE COURT: Is this your last witness?

18 MR. MILLER: Yes, sir.

19 MR. HORWATT: May we approach the bench for  
20 just one minute.

21 THE COURT: Yes.

22 MR. HORWATT: I didn't want to embarrass my  
23 client, but she just asked if she could have a short  
24 break.

1 THE COURT: She's free to go.

2 MR. HORWATT: We're going to keep going?

3 THE COURT: Yes.

4 If you would have a seat there, please. Have  
5 a seat, and raise your right hand.

6

7 STEVE AGEE

8 was called as a witness, and after having first been duly  
9 sworn to tell the truth, the whole truth and nothing but the  
10 truth, was examined and testified as follows:

11

12 DIRECT EXAMINATION

13

14 BY MR. HODGES:

15 Q Please state your name for the record.

16 A My name is Steve Agee.

17 Q Your occupation?

18 A I'm an attorney.

19 Q Professional address?

20 A 1919 Electric Road, Roanoke, Virginia.

21 Q Your law firm?

22 A Osterhoudt, Ferguson, Natt, Ahern & Agee.

23 Q When did you graduate from law school?

24 A 1977.

1           Q       What law school, and what further legal  
2 education did you have after that?

3           A       My law degree is from the University of  
4 Virginia. I also have a Master's in Taxation degree from  
5 the law school of New York University.

6           Q       How long have you practiced law, Mr. Agee?

7           A       Almost 17 years.

8           Q       What has been essentially your basic areas of  
9 specialization, if you have any?

10          A       Essentially a business and corporate practice  
11 that encompasses a fair amount of tax-related issues; tax  
12 planning, estate planning, tax litigation.

13          Q       Have you had occasion to perform tax research  
14 as well as advise clients with respect to federal tax  
15 issues?

16          A       Yes, sir, I have.

17          Q       Have you had occasion to litigate cases  
18 involving tax issues?

19          A       Yes, sir, I have.

20                 MR. HODGES: At this time I offer Mr. Agee as  
21 an expert in the field of federal taxation as a  
22 practicing tax lawyer.

23                 THE COURT: Is this for the purpose of  
24 showing the tax liability under certain

1 conditions --

2 MR. HODGES: I only have two opinion  
3 questions to ask him. I expect it will be very  
4 brief, but the response is yes, sir.

5 Do you have any problem with his  
6 qualifications?

7 MR. HORWATT: I don't have a problem about  
8 his expertise.

9 THE COURT: Go ahead.

10

11 BY MR. HODGES:

12 Q First question in response, then, Mr. Agee,  
13 is at the request of defense counsel in this case, have you  
14 had an opportunity to review the, quote, "settlement  
15 documents" concerning the underlying litigation of this  
16 case; that is, Ms. Snyder-Falkinham's litigation against  
17 Gentry, Locke, Rakes & Moore, Bruce Stockburger, et al.?

18 A Yes, sir, I have.

19 Q Has that review included the release  
20 agreement as well as the underlying December 1990  
21 transaction between Ms. Snyder-Falkinham and  
22 Mr. Stockburger?

23 A Yes, sir, that's correct.

24 Q On the basis of the review of those

1 materials, are you prepared today to render an opinion with  
2 regard to potential tax consequences, if any, facing  
3 Ms. Snyder-Falkinham as a result of the release agreement  
4 tendered to Ms. Snyder-Falkinham in this case?

5 MR. HORWATT: Objection. I object on the  
6 grounds of relevancy and materiality. The question  
7 in this case is not whether the defendants or  
8 anybody else thinks that the tax consequence is  
9 going to be good or bad. The question is whether or  
10 not the plaintiff viewed the tax question as a  
11 serious material issue and manifested that and  
12 refused to accept the condition.

13 Whether or not Mr. Anthony and this tax  
14 expert disagree is immaterial under the law in  
15 Virginia, especially as it relates to contracts  
16 involving settlements.

17 THE COURT: Your position?

18 MR. HODGES: Your Honor, this evidence is  
19 being offered in response to the evidence tendered  
20 by the plaintiffs earlier today, from Mr. Anthony  
21 and Mr. Crabbs, but primarily Mr. Anthony.

22 As I recall the evidence, and obviously I'm  
23 subject to being corrected, as I recall the  
24 evidence, Mr. Anthony testified specifically with

1           regard to his opinion and the high likelihood of  
2           risk of IRS upset or audit.

3           Given the fact that this evidence is in the  
4           record, I believe we are entitled to place a  
5           response and a rebuttal to that evidence. We would  
6           stipulate Mr. Agee has to my knowledge never spoken  
7           to Ms. Snyder-Falkinham with regard to the merits or  
8           the -- or his opinion as a tax lawyer, but we're in  
9           a state now in which there's evidence now on this  
10          record that we believe we're entitled to respond to,  
11          and that's why we tender it or proffer it at this  
12          moment.

13          THE COURT: I think Mr. Horwatt is right. I  
14          don't think that's the issue we're concerned with  
15          today. I think the issue is whether or not there  
16          was a meeting of the minds, whether or not there was  
17          an agreement as to settlement, regardless of the tax  
18          consequences.

19          I think Mr. Horwatt is right. I think he  
20          would probably want the benefit of the free taxation  
21          advice, but since he doesn't want it, I sustain his  
22          objection.

23          MR. HODGES: May I be heard on one further  
24          point? And this may not persuade the Court

1 otherwise at all; I merely offer it for the Court's  
2 consideration.

3 There has been what I perceive to be an  
4 attack by the plaintiffs on the credibility of some  
5 of the actions that were taken during the course of  
6 the events; specifically I'm referring to it sounds  
7 like there's a credibility attack on the defense  
8 attorneys, being quoted as saying we have a defense  
9 expert CPA who has tendered an opinion that there is  
10 no impact or adverse impact.

11 Would that be sufficient foundation for the  
12 Court to consider this evidence to be offered at  
13 this time, because if the Court were taking into  
14 account an attack on credibility, then I would  
15 respectfully suggest once more we are in a posture  
16 that we are prepared to offer through Mr. Agee  
17 opinion testimony that's supportive of that  
18 underlying opinion.

19 THE COURT: I think obviously there is a  
20 credibility problem, but I don't think this is going  
21 to help it. I would sustain his objection.

22 MR. HORWATT: Thank you.

23 MR. HODGES: May I have a moment, Your Honor.  
24 My cocounsel may have a better foundation than I

1 do.

2 With the Court's ruling, I have no further  
3 questions with regard to this witness, except I  
4 might ask, if it's convenient to the Court, we would  
5 like an opportunity to proffer some of that for the  
6 record, but we don't want to take up the Court's  
7 time.

8 THE COURT: Sure. You can put that in the  
9 record later.

10 I guess you can stay in the courtroom.

11 MR. HORWATT: If he's going to proffer into  
12 the record, I really would rather he not --

13 THE COURT: I think it's a proffer. I don't  
14 know that you could object to that.

15 MR. HORWATT: I withdraw the objection.

16 MR. HODGES: I have no further witnesses.

17 THE COURT: You can have a seat in the  
18 courtroom, or wherever you'd like. But keep  
19 yourself readily available.

20

21 (The witness stepped down.)

22

23 THE COURT: Anything further?

24 MR. HODGES: Your Honor, on behalf of my



1 client, Gentry, Locke, Rakes & Moore, and if I have  
2 the other clients in the case, on behalf of all my  
3 individual clients, I would rest at this point, Your  
4 Honor.

5 THE COURT: Mr. Miller?

6 MR. MILLER: We rest on behalf of  
7 Stockburger.

8 THE COURT: Anything further?

9 MR. HORWATT: Yes, Your Honor.

10 Mr. Hunt.

11 THE COURT: How many witnesses are you going  
12 to call, Mr. Horwatt?

13 MR. HORWATT: Pardon?

14 THE COURT: How many other witnesses are you  
15 going to call?

16 MR. HORWATT: Five.

17 THE COURT: When the sheriff comes back, you  
18 might give him their names so he can be sure they're  
19 here.

20 I understand Mr. Horwatt is going to call  
21 five more witnesses. He'll give you their names so  
22 we don't have to wait on them.

1 CHARLES S. HUNT

2 was called as a witness, and after having first been duly  
3 sworn to tell the truth, the whole truth and nothing but the  
4 truth, was examined and testified as follows:

5  
6 DIRECT EXAMINATION

7  
8 BY MR. HORWATT:

9 Q Would you state your name for the record.

10 A Charles S. Hunt.

11 Q What is your relationship to Georgia Anne  
12 Snyder-Falkinham?

13 A Brother.

14 Q And you testified and you were sworn in  
15 earlier; correct?

16 A Yes.

17 Q Would you tell the Court whether on the night  
18 of January 30th, 1994, you got a call from your sister.

19 A Yes, sir, I did.

20 Q About what time?

21 A Somewhere between 8:00 and 8:30, I would  
22 guess.

23 Q Would you tell the Court the substance of  
24 your conversation.

1           A           Well, we had -- I had just come on up to my  
2 house from the old home place where we had had a family  
3 get-together. Several people had come in to attend the  
4 trial that was going to start on Monday.

5                       So when I came up, the phone was ringing, and  
6 I answered it, and my sister said, "You can tell Al and them  
7 they will not have to come to court Monday." And I said,  
8 "How come," and she said, "We're working on settlement."  
9 She said, "Nothing has been signed yet, but court has been  
10 canceled for Monday."

11                      MR. HORWATT: Your witness.

12                      MR. HODGES: No questions, Your Honor.

13                      THE COURT: You can step down. You may stay  
14 in the courtroom, if you'd like.

15

16                      (The witness stepped down.)

17

18                      MR. HORWATT: Michael Snyder.

19

20                      MICHAEL SNYDER

21 was called as a witness, and after having first been duly  
22 sworn to tell the truth, the whole truth and nothing but the  
23 truth, was examined and testified as follows:

24

## 1 DIRECT EXAMINATION

2  
3 BY MR. HORWATT:

4 Q You are Michael Snyder?

5 A Yes, sir.

6 Q You are the son of Georgia Anne  
7 Snyder-Falkinham?

8 A Yes, sir.

9 Q On January 30th, 1994, did you have  
10 discussions with your mother?

11 A Yes, sir, I did.

12 Q Will you tell the Court whether you got a  
13 call with your mother and Mr. Jenne.

14 A Yes, I did.

15 Q Would you tell the Court the substance of  
16 that conversation.17 MR. MILLER: If Your Honor please, I would  
18 suggest to the Court that this is hearsay and not  
19 relevant or material to the issues. Anything that  
20 his mother told him would be obviously hearsay, as  
21 well as anything Mr. Jenne had said, unless it's  
22 offered for the purposes of impeachment, and I don't  
23 know that that's true.

24 THE COURT: I think it does relate to that,

1 but I think you opened the door to it.

2 You can go ahead.

3 MR. HORWATT: Thank you.

4 MR. MILLER: You will note the exception?

5 THE COURT: Right.

6

7 BY MR. HORWATT:

8 Q You did have a conversation?

9 A Yes, I did.

10 Q And would you tell the Court the substance of  
11 your discussion.

12 A She called me around 2:00 o'clock that  
13 afternoon, along with Mr. Jenne and Mr. Rasnic. She called  
14 to inform me that now my sister and I were required to sign  
15 a release --

16 THE COURT: I'm sorry. I thought his  
17 testimony was going to be something else. I'm going  
18 to sustain the objection to this.

19

20 BY MR. HORWATT:

21 Q On the evening of January 30th, did you talk  
22 with your mother?

23 A Yes, I did.

24 Q What time?

1           A       It was about 9:30.

2           Q       Would you tell the Court the substance of the  
3 conversation.

4           A       My mother called me from her car phone on the  
5 way home from Roanoke. I asked her how things went and if  
6 she was feeling okay.

7                   MR. MILLER: If Your Honor please --

8                   THE COURT: I would agree with you.

9                   Call his attention to the specific thing that  
10 we're concerned with, Mr. Horwatt.

11                  MR. MILLER: Your Honor, if this witness is  
12 offered to contradict what Ms. Arthur or Ms. Robbins  
13 have had to say, it would not be proper, because his  
14 mother called him from the car phone and not from  
15 the hotel in Roanoke.

16                  THE COURT: I think you opened the door to  
17 this line of testimony.

18

19 BY MR. HORWATT:

20           Q       Tell the Court what your mother said to you.

21           A       She said she was not happy.

22                   THE COURT: As it relates to the case.

23                   THE WITNESS: She said she was not happy with  
24 what had happened that day, and I asked her why; she

1           said it had to do with a certain tax situation  
2           dealing with some stock that Mr. Stockburger would  
3           be somehow giving back to her, and that it may hurt  
4           her financially, tax-wise. And that was it.

5

6       BY MR. HORWATT:

7           Q       Did she say anything about court or about a  
8       settlement?

9           A       I asked her if court was still on. She said  
10       it was canceled for tomorrow, and I said, "So that means I  
11       don't have to pick you up in the morning," and she said,  
12       "Right."

13          Q       Anything else?

14          A       She just -- no.

15               MR. HORWATT: That's fine. Thank you.

16               MR. MILLER: No questions.

17               MR. HODGES: No questions, Your Honor.

18               THE COURT: You can step down, and you can  
19       stay in the courtroom. Thank you.

20

21                       (The witness stepped down.)

22

23               THE COURT: Who's next?

24               MR. HORWATT: I need my list back.

1 I would like Larry Sheffler.

2

3 LARRY SHEFFLER

4 was called as a witness, and after having first been duly  
5 sworn to tell the truth, the whole truth and nothing but the  
6 truth, was examined and testified as follows:

7

8 DIRECT EXAMINATION

9

10 BY MR. HORWATT:

11 Q You are Larry Sheffler?

12 A That's correct.

13 Q And you are an asset manager?

14 A That's correct.

15 Q And you are an asset manager for the Peter C.  
16 Snyder marital and residual trust?

17 A That's correct.

18 Q And were you scheduled to come to court on  
19 the 31st of January, 1994?

20 A Yes, I was.

21 Q And on January 30th, 1994, did you receive a  
22 call from Mrs. Snyder-Falkinham?

23 A Yes, I did.

24 Q At what time?



1           A           Approximately 10:00 o'clock Sunday night.

2           Q           What did she say to you?

3           A           She said that I would not have to be in court  
4 on Monday. I asked her if the case was settled; she said,  
5 "We're still working on some things, but you won't have to  
6 be in court on Monday."

7                       MR. HORWATT: Thank you. No further  
8 questions.

9                       MR. HODGES: No questions, Your Honor.

10                      THE COURT: You're free to go, or you can  
11 have a seat in the courtroom. Thank you.

12  
13                               (The witness stepped down.)

14  
15                               JOYCE HUNT HEATH  
16 was called as a witness, and after having first been duly  
17 sworn to tell the truth, the whole truth and nothing but the  
18 truth, was examined and testified as follows:

19  
20                               DIRECT EXAMINATION

21  
22 BY MR. HORWATT:

23           Q           Would you state your name for the record,  
24 please.

1           A       Joyce Hunt Heath.

2           Q       Ms. Heath, what relationship do you have to  
3 Ms. Snyder-Falkinham?

4           A       I'm her sister.

5           Q       On the evening of January 31st, 1994, did you  
6 get a call from your sister?

7           A       Yes, sir.

8           Q       What time did you receive this call?

9           A       It was between 9:00 and 10:00 o'clock at  
10 night.

11          Q       How did your sister sound to you when she  
12 spoke with you?

13          A       Well, I was kind of surprised to hear from  
14 her, and to me she sounded very tired and rather agitated.

15          Q       What did she tell you?

16          A       She said I didn't have to come to court  
17 tomorrow, that it had been canceled, and she said that they  
18 were working on a settlement and she would call me the next  
19 morning.

20          Q       Okay. Now, can you tell the Court whether or  
21 not you happened to take notes of that conversation?

22          A       Yes, I did.

23          Q       Can you tell the Court why it was that you  
24 happened to take notes of the conversation that evening?

1           A           Well, I'm a meticulous note-taker. We get a  
2 lot of telephone calls at our house, and I always pick up  
3 the phone with one hand and a pen with one hand, or a  
4 pencil, and I have a note pad there and I write down notes  
5 for my information, so I won't get anything mixed up.

6                   MR. HORWATT: I have an exhibit marked but I  
7 regret I don't have a copy, so I'm going to show it  
8 to you before I move for its admission.

9                   MR. MILLER: I would have to object to this.  
10 This is nothing more than bootstrapping by this  
11 witness to try to improve the credibility of her own  
12 testimony, and I would suggest -- it's not a  
13 business record, nor do I know of any other  
14 exception to the hearsay rule under which it would  
15 come in.

16                   MR. HORWATT: Your Honor, this is not offered  
17 for the truth of the facts, it's offered for the  
18 res gestae; for the truth of what the state of mind  
19 was for the witness. And just as her testimony  
20 could come in on that theory, the same reason that  
21 the writing should be able to come in.

22                   And she, by the way, happens to have the  
23 original writing with her. There's no question to  
24 its authenticity.

1 THE COURT: I would sustain the objection.  
2 She's already testified she did make notes. She can  
3 testify to as what the conversation was, but I would  
4 sustain the objection as to the written memorandum.

5 MR. HORWATT: Your witness.

6 MR. HODGES: No questions.

7 MR. MILLER: No questions.

8 THE COURT: You can step down. You may stay  
9 in the courtroom if you like, and thank you for  
10 coming.

11 You have one more witness, Mr. Horwatt?

12 MR. HORWATT: Yes.

13

14 BOBBIE CARR

15 was called as a witness, and after having first been duly  
16 sworn to tell the truth, the whole truth and nothing but the  
17 truth, was examined and testified as follows:

18

19 DIRECT EXAMINATION

20

21 BY MR. HORWATT:

22 Q Would you state your name, please.

23 A Bobbie Carr.

24 Q And you are the bookkeeper for

1 Ms. Snyder-Falkinham?

2 A Yes, I am.

3 Q Did you receive a call from her on the 30th  
4 of January, 1994?

5 A Yes, I did.

6 Q About what time?

7 A About 9:00 o'clock.

8 Q What did she say?

9 A She said, "There will be no court tomorrow."

10 Q How did she sound?

11 A A little tired, I think.

12 Q What else if anything did she say to you?

13 A I said, "Are you happy?" And she said no.  
14 She said, "There are some things that have to be worked out,  
15 and we will talk tomorrow."

16 MR. HORWATT: Thank you. Your witness.

17 MR. HODGES: No questions.

18 MR. MILLER: No questions, Your Honor.

19 THE COURT: Thank you for coming. You're  
20 free to go, or you may stay in the courtroom.

21 MR. HORWATT: I'd like to recall Mr. Rasnic.

22 THE COURT: Mr. Horwatt is calling you back  
23 as rebuttal witness, and your oath is still in force  
24 and effect.

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THOMAS L. RASNIC

was recalled as a witness and testified further on his oath  
as follows:

DIRECT EXAMINATION

BY MR. HORWATT:

Q I wanted to ask you whether you had a  
discussion with a bailiff on Monday morning regarding the  
reason why the jury had not been called off prior to Monday.

MR. MILLER: Judge, I'm going to have to  
object. This would not be rebuttal testimony.

THE COURT: I'm not sure it is either. What  
is this rebutting?

MR. HORWATT: It's rebutting the fact that  
there was a claim that there was a settlement before  
Ms. Falkinham left, Ms. Snyder-Falkinham left, and  
there was a representation to a bailiff that the  
case didn't settle until 11:30 that night.

THE COURT: All right. Go ahead.

MR. MILLER: I would note the exception.

THE WITNESS: Did I make the representation  
to a bailiff --

1 BY MR. HORWATT:

2 Q That's not my question. My question is did  
3 you confer with a bailiff and answer the bailiff's question  
4 as to why the jury hadn't been called off for Monday.

5 A I don't recall discussing anything with a  
6 bailiff as to why the jury hadn't been called off.

7 Q Did you talk to a Renee Wright, a bailiff?

8 A Renee Wright?

9 MR. MILLER: I'm going to object to this  
10 unless Mr. Horwatt is prepared to bring Renee Wright  
11 to the courtroom today to --

12 THE COURT: I think he can ask the question.

13 THE WITNESS: I don't know. I don't know  
14 Renee Wright.

15

16 BY MR. HORWATT:

17 Q You don't recall saying that "We settled at  
18 11:00 o'clock"?

19 A I don't recall telling a Renee Wright,  
20 because first of all, I don't know who Renee Wright is, that  
21 we settled at 11:00 o'clock. You have to understand --

22 THE COURT: I'm not sure what question you're  
23 answering now. What is your question, Mr. Horwatt?

24

1 BY MR. HORWATT:

2 Q I'm just asking him -- I asked him my  
3 question, and he answered that he didn't know, and the only  
4 other question I have is did you talk to anyone at the court  
5 and explain why the jury had not been called off for Monday?

6 A I talked to the clerk of the court. I didn't  
7 go into why the jury hadn't been called off. And if the  
8 question is if Renee Wright says that I told her the case  
9 was settled --

10 THE COURT: No, no, no.

11 THE WITNESS: I'm sorry.

12 MR. HORWATT: I have no further questions.

13 THE WITNESS: I don't know if I talked to  
14 Renee Wright or not.

15 MR. HODGES: No questions, Your Honor.

16 MR. MILLER: No questions.

17 THE COURT: You can stay in the courtroom.

18 MR. HORWATT: May I have the Court's  
19 indulgence one moment? I may have one more witness,  
20 and that's it.

21

22 GEORGIA ANNE SNYDER-FALKINHAM

23 was recalled as a witness and testified further on her oath  
24 as follows:



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DIRECT EXAMINATION

BY MR. HORWATT:

Q Ms. Snyder-Falkinham, you have heard your attorneys say that during the first meeting they came in and they gave you all of the conditions that Mr. Jenne recited, and that you had agreed to all of them, subject to the transfer of the stock and the execution by the trust cotrustee of an agreement.

Will you tell the Court whether or not --

MR. MILLER: If Your Honor please, I object to the form of the question. I don't believe it fairly restates what has been testified to here today by Mr. Jenne.

THE COURT: You haven't let him ask his question yet. I'm not sure what his question is.

BY MR. HORWATT:

Q Would you tell the Court whether you agreed to all the conditions recited by Mr. Jenne save for the transfer of the stock and the signing of the agreement by a cotrustee?

A I never agreed to any agreement because

1 nothing was ever given to me in writing to see it all down.

2 Q With respect to those conditions that were  
3 given to you orally, did you agree to the transfer of the  
4 note marked paid and satisfied for \$25,000?

5 A No, sir, I did not.

6 Q Did you make a comment to Mr. Jenne or  
7 Mr. Rasnic about your views with regard to that proposition?

8 A I don't think I ever knew that was going to  
9 be part of the settlement until I saw it on the written copy  
10 on February the 1st that was Faxed to me.

11 Q On the 25th of January when you were at this  
12 mediation conference, was it ever stated to you that what  
13 you were signing with respect to a nonsuit of the individual  
14 partners was going to be with prejudice, as distinguished  
15 from without prejudice?

16 A I didn't sign anything at the mediation.

17 Q I'm asking you the question as to whether  
18 either Mr. Jenne, Mr. Rasnic, the arbitrator or anyone else  
19 at that meeting said, "I want you to know that if you agree  
20 to what has been proposed at this mediation hearing, that  
21 your case against all of the partners of the law firm will  
22 be ended with prejudice"?

23 A No, sir.

24 MR. MILLER: Object to the form of the

1 question; leading.

2 THE COURT: Overruled.

3 THE WITNESS: That was not mentioned. It was  
4 mentioned it would be dismissed or nonsuited without  
5 prejudice.

6

7 BY MR. HORWATT:

8 Q All right. You heard the witnesses that were  
9 in the room, the two secretaries, and I would ask you  
10 whether you told them that the case had settled.

11 A No, I didn't make that statement. I didn't  
12 know it had been settled at that time.

13 Q What did you tell them, if anything?

14 A We talked about lots of different things.

15 THE COURT: With respect to the conclusion of  
16 the case; what did you tell them about the  
17 settlement?

18 THE WITNESS: What did I tell them about the  
19 settlement? We didn't talk about the settlement.

20

21 BY MR. HORWATT:

22 Q Is it your position you never said anything  
23 to these witnesses about a settlement?

24 A Not to my knowledge, it was never mentioned.

1 MR. HORWATT: Your witness.

2 THE COURT: Any questions?

3 MR. MILLER: No questions.

4 MR. HODGES: None, Your Honor.

5 THE COURT: You may step down.

6 THE COURT: Anything further?

7 MR. HORWATT: No, Your Honor.

8 THE COURT: Any argument? Mr. Horwatt first.

9 MR. HORWATT: May it please the Court, the  
10 reason that Virginia law requires that agreements to  
11 settle cases be in writing, or if they're not in  
12 writing, they are read into the record in court so  
13 that everybody knows what they are, is so that a  
14 client like Ms. Snyder-Falkinham is never in the  
15 position of having to face four lawyers, all of whom  
16 in one way or another have a stake in the outcome of  
17 this.

18 Now, I'm not saying for a moment that any one  
19 of them is not telling the truth; that's not a  
20 judgment for me to make, especially defense counsel.  
21 But what I have to say about defense counsel is  
22 this: If there is any implication under these  
23 conditions that they were entitled as reasonable and  
24 prudent attorneys to assume that Mr. Jenne and

1           Mr. Rasnic had implied authority to enter into an  
2           agreement with them on January 30th, 1994 that was  
3           binding on their client, that that was an  
4           unreasonable assumption.

5                   I submit that a reasonable and prudent  
6           attorney in a matter of complexity of this kind  
7           would never bind a client to a settlement where  
8           there are, at least in the client's mind, very  
9           severe consequences that could indeed outweigh any  
10          settlement that might have been achieved.

11                   And Virginia law says it's up to the attorney  
12          to show by clear and convincing evidence that he's  
13          got that authority; it's not up to the client to  
14          prove that he didn't have it.

15                   Now, all of the cases that the defense have  
16          cited are conspicuously lacking in one factual  
17          similarity that is the key here, and that is that in  
18          the cases that they cite, if I'm not mistaken, every  
19          one of them, there is a writing. The client was  
20          present; the agreement was read into the record.  
21          And in every case that is not that way, the burden  
22          is wholly and exclusively on those that are seeking  
23          to uphold the purported agreement.

24                   Now, here, there is uncontroverted testimony

1           that when Mr. Rasnic went into court on the 31st, he  
2           had no express authority. Now, in the Virginia  
3           Concrete case which came out of Fairfax County  
4           involving enforcement of a zoning provision, the  
5           attorneys for the County learned during the trial  
6           that there had been a resolution passed by the Board  
7           rescinding the resolution.

8           And based upon that, they, in good faith,  
9           moved to dismiss the case with prejudice, and here  
10          is what the Virginia Supreme Court said: "A  
11          retraxit is a voluntary renunciation by the  
12          plaintiff in open court of his suit and the cause  
13          thereof, and by it he forever loses his action.

14          "An order 'dismissed agreed' not only puts an  
15          end to the pending suit, but is a bar to any  
16          subsequent suit on the same cause of action by the  
17          same parties 'as fully as a retraxit would be.'

18          "The defendant contends, as noted above, that  
19          the dismissal with prejudice by the decree of April  
20          3, 1953 was a final and complete adjudication of the  
21          matters and things involved in that suit, and res  
22          judicata as to all matters and things alleged  
23          therein and in the present suit."

24          That's exactly what the case would be; it

1           would be res judicata. And it's said that, "Under  
2           his general authority an attorney has control of the  
3           remedy and may discontinue the action by a dismissal  
4           without prejudice, thus binding his client. But  
5           general authority gives him no right to discharge or  
6           terminate the cause of action, and he may not  
7           without special authority or acquiescence on the  
8           part of his client terminate the right of action by  
9           a dismissal on the merits."

10                 Now, here, within a day or so, she had taken  
11           steps to engage this counsel for the sole purpose of  
12           getting these orders vacated, so there was certainly  
13           no acquiescence.

14                 We had Mr. Rasnic's word for it that even on  
15           January 25th, with regard to the nonsuit, that she  
16           was told and she understood that the nonsuit of the  
17           attorneys was without prejudice. And what happened  
18           was that got transformed into some kind of  
19           authority to enter an order dismissing the partners  
20           with prejudice. Those are two very different  
21           things.

22                 When she left on the 30th, as far as she was  
23           concerned, she did not have an agreement; all of the  
24           parties testified, and there isn't one, and this is

1 my recollection, Your Honor, that said that it was  
2 not contemplated that the agreement -- that there  
3 would be an agreement and that it would be signed by  
4 the parties.

5 Indeed, a lot of the negotiation went to the  
6 fact that there would be a signed agreement, and in  
7 Virginia, there is a presumption, there is a  
8 presumption that if the parties expect to reduce an  
9 agreement to writing, then until there is a formal  
10 writing signed by all the parties, there is no  
11 binding agreement, and indeed, that's what we had  
12 here.

13 Indeed, when you look at the intricacy of the  
14 facts involved in this case, you look at the number  
15 of conditions that there were, the different  
16 recollections of the parties, the different nuances  
17 that the parties put on the words, I submit that any  
18 prudent, responsible lawyer not only would have had  
19 this agreement in writing and signed before taking  
20 it in and having the case permanently dismissed but  
21 would go over each and every provision with his  
22 client, and not only would go over each and every  
23 provision with his client but be satisfied that any  
24 serious ramifications that might flow from that



1           agreement were carefully examined and that the  
2           client had the opportunity to be fully satisfied.

3                   And in this case we have Mr. Rasnic and  
4           Mr. Jenne in the position of telling their own  
5           client to disregard the advice of their attorney --  
6           of her tax attorney and her CPA, and not to take --  
7           and not to let the deal go down.

8                   And when we listen to Mr. Jenne, I was trying  
9           to figure out what's in the agreement, what's out of  
10          the agreement, and one of the reasons that Virginia  
11          insists on having things in writing is just that.

12                   And I really think that the case of Montagna  
13          Holiday Inns Inc., 269 S.E.2d 838 -- I don't have  
14          the official cite in front of me -- is almost on  
15          point. In that case there was a damage suit for a  
16          recovery for wrongful death brought by the estate of  
17          a physician who had been shot to death while a guest  
18          at a Holiday Inn.

19                   The parents came over to this country from  
20          England, and they got a lawyer, and they negotiated  
21          the case -- a settlement, and the settlement was  
22          that the hotel would pay expenses, that they would  
23          pay the burial costs, they would pay the costs for  
24          their coming over. In this case, the

1           representative, the attorney for the deceased  
2           actually delivered a release, delivered a release to  
3           the other side.

4           Now, it so happened that the insurance  
5           company introduced a condition of payment, just as  
6           there was a condition introduced in this case, first  
7           that the stock had to be transferred, then that a  
8           note had been to be taken back. There was  
9           introduced in this case that the trusts had to sign,  
10          that Mr. Jenne -- excuse me, that Mr. Falkinham had  
11          to sign, that the cotrustee had to sign.

12          And what the Court said in Montagna was that  
13          it didn't make any difference whether or not the  
14          condition was introduced by the plaintiff or whether  
15          it was introduced by defendant, because of course  
16          what made this a case was that after the insurance  
17          company refused to drop the condition, the  
18          decedent's estate came in and said, All bets are  
19          off, we're starting from ground zero, we're suing,  
20          and then the insurance company, on behalf of its  
21          insureds, asserts that there was a compromise and  
22          settlement.

23          And the Court said that in these kinds of  
24          circumstances, there has to be a totality, a

1 complete full agreement. And in this case -- The  
2 Court said, "Defendants argue the actual agreement  
3 was struck in May of 1976," much as in this case  
4 there's a claim that there was an agreement in  
5 January of 1994, January 30th, and then there were  
6 various versions up through February 4th.

7 And the Court said, "Defendants argue that  
8 the actual agreement was struck in May of 1976, and  
9 that the later events merely dealt with the  
10 mechanics of performing both promises."

11 "Defendants also contend" -- and I'm  
12 skipping -- "that the release was a valid contract,  
13 binding upon the beneficiaries, because it was  
14 executed without fraud or duress and with a full  
15 understanding of its consequences and effects."

16 And in this case, the Court said, "The  
17 essential elements of a valid contract must exist to  
18 support a binding compromise settlement; there must  
19 be a complete agreement which requires acceptance of  
20 an offer" -- and it cites several other Virginia  
21 cases -- "as well as valuable consideration. And,  
22 contrary to the defendants' argument, it is  
23 unnecessary to dwell here on any narrow distinction  
24 which may exist between a 'compromise' or

1           'settlement' on one hand and 'accord and  
2           satisfaction' on the other."

3                   And here's the key language: "The issue is  
4           always ultimately resolved by a 'determination of  
5           the intention of the parties, as objectively  
6           manifested.'

7                   "The problem presented in cases of this kind  
8           is whether negotiations upon a disputed claim have  
9           culminated in an agreement so final that no action  
10          may be brought on the antecedent claim, but only  
11          upon the later agreement."

12                   And then I'm going to skip a little bit down  
13          to the kernel of the holding: "Here, the parties  
14          never reached a mutual agreement on every essential  
15          element of the proposed settlement. Specifically,  
16          the record demonstrates as a matter of law that the  
17          insurer intended to condition payment of the agreed  
18          sum upon appointment of a Virginia personal  
19          representative and subsequent court approval of the  
20          contemplated compromise. The beneficiaries not only  
21          did not agree to this condition, they were never  
22          advised of it."

23                   And here, Your Honor, we have the same  
24          thing. If she doesn't find a condition acceptable,

1           it's not material. And if it's not material,  
2           Mr. Jenne and Mr. Rasnic and defense counsel had  
3           this blanket authority to take things out or put  
4           things in, and that's not what Virginia law permits.

5           It's up to the client to decide what the  
6           final terms are going to be. She has the freedom to  
7           be irrational, she has the freedom to be whatever  
8           she wants until there is an agreement. That's what  
9           freedom of contract is about.

10          I don't blame defense counsel for what they  
11          did. They were protecting their clients' interests  
12          and they were doing the very best they could for  
13          their clients. But the fact is that until there is  
14          a fully formally executed agreement, then the  
15          parties aren't bound.

16          Thank you

17          MR. MILLER: If Your Honor please, as you  
18          might expect, I take issue with quite a bit of what  
19          Mr. Horwatt says, and I've put the case in this  
20          context.

21          As we sit here today listening to the  
22          evidence, I think Your Honor can put yourself back  
23          in the position of either counsel for plaintiff or  
24          counsel for defendant on January 30, 1994 when this

1 case was settled. It was the evening before trial,  
2 counsel were discussing the matter, they were going  
3 back and forth; counsel for the parties reached an  
4 agreement on all issues.

5 We heard Mr. Jenne testify that Exhibit 6  
6 spells out everything to which Ms. Georgia Anne  
7 Snyder-Falkinham agreed to. Exhibit 6 spells out --  
8 excuse me, Exhibit 9, the one without the two  
9 paragraphs -- spells out all the material points of  
10 the settlement, and Georgia Anne Snyder-Falkinham  
11 agreed to it.

12 He goes further and says that counsel for  
13 defendants asked for a release to be signed by the  
14 bank as cotrustee and they asked for a release to be  
15 asked by Joe Falkinham, her husband, and her two  
16 children, Michael and Stacey. Those matters were  
17 not deal breakers.

18 The deal between Georgia Anne  
19 Snyder-Falkinham, Bruce Stockburger, Gentry, Locke,  
20 Rakes & Moore, Bob Glenn and Glenn, Flippin,  
21 Feldmann & Darby never changed one iota. The deal  
22 was that she was going to receive a sum certain in  
23 exchange for which she was to release the two  
24 lawyers and the law firms, and she was to mark paid

1           and deliver to me as counsel for Stockburger a note  
2           previously given in the amount of \$25,000.

3                     She agreed to confidentiality and the  
4           dismissal of the case; it was gone. And they are  
5           the terms of the settlement agreement. She has not  
6           denied that she agreed to the amount. She has not  
7           denied that she agreed to a dismissal of the various  
8           lawyers.

9                     Her sole saying as to why she had second  
10          thoughts about this settlement as she was riding  
11          back to Blacksburg on Sunday evening was that she  
12          was concerned about if something got entered between  
13          the time she left the hotel and the time she started  
14          back to Blacksburg.

15                    I don't think the Court could doubt for one  
16          minute she agreed to the agreement at the hotel; she  
17          did. There isn't any question about that. She  
18          obviously changed her mind at some point in time,  
19          whether it was in the car going back to Blacksburg,  
20          or after she got to Blacksburg.

21                    But the witnesses here have been clear.  
22          They worked all day long; a lawyer doesn't quit  
23          working if he's got a case to try the next day.  
24          They all knew the case was settled. You heard the

1           paralegals; you heard the lawyers; they talked to  
2           her. She agreed to the settlement.

3                     She agreed to a settlement on every material  
4           item of that case. Mr. Horwatt would have you  
5           believe that the burden is on Mr. Jenne and  
6           Mr. Rasnic to show that they were authorized.  
7           That's not true.

8                     Under the case that I cited you earlier, the  
9           Eggleston and Crump case, the burden is on  
10          Ms. Georgia Anne Snyder-Falkinham to prove by clear  
11          and convincing evidence that she had not agreed to  
12          the terms of this settlement.

13                    She is the one moving this Court to vacate  
14          the two orders entered by this Court on January 31,  
15          1994, and I submit to you that she has not shown by  
16          any clear and convincing evidence that she did not  
17          agree to the terms of that settlement as spelled out  
18          in Exhibit 9, presented to this Court today; that  
19          burden is on her and not on the defendants.

20                    Whether or not we get to the Wells and Weston  
21          case, the Supreme Court, whether you have  
22          reservations about a settlement doesn't mean the  
23          settlement is no good; the settlement is good when  
24          you make a settlement, we come to Richardson and



1 Richardson, a domestic case, at 10 Va. App. 391.

2 That case is very much similar to this one,  
3 Judge. The parties on the eve of trial or at the  
4 time of trial agreed to settlement. They were in  
5 court. They went in; the judge asked them, "Do you  
6 agree to the settlement?" It wasn't in any  
7 writing. The husband said "Yes, sir," and the wife  
8 said, "I believe so."

9 When they got it down to writing, the wife  
10 says, "No, no, I don't want to agree to that."

11 The Court held that the agreement did not  
12 have to be in writing, and that a parol contract can  
13 be made, and the parol contract as we read the  
14 cases, there's no requirement that the parol  
15 contract be in writing -- a parol contract can't be  
16 in writing. But there's no requirement it be in  
17 writing or the settlement terms be read into the  
18 record at the time of trial.

19 We pointed out to the Court that in the  
20 plaintiff's main case, the Concrete Company versus  
21 Board of Supervisors, that the key element in that  
22 case, that Mr. Horwatt omitted, on Page 827 of the  
23 opinion, the Supreme Court advised the reasons for  
24 the opinion: "Neither" -- talking about the two

1 attorneys representing Fairfax County Board of  
2 Supervisors -- "claimed any express authority from  
3 the Board to dismiss the case with prejudice and it  
4 is clear that none was given."

5 Mr. Rasnic and Mr. Jenne have both testified  
6 that they had authority to dismiss this case; that  
7 that case was settled. That's a very factually  
8 distinguishable case in here.

9 And Mr. Horwatt talks about the Montagna  
10 case, the doctor that fell or was killed by lack of  
11 security at the Holiday Inn in Norfolk. In that  
12 case he forgets to tell the Court that in Virginia,  
13 by statute, all settlements involving claims for  
14 death by wrongful act must be approved by the Court.

15 That was a condition that was put in in that  
16 case, and that was a big difference. We don't have  
17 any conditions being put in here after the parties  
18 agreed to a settlement.

19 Exhibit 9 spells out the settlement, Judge,  
20 and we ask the Court not to vacate the orders of  
21 January 31, 1994, and to confirm the settlement in  
22 this case.

23 THE COURT: Mr. Hodges?

24 MR. HODGES: May it please the Court,

1 Counsel; Your Honor, perhaps a starting point is to  
2 reflect for a few moments on some of the argument  
3 that's offered by opposing counsel. I did not count  
4 the number of times, but my impression is at least  
5 three times, and I believe more, present counsel for  
6 plaintiff made reference to a, quote, "reasonable  
7 and prudent attorney," end quote, would or would not  
8 take certain action.

9 The thrust of those remarks, without  
10 exception, were directed to present counsel's  
11 criticism of Mr. Jenne and Mr. Rasnic.

12 I submit to the Court that there has been an  
13 attempt in this motion to vacate to incorporate by  
14 reference specifically standards, accusations,  
15 allegations that belong in another forum and in  
16 another action, should that be the course that this  
17 plaintiff chooses.

18 It is not relevant, nor does it meet any case  
19 law standards regarding burden of proof, et cetera,  
20 for the plaintiff to stand forward today and say I'm  
21 not satisfied with the actions of my attorneys who  
22 were representing me on January 30 and January 31,  
23 1994, and yet that's the exactly the context we are  
24 hearing this argument.

1                   Secondly, Your Honor, I ask the Court to take  
2                   careful consideration with Plaintiff's Exhibit  
3                   Number 4. The plaintiff has come before us today,  
4                   has called witnesses and has submitted exhibits, and  
5                   one of the exhibits that the plaintiff has submitted  
6                   as part of her case is the letter of February 1,  
7                   1994, on the letterhead of Mr. Rasnic, directed to  
8                   the plaintiff.

9                   And I quote, in part: "A settlement had been  
10                  reached in this case, and the only thing that  
11                  remained to be done was a final memorialization of  
12                  the agreement typed and signed."

13                  Further quoting, "As a result of extensive  
14                  negotiations which occurred on January 30, 1994, you  
15                  agreed" -- "you" meaning Ms. Snyder-Falkinham --  
16                  "before Roger, myself," -- that would be  
17                  Mr. Rasnic -- "Pam and Sherry to the terms and  
18                  conditions of the settlement as memorialized in the  
19                  mutual release and settlement agreement. Based on  
20                  your agreement, we advised Mr. Miller and Mr. Hodges  
21                  of this agreement," end quote.

22                  It is my submission to the Court that  
23                  Plaintiff's Exhibit Number 4 in and of itself  
24                  defeats the motion posited before this Court. They,

1           that is the plaintiff and her counsel, cannot choose  
2           to come into this matter, present evidence, and then  
3           ask the Court, "Will you disregard what parts of it  
4           we want you to disregard."

5                       Here is a key piece of evidence submitted not  
6           by the defense; submitted by the plaintiff to this  
7           Court, and there has been not one mention that that  
8           document was fraudulent, was a misstatement of any  
9           type intentionally made by this attorney.

10                      And on that point, I know -- well, I have the  
11           impression that the Court had some question in its  
12           mind about what was included in the discussion of  
13           the \$25,000, and perhaps it struck the Court the way  
14           it struck this particular attorney. Mr. Rasnic was  
15           very graphic in his testimony; Mr. Jenne was very  
16           specific in his testimony that during the meetings  
17           of January 30, Mr. Rasnic turned to his then-client,  
18           Ms. Snyder-Falkinham, and stated, "If the \$25,000  
19           note is an issue to you, I'll buy it myself."

20                      Now, did it strike the Court's attention the  
21           way it did mine when the plaintiff was called in  
22           rebuttal, just a few moments ago, she sat in that  
23           chair and made absolutely no refutation of  
24           Mr. Rasnic's testimony.

1                   She never once said one word that Mr. Rasnic  
2                   was incorrect; Mr. Rasnic never said that;  
3                   Mr. Rasnic did not have that conversation; Mr. Jenne  
4                   was wrong; that conversation never took place.

5                   The evidence as far as I can tell from what  
6                   we've heard today is very specific, that those terms  
7                   and specifically that \$25,000 was clearly discussed  
8                   with the plaintiff. And as I've already made  
9                   reference, there's the exhibit with those two  
10                  specific references to those lengthy conversations.

11                  We have some guidance from our Supreme Court  
12                  cases, and perhaps two that I wanted to call  
13                  attention to, in addition to what my cocounsel has  
14                  already made reference to, one is the Singer Sewing  
15                  Machine case which has been cited in our brief, 144  
16                  Va. 395, a 1926 case; I'm making reference  
17                  specifically to pages 402 and 403.

18                  The question as stated by the Supreme Court  
19                  in that case is the binding effect of an agreement  
20                  entered into by attorneys. On Page 403, the  
21                  following quotation, and if you will bear with me  
22                  just a moment, I'll read quite a bit of it. And  
23                  incidentally, in Singer, just like this case, no  
24                  intimation of any fraud.

1                   The Court then quotes: "The facts in the  
2                   case show that the attorney for the plaintiff had  
3                   either the actual or else the apparent authority to  
4                   make the compromise. There is no pretense that  
5                   there was any fraud practiced on plaintiff in making  
6                   the compromise or that plaintiff's attorney had no  
7                   authority to make a compromise; and the law is well  
8                   settled that while a compromise made by an attorney  
9                   without authority or in violation of his client's  
10                  commands will not be enforced to the client's  
11                  injury, yet if the authority of the attorney be  
12                  apparent, then his client will be bound," -- will be  
13                  bound" -- unless the compromise possessed such  
14                  elements of intrinsic unfairness" -- that's the test  
15                  as I understand it, intrinsic unfairness --  
16                  continuing the quote, "as to provoke inquiry or  
17                  imply fraud."

18                 The apparent authority, as far as third  
19                 persons are concerned is the real authority, and  
20                 when the third person has ascertained the apparent  
21                 authority with which the principal has clothed the  
22                 agent, he is under no obligation to inquire into the  
23                 agent's actual authority," end quote.

24                 The Court may recall and perhaps would even

1           be puzzled as to why this particular attorney spent  
2           so much time in developing an evidentiary record on  
3           January 25, 1994, in the mediation session.

4           Part of that attempt, Your Honor, was to  
5           point out very specifically with an adequate factual  
6           basis in this record that this particular plaintiff  
7           sat in a room with I think nine other individuals  
8           and specifically stated, as she has admitted to  
9           us -- it's not contradicted; she specifically  
10          admitted that she told everyone present, including  
11          defense counsel in this case and representatives of  
12          the insurance carrier, that her attorneys had the  
13          authority to speak for her, and they did speak for  
14          her in action taken at that time, and that action  
15          was followed through.

16          The action is uncontradicted, and she never  
17          restricted the authority; she never attempted to  
18          reduce the authority at any time from that night on  
19          January 25 when it's represented to all of us  
20          present in that room that these attorneys had her  
21          authority and were negotiating, because that was her  
22          first purpose, negotiate and settle this entire  
23          case. If that cannot be done, what else can be  
24          agreed to, and what else can be agreed to was what



1           was reflected in that first order presented to the  
2           Court January 31 taking out the individual  
3           defendants.

4                       So here is the plaintiff in her own words  
5           today admitting to us that at no time thereafter,  
6           certainly not until after the orders were entered on  
7           January 31, 1994, did she tell her then-attorneys,  
8           Mr. Rasnic, Mr. Jenne, "You do not have the  
9           authority to continue what you've been doing and  
10          what I've told these people in Richmond you're  
11          authorized to do."

12                      Next, Wells versus Weston offers us some  
13          help, 229 Va., Page 72. It's a 1985 decision by the  
14          Virginia Supreme Court, a support agreement.  
15          Although the Court was careful to point out that the  
16          usual provisions of contract law apply, at Pages 78  
17          and 79 is a quote, with the Court's indulgence, and  
18          I quote: "In evaluating a party's intent, however,  
19          we must examine his outward expression rather than  
20          his secret, unexpressed intention," citing a quote,  
21          and then there's a subquote: "The mental assent of  
22          the parties is not requisite for the formation of a  
23          contract. If the words or other acts of one of the  
24          parties have but one reasonable meaning, his

1           undisclosed intention is immaterial except when an  
2           unreasonable meaning which he attaches to his  
3           manifestation is known to the other party," end  
4           quote of the subpart.

5                   Continuing the full quote, "A meeting of the  
6           minds requires a manifestation of mutual assent, and  
7           a party's mental reservation does not impair the  
8           contract he purports to enter," end quote.

9                   Even if we give the benefit of the doubt from  
10          this lawyer's perspective to the plaintiff, and for  
11          the benefit of the doubt say, Well, perhaps on that  
12          day of January 30th, 1994 there was some mental  
13          reservation in the mind of the plaintiff, the  
14          actions and the manifestations of the plaintiff as  
15          introduced here today in the form of testimony from  
16          Mr. Jenne, Mr. Rasnic, Ms. Arthur, Mrs. Robbins,  
17          Mr. Robbins, and even some of the testimony of the  
18          plaintiff herself -- the Court will recall, I'm  
19          sure, even at the outset of the discussions as  
20          Mr. Jenne described at around noon until 1:00  
21          o'clock on January 30th, there was a, quote,  
22          "laundry list"; there was an itemization of item by  
23          item by item, and Mr. Rasnic and Mr. Jenne made it  
24          crystal-clear in their testimony here today those

1 items were taken up and discussed with the plaintiff  
2 in detail.

3 If the Court still has some reservations that  
4 there may be some conflict in the evidence here  
5 today, then I ask the Court once more to come back  
6 to where I started, and that's Plaintiff's Exhibit  
7 Number 4, and the statements that there was in fact  
8 an agreement, and the plaintiff in this motion  
9 introduced that document.

10 As far as I'm concerned, Massey versus  
11 Firestone still applies. Even though at times I  
12 wonder exactly where all that opinion takes us, I  
13 respectfully suggest to the Court that a party is  
14 bound by their evidence, and her evidence in this  
15 case binds her to an agreement, and I respectfully  
16 ask the Court to deny the motion to vacate.

17 Thank you, Your Honor.

18 MR. HORWATT: Here we have a situation where  
19 there were negotiations in which the client was  
20 never present. There wasn't even a draft of an  
21 agreement. Both Mr. Rasnic and Mr. Jenne say, "I  
22 acknowledge that I was never specifically expressly  
23 authorized to go into court and move for the  
24 dismissal of these cases with prejudice."

1                   These attorneys did not turn over any papers  
2                   or documents to speak of. There were dribbles and  
3                   drabs here and there, so that their client finds  
4                   herself in a position where she's got to take on  
5                   these lawyers over here; where her lawyers are in a  
6                   position to have to introduce Exhibit 4. Because I  
7                   acknowledge Exhibit Number 4 has some things in  
8                   there that are favorable to the defendant's  
9                   position, but we certainly didn't introduce it for  
10                  that purpose; we introduced it to show that  
11                  Mr. Rasnic contradicted himself about what happened  
12                  during the proceeding.

13                 And all of this goes to show that this is  
14                 about as -- this is the weakest case that you can  
15                 look at under any of the authorities, in that if you  
16                 look at the Singer case, in the Singer case there is  
17                 no question that the clients were present, and the  
18                 Court pointed that out; there was very weak  
19                 authority.

20                 And in that case, and this is a real  
21                 distinction, there was a sewing machine that was  
22                 complained about that was replaced, and the client  
23                 kept the sewing machine, benefitted from it, and  
24                 then just before the statute of limitations runs,

1 files a lawsuit over the controversy.

2 That case is certainly factually  
3 distinguishable. Now, in the case of Montagna, it  
4 is claimed that that case doesn't really apply --  
5 that's the Holiday Inn case -- because there's a  
6 wrongful death issue, and it was represented that  
7 that case is inapposite because of the law.

8 But in the footnote in that case, Footnote  
9 Two on Page 843 of that opinion, the Court says, "We  
10 will assume without deciding that as the parties  
11 agree on appeal, a binding settlement of a wrongful  
12 death claim may be affected by a decedent's sole  
13 adult beneficiaries prior to appointment of a  
14 personal representative."

15 So the Court took wrongful death out of this  
16 case. And this case is a contract case, pure and  
17 simple, and it's dead center on to this case. In  
18 the Richardson versus Richardson case that was cited  
19 by the other side, in that case counsel informed the  
20 Court of the settlement, and the Court had both  
21 counsel recite the terms of the oral agreement into  
22 the record.

23 In that case, both parties were present when  
24 that was done, and certainly that is a situation

1           where the presumption that it would be reduced to  
2           writing is overcome. Clearly that's a different  
3           situation than this one where Ms. Snyder-Falkinham  
4           never even saw the draft of an agreement.

5                     In the Eggleston versus Crump case that the  
6           other side cites, again on November 10th, 1992, the  
7           litigants and their counsel met for the purpose of  
8           taking depositions.

9                     After a full discussion of the respective  
10          rights of the litigants, the record shows that with  
11          full knowledge and consent the attorney entered into  
12          the following agreement and it was read into the  
13          record.

14                    And these are the cases that the defense is  
15          citing for the proposition that those lawyers can  
16          bind their client in a case of this complexity with  
17          nine little items written on a Marriott Hotel piece  
18          of notebook paper, and then tell the Court later  
19          what's part of the agreement and what's not part of  
20          the agreement.

21                    Her own lawyer told Ms. Snyder-Falkinham's  
22          CPA that the amount involved was too large to settle  
23          that night. That was the statement that was made.  
24          And that's what everybody really hoped would happen

1           and expected would happen.

2                   And I really shouldn't say that, because no  
3           one had any idea that these lawyers were going to go  
4           in and do what they did the next day. It is  
5           unquestionable that everyone understood there would  
6           not be court the next day. The question was why;  
7           was it going to be that court was canceled in order  
8           to give time for an agreement to be worked out, or  
9           was it because court was going to be canceled and  
10          these cases were going to be dismissed before papers  
11          were signed.

12                   There's no question everybody knew court was  
13          going to be canceled; that's the word that was used  
14          throughout. It's undisputed. And they tried to  
15          bootstrap that into an --

16                   THE COURT: Mr. Horwatt, do you think the  
17          judge would have something to do with whether or not  
18          court was canceled?

19                   MR. HORWATT: I'm sorry, I'm having --

20                   THE COURT: I said do you think the judge,  
21          the Court, would have something to do with whether  
22          or not the case was canceled?

23                   MR. HORWATT: Was canceled?

24                   THE COURT: Right.

1 MR. HORWATT: I certainly do.

2 THE COURT: I would too.

3 MR. HORWATT: And indeed, Your Honor, the  
4 question is whether or not her attorneys, when they  
5 went into court, had authority to move for the  
6 dismissal of the case with prejudice, as  
7 distinguished from a motion to nonsuit or a motion  
8 to postpone, or whatever. But that's not what she  
9 knew or had any basis of knowing.

10 And I would say, Your Honor, if there were  
11 ever a case that is a situation where there is a  
12 usurpation of authority, a case where there was no  
13 agreement because there was a lack of completeness,  
14 this is it.

15 THE COURT: Thank you.

16 Well, Mr. Horwatt, I can't help but be  
17 impressed at the amount of time, the amount of work  
18 and effort that you've put into this case,  
19 and I think that's true of Mr. Miller, Mr. Hodges,  
20 Mr. Rasnic, and Mr. Jenne, too. I think all of you  
21 all put in a tremendous amount of work and time on  
22 this case.

23 I'm sure each of you did the best you could  
24 to represent the interests of your clients, and I



1           surely wish there was something I could do to make  
2           each of you happy, but obviously I can't do that.  
3           question of credibility; that is, whether I believe  
4           Ms. Snyder-Falkinham or whether I believe Mr. Jenne  
5           and Mr. Rasnic and some of the other witnesses.

6           The plaintiff has testified about some of the  
7           things she did agree to. And I'm not going to try  
8           to comment on all of the evidence or each phase of  
9           your individual arguments, but the plaintiff  
10          indicated, insofar as the amount was concerned, that  
11          that was acceptable to her, and it sort of boiled  
12          down to the big problem being this note, so far as  
13          the end alleged agreement is concerned; that is, the  
14          note from Mr. Stockburger to the plaintiff, the  
15          \$25,000 note. And there's considerable discrepancy  
16          in the testimony as it relates to that.

17          But each of the attorneys testified  
18          positively that the defendant did agree to the terms  
19          of the settlement, the various itemizations and the  
20          conditions of the settlement.

21          That's been corroborated to some extent by  
22          disinterested witnesses, unless you could say that  
23          employees of Mr. Rasnic and Mr. Jenne were biased or  
24          prejudiced to some extent, or would favor one side

1 as distinguished from the other. But there's no  
2 real reason to believe that they would come in and  
3 perjure themselves.

4 And I don't think that really anyone is  
5 intentionally making a false statement in this case,  
6 and it could be that the plaintiff really did not  
7 understand what was being explained to her, although  
8 she appears to be a very intelligent woman and a  
9 knowledgeable woman, and a person who does have some  
10 business experience, based on what I've heard today  
11 and the various pleadings and papers that have been  
12 filed in this case.

13 But so far as the motion to vacate is  
14 concerned, Mr. Horwatt, as I say, I think you did an  
15 excellent job in representing your client on it, but  
16 I just don't feel it should be vacated, and I would  
17 deny the motion, and I would find as a fact that the  
18 plaintiff did agree to the terms of the settlement,  
19 and that the attorneys did have actual as well as  
20 implied authority to settle the case.

21 Do each of you all have an order that's been  
22 prepared in this matter?

23 MR. MILLER: Yes, sir.

24 THE COURT: You might show it to Mr. Horwatt

1           and get him to approve it.

2           MR. HORWATT: Your Honor, there is a motion  
3           for sanctions pending.

4           THE COURT: Do you all intend to pursue that?

5           MR. HODGES: May I have just a moment, Judge.

6           THE COURT: Let's get the order first, and  
7           let Mr. Horwatt look at that.

8           So far as the motion for sanctions is  
9           concerned, do you all intend to pursue that?

10          MR. MILLER: No. We'll waive that, Judge.

11          THE COURT: Is this the original?

12          MR. MILLER: Yes, sir.

13          THE COURT: All right. You all go ahead and  
14          endorse that.

15          Gentlemen, court is still in session.

16          MR. HODGES: Your Honor, I apologize. I had  
17          asked Counsel to look at it, because my version had  
18          their signature line on it. That's why I had asked  
19          them to look at it.

20          THE COURT: Mr. Horwatt, I think that's the  
21          original.

22          MR. HORWATT: This is the one I have.

23          MR. HODGES: It's my fault for picking up the  
24          wrong one. That's what's caused the confusion.

1 MR. HORWATT: This is the same thing?

2 MR. MILLER: Yes, sir.

3 THE COURT: This doesn't need to be on the  
4 record.

5

6 (Discussion off the Record.)

7

8 THE COURT: Court is adjourned.

9

10 (Court was adjourned.)

11

12 MR. HODGES: Let the record reflect that at  
13 the conclusion of the proceeding today, and with the  
14 prior permission of the Court, on behalf of the  
15 defendants I am offering the following proffer of  
16 further examination of Mr. Agee, who had been called  
17 earlier as a defense expert witness and had been  
18 qualified by the Court to render opinion testimony.  
19 That examination is as follows:

20

21 EXAMINATION

22

23 BY MR. HODGES:

24

Q Mr. Agee, do you have an opinion on the basis

1 of your review of the documents supplied to you as to  
2 whether or not the plaintiff, Georgia Anne Snyder-Falkinham,  
3 would have any tax consequences as a result of the proposed  
4 release and settlement document that had been tendered to  
5 you but not executed by the plaintiff, and more  
6 specifically, would it in your opinion have any impact on  
7 the December 1990 transaction between the plaintiff and  
8 Bruce Stockburger?

9 A Yes, I do have an opinion.

10 Q What is that opinion?

11 A My opinion is that the implementation of the  
12 release and settlement agreement would have no effect on the  
13 December 1990 transaction.

14 MR. HODGES: Thank you, sir. Do you have any  
15 cross?

16 MR. WRIGHT: No, that's fine.

17 MR. HODGES: This concludes the proffer  
18 setting forth that testimony that would have been  
19 solicited from this witness had the court permitted  
20 Mr. Agee to go forward with his testimony.

21  
22 (This concludes the record of the hearing.)  
23

24 \* \* \* \* \*

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ROANOKE

GEORGIA ANNE SNYDER-FALKINHAM,

Plaintiff,

v.

Case No.: CL91-1212 *encl*

BRUCE C. STOCKBURGER, et al.,

Defendants.

ORDER

RECEIVED MAR 1 1994

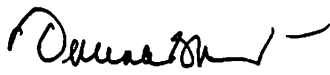
This matter came on this day to be heard on the Motion of Defendants to confirm agreements made in this matter on January 25, 1994, which resulted in an Order entered by this court on January 31, 1994, dismissing plaintiff's claims against the individual defendants other than Stockburger and plaintiff's claim for punitive damages, and the final settlement agreed to by the parties on January 30, 1994, which resulted in the Final Order dismissing this action as to the remaining defendants, and on plaintiff's Motion to Reinstate and for Vacation of Order and Final Order; and, the Court, after hearing the evidence and considering the memoranda of counsel filed herein, doth find that plaintiff agreed to: (1) a dismissal of her action against the individual defendants other than Stockburger and a dismissal of her claim for punitive damages against all defendants, all as agreed to at the Mediation Hearing which took place on January 25, 1994, as evidenced by the agreement identified as Exhibit 1 to defendant's Motion and as reflected in the Court's Order of January 31, 1994; and (2) a settlement of her action against all defendants on January 30, 1994, all as spelled out in the Mutual Release and Settlement Agreement, Exhibit 2 to defendants'

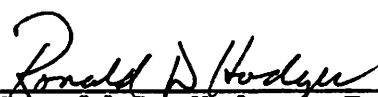
Motion, doth ORDER that plaintiff's Motion to Reinstate and for Vacation of Order and Final Order of January 31, 1994 is denied and Defendants' Motion to Confirm Settlement is sustained, to all of which action of the Court, the plaintiff, by counsel, objected and excepted.

ENTER: February 15, 1994


  
Judge Designate

WE ASK FOR THIS:

  
Frank B. Miller, III, Esquire  
Sands, Anderson, Marks & Miller  
801 East Main Street  
Suite 1500  
P.O. Box 1998  
Richmond, VA 23216-1998  
Counsel for Defendant Stockburger

  
Ronald D. Hodges, Esquire  
Wharton, Aldhizer & Weaver  
A Professional Limited Liability Company  
100 South Mason Street  
Harrisonburg, VA 22801  
Counsel for  
Gentry, Locke, Rakes & Moore

SEEN AND OBJECTION NOTED:

  
Michael S. Horwatt, Esquire  
Charles F. Wright, Esquire  
Michael Horwatt & Associates, P.C.  
8300 Boone Boulevard, Suite 800  
Vienna, VA 22182  
Counsel for Plaintiff

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF ROANOKE

GEORGIA ANNE SNYDER-FALKINHAM

PLAINTIFF

VS.

Case No.: CL91-1212

BRUCE C. STOCKBURGER, ET AL

DEFENDANTS

ORDER

RECEIVED MAR 1 1994

Upon motion of counsel for the plaintiff, Thomas L. Rasnic and Roger E. Jenne, notice to all parties and all counsel and for good cause shown, it is

ORDERED that Thomas L. Rasnic and Roger E. Jenne, be and they are hereby relieved as counsel of record. Plaintiff shall have thirty (30) days from the date hereof to obtain counsel in this case.

Further ORDERED that Thomas L. Rasnic and Roger E. Jenne be, and are hereby granted a lien upon any recovery effected in this cause for their contractual attorney fees and expenses incurred.

Enter this Order this 15<sup>th</sup> day of February, 1994.

*Bernard J. Fleming*  
JUDGE

APPROVED:

JENNE, SCOTT &amp; BRYANT


BY: *[Signature]*

Roger E. Jenne, Esq. (BPR#966)  
PO Box 161  
Cleveland, Tennessee 37364  
(615) 476-5506



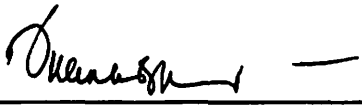
RASNIC AND RASNIC, PC

BY:

  
Thomas L. Rasnic, Esq.  
PO Box 733  
Jonesville, Virginia 24263  
(703) 346-3690

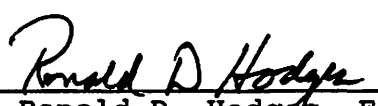
SANDS, ANDERSON, MARKS & MILLER

BY:

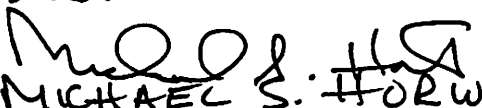
  
Frank Miller, Esq.  
PO Box 1998  
Richmond, Virginia 23216  
(804) 648-1636

WHARTON, ALDHIZER & WEAVER

BY:

  
Ronald D. Hodges, Esq.  
100 South Mason Street  
Harrisonburg, Virginia 22801  
(703) 434-0316

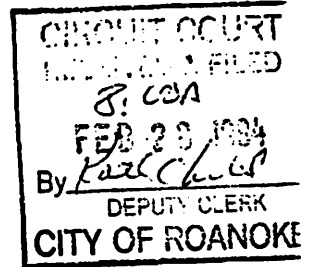
SEEN and OBJECTED TO  
as to signing of proposed substitute  
Order. AGREED TO as to granting of leave to a  
withdrawal and ~~for~~ denial of an attorney's  
lien.

  
MICHAEL S. HORWATH, Esq.



NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

Fairfax County Judicial Center  
4110 Chain Bridge Road  
Fairfax, Virginia 22030-4009  
(703) 248-2221 Fax: (703) 385-4432



RICHARD J. JAMBORSKY  
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J. HOWE BROWN  
JACK B. STEVENS  
THOMAS A. FORTKORT  
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ROSEMARIE ANNUNZIATA  
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MARCUS D. WILLIAMS  
GERALD BRUCE LEE  
STANLEY P. KLEIN  
ROBERT W. WOOLDRIDGE, JR.  
ARTHUR B. VIEREGG, JR.  
JANE MARUM ROUSH  
JUDGES

COUNTY OF FAIRFAX

CITY OF FAIRFAX

DR. MARK A. ZAFFARANO  
DIRECTOR, JUDICIAL OPERATIONS

JAMES KEITH  
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BURCH MILLSAP  
BARNARD F. JENNINGS  
LEWIS H. GRIFFITH  
WILLIAM G. PLUMMER  
THOMAS J. MIDDLETON  
RETIRED JUDGES

February <sup>18</sup>~~22~~, 1994

RECEIVED MAR 1 1994

Michael S. Horwatt, Esq.  
8300 Boone Boulevard  
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Vienna, VA 22182

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P. O. Box 1998  
Richmond, VA 23216

Ronald D. Hodges, Esq.  
100 South Mason Street  
Harrisonburg, VA 22801

Patty, 3-1-94  
Judge Weckstein  
said to treat this  
letter as an order.  
Spread as you would  
an order. Dale

Re: Snyder-Falkingham v. Stockburger, et al CL91-1212

Gentlemen:

I am today in receipt of a Motion for Reconsideration filed by Mr. Horwatt. There is nothing set forth in the Motion or the exhibits attached thereto that warrant reconsideration in my opinion. Considering the evidence as a whole I did and do find as a fact that the Plaintiff authorized the settlement.

You may consider this letter as an Order denying the Plaintiff's Motion for Reconsideration. Mr. Horwatt's exception is noted.

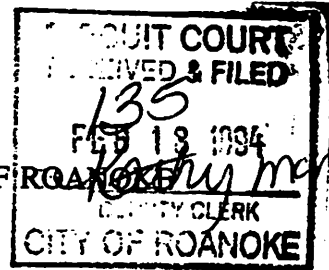
Sincerely,

*Barnard F. Jennings*  
Barnard F. Jennings

BFJ/al  
cc: Arthur B. Crush, Clerk  
Circuit Court, City of  
Roanoke

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ROANOKE



GEORGIA ANNE SNYDER-FALKINHAM,

Plaintiff,

v.

BRUCE C. STOCKBURGER, et al.

Defendants.

Case No.: CL91-1212

**PLAINTIFF'S MOTION FOR RECONSIDERATION**

GEORGIA ANNE SNYDER-FALKINHAM, ("Ms. Snyder-Falkinham") by her special counsel, Michael S. Horwatt and Charles F. Wright ("Special Counsel"), respectfully moves that this Court reconsider its February 15, 1994, ruling denying Ms. Snyder-Falkinham's Motion to Reinstate and for Vacation of Order and Final Order (the "Motion"). In support of this "Motion for Reconsideration," Ms. Snyder-Falkinham states as follows:

1. On or about February 14, 1994, Ms. Snyder-Falkinham, by Special Counsel, moved that this Court vacate its Order and Final Order entered on January 31, 1994.
2. This Court held a hearing on the Motion on February 15, 1994, in the Circuit Court for the County of Whytheville.
3. At the conclusion of the hearing, this Court refused to grant the Motion. In

its ruling from the bench, this Court stated in pertinent part:

**The plaintiff has testified about some of the things she did agree to. And I'm not going to try to comment on all of the evidence or each phase of your individual arguments, but the plaintiff indicated, insofar as the amount was concerned, that that was acceptable to her, and it sort of boiled down to the big problem being this note, so far as the end alleged agreement is concerned; that is, the note from Mr. Stockburger to the plaintiff, the \$25,000 note. And there's considerable discrepancy in the testimony as it relates to that (emphasis added).**

A copy of this Court's ruling appears as Exhibit 1 affixed to this Motion for Reconsideration.

4. An issue that this Court considered pivotal, related to Ms. Snyder-Falkinham's position in the settlement negotiations, regarding the cancellation of Mr. Stockburger's December 15, 1990, promissory note to her without Defendant Stockburger's actually paying off such note (the "Stockburger Note").

5. Both Messrs. Rasnic and Jenne, Ms. Snyder-Falkinham's former attorneys ("Trial Attorneys"), repeatedly testified that Ms. Snyder-Falkinham had consistently agreed to a provision in the contemplated settlement with Defendants that required her to accept the unpaid Stockburger Note marked "paid."

6. Both Trial Attorneys testified that that particular provision had never posed a problem for their client.

7. The following excerpts from the testimony make this clear:

**Mr. Miller: State whether or not there was any discussion at that time about satisfaction of the note running from Mr. Stockburger to Ms. Snyder-Falkinham in the amount of \$25,000.**

Mr. Jenne: Yes. The note was to be marked paid.

Mr. Miller: Did Ms. Snyder-Falkinham agree to that?

Mr. Jenne: Yes.

Mr. Miller: That was in your first conversation with her after the meeting which ended at 2:00 o'clock with Mr. Hodges?

Mr. Jenne: Right. And with regard to the note, when we were discussing this, it wasn't a big issue, and Mr. Rasnic made the statement to her that he would buy the note from her for \$25,000 if that's what she wanted him to do.

His statement basically was that If everything else is agreeable to you, that should not be an impediment, and I think Mr. Rasnic's words about the stock transfer of Mr. Stockburger's stock was to transfer it to the Easter Bunny; something to that effect.

See pages 18-19 of the excerpted transcript affixed as Exhibit 2 to this Motion for Reconsideration.

Mr. Horwatt: Now, when -- you also knew that there was a tax question; you said that?

Mr. Jenne: A tax question about this December 1990 transaction?

Mr. Horwatt: Yes.

Mr. Jenne: Well, we knew that we were not going to do anything in this settlement to upset that.

Mr. Horwatt: Well, you knew that she objected to the transfer of the stock back to her, which was one of the conditions that the defendants had made as a basis for this proposed settlement; isn't that correct?

Mr. Jenne: That was not an initial objection. I'm not a tax attorney, Mr. Rasnic is not, obviously Ms. Snyder-Falkinham is not. We did not know how, or in what way,

if anything, it would impact her to have Mr. Stockburger's stock transferred back to her.

So to that end, we called Mr. Anthony, Joe Anthony, who is a tax attorney; discussed it with him. He and I were initially talking about if she took his stock in cancellation of the \$25,000 note, would that give her a \$25,000 basis in that stock so she could take an additional loss.

Mr. Horwatt: Mr. Jenne, my question to you is this: She told you she had a problem with that condition, didn't she?

Mr. Jenne: No. She didn't know.

\* \* \*

Mr. Horwatt: And the question of what happened to the note, you knew, didn't you, was just as much of a concern to Mr. Anthony and to her CPA as the stock was?

Mr. Jenne: No. I never discussed that.

Mr. Horwatt: You didn't know?

Mr. Jenne: (Witness shakes head).

Mr. Horwatt: You didn't hear them tell you that?

Mr. Jenne: If I hear your question correctly, I wasn't told that.

See pages 44-46 of the excerpted transcript affixed as Exhibit 3 to this Motion for Reconsideration.

8. This Court apparently concluded from her Trial Attorney's testimony that Ms. Snyder-Falkinham only objected to the contemplated transfer to her of Defendant Stockburger's 51 percent interest in Rich Hill Development Corporation, not the cancellation of the Stockburger Note.

9. The Court's conclusion stemmed in part from the following exchange between Mr. Jenne and this Court:

The Court: So far as the stock that Mr. Stockburger was to transfer back to her, at least the proposal of that, she did not agree to that?

Mr. Jenne: That's correct.

The Court: And she did agree to have the note marked paid and cancelled, that is the Stockburger note directed to her?

Mr. Jenne: Correct.

See page 35 of the excerpted transcript affixed as Exhibit 4 to this Motion for Reconsideration.

10. After the hearing, Ms. Snyder-Falkinham's personal attorney, Mr. Joseph Anthony, reviewed papers that Mr. Jenne had described as Ms. Snyder-Falkinham's original documents.

11. On the very top of this thick stack of documents, Mr. Anthony discovered a letter from Messrs. Jenne and/or Rasnic, dated January 12, 1994, (the "Letter") to defense counsel. The attached Affidavits from Georgia Anne Snyder-Falkinham and her tax attorney, Joseph L. Anthony, appear as Exhibits 5 and 6, respectively, in support of this Motion for Reconsideration.

12. This Letter provides independent, newly discovered evidence about the central importance of this aspect of the settlement, and that the Note had become the "sticking issue." The Letter is clearly not cumulative, and it is material. Unlike the prior evidence in the hearing, which merely consisted of the undocumented testimony

of Trial Attorney, the Letter constitutes a new form of proof. The Letter for the first time establishes beyond doubt that Trial Attorneys recognized the inextricable relationship between the cancellation of the Stockburger Note and preserving the integrity of the tax aspects of the December 1990 transaction.

13. The pertinent excerpt of this January 12, 1994, Letter appears below:

As Tom [Rasnic] and I [Jenne] related to Bunky [Miller] during our January 11 telephone conversation, if we are able to conclude the case at this point without the expenditure of additional time or money we will recommend a \$[redacted herein] settlement to our client. In addition we would expect Mr. Stockburger to pay the balance owed to Ms. Snyder-Falkinham together with interest from and after December, 1991 in order to give greater credibility to this transaction in the event of an IRS audit \* \* \*.

(Emphasis added.) A copy of this Letter appears as Exhibit 7.

14. This Letter establishes that her Trial Attorneys placed the Stockburger Note on an equal footing with the disposition of Stockburger's 51 percent interest in Rich Hill Development Corporation. The materiality of this newly discovered evidence, although inherently demonstrable, rises to an especially high level in light of the above-quoted colloquy between this Court and Mr. Jenne.

15. Uncontroverted testimony establishes that Ms. Snyder-Falkinham rejected a proposed offer on January 30, 1994, and on January 31, 1994, that required her to accept Stockburger's shares in Rich Hill Development Corporation. Consequently, defense counsel dropped this condition. However, defense counsel inappropriately insisted that Ms. Snyder-Falkinham consistently agreed to cancel the unpaid



Stockburger Note as part of the settlement.

16. Repeatedly during the hearing on February 15, 1994, this Court raised questions about the importance of the Note in the settlement negotiations.

17. The Letter establishes that the provisions of Defendant's settlement offer relating to the Note stood on a parity with the issues related to the stock. In fact, the Letter never even mentions the stock.

18. The failure and refusal of the Trial Attorneys to produce this obviously pivotal document, combined with the content of the Letter, support a reconsideration of this Court's denial of the Motion.

19. In this correspondence, her Trial Attorneys solicited a new offer from defense counsel. The Letter was not one of her original documents. It came from Mr. Jenne's files -- not Ms. Snyder-Falkinham's. If Special Counsel had had this Letter available to him when he cross-examined Mr. Jenne, Mr. Jenne's feigned ignorance about the central importance of the Stockburger Note would have come to light. This Court would, in all probability, have reached a different conclusion about whether Ms. Snyder-Falkinham had agreed to the provision relating to the Note. Therefore, upon reconsideration, this newly discovered evidence could have a decisive impact upon the disposition of the Motion.

20. For understandable reasons, Mr. Jenne and Mr. Rasnic withheld this Letter from their former client despite repeated requests from her and from Mr. Anthony that they provide her with copies of all documents related to settlement negotiations -- especially the Letter -- which she asked them to fax to her.

21. Because the Court stressed the importance of this aspect of the settlement negotiations throughout the hearing, this newly discovered evidence could result in this Court's granting the Motion.

22. Repeatedly, before the hearing on February 15, Ms. Snyder-Falkinham requested that her former Trial Attorneys produce documents that would have included the Letter.

23. On February 4, 1994, Ms. Snyder-Falkinham faxed a letter to Messrs. Jenne and Rasnic that specifically requested:

A copy of all letters to and from counsel for the  
Defendants regarding settlement offers and/or solicitations  
for settlement offers (emphasis added).

A copy of this letter appears as Exhibit 8 affixed to this Motion for Reconsideration.

24. Next, on Friday, February 8, 1994, their client pled with them to give her materials they alone had. Such materials would have given her a more meaningful opportunity to protect her interests. She wrote:

Last Friday [February 4] I faxed each of you a  
letter requesting information which I desperately need to  
protect my interest. As of this time, I have not received  
any of the requested information . . .

\* \* \*

I am apprehensive that if I do not have this  
information before I appear in court . . . my case will be  
severely prejudiced, especially since you both state that  
you will testify for the defense "that this case had been  
settled."

See Exhibit 9.

25. As "lead counsel," Mr. Jenne had all of the relevant documents within the

scope of Ms. Snyder-Falkinham's requests, especially the Letter.

26. Mr. Jenne maintains law offices in Cleveland, Tennessee. He had a duty to produce these materials to Ms. Snyder-Falkinham without a subpoena. Ms. Snyder-Falkinham took reasonable steps to obtain the Letter and other materials that may have influenced the outcome of the proceeding. A subpoena issued by this Court would have no validity in Tennessee.

27. The Letter's central importance extends beyond the issue of whether the parties reached a settlement. It also relates directly to any implied authority of Messrs. Jenne and Rasnic. Defense Counsel certainly had reason to know about the importance of the Stockburger Note to her.

28. This Letter also defines the scope of Trial Attorneys' authority. Moreover, the Defense maintained that Messrs. Jenne and Rasnic derived their express and implied authority to bind Ms. Snyder-Falkinham at the mediation session in Richmond on January 25, 1994. In light of the Letter, which Defense Counsel received, they had notice that Ms. Snyder-Falkinham would reject forgiveness of the Stockburger Note. Mr. Jenne wrote, in part (emphasis added):

In addition we would expect Mr. Stockburger to pay the balance owed to Ms. Snyder-Falkinham together with interest from and after December 1991 in order to give greater credibility to this transaction in the event of an IRS audit.

See Exhibit 7, p. 3.

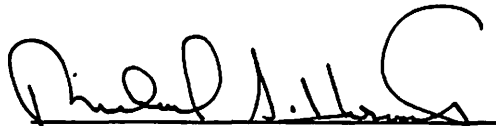
29. In conclusion, the Letter establishes the paramount importance of one central guiding principle upon which Ms. Snyder-Falkinham insisted as a condition to

any settlement: that she would agree to no provision that would jeopardize the tax treatment of the December 1990 transaction. The Letter betrays her Trial Attorneys' now apparent attempt to trivialize the critical importance and possible far reaching consequences of forgiving the Stockburger Note.

30. The Letter confirms that the parties never had a meeting of the minds and that the document confirmed by this Court's ruling does not embody the parties' understanding and all essential terms.

WHEREFORE, Georgia-Anne Snyder Falkinham respectfully prays that this Court grant her Motion to Reconsider, Vacate the Order and Final Order entered by this Court on January 31, 1994, and thereafter convene a status conference. She also requests that this Court rule on this Motion to Reconsider without any further hearing of this Court.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael S. Horwatt", written over a horizontal line.

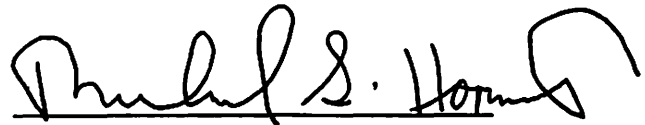
Michael S. Horwatt  
Charles F. Wright  
Michael Horwatt & Associates, P.C.  
8300 Boone Boulevard, Suite 800  
Vienna, VA 22182  
(703) 847-1900

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing Motion for Reconsideration sent by facsimile and by U.S. mail, postage pre-paid, this 12th day of February, 1994, to counsel as follows:

Frank B. Miller, III, Esquire  
Sands, Anderson, Marks & Miller  
P.O. Box 1998  
Richmond, VA 23216

Ronald D. Hodges, Esquire  
Wharton, Aldhizer & Weaver  
A Professional Limited Liability Company  
100 South Mason Street  
Harrisonburg, VA 22801

  
Michael S. Horwatt

1 (This concludes the testimony of Mr. Jenne.)

2  
3 \* \* \* \* \*

4  
5 THE COURT: Thank you.

6 Well, Mr. Horwatt, I can't help but be  
7 impressed at the amount of time, the amount of work  
8 and effort that you've put into this case, and I  
9 think that's true of Mr. Miller, Mr. Hodges,  
10 Mr. Rasnic, and Mr. Jenne, too. I think all of you  
11 all put in a tremendous amount of work and time on  
12 this case.

13 I'm sure each of you did the best you could  
14 to represent the interests of your clients, and I  
15 surely wish there was something I could do to make  
16 each of you happy, but obviously I can't do that.

17 And to a great extent it does boil down to a  
18 question of credibility; that is, whether I believe  
19 Ms. Snyder-Falkinham or whether I believe Mr. Jenne  
20 and Mr. Rasnic and some of the other witnesses.

21 The plaintiff has testified about some of the  
22 things she did agree to. And I'm not going to try  
23 to comment on all of the evidence or each phase of  
24 your individual arguments, but the plaintiff

1 indicated, insofar as the amount was concerned, that  
2 that was acceptable to her, and it sort of boiled  
3 down to the big problem being this note, so far as  
4 the end alleged agreement is concerned; that is, the  
5 note from Mr. Stockburger to the plaintiff, the  
6 \$25,000 note. And there's considerable discrepancy  
7 in the testimony as it relates to that.

8 But each of the attorneys testified  
9 positively that the defendant did agree to the terms  
10 of the settlement, the various itemizations and the  
11 conditions of the settlement.

12 That's been corroborated to some extent by  
13 disinterested witnesses, unless you could say that  
14 employees of Mr. Rasnic and Mr. Jenne were biased or  
15 prejudiced to some extent, or would favor one side  
16 as distinguished from the other. But there's no  
17 real reason to believe that they would come in and  
18 perjure themselves.

19 And I don't think that really anyone is  
20 intentionally making a false statement in this case,  
21 and it could be that the plaintiff really did not  
22 understand what was being explained to her, although  
23 she appears to be a very intelligent woman and a  
24 knowledgeable woman, and a person who does have some

1 business experience, based on what I've heard today  
2 and the various pleadings and papers that have been  
3 filed in this case.

4 But so far as the motion to vacate is  
5 concerned, Mr. Horwatt, as I say, I think you did an  
6 excellent job in representing your client on it, but  
7 I just don't feel it should be vacated, and I would  
8 deny the motion, and I would find as a fact that the  
9 plaintiff did agree to the terms of the settlement,  
10 and that the attorneys did have actual as well as  
11 implied authority to settle the case.

12 Do each of you all have an order that's been  
13 prepared in this matter?

14 MR. MILLER: Yes, sir.

15 THE COURT: You might show it to Mr. Horwatt  
16 and get him to approve it.

17 MR. HORWATT: Your Honor, there is a motion  
18 for sanctions pending.

19 THE COURT: Do you all intend to pursue that?

20 MR. HODGES: May I have just one moment,  
21 Judge.

22 THE COURT: Let's get the order first, and  
23 let Mr. Horwatt look at that.

24 So far as the motion for sanctions is



1 was to be Bruce Stockburger and his law firm,  
2 Gentry, Locke, Rakes & Moore; Bob Glenn and his  
3 firm; I'm not sure the name of the firm. We agreed  
4 to withdraw the trial brief.

5 With regard to the issue on the sale of Rich  
6 Hill stock, our position was, and we discussed this  
7 with her, that we were not going to do anything with  
8 Mr. Stockburger's stock that would overturn a  
9 December 1990 transaction that was created long  
10 before any of this came up that created some tax  
11 losses for her.

12 I guess to amplify this a little bit,  
13 Mr. Hodges stated that Bill Rakes, the managing  
14 member of this law firm, was insistent that Bruce  
15 Stockburger not have any of this Rich Hill stock.  
16 They wanted to completely divorce Mr. Stockburger,  
17 who is her former lawyer and business partner, and  
18 Ms. Snyder-Falkinham.

19  
20 BY MR. MILLER:

21 Q State whether or not there was any discussion  
22 at that time about satisfaction of the note running from  
23 Mr. Stockburger to Ms. Snyder-Falkinham in the amount of  
24 \$25,000.

1 A Yes. The note was to be marked paid.

2 Q Did Ms. Snyder-Falkinham agree to that?

3 A Yes.

4 Q That was in your first conversation with her  
5 after the meeting which ended at 2:00 o'clock with  
6 Mr. Hodges?

7 A Right. And with regard to the note, when we  
8 were discussing this, it wasn't a big issue, and Mr. Rasnic  
9 made the statement to her that he would buy the note from  
10 her for \$25,000 if that's what she wanted him to do.

11 His statement basically was that If  
12 everything else is agreeable to you, that should not be an  
13 impediment, and I think Mr. Rasnic's words about the stock  
14 transfer of Mr. Stockburger's stock was to transfer it to  
15 the Easter Bunny; something to that effect.

16 Q Did you go back and meet with defense counsel  
17 after that meeting with Ms. Snyder-Falkinham?

18 A Yes.

19 Q Did you reach an agreement with defense  
20 counsel with respect to Michael and Stacey Snyder?

21 A When Mr. Rasnic and I, at the second meeting,  
22 we met you two, you and Mr. Hodges, back in Room 125, we  
23 told you at that time that we could not speak on behalf of  
24 the trust, on behalf of Joe, or on behalf of Mike and

1 the case.

2 MR. MILLER: I object.

3 THE COURT: I think you guys are being kind  
4 frivolous about it, really.

5 MR. HORWATT: I apologize, Your Honor. I'll  
6 move on.

7 THE COURT: All right.

8

9 BY MR. HORWATT:

10 Q Now, when -- you also knew that there was a  
11 tax question; you said that?

12 A A tax question about this December 1990  
13 transaction?

14 Q Yes.

15 A Well, we knew that we were not going to do  
16 anything in this settlement to upset that.

17 Q Well, you knew that she objected to the  
18 transfer of the stock back to her, which was one of the  
19 conditions that the defendants had made as a basis for this  
20 proposed settlement; isn't that correct?

21 A That was not an initial objection. I'm  
22 not a tax attorney, Mr. Rasnic is not, obviously  
23 Ms. Snyder-Falkinham is not. We did not know how, or in  
24 what way, if anything, it would impact her to have

1 Mr. Stockburger's stock transferred back to her.

2 So to that end, we called Mr. Anthony, Joe  
3 Anthony, who is a tax attorney; discussed it with him. He  
4 and I were initially talking about if she took his stock in  
5 cancellation of the \$25,000 note, would that give her a  
6 \$25,000 basis in that stock so she could take an additional  
7 loss.

8 Q Mr. Jenne, my question to you is this: She  
9 told you she had a problem with that condition, didn't she?

10 A No. She didn't know.

11 Q She told you she would not accept that  
12 condition unless and until she was satisfied that it would  
13 not cause tax problems to her?

14 A No. We told her that we were not going to  
15 involve that stock transaction, and she agreed. You know,  
16 she did not want anything to upset that December 1990  
17 transaction; we didn't either.

18 Q Now, the note was part of the stock  
19 transaction, wasn't it; it was part of the total transaction  
20 in 1990?

21 A Mr. Stockburger still had a \$25,000  
22 outstanding note to her.

23 Q It was part of the transaction?

24 A I did not put the transaction together. I

506

1 guess, if you want to use it in that term.

2 Q And the question of what happened to the  
3 note, you knew, didn't you, was just as much of a concern to  
4 Mr. Anthony and to her CPA as the stock was?

5 A No. I never discussed that.

6 Q You didn't know?

7 A (Witness shakes head).

8 Q You didn't hear them tell you that?

9 A If I hear your question correctly, I wasn't  
10 told that.

11 May I have my notes back?

12 Q Well, I have some more questions I have to  
13 ask you about these notes.

14 A Okay. I just want to make sure they don't  
15 get shuffled in with your papers.

16 Q Fine. How long had you been working on this  
17 case?

18 A I first met Ms. Falkinham in the summer of  
19 1991; started working on this case in the fall of 1991.

20 Q You have a lot of hours in the case?

21 A Yes.

22 Q And you had a 40 percent contingency riding  
23 on the outcome of this case, did you not?

24 A Yes. That was our fee basis.

1 THE WITNESS: That's correct.

2 THE COURT: So far as the marital trust, the  
3 release of Central Fidelity Bank, she indicated she  
4 didn't have the authority to do that?

5 THE WITNESS: That's correct.

6 THE COURT: So far as the various entities  
7 that you referred to, I understood you to say that  
8 she did not agree to that; did I understand you --

9 THE WITNESS: No, that's incorrect. She did  
10 agree on behalf of the Snyder Company, Snyder  
11 Associates, and Rich Hill Development, in her  
12 capacity with Rich Hill Development.

13 THE COURT: And the trial brief she agreed  
14 that would be withdrawn?

15 THE WITNESS: Yes.

16 THE COURT: So far as the stock that  
17 Mr. Stockburger was to transfer back to her, at  
18 least the proposal of that, she did not agree to  
19 that?

20 THE WITNESS: That's correct.

21 THE COURT: And she did agree to have the  
22 note marked paid and canceled, that is the  
23 Stockburger note directed to her?

24 THE WITNESS: Correct.

## EXHIBIT 5

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF ROANOKE

GEORGIA ANNE SNYDER-FALKINHAM,	)	
	)	
Plaintiff,	)	
	)	
V.	)	Civil Action
	)	No. 92-1212
	)	
BRUCE C. STOCKBURGER, <u>et al.</u> ,	)	
	)	
Defendants.	)	

### AFFIDAVIT OF GEORGIA ANNE SNYDER-FALKINHAM

---

I, Georgia Anne Snyder-Falkinham, after being duly sworn, state as follows:

1. Thomas L. Rasnic, Esquire ("Mr. Rasnic"), and Roger E. Jenne, Esquire ("Mr. Jenne") (collectively, "Trial Attorneys"), never asked me to agree to or accept the condition that the December 15, 1990, note in the face amount of \$25,000 from Bruce C. Stockburger to me ("Note") be marked "paid" on Sunday, January 30, 1994, or Monday, January 31, 1994.

2. Mr. Rasnic did state at one point that he would buy the Note. However, no one ever asked me if I would consider the Note "paid" and/or mark the Note "paid."

3. The January 12, 1994, letter from Mr. Jenne to Messrs. Frank Miller, Esq., and Ronald D. Hodges, Esq. ("Defense Counsel"), which is attached to the Motion For Reconsideration as Exhibit 7 ("Letter") was never authorized by me.

EXHIBIT 5

4. The existence of this Letter soliciting an offer for a \$[dollar amount redacted herein] settlement became known to me in the mediation conference on January 25, 1994, when Defense Counsel divulged its existence.

5. Even after repeated demands by me to see the Letter, my Trial Attorneys refused to discuss the content of the Letter with me or to provide me with a copy of the Letter.

6. In view of the repeated refusals and the subsequent unauthorized acts, I specifically demanded a copy of the Letter by my letter to my Trial Attorneys dated February 4, 1994, stating that

in order for me to evaluate my options at this time I am in dire need of ... a copy of all letters to and from counsel for the Defendants regarding settlement offers and/or solicitations for settlement offers.

See Exhibit 8, attached to the Motion For Reconsideration.

7. Again, by my letter to my Trial Attorneys dated February 8, 1994, I demanded a copy of the Letter stating that

Last Friday I faxed each of you a letter (Exhibit 8, above) requesting information which I desperately need to protect my interest. As of this time I have not received any of the requested information. Again, I must have that information immediately in order to, among other things, file the Motion to Vacate....

. . .

I am apprehensive that if I do not have this information before I appear in court ... my case will be severely prejudiced, ....

See Exhibit 9, attached to the Motion For Reconsideration.

8. Again, by my letter to Mr. Rasnic dated February 10, 1994, I demanded a copy of the Letter requesting (emphasis added)



a copy of [Tom's]/Roger's letter to counsel for the defendants soliciting an offer of \$[dollar amount redacted herein] .... The existence of this solicitation letter came out at the medication session in Richmond (on January 25, 1994). I have not seen this letter. Please fax this letter to me as soon as possible.

See My letter to Mr. Rasnic dated February 10, 1994, which is attached hereto as Exhibit 10.

9. Again, by my letter to Mr. Jenne dated February 10, 1994, I demanded a copy of the Letter requesting (emphasis added)

a copy of [Roger's]/Tom's letter to counsel for the defendants soliciting an offer of \$[dollar amount redacted herein] .... The existence of this solicitation letter came out at the medication session in Richmond (on January 25, 1994). I have not seen this letter. Please fax this letter to me as soon as possible.

See My letter to Mr. Jenne dated February 10, 1994, which is attached hereto as Exhibit 11.

10. Without a response to my repeated demands and in frustration, I wrote yet another letter to my Trial Attorneys dated February 11, 1994, providing, at page 2 (emphasis added) that

I sincerely believe ... that the files you have in your possession in this case are my files .... If you have any legal authority to support your position that, during the continuation of an ongoing case, you can deny me the availability of my entire files, please provide me with that authority at once. I hereby -- and again -- respectfully demand that you promptly make all my files available to me without further irreparable damage to my case.

See my letter to my Trial Attorneys dated February 11, 1994, which is attached hereto as Exhibit 12.

11. I did not receive and was not able to read the Letter until Tuesday evening on February 15, 1994, after the scheduled hearing on the Motion To Vacate.

FURTHER AFFIANT SAYETH NOT.

Georgia Anne Snyder Falkinham  
Georgia Anne Snyder-Falkinham

Subscribed and sworn to before me by Georgia Anne Snyder-Falkinham on February 18<sup>th</sup> 1994.

Shirley Jean Rivers  
Notary Public

My commission expires:

June 30, 1996

EXHIBIT 6

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF ROANOKE

GEORGIA ANNE SNYDER-FALKINHAM,	)	
	)	
Plaintiff,	)	
	)	
V.	)	Civil Action
	)	No. 92-1212
	)	
BRUCE C. STOCKBURGER, <u>et al.</u> ,	)	
	)	
Defendants.	)	

AFFIDAVIT OF JOSEPH L. ANTHONY

---

I, Joseph L. Anthony, after being duly sworn, state as follows:

1. After the hearing on the Motion To Vacate on February 15, 1994, I was told that Roger E. Jenne, Esquire ("Mr. Jenne"), had a box which contained a number of original documents which belong to Georgia Anne Snyder-Falkinham ("Ms. Snyder-Falkinham") and/or an entity in which she owned an interest.

2. As general legal counsel for Ms. Snyder-Falkinham and the Snyder Family (including related entities), I was asked to peruse the box ("Box") in order to ascertain its contents.

3. I turned to look for the Box, and I saw Mr. Jenne standing over the Box, which had been placed on the Plaintiff's table.

4. When I looked in the Box, I saw a letter on Rasnic and Rasnic, P.C., stationery to Frank Miller, Esq., and Ronald D.

Hodges, Esq., dated January 12, 1994 (the "Letter"), on top of a thick stack of documents encircled with a rubber band.

5. When I read the letter, I realized that this was the "solicitation" letter which Ms. Snyder-Falkinham had previously told me about which she did not authorize and desperately needed a copy of.

6. On Wednesday, February 16, 1994, I informed Michael S. Horwatt, Esquire, Special Counsel for Ms. Snyder-Falkinham, of the procurement of the Letter and the content of the Letter. I regarded this Letter as confirming the actual knowledge of Messrs. Rasnic and Jenne as to the fact that they knew that Ms. Snyder-Falkinham understood that forgiveness of the \$25,000 note dated December 15, 1990, from Stockburger to Ms. Snyder-Falkinham ("Note") could cause unacceptable "IRS audit" problems for Ms. Snyder-Falkinham regarding the entire December 1990 transaction.

7. Further, I concluded that the Letter established that Messrs. Miller and Hodges had reason to know that just as Ms. Snyder-Falkinham would not agree to a transfer of Stockburger's interest in the Rich Hill Development Corporation to her, neither would she agree to the cancellation of the Stockburger Note as a condition of any settlement.

FURTHER AFFIANT SAYETH NOT.

  
Joseph L. Anthony

Subscribed and sworn to before me by Joseph L. Anthony on  
February 18<sup>th</sup> 1994.

Nancy S. Akers  
Notary Public

My commission expires:

November 30, 1997

LAW OFFICES  
P.O. BOX 733  
JONESVILLE, VIRGINIA 24263

THOMAS L. RASNIC

LICENSED TO PRACTICE  
IN VIRGINIA & TENNESSEE

703-346-3690  
TELECOPIER • 703-346-0229  
CIVIL, DOMESTIC & CRIMINAL LITIGATION

JAMES E. RASNIC

LICENSED TO PRACTICE  
IN VIRGINIA ONLY

January 12, 1994

Frank Miller, Esq.  
P. O. Box 1998  
Richmond, VA 23216

Ronald D. Hodges, Esq.  
100 S. Main Street  
Harrisonburg, VA 22801

RE: Snyder-Falkinham v. Bruce Stockburger, et als

Gentlemen:

This will follow up on our various communications, particularly with Bunky, concerning the above-captioned case. As I related to Bunky during our telephone conversation during the week of January 2nd, the Defendant's offer to settle in the amount of [REDACTED] is emphatically rejected. As a matter of fact, our client, as well as Mr. Rasnic and myself, view this as insult. Bunky explained the methodology utilized in calculating the Defendant's maximum exposure at [REDACTED] further explained that in his view liability was a "toss-up"; and based upon this methodology offered what he considered to be 50% of the Defendant's maximum exposure. While we appreciate and respect your abilities as capable advocates we must most respectfully disagree with your analysis. We take this opportunity to share with you some of our general thoughts concerning this case.

The evidence will establish that commencing around 1980 an attorney/client relationship attached between Bruce Stockburger and our client. This attorney/client relationship formed shortly after the death of Peter Snyder and during a period when our client, as a housewife and mother of young children, was very unsophisticated in business dealings. The attorney/client relationship between Stockburger and our client continued even after Stockburger joined the Defendant law firm of Gentry, Locke, Rakes and Moore. The evidence establishes that the attorney/client relationship between this law firm and our client continued through at least 1990 and probably over into early 1991. Subsequent to the inception of the attorney/client relationship in the early 1980's the parties became close personal friends. This attorney/client/friendship relationship evolved to the point where Stockburger was in fact advising Ms.

January 12, 1994

Frank Miller, Esq. & Ronald Hodges, Esq.

Page Two

Snyder Falkinham on a daily basis, not only as to legal issues but to financial and business issues. As Stockburger acknowledges, he and his law firm represented her in thousands of undertakings during this time-frame. The evidence will establish that the law firm was doing some legal work on her behalf, and charging her, almost on a daily basis during this time-frame. Ms. Snyder-Falkinham was relying on Stockburger and the law firm to provide her legal and business advice during this time-frame. The Defendants were also providing advice to her family members and business entities created through the legal efforts of this law firm. Stockburger even named himself as the co-executor of our client's Last Will and Testament.

I believe that you will both agree that as a matter of law Stockburger, and the remaining Defendants as partners of Stockburger, owed a fiduciary duty to Ms. Snyder-Falkinham. It is the Plaintiff's position that the multi-faceted relationship between the Plaintiff and the Defendants imposed a higher standard upon the Defendants. The law is clear that the fiduciary obligations of an attorney continue even after the attorney/client relationship is severed. In this instance the Defendants attempt to hide behind a "shield" created by Mr. Glenn's involvement will not be successful. We most respectfully insist that Glenn's involvement is insignificant insofar as the Defendants' liabilities to the Plaintiff. The Defendants continued to represent the Plaintiff in legal undertakings even after Glenn became involved in some capacity. Certainly the law does not allow a law firm to represent a client in certain undertakings while at the same time become involved in activities adverse to the client's interest. The law imposes upon the Defendants, under the circumstances which will be supported by the evidence in this case, a continuing duty to put the client's interest above the interest of all others and particularly above the personal interest of any member of the law firm. The Plaintiff expected that the Defendants were at all times acting in her best interest.

We believe that the evidence will clearly establish the liability of the Defendants under the following theories:

1. Breach of fiduciary duty;
2. Negligence or failure to represent the client's interest with ordinary care, skill and diligence;
3. Negligent and/or intentional misrepresentation; and
4. Fraud.

We are confident that a jury will find in the Plaintiff's favor on one or more of the aforesaid theories. We are also confident that the law imputes Stockburger's intentional and/or fraudulent

January 12, 1994

Frank Miller, Esq. & Ronald Hodges, Esq.

Page Three

misconduct to the partnership. As we view it, the law firm's liability is more than vicarious. The record evidence shows that from its inception the law firm, through Mr. Rakes, had knowledge of Stockburger's personal involvement with his client. The law firm had knowledge of Stockburger's antagonistic relationship with his client. The law firm had knowledge that the firm, as well as Stockburger, continued, with this obvious conflict, to advise and represent the Plaintiff. Without discussing the myriad of conflicts involving Rich Hill, John Olver, Olver Inc., Ralph Sampson and the other business entities involved, it is clear that neither Stockburger, nor the law firm, could justify the various masters they were purporting to serve.

We believe the evidence will satisfactorily convince the jury that Stockburger, through intentional and/or negligent misrepresentation, induced the Plaintiff to become involved in Rich Hill Development Corporation for his own personal gain. We believe that the evidence will establish that Stockburger's motivation inducing the Plaintiff's involvement was not for her economic benefit but for his. We believe the evidence will establish clearly that from the very beginning of the High Meadow development he intended to take advantage of the Plaintiff financially and that he in fact did so. The evidence in this case will support a verdict of punitive damages.

We also have significant problems with Bunky's analysis concerning damages. Again, we appreciate your legal abilities as well as your abilities as an advocate; however, we seriously doubt that you will be able to sell the jury that the damages are nominal. Bunky seems to use the April, 1991 letter of the Plaintiff as a benchmark and wants to deduct anticipated tax refunds as a credit against that benchmark. He fails to consider, or at least does not want us to consider the fact that Ms. Snyder-Falkinham did not receive the tax refund. She must pay 80% to the trust as she is fully obligated to the trust for the repayment of \$1.6 million.

The Plaintiff has put more than \$3.2 million into the Rich Hill Development Corporation, a project that was suppose to not cost her any money and was to generate over \$8,000,000.00 in profit. In addition to her capital outlay she has a loss of use of those funds totaling \$1,140,097.00 (see Mehler report faxed to you on January 12, 1994). The precise amount has not been calculated. In addition, she has paid over \$300,000.00 in attorney's fees.

Your analysis of Plaintiff's damages being less than [REDACTED] is erroneous for the following reasons:

1. Georgia Anne Snyder-Falkinham executed a note to



January 12, 1994

Frank Miller, Esq. & Ronald Hodges, Esq.

Page Four

Michael Snyder and Stacy Snyder in the amount of [REDACTED] which note is a legal debt (if not, Mr. Stockburger has practiced another fraud).

2. Central Fidelity Bank used [REDACTED] in CD's which came from the sale of Georgia Anne Snyder-Falkinham's individual property in North Carolina to pay the interest on Rich Hill's debt.

3. [REDACTED] received by Georgia Anne from the sale of her Blacksburg, Virginia properties to the Snyder Land Trust (which were set up by Mr. Stockburger) was "loaned" to Rich Hill. It is interesting to note that the money also came from the residual trust.

4. Mrs. Snyder-Falkinham took [REDACTED] from the marital trust income which had accumulated and put this amount in the project from November, 1989 through July, 1990.

5. [REDACTED] came out of the marital trust in December, 1990. This reduced the value of the marital trust to approximately [REDACTED]. The trustees at Crestar Bank required that the High Meadows Land Trust sign a note to the marital trust to repay this money and this note was guaranteed by Georgia Anne Snyder-Falkinham personally. We assume that this is not some other type of ruse but is a legal and binding debt.

6. The balance of the monies used to pay off the Central Fidelity debt, that is, [REDACTED] came from the residual trust and Georgia Anne Snyder-Falkinham was required to sign a note guaranteeing the payment to the residual trusts of this entire amount. She has paid approximately [REDACTED] from her tax refunds to the residual trust on this debt.

7. Loss of use of monies totaling [REDACTED]

Without itemizing all of the Plaintiff's proof we are confident that the evidence will support a jury verdict of at least [REDACTED] without consideration of punitive damage.

As Tom and I related to Bunky during our January 11 telephone conversation, if we are able to conclude the case at this point without the expenditure of additional time or money we will recommend a [REDACTED] settlement to our client. In addition we would expect Mr. Stockburger to pay the balance owed to Ms. Snyder-Falkinham together with interest from and after December, 1991 in order to give greater credibility to this transaction in the event of an IRS audit. If the case is going to be disposed of without litigation it should be settled at this point without

January 12, 1994

Frank Miller, Esq. & Ronald Hodges, Esq.

Page Five

requiring either party to invest further time and money.

You may contact us if you desire to dispose of the case as above outlined.

Sincerely,



Roger Jenne  
RJ/grj

**SNYDER  
& ASSOCIATES  
GENERAL CONTRACTORS**

GEORGIA ANNE SNYDER-FALKINHAM  
PRESIDENT

February 4, 1994

VIA TELECOPIER & US MAIL

Mr. Roger Jenna  
Jenna, Scott & Bryant  
P. O. Box 161  
Cleveland, Tennessee 37364-0161

RE: Georgia Anne Snyder-Falkinham  
vs. Bruce C. Stockburger, et al

Mr. Tom Rasnic  
Rasnic & Rasnic  
P. O. Box 733  
Jonesville, Virginia 24263

Dear Roger & Tom:

In order for me to evaluate my options at this time I am in dire need of the following information:

1. A detailed account of the settlement negotiations on Monday, January 30, 1994, through to the present, including the second revised draft of the Mutual Release and Settlement Agreement;
2. A copy of all notes/memos in your possession regarding the terms/provisions to be included in any settlement document;
3. A copy of all letters to and from counsel for the Defendants regarding settlement offers and/or solicitations for settlement offers;
4. A copy of all legal memos prepared by you two and/or the Charlottesville research group and not filed with the court, but I have paid them for; and
5. A copy of any documents and/or evidence you have disclosing the malpractice insurer for Bob Glenn and his law firm.

Please provide me with this information as soon as possible. In view of the fact that item No. 1 may take a few hours, please do not hold up the faxing of the other requested information until the entire package of information is ready. Thank you!

Sincerely,



Georgia Anne Snyder-Falkinham

**SNYDER  
& ASSOCIATES**  
GENERAL CONTRACTORS

February 8, 1994

GEORGIA ANNE SNYDER-FALKINHAM  
PRESIDENT

VIA TELECOPIER & US MAIL

Mr. Roger E. Jenne (615-476-5058)

Jenne, Scott & Bryant

P.O. Box 161

Cleveland, Tennessee 37364-0161

RE: Georgia Anne Snyder-Falkinham  
vs. Bruce C. Stockburger, et al

and

Mr. Thomas L. Rasnic (703-346-0229)

Rasnic and Rasnic, P.C.

P.O. Box 733

Jonesville, Virginia 24263

Dear Roger and Tom:

Last Friday I faxed each of you a letter requesting information which I desperately need to protect my interest. As of this time, I have not received any of the requested information. Again, I must have that information immediately in order to, among other things, file the motion to vacate, which you have indicated should be done. If you cannot or are not going to provide me with any of this information, I must, also, know that fact immediately. If you cannot or are not going to provide me with the requested information, it would appear that I would need to seek the court's assistance in this regard.

I am apprehensive that if I do not have this information before I appear in court for any reason that, my case will be severely prejudiced, especially since you both state that you will testify for the defense "that this case had been settled." If you can honestly testify that the case has been settled, then it is obvious that you know some facts which I do not know. From what I learned in this case, you two, as attorneys for me, are required to protect and act in my best interest when you represent me and when you terminate that relationship. I have recently learned that you either have filed (or are anticipating the filing of) a motion to withdraw as my counsel. In attempting withdrawal without reasonable notice to me, I hereby respectfully demand that you tell the truth regarding all matters and that you act with loyalty to protect my interest.

In this regard, and in addition to the information previously requested, I must have the following information and/or questions answered immediately:

1. A copy of all engagement letters and/or agreements (including letters of transmittal) which I have signed granting you the right to represent me;

EXHIBIT 9

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2. Whether you had in your possession a copy of the order ("Order") and final order ("Final Order") entered by Judge Jennings on Sunday, January 30, 1994?;
3. Whether you, Tom/Roger, signed the Order and/or Final Order Sunday night or Monday morning?;
4. The identification of all parties present at the hearing before Judge Jennings on Monday, January 31, 1994, when the Order and Final Order was entered;
5. Whether there was a Court Reporter there at the hearing and whether that Court Reporter recorded the proceedings?;
6. If the Court Reporter was dismissed without recording this important hearing, who dismissed the Court Reporter?;
7. The name of all Court Reporters scheduled to record the trial proceedings and the name of the organizations they work for;
8. Whether and/who (if applicable) made a summary recitation of the settlement negotiations/purported "settlement agreement" to the Court in order to procure the entry of the Order and Final Order?;
9. Whether any motions/orders were made and/or submitted to the Court on January 31, 1994, which were not granted?;
10. A detailed account of what was said and by whom at the hearing before Judge Jennings on January 31, 1994;
11. A detailed account by date, time, and subject matter, and outcome of every conversation/communication you had with opposing counsel since the hearing before Judge Jennings on January 31, 1994, specifically as to conversations on whether or not there was an agreement and what was the alleged agreement you two reached with opposing counsel without my authorization and/or approval;
12. Any and all documents/information you have on the financial condition of Gentry, Locke, Rakes & Moore, including balance sheets and income information;
13. Any and all documents/information you have on the financial condition of Bruce C. Stockburger, including balance sheet and income information;

Mr. Thomas L. Rasnic and Mr. Roger E. Jenne  
February 8, 1994  
Page 3

14. Any and all documents/information you have on the financial condition of any partner at Gentry, Locke, Rakes & Moore, including balance sheets and income information;
15. Any and all documents/information you have on the reservation of rights and/or exclusion regarding Gentry, Locke's insurance through the Virginia Reciprocal; and
16. Any and all documents/information you have regarding non-Virginia Reciprocal insurance coverage (e.g., errors and omission, umbrella) which Gentry, Locke (and each of its partners named in this action) carry.

I hereby respectfully demand that each of you immediately box up for my pickup all the information and files you have of mine, or any entity in which I have an interest, including, without limitation, all pleadings; discovery; correspondence; memoranda; drafts of documents; notes; computer diskettes containing information relating to these matters; telephone message slips; copies of cases, statutes, or other research; records and bills; etc., created in preparation for this trial. If you are retaining any documents/information which you refuse to allow me to pick up, you are directed to prepare a list of those items with the type of print (e.g., handwritten or typed) and the number of pages making up each document. I will have someone at Roger's office on Thursday, February 10, 1994, at approximately 10:00 a.m. to pick up my files. I will have someone at Tom's office on Thursday, February 10, 1994, at approximately 3:00 p.m. to pick up my files. For your information, I have enclosed LEO# 1544 which was recently provided to me.

All of the requests/demands in this letter are continuing in nature. Further, I expect you to up-date me promptly regarding any information/document you procure after this date of the letter on any matter addressed in this letter or any litigation matter of mine which is now pending. Furthermore you are hereby directed not to file anything in any Court regarding any of my cases without written authority from me.


I hereby respectfully demand and instruct you not to discuss any of my litigation matters with the Defendants or their counsel. Any prior authorizations (written and/or oral) allowing you to negotiate, settle, and/or compromise any matter for my benefit, subject to my approval, is hereby revoked. As attorneys engaged to represent me, you are hereby directed to write to and/or discuss any matter with Joseph L. Anthony, which you believe is in my best interest. You are, also, hereby directed to pass on to Joseph L. Anthony any and all information and/or opinions which you have regarding what I need to do to protect my interest in any of the litigation matters with which you have been associated.

Mr. Thomas L. Rasnic and Mr. Roger E. Jenne  
February 8, 1994  
Page 4

As you are surely able to determine from the language and the subject matter used/covered in this letter, I did employ other legal counsel to assist me in drafting this letter. As you know, however, I continued to employ Joseph L. Anthony, as legal counsel regarding essentially all non-litigation matters for me and my related entities, while this litigation was proceeding. Accordingly, it should not surprise you that I received legal assistance in drafting this letter. Further, my use/employment of additional counsel does not relieve you of any of your obligations and responsibilities as my attorney to take the actions necessary to continue to protect my interest. Furthermore, please understand that the instructions, directives, and/or demands in this letter are from me and are not from my legal counsel. Further, these directives are made by me to you in order to procure the information necessary to protect my interest in the litigation matter you are pursuing for me.

I eagerly await your response and compliance.

Sincerely,

A handwritten signature in cursive script, appearing to read "Georgia Anne".

Georgia Anne Snyder-Falkinham

**SNYDER  
& ASSOCIATES  
GENERAL CONTRACTORS**

February 10, 1994

GEORGIA ANNE SNYDER-FALKINHAM  
PRESIDENT

VIA TELECOPIER  
(703)-346-0229)

Mr. Thomas L. Rasnic  
Rasnic & Rasnic  
P. O. Box 733  
Jonesville, Virginia 24263


Dear Tom:

I have enclosed copies of seven (7) invoices from National Legal Research Group in Charlottesville, Virginia, which I paid for concerning the Bruce C. Stockburger, et al, lawsuit. I only have copies of a part of the material/information generated regarding jury instructions (i.e., invoice #65,407) and brief in opposition to demurrer (i.e., invoice #60,859).

Please fax me the balance of the material/information you received from the Research Group in Charlottesville. If this material is too voluminous to fax, I would appreciate receiving this material/information as soon as possible by Federal Express and if necessary Federal Express could deliver to my home at 501 Rucker Road on Saturday.

Also, please provide me with a copy of your/Roger's letter to counsel for the defendants soliciting an offer of \$~~250,000~~, which provided that you and Roger would recommend this amount to your client. The existence of this solicitation letter came out at the mediation session in Richmond. I have not seen this letter. Please fax this letter to me as soon as possible.

Sincerely,



Georgia Anne Snyder-Falkinham

GASF:h

Enclosures

cc: Joe Anthony  
Michael Horwatt

EXHIBIT 10

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**SNYDER  
& ASSOCIATES  
GENERAL CONTRACTORS**

February 10, 1994

GEORGIA ANNE SNYDER-FALKINHAM  
PRESIDENT

VIA TELECOPIER  
(615-476-5058)

Mr. Roger Jenne  
Jenne, Scott & Bryant  
P. O. Box 161  
Cleveland, Tennessee 37364-0161

Dear Roger:

I would like for you to either Federal Express or bring with you to the Court hearing in Wytheville, Virginia, on Tuesday February 15, 1994, the box of my ORIGINAL papers which you have in your possession. The box contains MY original checks, notes, letters, correspondence, etc., that were submitted as trial exhibits for the Bruce C. Stockburger, et al lawsuit.

Also, please provide me with a copy of your/Tom's letter to counsel for the defendants soliciting an offer of \$[REDACTED], which provided that you and Tom would recommend this amount to your client. The existence of this solicitation letter came out at the mediation session in Richmond. I have not seen this letter. Please fax this letter to me as soon as possible.

Sincerely,



Georgia Anne Snyder-Falkinham

CASF:h

bc: Joe Anthony  
Michael Horwatt

EXHIBIT 11

**SNYDER  
& ASSOCIATES**  
**GENERAL CONTRACTORS**

GEORGIA ANNE SNYDER-FALKINHAM  
PRESIDENT

February 11, 1994

VIA TELECOPIER & US MAIL

Mr. Roger E. Jenne (615-476-5058)  
Jenne, Scott & Bryant  
P.O. Box 161  
Cleveland, TN 37364-0161

and

Mr. Thomas L. Rasnic (703-346-0229)  
Rasnic and Rasnic, P.C.  
P.O. Box 733  
Jonesville, VA 24263

RE: Georgia Anne Snyder-Falkinham  
v.  
Bruce C. Stockburger, et al.  
Case No.: CL 91-1212

Dear Roger and Tom:

It seems obvious from your last flurry of letters that you two are posturing yourselves to defend your own conduct rather than finalizing the matters related to this case. You insinuate, if not state, that I have threatened to sue you. I have not threatened to sue you. In this regard, I merely stated, in the presence of Bobbie Carr, that "I may even have to sue you." Further, this statement was made immediately after you had told me that this case had been dismissed with prejudice, but without any written agreement and without prior notice to me of the dismissal, and I was extremely upset and incredulous at that fact.

I have not engaged legal counsel to look into and/or investigate the possibility of a law suit against you two. I have only engaged legal counsel, Michael S. Horwatt, to assist me in resolving the problems created by your premature dismissal of my case against Bruce C. Stockburger, et al. I would have preferred that you two assist me and my additional counsel in this regard

EXHIBIT 12

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500 South Main Street, Blacksburg, VA 24060 (703) 552-3377 Fax (703) 552-2972

Mr. Roger E. Jenne and Mr. Thomas L. Rasnic  
February 11, 1994  
Page 2

rather than withhold information/documents from me under the guise of an anticipated law suit.

I sincerely believe (and I have been told by several lawyers) that the files you have in your possession in this case are my files (and not yours), whether those files contain copies or original documents/materials. If you have any legal authority to support your position that, during the continuation of an ongoing case, you can deny me the availability of my entire files, please provide me with that authority at once. I hereby--and again--respectfully demand that you promptly make all my files available to me without further irreparable damage to my case.

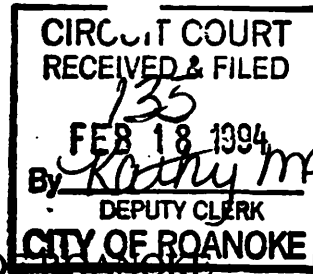
If you want copies of these files, I will arrange to have the files picked up by an independent person and have copies made for you. Since the desired copies will then be your files, however, I would appreciate your consideration in paying for those copies.

Please allow me the courtesy of picking up my files in order that I can protect my interest in this case. Your prompt response is necessary and will be appreciated.

Sincerely,

A handwritten signature in cursive script, appearing to read "Georgia Anne", written in dark ink.

Georgia Anne Snyder-Falkinham



VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ROANOKE

GEORGIA ANNE SNYDER-FALKINHAM, )

Plaintiff, )

V. )

BRUCE C. STOCKBURGER, et al., )

Defendants. )

Case No.: CL 91-1212

PRAECIPE

TO: THE CLERK OF THE CIRCUIT COURT

Please take notice of the filing of Plaintiff's Motion For Reconsideration herein and that Plaintiff requests that the Honorable Barnard F. Jennings rule upon this Motion and opposition thereto without a hearing.

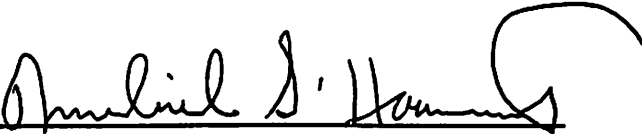
Michael S. Horwatt, VSB 004943  
Charles F. Wright, VSB 030609  
Michael Horwatt & Associates, P.C.  
8300 Boone Boulevard, Suite 800  
Vienna, Virginia 22182

## CERTIFICATE OF SERVICE

I hereby certify that a true copy of the following Praecipe was sent by facsimile and by U.S. mail, postage pre-paid, this 18th day of February, 1994, to counsel as follows:

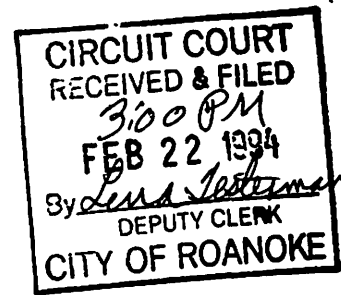
Frank B. Miller, III, Esquire  
Sands, Anderson, Marks & Miller  
P.O. Box 1998  
Richmond, VA 23216

Ronald D. Hodges, Esquire  
Wharton, Aldhizer & Weaver  
A Professional Limited Liability Company  
100 South Mason Street  
Harrisonburg, VA 22801

  
Michael S. Horwatt

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ROANOKE



GEORGIA ANNE SNYDER-FALKINHAM, )

Plaintiff, )

v. )

BRUCE C. STOCKBURGER, et al. )

Defendants. )

Case No.: CL91-1212

**PLAINTIFF'S REPLY TO DEFENDANTS' OPPOSITION  
TO MOTION FOR RECONSIDERATION**

On February 18, 1994, Plaintiff Georgia Anne Snyder-Falkinham filed a Motion for Reconsideration based upon newly discovered evidence. The evidence, a January 12, 1994 letter from Roger Jenne to Defense Counsel goes to the merits of this case. Defense Counsel concede that the Letter "offers some feeble support to Snyder-Falkinham's testimony that the [\$25,000 promissory] note was a 'sticking' point."<sup>1</sup> As such, this evidence is not cumulative, corroborative or collateral, but instead goes to the heart of this case: Whether the parties reached a settlement agreement on January 30, 1994.

Defendant's Opposition acknowledges the well-settled principle that "where the after-discovered testimony, if true, shows that the party's own evidence, or that of his principal

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<sup>1</sup> See Defendants' Memorandum of Law in Opposition to Plaintiff's Motion for Reconsideration ("Defendants' Opposition"), page 4.

witness, upon a material point, is fabricated, perjured or mistaken \* \* \*, a new trial should be granted." Rountree v. Rountree, 200 Va. 57, 64, 104 S.E.2d 42 (1958) (quoting Cab Association v. LaTouche, 197 Va. 367, 376-77, 89 S.E.2d 320 (1955)). Here, the Letter shows that Defendants' principal witness's testimony, "upon a material point, is fabricated, perjured or mistaken." Moreover, because Defense Counsel have filed no counter affidavits disputing Ms. Snyder-Falkinham's or Mr. Anthony's testimony, the Court must accept the facts so stated as true. See Independent Cab Ass'n. v. La Touche, 197 Va. 367, 89 S.E.2d 320, 327 ("Where no counter affidavits have been filed the facts contained in the affidavits in support of the motion for new trial are accepted as true." (citations omitted.)) Thus, Defense Counsel may not contest the due diligence expended by Ms. Snyder-Falkinham to obtain this crucial evidence.

Finally, Ms. Snyder-Falkinham should not be held "to the rigid requirements of the rules ordinarily applicable to the granting of new trials, but is entitled to the benefit of the exception of Independent Cab Ass'n v. LaTouche, 197 Va. 367, 376, 377, 89 S.E.2d 320." Fulcher v. Whitlow, 208 Va. 34, 155 S.E. 2d 362, 367 (1967). In Fulcher, the Supreme Court wrote:

In [Independent Cab Ass'n. v. LaTouche, 197 Va. 367, 89 S.E.2d 320], we held that the exacting requirements imposed upon a party moving for a new trial are 'somewhat relaxed' where the after discovered evidence shows that a 'party's own evidence, or that of his principal witness, upon a material point, is fabricated, perjured, or mistaken.'

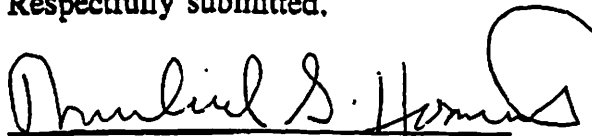
155 S.E.2d at 367. Consequently, Ms. Snyder-Falkinham's Motion for Reconsideration should be judged by the "somewhat relaxed" standard because it alleges that Mr. Jenne's testimony, is "fabricated, perjured or mistaken."

Moreover, the Letter clearly contradicts the factual basis of Mr. Jenne's testimony and, thus, has sufficient probative weight to produce a different result at a new hearing. See generally, Mundy v. Commonwealth, 11 Va. App. 461, 390 S.E.2d 525, reh'g granted, stay granted, en banc 1990 Va. App. Lexis 78, reh'g en banc, 399 S.E.2d 29 (1990), cert denied sub nom., 112 S. Ct. 127 (1991) ("However, if the newly-discovered evidence contradicts the factual basis of a witness's testimony, a new trial may be granted when it appears that the newly discovered evidence has sufficient probative weight to produce a different result on retrial.") (citation omitted.) See Barsa v. Kator, 121 Va. 290, 93 S.E. 613, 616 (1917) (new trial ought to be granted on basis of affidavits where evidence was "more circumstantial, and was evidence of a different kind and character from that introduced on the subject" at the former trial; "again, the admissions of [the opposing party] alleged in the affidavit of Hannie are not cumulative, but independent evidence." ) Moreover, where the after-discovered evidence may tend to prove the same issue, the law does not treat such evidence as cumulative if it introduces proof of a kind and character not identical to that introduced at trial. Unlike Mr. Jenne's testimony, the Letter introduces the first documentary evidence that even before January 30, 1994, Ms. Snyder-Falkinham regarded the cancellation of the Stockburger Note as a dealbreaker in any settlement negotiations. See generally 13B Michie's Jurisprudence of Virginia and West Virginia, New Trials, § 26.



Here, as in Barsa, the Letter is of an entirely different kind and is independent evidence than simply the discovery of contradictory evidence. Under the "somewhat relaxed" standards of Independent Cab, respectfully requests that this Court should grant Plaintiff's Motion for Reconsideration.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael S. Horwatt", with a large, stylized flourish at the end.

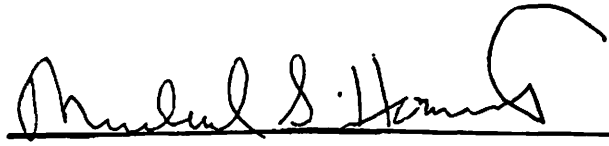
Michael S. Horwatt  
Charles F. Wright  
Michael Horwatt & Associates, P.C.  
8300 Boone Boulevard, Suite 800  
Vienna, VA 22182  
(703) 847-1900

# **CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing Plaintiff's Reply to Defendants' Opposition to Motion for Reconsideration and proposed Order was sent by facsimile and by U.S. mail, postage pre-paid, this 22nd day of February, 1994, to counsel as follows:

Frank B. Miller, III, Esquire  
Sands, Anderson, Marks & Miller  
P.O. Box 1998  
Richmond, VA 23216

Ronald D. Hodges, Esquire  
Wharton, Aldhizer & Weaver  
A Professional Limited Liability Company  
100 South Mason Street  
Harrisonburg, VA 22801

  
Michael S. Horwatt

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ROANOKE

GEORGIA ANNE SNYDER-FALKINHAM, )

Plaintiff, )

v. )

BRUCE C. STOCKBURGER, et al. )

Defendants. )

---

Case No.: CL91-1212

**ORDER**

This matter came before the Court on Plaintiff's Motion for Reconsideration and Defendants' Opposition thereto, and the Court, having reviewed the matter, and it appearing that this Court's jurisdiction over this matter will expire as of this 22nd day of February, 1994, this Court hereby ORDERS and DECREES that the Plaintiff's Motion for Reconsideration is hereby GRANTED and the Court further ORDERS that the Order and Final Order of January 31, 1994 in this matter is vacated [with prejudice.] [Without prejudice until such time as a rehearing on the merits of Plaintiff's Motion for Reinstatement and Vacation of Order and

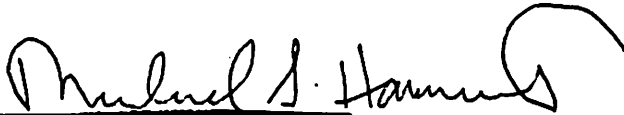
Final Order may be held.]

Entered this 22nd day of February 1994.

---

The Honorable Barnard F. Jennings  
Designate Judge

SEEN AND AGREED:



Michael S. Horwatt  
Charles Wright  
Michael Horwatt & Assoc., PC  
8300 Boone Blvd., Ste 800  
Vienna, VA 22182

SEEN AND OBJECTED TO:

---

Frank B. Miller., III  
M. Pierce Rucker, II  
Rudolph Bumgardner, IV  
Sands, Anderson, Marks & Miller  
P.O. Box 1998  
Richmond, VA 23216

---

Ronald D. Hodges, Esq.  
Marshall H. Ross, Esq.  
Wharton, Aldhizer & Weaver  
A Professional Limited Liability Company  
100 South Mason Street  
Harrisonburg, VA 22801

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ROANOKE

GEORGIA ANNE SNYDER-FALKINHAM,

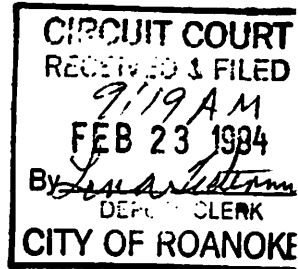
*Plaintiff,*

*versus*

BRUCE C. STOCKBURGER, ET AL.,

*Defendants.*

No. CL91-1212



DEFENDANTS'  
MEMORANDUM OF LAW IN OPPOSITION  
TO  
PLAINTIFF'S MOTION FOR RECONSIDERATION

The Defendants, Bruce C. Stockburger ("Stockburger") and Gentry, Locke, Rakes & Moore ("the firm"), by counsel, respectfully submit this memorandum of law in opposition to Plaintiff Georgia Anne Snyder-Falkinham's, ("Snyder-Falkinham"), Motion for Reconsideration and request that the Court overrule Snyder-Falkinham's motion.

STATEMENT OF FACTS

On late Friday, February 18, 1994, defense counsel received a facsimile of Snyder-Falkinham's Motion for reconsideration. In her motion, Snyder-Falkinham alleges the discovery of new evidence that warrants the Court's reversing its decision of February 15, 1994, which was based upon a full day of testimony. In essence, Snyder-Falkinham wants the court to reverse its prior ruling on the basis of "newly" discovered evidence. Yet, Snyder-Falkinham's motion is devoid of any authority in support of same. In order to facilitate the Court's decision

and to illustrate that Snyder-Falkinham's motion should be denied, defense counsel provides this memorandum of law.

### LAW AND ARGUMENT

The Supreme Court of Virginia looks with disfavor upon motions to change a dispositive ruling. The Supreme Court holds:

A new trial for after-discovered evidence is granted with great reluctance and with special care and caution. In order to justify a new trial for after-discovered evidence, (a) the evidence must have been discovered since the trial, (b) it must be material in its object and such as on another trial ought to produce opposite results on the merits, (c) it must not be merely cumulative, corroborative, or collateral, and (d) it must be evidence that could not have been discovered before the trial by use of due diligence, and such as can be produced at another trial. This is undoubtedly the general rule, but exceptional cases may arise when the courts will find it necessary to depart from it. \* \* \* So where the after-discovered testimony, if true, shows that the party's own evidence, or that of his principal witness, upon a material point, is fabricated, perjured or mistaken . . . , a new trial should be granted.

*Rountree v. Rountree*, 200 Va. 57, 64, 104 S.E.2d 42 (1958)(quoting *Cab Association v. LaTouche*, 197 Va. 367, 376-77, 89 S.E.2d 320 (1955)). No evidence exists that any of the exceptional circumstances exist, and consequently, the general rule announced above is applicable to Snyder-Falkinham's Motion for Reconsideration. Although Snyder-Falkinham is not seeking a new trial, her motion seeks the similar relief as a new trial. Like a new trial, Snyder-Falkinham requests that the Court reverse its dispositive ruling. In fact, Snyder-Falkinham goes beyond the relief sought in a new trial. She seeks that the Court, without hearing evidence or the cross-examination of witnesses, reverse its February 15, 1994 Order and enter an opposite Order. Since this relief goes beyond the relief of a new trial that is granted only with "great reluctance," the Court should exhibit even more reluctance.

Even if Snyder-Falkinham's allegation of newly discovered evidence is assumed to have been acquired after the February 15, 1994 hearing, Snyder-Falkinham cannot satisfy the remaining three elements that would allow the court to consider this evidence. The letter of January 12, 1994 existed long prior to the in-person negotiations. The January 12, 1994 letter, even if admitted, would not produce an opposite result from the Court's overruling Snyder-Falkinham's Motion to Vacate. In reaching this decision, the Court stated:

And to a great extent it does boil down to a question of credibility; that is, whether I believe Ms. Snyder-Falkinham or whether I believe Mr. Jenne and Mr. Rasnic and some of the other witnesses.<sup>1</sup>

In ruling against Snyder-Falkinham, this Court necessarily found Snyder-Falkinham less credible than Messrs. Rasnic and Jenne. Messrs. Rasnic and Jenne testified about the settlement that occurred on January 30, 1994. On January 30, 1994, Snyder-Falkinham agreed to settle her claims against Stockburger, the firm, Robert E. Glenn, and Glenn, Flippin, Darby and Feldmann for alleged legal malpractice as well as her claim against Stockburger for the note, for all of which she was to receive an agreed amount. Neither the claims against Glenn and his law firm nor the claim for payment of the note were in litigation on January 30, 1994, showing that the negotiations had changed substantially since January 12, 1994. Moreover, in the January 30, 1994 negotiations, the stock was not material to the settlement. In fact the Court, under its own questioning, made this fact clear. The Court stated:

THE COURT: So far as the stock that Mr. Stockburger was to transfer back to her, at least the proposal of that, she did not agree to that?

THE WITNESS: [Mr. Jenne] That's correct.

---

<sup>1</sup> Transcript of February 15, 1994 Hearing, p. 69, ll. 17-20.

**THE COURT:** And she did agree to have the note marked paid and canceled, that is the Stockburger note directed to her?

**THE WITNESS:** Correct.<sup>2</sup>

This Court found that the above settlement had occurred on January 30, 1994. Since the Court found as a matter of fact that Snyder-Falkinham accepted the January 30, 1994 settlement, any letter of January 12, 1994 is immaterial and would not produce an opposite result.

In addition, the January 12, 1994 letter is cumulative, corroborative, and collateral. Even in the light most favorable to Snyder-Falkinham, the letter merely offers some feeble support to Snyder-Falkinham's testimony that the note was a "sticking" point. Snyder-Falkinham claims that this letter would have allowed a more effective cross-examination of Mr. Jenne. However, the Supreme Court of Virginia has held that alleged new evidence which is simply an inconsistent statement is not grounds for vacating a prior dispositive ruling. *Smith v. Virginia Transit Co.*, 206 Va. 951, 958, 147 S.E.2d 110 (1966). Moreover, the stock was collateral to Snyder-Falkinham's claims for legal malpractice. Consequently, Snyder-Falkinham's alleged new evidence is merely cumulative, corroborative, and collateral and fails the third requisite prong for the relief that she seeks.

Finally, Snyder-Falkinham implicitly admits that due diligence would have obtained the use of the January 12, 1994 letter. In the exhibits to her Motion for Reconsideration, Snyder-Falkinham produces correspondence stating that she would be willing to pick up materials from Messrs. Rasnic and Jenne. Yet, despite not receiving the documents by mail, she did not

---

<sup>2</sup> Id. at 35.



retrieve the documents. As a result, Snyder-Falkinham failed to exercise due diligence, barring her from seeking the relief which she requests.

WHEREFORE, Defendants request that the Court overrule Snyder-Falkinham's Motion for Reconsideration and award costs, including reasonable attorneys' fees, expended on this Motion.

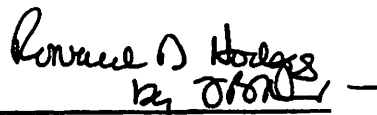
Respectfully submitted,

BRUCE C. STOCKBURGER AND  
GENTRY, LOCKE, RAKES & MOORE

*By Counsel*



Frank B. Miller, III  
M. Pierce Rucker, II  
Rudolph Bumgardner, IV  
SANDS, ANDERSON, MARKS & MILLER  
P. O. Box 1998  
Richmond, Virginia 23216  
(804) 783-7255  
Counsel for Stockburger



Ronald D. Hodges  
Marshall H. Ross  
WHARTON, ALDHIZER & WEAVER  
100 South Mason Street  
Harrisonburg, Virginia 22801  
(703) 434-0316  
Counsel for Gentry, Locke, Rakes & Moore

***CERTIFICATE***

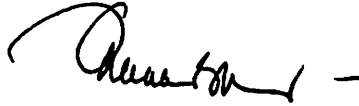
I hereby certify that on this 21<sup>st</sup> day of February, 1994, a true copy of the foregoing  
was mailed, via Federal Express and surface mail, postage prepaid, to:

Michael S. Horwatt, Esquire  
Michael Horwatt & Associates, P.C.  
8300 Boone Boulevard, Suite 800  
Vienna, Virginia 22182.

and via surface mail to:

Thomas L. Rasnic, Esquire  
Rasnic and Rasnic, P.C.  
Post Office Box 733  
Jonesville, Virginia 24263

Roger Jenne, Esquire  
Post Office Box 161  
Cleveland, Tennessee 37364



---

LAW OFFICES  
**SANDS, ANDERSON, MARKS & MILLER**  
A PROFESSIONAL CORPORATION  
THE ROSS BUILDING  
801 EAST MAIN STREET  
POST OFFICE BOX 1998  
RICHMOND, VIRGINIA 23216-1998  
804/648-1836

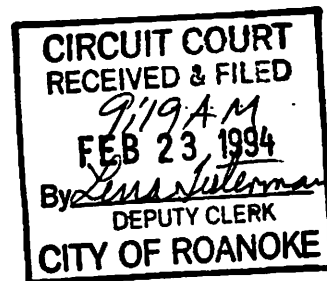
TELECOPIER  
804/783-2926  
804/783-7291

FRANK B. MILLER, III

DIRECT DIAL NO.:  
804/783-7255

February 21, 1994

Arthur B. Crush, III, Clerk  
Circuit Court of the City of Roanoke  
315 Church Avenue, SW  
P. O. Box 2610  
Roanoke, VA 24010



Re: Georgia Anne Snyder-Falkinham  
v. Bruce C. Stockburger, et al.  
Case No. CL91-1212  
Our File No. 48-023375

Dear Mr. Crush:

Enclosed please find Defendants' Memorandum of Law in Opposition to Plaintiff's Motion for Reconsideration, which we would appreciate your placing among the papers in this matter. We have forwarded directly to Judge Jennings, via Federal Express, a copy thereof.

Thank you for your kind attention to this matter.

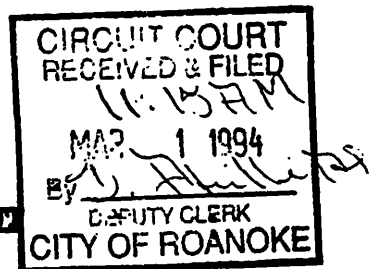
Sincerely yours,

A handwritten signature in cursive script, appearing to read "Frank B. Miller, III".

Frank B. Miller, III

FBMIII/sfp  
Enclosure

cc: The Honorable Barnard S. Jennings  
Michael S. Horwatt, Esquire  
Roger Jenne, Esquire  
Thomas L. Rasnic, Esquire  
Ronald D. Hodges, Esquire



**MEDIATION MEMORANDUM OF AGREEMENT**

**INITIATOR:**

Georgia Ann Snyder - *Fairfaxham*

CASE NUMBER: CL91-1212

**RESPONDER:**

Stockburger, et al

MEDIATION DATE: 1-25-94

**THIS IS A LEGAL CONTRACT.**

WE, the undersigned parties, hereby agree that our settlement, outlined in the "Terms and Conditions" below is an accurate reflection of our resolution.

We agree that the terms and conditions set forth here are the result of substantial full disclosure of all relevant property and financial information.

We understand that we have the opportunity to have this Memorandum of Agreement reviewed by independent legal counsel prior to signing it and have either had this agreement so reviewed prior to signing it or have chosen to waive our opportunity to do so.

This agreement is recorded in the words of the parties by the mediators acting as scriveners only.

**TERMS AND CONDITIONS**

1. Reciprocal (TVIR) ~~will~~ <sup>does</sup> withdraw the reservation of rights as to the firm (Gentry Locke Rakes & Moore) and all ~~affiliated~~ <sup>damages</sup> partners other than Bruce Stockburger.
2. The plaintiff ~~will~~ <sup>does</sup> waive punitive damages as to all defendants.
3. The plaintiff ~~will~~ <sup>does</sup> waive any claim in excess of the firm's policy limits of Five (5) Million Dollars.
4. The plaintiff ~~will~~ <sup>shall</sup> nonsuit all individual partners other than M. Stockburger.

Initiator

Date

Responder(s)

Date



VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ROANOKE  
GEORGIA ANNE SNYDER-FALKINHAM,

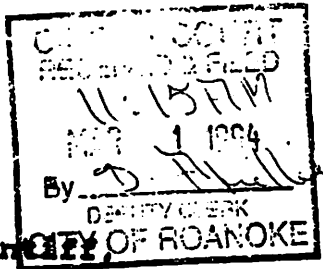
Plaintiff

v.

Case No.: CL91-1212

BRUCE C. STOCKBURGER, et al.,

Defendants.



FINAL ORDER

On motion of the parties, by counsel, it is ORDERED that this action be dismissed with prejudice.

It is further ORDERED, on motion of the parties, by counsel, that violation of the confidentiality portion of the Mutual Release and Settlement Agreement shall constitute contempt of court, and violations shall be punished accordingly.

ENTER: January 31, 1994

*[Signature]*  
Judge Designate

WE ASK FOR THIS:

*[Signature]*  
Thomas L. Rasnic, Esquire  
Rasnic and Rasnic, P.C.  
P.O. Box 733  
Jonesville, VA 24263

*[Signature]*  
Roger Jenna, Esquire  
P.O. Box 161  
Cleveland, TN 37364

Counsel for Plaintiff



*Frank B. Miller, III*

Frank B. Miller, III, Esquire  
Sands, Anderson, Marks & Miller  
801 East Main Street  
Suite 1500  
P.O. Box 1998  
Richmond, VA 23216-1998  
Counsel for Defendant Stockburger

*Ronald D. Hodges*

Ronald D. Hodges, Esquire  
Wharton, Aldhizer & Weaver  
A Professional Limited Liability Company  
100 South Mason Street  
Harrisonburg, VA 22801  
Counsel for  
Gentry, Locke, Rakes & Moore

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ROANOKE

GEORGIA ANNE SNYDER-FALKINHAM,

Plaintiff,

v.

Case No.: CL91-1212

BRUCE C. STOCKBURGER,  
GENTRY, LOCKE, RAKES AND MOORE,  
S. D. ROBERTS MOORE,  
WILLIAM R. RAKES,  
JAMES R. AUSTIN,  
CHARLES L. WILLIAMS, JR.,  
EUGENE E. DERRYBERRY,  
WILLIAM J. CREECH,  
JAMES C. JOYCE, JR.,  
LINDA DAVIS FRITH,  
W. DAVID PAXTON,  
W. WILLIAM GUST,  
GUY M. HARBERT, III,  
AND  
DAVID C. WEAVER,

Defendants.

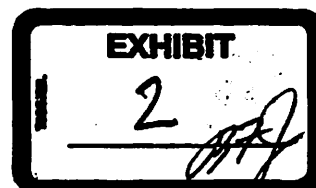
ORDER

Upon motion of plaintiff, by counsel, it is ORDERED that this action be and the same is hereby dismissed with prejudice as to defendants, S.D. Roberts Moore, William R. Rakes, James R. Austin, Charles L. Williams, Jr., Eugene E. Derryberry, William J. Creech, James C. Joyce, Jr., Linda Davis Frith, W. David Paxton, W. William Gust, Guy M. Harbert, III and David C. Weaver.


And it is further ORDERED that the claim for punitive damages be and the same is hereby dismissed with prejudice.


Enter this 31<sup>st</sup> day of January, 1994.

*Dennard F. Jennings*  
Judge




WE ASK FOR THIS:

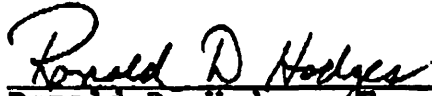
  
Thomas L. Rashic, Esquire  
Rashic And Rashic, P.C.  
P.O. Box 733  
Jonesville, VA 24263

  
Roger Jehne, Esquire  
P.O. Box 161  
Cleveland, TN 37364

Counsel for Plaintiff

SEEN AND AGREED

  
Frank B. Miller, III, Esquire  
Sands, Anderson, Marks & Miller  
801 East Main Street  
Suite 1500  
P.O. Box 1998  
Richmond, VA 23216-1998  
Counsel for Defendant Stockburger

  
Ronald D. Hodges, Esquire  
Wharton, Aldhizer & Weaver  
A Professional Limited Liability Company  
100 South Mason Street  
Harrisonburg, VA 22801  
Counsel for Defendants  
S.D. Roberts Moore, William R. Rakes,  
James R. Austin, Charles L. Williams, Jr.  
Eugene E. Derryberry, William J. Creech,  
James C. Joyce, Jr., Linda Davis Frith,  
W. David Paxton, W. William Gust,  
Guy M. Harbaert, III and David C. Weaver,  
and Gentry, Locke, Rakes & Moore



*Rasnic and Rasnic*

LAW OFFICES  
P.O. BOX 788  
JONESVILLE, VIRGINIA 24388

703-346-8880  
TELECOPIER: 703-346-0880  
CIVIL, DOMESTIC & CRIMINAL LITIGATION

THOMAS L. RASNIC

LICENSED TO PRACTICE  
IN VIRGINIA & TENNESSEE

JAMES E. RAI

LICENSED TO PRACTICE  
IN VIRGINIA & TENNESSEE

January 30, 1992

Georgia Anne Snyder-Falkinham  
508 S. Main Street  
Blacksburg, Virginia 24060

Dear Georgia Anne:

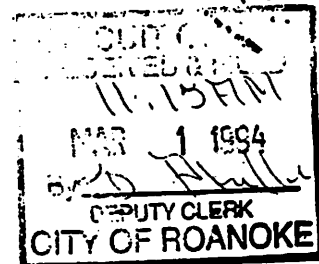
1992  
I enclose the new employment contracts which I told you we would need to get signed. Please sign these and date them September, 1991 as they will replace those that we presented to you at that time. *signed 2/5/92 with date of 19/September, 1991*

I will be corresponding with David Izakowitz as soon as we get these contracts back because I assume that we will be sending him a copy of the contracts.

Sincerely,

*Thomas L. Rasnic*  
Thomas L. Rasnic  
TLR/pbr  
Enclosure

c: Roger Jenne, Esq.  
Jenne, Scott & Bryant,  
PO Box 161  
Cleveland, Tennessee 37364-0161



**AGREEMENT**

In consideration of legal services to be rendered by Rasnic and Rasnic, PC and Roger Jenne, Esq., lawyers, the undersigned client hereby retains said lawyers to prosecute such case or cases as they may deem necessary against Bruce Stockburger and any other person who may be responsible and/or liable for losses suffered by the undersigned due to Stockburger and Gentry, Locke, Attorneys representation of her.

The attorneys accept the above employment and are authorized to effect a settlement or compromise, subject to the client(s) approval, or to institute such legal action, or actions, file such claims or counter-claims, as they may deem advisable in their judgment in order to enforce the client's rights.

The attorneys' fee shall be as follows:

Forty (40%) per cent of the amount recovered.

Costs may be advanced by attorneys including investigation and experts fees, and said advance shall be billed to the client when paid or may be billed at the time settlement of the suit is made, at attorney's discretion. Associated counsel may be employed at the discretion and expense of the attorneys. Attorneys shall have a lien on any claim, suit or recovery for any fees and expenses expended, if applicable.

In the event an appeal is taken, a new and separate agreement shall be entered into by the parties as to service and fees.

Attorneys may withdraw at any time by giving

*Rasnic & Rasnic, P.C.*

**James E. Rasnic**  
ATTORNEY AT LAW  
P.O. BOX 130  
HONOLULU, VIRGINIA 24863

LICENSED TO PRACTICE  
IN VIRGINIA ONLY

**Thomas L. Rasnic**  
ATTORNEY AT LAW  
P.O. BOX 130  
HONOLULU, VIRGINIA 24863

LICENSED TO PRACTICE  
IN  
VIRGINIA AND TENNESSEE  
CIVIL AND CRIMINAL  
LITIGATION

reasonable written notice and the client agrees to any substitution of attorneys in the event of such withdrawal.

Entered this 19th day of September, 1992.

*Georgia Anne Snyder-Falkinham*  
GEORGIA ANNE SNYDER-FALKINHAM

ATTORNEYS:

*[Signature]*  
THOMAS V. RASNIC, ESQ.  
RASNIC AND RASNIC, PC

*[Signature]*  
ROGER JENNE, ESQ.  
JENNE, SCOTT and BRYANT

*Rasnic & Rasnic, P.C.*

**James E. Rasnic**  
ATTORNEY AT LAW  
P.O. BOX 133  
JONESVILLE, VIRGINIA 22093

LICENSED TO PRACTICE  
IN VIRGINIA ONLY

**Thomas L. Rasnic**  
ATTORNEY AT LAW  
P.O. BOX 133  
JONESVILLE, VIRGINIA 22093

LICENSED TO PRACTICE  
IN  
VIRGINIA AND TERRITORIES  
CIVIL AND CRIMINAL

*Grasnic and Rasmio, P.C.*

LAW OFFICES  
P.O. BOX 700  
JONESVILLE, VIRGINIA 22133

TELEPHONE 703-540-0000  
TELECOPIER 703-540-0000  
CIVIL, DOMESTIC & CRIMINAL LITIGATION

THOMAS L. RASMIO

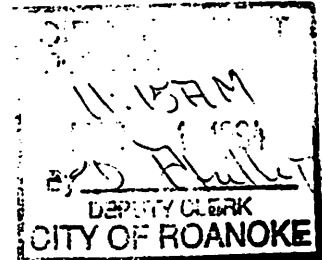
LICENSED TO PRACTICE  
IN VIRGINIA & TENNESSEE

JAMES E. RAS

LICENSED TO PRACTICE  
IN VIRGINIA & TENNESSEE

February 1, 1994

Georgia Anne Snyder-Falkinham  
500 S. Main Street  
Blacksburg, Virginia 24060



Dear Georgia Anne:

We attach herewith for your review the following:

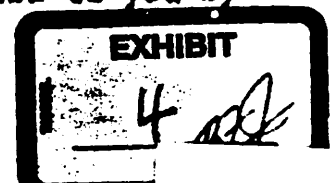
1. A copy of the Mutual Release and Settlement which memorializes the oral agreement made January 30, 1994;
2. A copy of the Settlement Draft;
3. A copy of Rule 1:1 of the Virginia Rules of Civil Procedure;
4. A copy of Annotations which follow Rule 1:1.

We initially want to point out to you the requirements of Rule 1:1. This Rule provides in pertinent parts as follows:

"All final judgments, orders and decrees, irrespective of terms of Court shall remain under the control of the Trial Court and subject to be modified, vacated or suspended for 21 days after the date of entry and no longer..."

A copy of this Rule is enclosed as are certain cases which follow that rule called "Annotations". One of these cases, Triggs v. Triggs, a case decided in the Court of Appeals for Virginia on December 24, 1991, specifically says that after 21 days the trial Court can do nothing about a final judgment. Therefore, if you intend to ask Judge Jennings to set aside this final decree, not only must a Motion be filed within the 21 days but a hearing must be held within the 21 days and an Order vacating the final Judgment entered by the Court within the 21 days. Otherwise, it cannot be vacated and becomes a final order of the Court.

With regard to such a Motion to Vacate, we are hereby advising you that we cannot draft such a Motion nor file it since we will be called upon to testify as witnesses by the defense to the effect that a settlement had been reached in this case and that the only thing that remained to be done was a final memorialization of the agreement typed and signed. That has now been accomplished and we have previously faxed same to you and/or sending this to you by



Page 2  
Georgia Anne Snyder-Palkinham

over-night mail. We wish to reiterate for your recollection the methodology which resulted in this settlement.

As a result of extensive negotiations which occurred on January 30, 1994, you agreed before Roger, myself, Ron and Sherry, to the terms and conditions of the settlement as memorialized in the Mutual Release and Settlement Agreement. Based upon your agreement, we advised Mr. Miller and Mr. Hodges of this agreement. When the agreement was made, you will recall, that we called all of the witnesses scheduled for the first day of trial and notified the expert witnesses, or tried to notify them, that they would not be needed. We cancelled their rooms and you telephoned your family members from Room 109 advising them that the case had been settled and that they did not need to be in court on January 31st. Since Judge Jennings had travelled from Fairfax, it was necessary for an appearance to be made by counsel on January 31, 1994. Tom was chosen to appear before Judge Jennings since he is local counsel and was accompanied by Ron Hodges. Judge Jennings had the settlement explained to him and entered the Order of Dismissal with Prejudice. This Order was entered because of your agreement to the settlement. Regardless of what anyone else may tell you, it is common practice in this area to enter an Order even though a final release has not been signed because we consider ourselves to be people of our word and expect people to act on it according.

On January 31, 1994 at 7:30 o'clock a.m., Roger received a call from Bunky Miller wherein Bunky advised that on the previous evening at 11:30 o'clock p.m., he had received a call from the final person to approve the settlement advising him that he agreed with the settlement. Miller then called Roger and Roger placed a call to you advising you that the settlement had been agreed upon and that he would call you as soon as the paper work was complete for your and Joe's signature. You had advised Roger at that time that your only concern was the discussion you had had with Joe Anthony about the stock in Rich Hill Development Corporation. We had made you aware that Bill Rakes had told Bruce Stockburger that he was not to own any stock in any corporation with you and that he had to divest himself of this stock. Our only question was whether or not you could accept this stock or some third person. After discussing the matter with Joe Anthony and you, we advised Mr. Miller that neither Mr. Anthony or anyone in your behalf would accept the transfer of this stock. We suggested that he could either transfer it to a charity, the Easter Bunny or anyone else of his choice but it would not be returned to you in any way. It was clear to Mr. Miller and Mr. Hodges that the settlement that we had worked out with you was not to affect the December, 1990 transaction. We have not been advised by anyone that this settlement will affect this transaction since this is a legal malpractice and does not involve the December, 1990 transaction since we agreed to avoid the problems involved with the decision

FEB 3 '94 16:02

PAGE.005

Page 3

Georgia Anne Snyder-Falkinham

portion of this case.

After we had the telephone conversation with you on Monday morning and you advised us that you were not going to execute any agreement, we advised Mr. Miller and Mr. Hodges of this and everything stopped insofar as the preparation of the documents were concerned. We received the enclosed Mutual Release and Settlement Agreement by fax from Mr. Miller on February 1, 1994. We have faxed this to you.

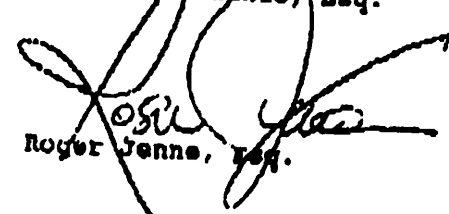
At this point, we are somewhat uncertain as to our role. On January 31, 1994, we received a telephone call from attorney Michael Horwatt from Vienna, Virginia. He advised us that although there was no engagement letter at that time, he did consider that he was your attorney. We have also received a fax transmittal from Mr. Anthony dated February 1st requesting that we forward to him a copy of the Release Agreement. We have not sent Mr. Anthony nor Mr. Horwatt a copy of this agreement because of the confidentiality portion of the agreement and the Order of the Court, a copy of which you have. Since Mr. Anthony and Mr. Horwatt are not counsel of record, we do not feel that we can provide this information to them as it may constitute a breach of the confidentiality. Certainly, neither you nor we can reveal to anyone other than the parties to this agreement, the amount of the settlement as this would be an absolute violation of this agreement. On our behalf, we do not intend to do anything that would be considered a breach of confidentiality provision and would advise you to be extremely cautious in taking any act that might be considered a breach of this provision.

We ask that you review the enclosed documents and advise us of your position. We would ask that you do so in writing. If you do not intend to complete the settlement which was agreed to, we must formally notify the attorneys involved in this. You must also contact someone about filing the necessary Motions, if you choose to do so, and vacating the order which has been entered. You have 21 days within which to get the Order vacated. We certainly cannot predict how the Court will react to any such Motion but we cannot file the Motions since we will be called as witnesses to testify concerning the settlement. We have been advised by Mr. Miller and Mr. Hodges that they intend to resist such a Motion and that their position will be that the settlement was agreed to by all parties concerned.

We must also advise you that we will be withdrawing as counsel on all other related cases which have been filed over our signatures. These include the Rich Hill Development Corporation case, the Snyder and Associates case and the cases involving Michael and Stacy Snyder. We will be sending a Motion to withdraw along with an agreed Order as soon as this can be prepared.

Sincerely,

  
Thomas L. Ranic, Esq.

  
Roger Jenne, Esq.

TLR/pbr  
Enclosure

FEB 3 '94 16:04

PAGE.002

The telecopier phone number for STOTT & ANTHONY, P.C. Roanoke, Virginia, is.

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If any difficulty is experienced, in receiving a telecopier transmission, or copies are unclear,  
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557

FEB 3 '94 16:00

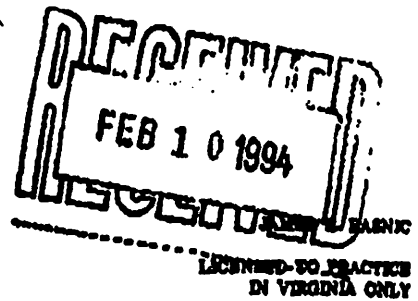
*Rasnic and Rasnic, P.C.*

LAW OFFICES  
P.O. BOX 788  
JONESVILLE, VIRGINIA 24358

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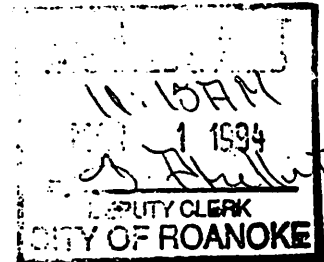
THOMAS L. RASNIC

LICENSED TO PRACTICE  
IN VIRGINIA & TENNESSEE



February 9, 1994

Georgia Anne Snyder-Falkinham  
500 S. Main Street  
Blacksburg, Virginia 24060



Dear Ms. Snyder-Falkinham:

I received a copy of Jenne's letter to you dated February 9, 1994. I concur in this letter in all respects.

With regard to the matters which occurred at the Courthouse which I can address and Mr. Jenne cannot, be advised that the following occurred:

I proceeded to the Circuit Court for the City of Roanoke at approximately 8:30 o'clock a.m. You were not present nor had you advised me that you had changed your mind about the settlement that you had entered into on Sunday evening. I arrived at the Circuit Court and was directed to the office where Judge Jennings would be later on. Sometime after 9:00 o'clock a.m., Mr. Hodges arrived with the Orders dismissing the suit with prejudice and dismissing the partners. I signed both of these Orders not having been advised by you that you had reneged on your word to settle the case. Judge Jennings arrived about 9:15 and was advised that the case had been settled. No discussion was held with the judge concerning the settlement nor was a hearing held. No court reporters were held as the matter was taken up with the Court in chambers. You were not present nor were any members of your family or friends. Neither you, your family or friends were present because you knew the case had been settled Sunday evening. The dismissal of this case with prejudice was done without any recital of any negotiations or otherwise and there were no other motions made other than the two Orders that were entered. I cannot provide you with a detailed account of what was said and by whom because it was an informal matter and merely an administrative act to get this case off the docket since it had been settled.

I would add to Mr. Jenne's letter that my staff and I have spent 2 1/2 years working on your litigation. As I told you the entire week preceding this trial, I was prepared to go forward with the trial and, indeed, on Sunday, January 30, 1994, I had completed all preliminary preparations except for re-interviewing approximately 2 or 3 witnesses. We had gotten this case down to the bare





essentials and you knew what the case was about. As we were required to do under our obligations as trial lawyers, we advised you of certain pit falls which we believed existed in this case. You should be able to recall those and relay them to your current lawyers. If you had chosen to go forward with the case, the matter would have been resolved one way or another by now. Instead, I believe that you developed a serious case of "cold feet" and knew that you could be made to look the fool before everyone who might venture into the Courtroom. I personally feel that you made a very wise decision in settling this case for ~~the amount of damages~~ because of the many pit-falls which we had attempted to make you aware of including actions which Mr. Anthony had taken without our knowledge, which certainly diminished the amount of damages.

Even though you have insulted me and threatened to sue me, I still am willing to set down with you on a one on one basis and discuss this case with you. I will not discuss the case with Mr. Anthony as I feel Mr. Anthony has attempted to undermined our position in this case for the past several months. His comment about "arm twisting" was uncalled for and represents his thinking on this case. It is extremely easy for Mr. Anthony and Mr. Mehler to sit on the sidelines and try to quarterback this case without any experience or time involved in the case. Should you desire to meet with me in my office in Jonesville to discuss this matter, I will be more than happy to do so.

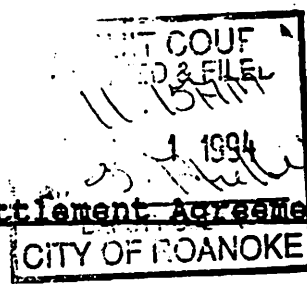
Sincerely,



Thomas L. Rasnic

TLR/pbr

c: Roger Jenne, Esq.



Mutual Release and Settlement Agreement  
CITY OF ROANOKE

It is hereby agreed, by and between Georgia Anne Snyder-Falkinham (hereafter, "Snyder-Falkinham"), Bruce C. Stockburger (hereafter, "Stockburger"), Gentry, Locke, Rakes & Moore (hereafter, "the firm"), Joseph O. Falkinham, Robert E. Glenn (hereafter, "Glenn"), Glenn, Flippen, Feldman & Darby, P.C. (hereafter, "his firm") and Central Fidelity Bank, N.A., that all claims made by Snyder-Falkinham against Stockburger and the firm currently pending in the Circuit Court for the City of Roanoke styled Georgia Anne Snyder-Falkinham, etc. v. Bruce C. Stockburger, et al., Case No. CL91-1212 (hereafter, "the action"), be settled and compromised on the following terms and conditions:

1. This is a compromise settlement of disputed claims and demands. The parties hereto recognize and acknowledge that neither this Agreement nor the resulting compromise settlement shall constitute an admission of any of the allegations in the action and/or of claims made by Snyder-Falkinham against Stockburger for alleged moneys due under a letter agreement dated December 14, 1990 (hereafter, "the letter agreement") and promissory note signed by Stockburger and dated December 15, 1990 (hereafter, "the note").

2. Snyder-Falkinham agrees to the dismissal of the action with prejudice.

3. The parties hereto and their respective counsel agree to keep the terms and provisions of this Agreement confidential and shall not make any public disclosure of the terms and provisions of this Agreement or amount of the settlement, absent an order of a court or tribunal of competent jurisdiction that the terms and/or

provisions be disclosed, and only then as required by the terms of the order.

4. In consideration of the covenants and agreements herein contained and the payment of good and valuable consideration to Snyder-Falkinham and her counsel in the action by or on behalf of Stockburger and the firm (hereafter, "the payment"), the receipt and sufficiency of which is acknowledged by Snyder-Falkinham and her counsel in the action, Snyder-Falkinham, for herself and her heirs and assigns, The Snyder Company, Inc. (hereafter, "Snyder Co."), Snyder and Associates, Rich Hill Development Corporation and their officers, directors and shareholders, does release, remise and forever discharge Stockburger and his heirs and assigns and the firm and its partners, officers, employees, successors and successors in interest from and against any and all claims, demands, actions, causes of action and expenses of whatever kind she may have against Stockburger and the firm, their heirs, assigns, partners, officers, employees, successors and successors in interest now or in the future.

5. In further consideration of the covenants and agreements herein contained and the payment, Snyder-Falkinham, for herself and her heirs and assigns, Snyder Co., Snyder and Associates, Rich Hill Development Corporation and their officers, directors and shareholders, does release, remise and forever discharge Glenn and his firm, their heirs, assigns, officers, directors, shareholders, employees, successors and successors in interest from and against any and all claims, demands, actions, causes of action and expenses

of whatever kind she may have against Glenn and his firm, their heirs, assigns, officers, directors, shareholders, employees, successors and successors in interest, now or in the future.

6. In further consideration of the covenants and agreements herein contained and the payment, Joseph O. Falkinham, for himself and his heirs and assigns, does release, remise and forever discharge Stockburger, the firm, Glenn and his firm, their heirs, assigns, officers, directors, partners, shareholders, employees, successors and successors in interest, from and against any and all claims, demands, actions, causes of action and expenses of any kind he may have against Stockburger, the firm, Glenn and his firm, their heirs, assigns, officers, directors, partners, shareholders, employees, successors and successors in interest.

7. In further consideration of the covenants and agreements herein contained and the payment, Snyder-Falkinham and Central Fidelity Bank, N.A., as trustees of the Marital Trust and Residual Trust created under the Will of Peter C. Snyder, deceased (hereafter, "the Trustees"), do release, remise and forever discharge Stockburger, the firm, Glenn and his firm, their heirs, assigns, officers, directors, partners, shareholders, employees, successors and successors in interest, from and against any and all claims, demands, actions, causes of action and expenses of any kind the Trustees may have against Stockburger, the firm, Glenn and his firm, their heirs, assigns, officers, directors, partners, shareholders, employees, successors and successors in interest, now or in the future arising out of matters and things alleged in the

legal actions described in this Agreement, the letter agreement and the note.

8. The parties agree that a part of the consideration includes the satisfaction of a promissory note dated December 15, 1990, from Stockburger to Snyder-Falkinham the original to be marked "paid" and delivered to counsel for Stockburger.

9. Stockburger, the firm, Glenn and his firm release, remise and discharge Snyder-Falkinham and her heirs and assigns from and against any and all claims, demands, actions and causes of action they might have against her for any cause whatsoever, save and except those claims for indemnity and/or contribution which might arise against Snyder-Falkinham by reason of the civil actions filed against Stockburger and Glenn in the Circuit Court for the City of Roanoke by Michael E. Snyder and Stacy A. Snyder, both individually and as beneficiaries under the Peter C. Snyder Marital and Residual Trusts styled Michael E. Snyder, etc., et al. v. Bruce C. Stockburger, et al., Case No.: 93-1373, for acts, errors or omissions of Snyder-Falkinham as Co-trustee of the Marital and Residual Trusts created by the will of Peter C. Snyder.

10. This Agreement is a Release and it is not a covenant not to sue. This Agreement shall not inure to the benefit of any person or entity other than those designated herein nor shall it be construed to be a release of any person or entity other than those persons and entities specifically named herein.

11. This writing contains all of the agreements of the parties hereto and shall be construed and interpreted in accordance with the laws of the Commonwealth of Virginia.

Signed and sealed this 31st day of January, 1994.

Georgia Anne Snyder-Falkinham,  
individually and as President  
of The Snyder Company, Inc.,  
and Snyder and Associates, Rich  
Hill Development Corporation  
and as co-Trustee of the  
Marital Trust and Residual  
Trust under the Will of Peter  
C. Snyder, deceased

STATE OF VIRGINIA

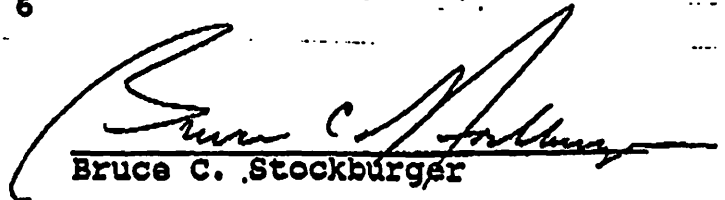
CITY/COUNTY OF \_\_\_\_\_, to-wit:

This day personally appeared before me, the undersigned Notary Public, in my jurisdiction aforesaid, Georgia Anne Snyder-Falkinham, who, being first duly sworn, deposed and said that (1) she is authorized to execute this Mutual Release and Settlement Agreement on her behalf and the behalf of the Snyder Company, Inc., Snyder and Associates, Rich Hill Development Corporation and the Marital Trust and Residual Trust under the Will of Peter C. Snyder, deceased, (2) she has read and understands the terms and conditions of the Mutual Release and Settlement Agreement and (3) she and the described companies and trusts agree to be bound by the terms and provisions of the Mutual Release and Settlement Agreement.

Sworn and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 1994.

My Commission expires:     /     /     .

\_\_\_\_\_  
Notary Public

  
Bruce C. Stockburger

STATE OF VIRGINIA  
CITY/COUNTY OF Roanoke, to-wit:

This day personally appeared before me, the undersigned Notary Public, in my jurisdiction aforesaid, Bruce C. Stockburger, who, being first duly sworn, deposed and said that (1) he has read and understands the terms and conditions of the Mutual Release and Settlement Agreement and (2) he agrees to be bound by the terms and provisions of the Mutual Release and Settlement Agreement.

Sworn and subscribed before me this 31st day of January, 1994.

My Commission expires: 5/3/1997.

  
Notary Public

Gentry, Locke, Rakes & Moore

By: William R. Rakes

Title: Managing Partner

STATE OF VIRGINIA  
 CITY/COUNTY OF Roanoke, to-wit:

This day personally appeared before me, the undersigned Notary Public, in my jurisdiction aforesaid, William R. Rakes, who, being first duly sworn, deposed and said that (1) he/she is authorized to execute this Mutual Release and Settlement Agreement on behalf of Gentry, Locke, Rakes & Moore, (2) he/she has read and understands the terms and conditions of the Mutual Release and Settlement Agreement and (3) Gentry, Locke, Rakes & Moore agrees to be bound by the terms and provisions of the Mutual Release and Settlement Agreement.

Sworn and subscribed before me this 31st day of January, 1994.

My Commission expires: 5/31/1997.

Sharon Blount  
 Notary Public



\_\_\_\_\_  
Joseph O. Falkinham

STATE OF VIRGINIA

CITY/COUNTY OF \_\_\_\_\_, to-wit:

This day personally appeared before me, the undersigned Notary Public, in my jurisdiction aforesaid, Joseph O. Falkinham, who, being first duly sworn, deposed and said that (1) he has read and understands the terms and conditions of the Mutual Release and Settlement Agreement and (2) he agrees to be bound by the terms and provisions of the Mutual Release and Settlement Agreement.

Sworn and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 1994.

My Commission expires:     /     /     .

\_\_\_\_\_  
Notary Public

Robert E. Glenn

STATE OF VIRGINIA

CITY/COUNTY OF \_\_\_\_\_, to-wit:

This day personally appeared before me, the undersigned Notary Public, in my jurisdiction aforesaid, Robert E. Glenn, who, being first duly sworn, deposed and said that (1) he has read and understands the terms and conditions of the Mutual Release and Settlement Agreement and (2) he agrees to be bound by the terms and provisions of the Mutual Release and Settlement Agreement.

Sworn and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 1994.

My Commission expires:    /    /    .

Notary Public

Glenn, Flippen, Feldman  
& Darby, P.C.

By: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF VIRGINIA

CITY/COUNTY OF \_\_\_\_\_, to-wit:

This day personally appeared before me, the undersigned Notary Public, in my jurisdiction aforesaid, \_\_\_\_\_, who, being first duly sworn, deposed and said that (1) he/she is authorized to execute this Mutual Release and Settlement Agreement on behalf of Glenn, Flippen, Feldman & Darby, P.C., (2) he/she has read and understands the terms and conditions of the Mutual Release and Settlement Agreement and (3) Glenn, Flippen, Feldman & Darby, P.C., agrees to be bound by the terms and provisions of the Mutual Release and Settlement Agreement.

Sworn and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 1994.

My Commission expires:     /     /     .

\_\_\_\_\_  
Notary Public

Central Fidelity Bank, N.A.

By: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF VIRGINIA

CITY/COUNTY OF \_\_\_\_\_, to-wit:

This day personally appeared before me, the undersigned Notary Public, in my jurisdiction aforesaid, \_\_\_\_\_, who, being first duly sworn, deposed and said that (1) he/she is authorized to execute this Mutual Release and Settlement Agreement on behalf of Central Fidelity Bank, N.A., (2) he/she has read and understands the terms and conditions of the Mutual Release and Settlement Agreement and (3) Central Fidelity Bank, N.A. agrees to be bound by the terms and provisions of the Mutual Release and Settlement Agreement.

Sworn and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 1994.

My Commission expires:     /     /     .

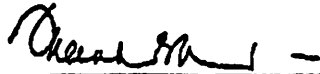
\_\_\_\_\_  
Notary Public.

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Thomas L. Rasnic  
Counsel for Georgia Anne  
Snyder-Falkinham

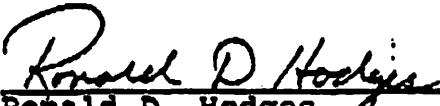
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Roger Jenne  
Counsel for Georgia Anne  
Snyder-Falkinham

---

Frank B. Miller, III  
Counsel for Bruce C. Stockburger

---

Ronald D. Hodges  
Counsel for Gentry, Locke, Rakes & Moore

---

Edwin R. Burnette  
Counsel for Robert E. Glenn  
and  
Glenn, Flippen, Feldman & Darby, P.C.

COURT  
FILED  
11/13/91  
1991  
CITY CLERK  
ROANOKE

EXHIBIT  
9  
[Signature]

Mutual Release and Settlement Agreement

It is hereby agreed, by and between Georgia Anne Snyder-Falkinham (hereafter, "Snyder-Falkinham"), Bruce C. Stockburger (hereafter, "Stockburger"), Gentry, Locke, Rakes & Moore (hereafter, "the firm"), Robert E. Glenn (hereafter, "Glenn"), and Glenn, Flippin, Feldmann & Darby, P.C. (hereafter, "his firm") that all claims made by Snyder-Falkinham against Stockburger and the firm currently pending in the Circuit Court for the City of Roanoke styled Georgia Anne Snyder-Falkinham, etc. v. Bruce C. Stockburger, et al., Case No. CL91-1212 (hereafter, "the action"), be settled and compromised on the following terms and conditions:

1. This is a compromise settlement of disputed claims and demands. The parties hereto recognize and acknowledge that neither this Agreement nor the resulting compromise settlement shall constitute an admission of any of the allegations in the action and/or of claims made by Snyder-Falkinham against Stockburger for alleged moneys due under a letter agreement dated December 14, 1990 (hereafter, "the letter agreement") and promissory note signed by Stockburger and dated December 15, 1990 (hereafter, "the note").

2. Snyder-Falkinham agrees to the dismissal of the action with prejudice.

3. The parties hereto and their respective counsel agree to keep the terms and provisions of this Agreement confidential and shall not make any public disclosure of the terms and provisions of this Agreement or amount of the settlement, absent an order of a court or tribunal of competent jurisdiction that the terms and/or

provisions be disclosed, and only then as required by the terms of the order.

4. In consideration of the covenants and agreements herein contained and the payment of good and valuable consideration to Snyder-Falkinham and her counsel in the action by or on behalf of Stockburger and the firm (hereafter, "the payment"), the receipt and sufficiency of which is acknowledged by Snyder-Falkinham and her counsel in the action, Snyder-Falkinham, for herself and her heirs and assigns, The Snyder Company, Inc. (hereafter, "Snyder Co."), Snyder and Associates, Rich Hill Development Corporation and their officers, directors and shareholders, does release, remise and forever discharge Stockburger and his heirs and assigns and the firm and its partners, officers, employees, successors and successors in interest from and against any and all claims, demands, actions, causes of action and expenses of whatever kind she may have against Stockburger and the firm, their heirs, assigns, partners, officers, employees, successors and successors in interest now or in the future.

5. In further consideration of the covenants and agreements herein contained and the payment, Snyder-Falkinham, for herself and her heirs and assigns, Snyder Co., Snyder and Associates, Rich Hill Development Corporation and their officers, directors and shareholders, does release, remise and forever discharge Glenn and his firm, their heirs, assigns, officers, directors, shareholders, employees, successors and successors in interest from and against any and all claims, demands, actions, causes of action and expenses

of whatever kind she may have against Glenn and his firm, their heirs, assigns, officers, directors, shareholders, employees, successors and successors in interest, now or in the future.

6. In further consideration of the covenants and agreements herein contained and the payment, Snyder-Falkinham, as beneficiary and Trustee of the Marital Trust and Residual Trust created under the Will of Peter C. Snyder, deceased (hereafter, "the Trustees"), does release, remise and forever discharge Stockburger, the firm, Glenn and his firm, their heirs, assigns, officers, directors, partners, shareholders, employees, successors and successors in interest, from and against any and all claims, demands, actions, causes of action and expenses of any kind the beneficiary and Trustee may have against Stockburger, the firm, Glenn and his firm, their heirs, assigns, officers, directors, partners, shareholders, employees, successors and successors in interest, now or in the future arising out of matters and things alleged in the legal actions described in this Agreement, the letter agreement and the note.

7. The parties agree that a part of the consideration includes the satisfaction of a promissory note dated December 15, 1990, from Stockburger to Snyder-Falkinham, the original to be marked "paid" and delivered to counsel for Stockburger.

8. Stockburger, the firm, Glenn and his firm release, remise and discharge Snyder-Falkinham and her heirs and assigns from and against any and all claims, demands, actions and causes of action they might have against her for any cause whatsoever, save and



except those claims for indemnity and/or contribution which might arise against Snyder-Falkinham by reason of the civil actions filed against Stockburger and Glenn in the Circuit Court for the City of Roanoke by Michael E. Snyder and Stacy A. Snyder, both individually and as beneficiaries under the Peter C. Snyder Marital and Residual Trusts styled Michael E. Snyder, etc., et al. v. Bruce C. Stockburger, et al., Case No.: 93-1373, for acts, errors or omissions of Snyder-Falkinham as Co-trustee of the Marital and Residual Trusts created by the Will of Peter C. Snyder.

9. This Agreement is a Release and it is not a covenant not to sue. This Agreement shall not inure to the benefit of any person or entity other than those designated herein nor shall it be construed to be a release of any person or entity other than those persons and entities specifically named herein.

10. This writing contains all of the agreements of the parties hereto and shall be construed and interpreted in accordance with the laws of the Commonwealth of Virginia.

Signed and sealed this 31st day of January, 1994.

Georgia Anne Snyder-Falkinham,  
 individually and as President  
 of The Snyder Company, Inc.,  
 and Snyder and Associates, Rich  
 Hill Development Corporation  
 and as beneficiary and co-  
 Trustee of the Marital Trust  
 and Residual Trust under the  
 Will of Peter C. Snyder,  
 deceased

STATE OF VIRGINIA

CITY/COUNTY OF \_\_\_\_\_, to-wit:

This day personally appeared before me, the undersigned Notary Public, in my jurisdiction aforesaid, Georgia Anne Snyder-Falkinham, who, being first duly sworn, deposed and said that (1) she is authorized to execute this Mutual Release and Settlement Agreement on her behalf and the behalf of the Snyder Company, Inc., Snyder and Associates, Rich Hill Development Corporation and as beneficiary and Co-Trustee under the Marital Trust and Residual Trust under the Will of Peter C. Snyder, deceased, (2) she has read and understands the terms and conditions of the Mutual Release and Settlement Agreement and (3) she and the described companies and trusts agree to be bound by the terms and provisions of the Mutual Release and Settlement Agreement.

Sworn and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 1994.

My Commission expires:    /    /    .

\_\_\_\_\_  
 Notary Public

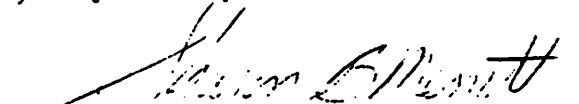
  
Bruce C. Stockburger

STATE OF VIRGINIA  
CITY/COUNTY OF Roanoke, to-wit:

This day personally appeared before me, the undersigned Notary Public, in my jurisdiction aforesaid, Bruce C. Stockburger, who, being first duly sworn, deposed and said that (1) he has read and understands the terms and conditions of the Mutual Release and Settlement Agreement and (2) he agrees to be bound by the terms and provisions of the Mutual Release and Settlement Agreement.

Sworn and subscribed before me this 31st day of January, 1994.

My Commission expires: 5/31/97.

  
Notary Public

Gentry, Locke, Rakes & Moore

By: William N. Rakes

Title: Managing Partner

STATE OF VIRGINIA  
 CITY/COUNTY OF Roanoke, to-wit:

This day personally appeared before me, the undersigned Notary Public, in my jurisdiction aforesaid, William N. Rakes, who, being first duly sworn, deposed and said that (1) he/she is authorized to execute this Mutual Release and Settlement Agreement on behalf of Gentry, Locke, Rakes & Moore, (2) he/she has read and understands the terms and conditions of the Mutual Release and Settlement Agreement and (3) Gentry, Locke, Rakes & Moore agrees to be bound by the terms and provisions of the Mutual Release and Settlement Agreement.

Sworn and subscribed before me this 31st day of January, 1994.

My Commission expires: 5/31/97.

Sharon B. Smith  
 Notary Public

\_\_\_\_\_  
Robert E. Glenn

STATE OF VIRGINIA  
CITY/COUNTY OF \_\_\_\_\_, to-wit:

This day personally appeared before me, the undersigned Notary Public, in my jurisdiction aforesaid, Robert E. Glenn, who, being first duly sworn, deposed and said that (1) he has read and understands the terms and conditions of the Mutual Release and Settlement Agreement and (2) he agrees to be bound by the terms and provisions of the Mutual Release and Settlement Agreement.

Sworn and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 1994.

My Commission expires:     /     /     .

\_\_\_\_\_  
Notary Public

Glenn, Flippin, Feldmann  
& Darby, P.C.

By: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF VIRGINIA

CITY/COUNTY OF \_\_\_\_\_, to-wit:

This day personally appeared before me, the undersigned Notary Public, in my jurisdiction aforesaid, \_\_\_\_\_, who, being first duly sworn, deposed and said that (1) he/she is authorized to execute this Mutual Release and Settlement Agreement on behalf of Glenn, Flippin, Feldman & Darby, P.C., (2) he/she has read and understands the terms and conditions of the Mutual Release and Settlement Agreement and (3) Glenn, Flippin, Feldman & Darby, P.C., agrees to be bound by the terms and provisions of the Mutual Release and Settlement Agreement.

Sworn and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, 1994.

My Commission expires:     /     /     .

\_\_\_\_\_  
Notary Public

---

Thomas L. Rasnic  
Counsel for Georgia Anne  
Snyder-Falkinham

---

Roger Jenne  
Counsel for Georgia Anne  
Snyder-Falkinham

---

Frank B. Miller, III  
Counsel for Bruce C. Stockburger

---

Ronald D. Hodges  
Counsel for Gentry, Locke, Rakes & Moore

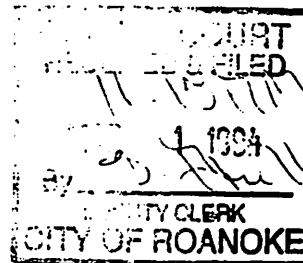
---

R. Edwin Burnette  
Counsel for Robert E. Glenn  
and  
Glenn, Flippin, Feldmann & Darby, P.C.

# BROWN, EDWARDS & COMPANY

Certified Public Accountants

Tennessee • Virginia • West Virginia



RECEIVED DEC 18 1991

December 18, 1991



D. Anglin  
S. D. Blackley  
R. M. Bragg  
M. T. Chittwood  
G. D. Cornwell  
M. K. Culler, Jr.  
P. S. Curry, Jr.  
G. R. Duerk  
R. F. Famer  
J. W. Jackson  
J. B. Lee  
R. L. Linnan  
J. J. Mahood  
D. E. Pettit  
C. E. Waxman  
D. C. Snyder  
W. H. Straley, II  
C. M. Wade

Ms. Georgia Anne Snyder-Falkinham  
506 S. Main Street  
Blacksburg, Virginia 24060

Dear Georgia Anne:

As a follow-up to our telephone conversation, I would like to thank you for the checks paying the fees for Snyder and Associates and Snyder, Inc. We will follow up with Joe Anthony concerning the trust information and your personal tax situation.

During a recent conversation with Bruce Stockburger which he initiated, he suggested that we pass along to you the economic impact of voiding the stock transaction which increased his stock ownership in Rich Hill just over 50 percent. If this transaction were reversed, as perhaps by the current court action, you could be required to repay the tax refund of \$342,859 plus interest you received in 1991. You received the refund because the change of stock ownership. You may also be forced to give up a loss carryforward of \$700,000 that could be used in 1991 and future years to offset income taxes. If the stock change had not been made, the losses which created the refund and the loss carryforward would flow through the trust and be deductible only as the property is sold to outside third parties.

As you are aware, our knowledge of this litigation is limited to the initial news media account which did not include the stock transaction as an issue. Voiding the stock transaction could have the consequences as described and I wanted to be sure this was something you were aware of. I pass along this information only for your consideration.

I hope you and your family have a wonderful holiday on St. Johns. Call me if I can provide any further information.

Very truly yours,

BROWN, EDWARDS & COMPANY

*JBL*  
James B. Lee, Partner

JBL:rdk

582

319 McClanahan Street, S.W. P.O. Box 12388 Roanoke, Virginia 24025 Tel. (703) 345-0936 Fax (703) 342-6181

Member SEC and Private Companies Practice Sections of American Institute of Certified Public Accountants and Associated Regional Accounting



V I R G I N I A:

IN THE CIRCUIT COURT OF THE CITY OF ROANOKE

GEORGIA ANNE SNYDER-FALKINHAM,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No.: CL91-1212
	)	
BRUCE C. STOCKBURGER, et al.	)	
	)	
Defendants.	)	
<hr/>		

SUBSTITUTE ORDER GRANTING LEAVE TO WITHDRAW

THIS MATTER came before this Court on the separate motions of Roger E. Jenne and Thomas L. Rasnic. These motions requested that this Court grant each of them leave to withdraw as attorneys of record for the Plaintiff in this proceeding and to impress an attorney's lien for fees and expenses.

This Court conducted a hearing on these motions at the Circuit Court of Wythe County on February 15, 1994. Movants appeared pro se. Messrs. Michael Horwatt and Charles Wright represented Plaintiff.

This Court makes the following findings of fact with respect to this Order.

1. Movants decided to seek leave to withdraw as Plaintiff's counsel unilaterally and without consultation.
2. Plaintiff neither requested or demanded that

Movants withdraw as her counsel in this case.

3. Nor did Plaintiff refuse to honor the contingency fee of Movants.

4. Although Plaintiff engaged separate counsel to review the circumstances upon which Movants sought and obtained an Order dismissing this case with prejudice against all defendants, and a review of settlement negotiations conducted by Movants, Plaintiff did not retain these attorneys as substitute counsel for Movants.

5. Subsequently, Plaintiff retained separate counsel to file a Motion to Reinstate and for Vacation of Order and Final Order. However, Plaintiff did not engage such attorneys as substitute counsel for Movants.

6. Movants entered into a written retainer agreement with Plaintiff that provided them a contingency fee of 40 percent of any recovery they obtained as a result of a settlement or through litigation. This agreement also gave Movants the right to withdraw. But such withdrawal could only occur upon reasonable notice to Plaintiff.

7. Prior to such withdrawal, Movants breached their written agreement with Plaintiff. First, contrary to the terms of their contract, Movants agreed with defendants to settle her case without her authority and consent. A second breach of their contract with Plaintiff resulted when they endorsed an Order and induced this Court to enter an Order and Final Order on January 31, 1994 dismissing her case with

prejudice against all defendants.

8. When Movants unilaterally moved to withdraw as her attorneys, such withdrawal occurred without reasonable notice to Plaintiff. Such withdrawal constituted an anticipatory breach of contract.

9. No recovery had occurred prior to Movants anticipatory breach and breach of contract. Nor had Plaintiff settled the case with Defendants.

10. Subsequent to their motion to withdraw which would result in a termination of the attorney-client relationship, Movants failed to honor their client's request that they return original documents to her, and provide her with certain information and material to support her contemplated motion to vacate the Order and Final Order and to reinstate her case.

This Court makes the following conclusions of law:

1. Movants anticipatorily breached the retainer agreement with Plaintiff by withdrawing without giving Plaintiff reasonable notice of such withdrawal.

2. Movants breached the retainer agreement with Plaintiff by agreeing with Defendants to settle the above-referenced action without her consent.

3. Movants breached the retainer agreement with Plaintiff by moving before this Court to dismiss the above-referenced action with prejudice and submitting for entry the January 31, 1994 Order and Final Order.

4. The parties did not enter into a valid, binding settlement agreement nor has a recovery occurred in this action.

5. Movants's refusal to honor their former client's requests for her files and other crucial information constitutes a breach of fiduciary duty.

WHEREFORE, the following is ORDERED:

1. Movant's Motion to Withdraw as counsel is GRANTED;

2. Movant's Motion for Attorney's lien is DENIED.

IT IS FURTHER ORDERED and DECREED:

1. Movants shall provide within forty-eight hours the original and all copies of documents concerning Georgia Anne Snyder-Falkinham or the above-referenced action. In so providing such documents, Movants shall make best efforts to secure copies of any documents concerning Georgia Anne Snyder-Falkinham that may have been transmitted to third parties, including, but without any limitation, the National Legal Research Group, Inc. and counsel for Defendants in the above-referenced action. In so providing, Movants shall provide any and all documents they have concerning the financial condition (including balance sheets and other financial information) of any the Defendants, including, but not limited to, Gentry, Locke, Rakes & Moore (and any of its partners, including but not limited to Bruce D. Stockburger);

2. Each Movant shall provide to the Court, under seal, with a copy forwarded to Plaintiff, a written, detailed account of all discussions and negotiations conducted by the Movants during January 30-31, 1994 with opposing counsel in the above-referenced case;

3. Each Movant shall provide to the Court, under seal, with a copy forwarded to Plaintiff, a written, detailed account of all discussions and negotiations conducted by Movants during January 30-31, 1994 concerning the above-referenced lawsuit or any alleged settlement agreement. The Court finds this necessary to ascertain whether the attorney-client privilege has been violated by Movants;

4. Movants are hereby enjoined and restrained from any further communications, in whatever form, from disclosing any information, confidences or secrets that they may have obtained as part of their attorney-client relationship and Movants are hereby Ordered to instruct their employees to refrain from doing likewise.

The Court shall retain jurisdiction over this matter.

Entered this \_\_ day of February 1994.

Jennings

---

The Honorable Barnard F.

Judge Designate

WE ASK FOR THIS:

---

Michael S. Horwatt  
Charles F. Wright  
Michael Horwatt & Assoc., PC  
8300 Boone Blvd. Ste. 800  
Vienna, VA 22182

SEEN AND OBJECTED TO:

---

Thomas L. Rasnic, Esq.  
Rasnic & Rasnic, P.C.  
P.O. Box 733  
Jonesville, VA 24263

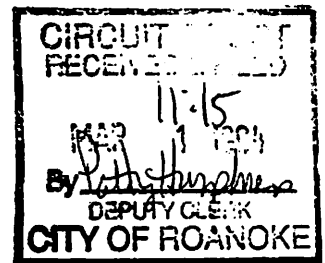
SEEN AND OBJECTED TO:

---

Roger E. Jenne, Esq.  
Jenne, Scott & Bryant  
P.O. Box 161  
Cleveland, TN 37364-0161

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ROANOKE



GEORGIA ANNE SNYDER-FALKINHAM,

Appellant,

v.

BRUCE C. STOCKBURGER, et al.

Appellees.

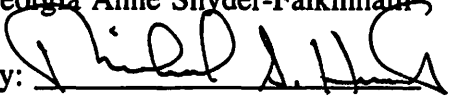
Case No.: CL91-1212

**NOTICE OF APPEAL**

The Appellant, Georgia Anne Snyder-Falkinham ("Appellant"), files this Notice of Appeal to the Supreme Court of Virginia from: (1) the Order of this Court entered on January 31, 1994; (2) the Final Order of this Court entered on January 31, 1994; (3) the Trial Court's rulings from the bench on February 15, 1994 including (a) the denial of Appellant's Motion to Quash or Modify Subpoena Duces Tecum; (b) the denial of Appellant's Motion to Reinstate and For Vacation of Order and Final Order; (c) the granting of Appellees' Motion to Confirm Settlement and the Order entered thereon; and (d) the evidentiary rulings of the Trial Court to which Appellant interposed objections; and (4) the ruling of this Court as set forth in its letter opinion dated February 18, 1994, denying Appellant's Motion for Reconsideration. Appellant further gives notice that the hearing transcript covering the

testimony and other incidents of the hearing held by this Court on February 15, 1994 will be filed, all in compliance with the Rules of the Supreme Court of Virginia.

Respectfully submitted,  
Georgia Anne Snyder-Falkinham

By: 

Michael S. Horwatt, VSB 004943  
Charles F. Wright, VSB 30609  
Michael Horwatt & Associates, P.C.  
8300 Boone Boulevard, Suite 800  
Vienna, VA 22182  
(703) 847-1900

Counsel to Appellant



## CERTIFICATE OF SERVICE

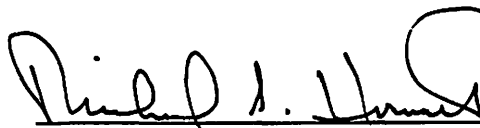
I hereby certify that a true copy of the foregoing Notice of Appeal and Praecipe were sent by facsimile and by U.S. mail, postage pre-paid, this 28 day of February, 1994, to counsel as follows:

Frank B. Miller, III, Esquire  
Sands, Anderson, Marks & Miller  
P.O. Box 1998  
Richmond, VA 23216

Counsel for Appellee Bruce C. Stockburger

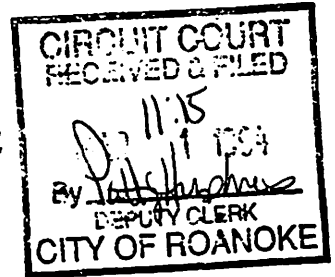
Ronald D. Hodges, Esquire  
Wharton, Aldhizer & Weaver  
A Professional Limited Liability Company  
100 South Mason Street  
Harrisonburg, VA 22801

Counsel for Appellees Gentry, Locke, Rakes & Moore,  
S. D. Roberts Moore, William R. Rakes, James R. Austin, Charles L.  
Williams, Jr., Eugene E. Derryberry, William J. Creech, James C. Joyce,  
Jr., Linda Davis Frith, W. David Paxton, W. William Gust, Guy M.  
Harbert, III, David C. Weaver.

  
\_\_\_\_\_  
Michael S. Horwatt

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ROANOKE



GEORGIA ANNE SNYDER-FALKINHAM, )

Plaintiff, )

v. )

Case No.: CL91-1212

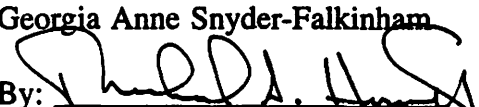
BRUCE C. STOCKBURGER, et al. )

Defendants. )

**PRAECIPE**

TO: THE CLERK OF THE CIRCUIT COURT

Please take notice of the appearance in this case of Michael S. Horwatt and Charles F. Wright of the firm of Michael Horwatt & Associates, P.C. as counsel for the Plaintiff Georgia Anne Snyder-Falkinham.

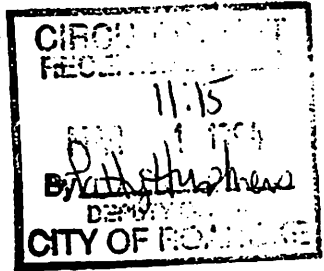
Respectfully submitted,  
Georgia Anne Snyder-Falkinham  
By:   
Michael S. Horwatt, VSB 004943  
Charles F. Wright, VSB 30609  
Michael Horwatt & Associates, P.C.  
8300 Boone Boulevard, Suite 800  
Vienna, VA 22182  
(703) 847-1900

Counsel to Plaintiff

MICHAEL HORWATT & ASSOCIATES P.C.

8300 BOONE BOULEVARD  
VIENNA, VIRGINIA 22182-2626  
703 847-1900

FACSIMILE: 703 847-4616



February 28, 1994

VIA FEDERAL EXPRESS

Mr. A. B. Crush, III  
Clerk of the Court  
Roanoke City Circuit Court  
315 W. Church Avenue  
Roanoke, VA 24016-0211

Re: Snyder-Falkinham v. Stockburger, et al. Case No. CL91-1212

Dear Mr. Crush:

Enclosed please find an original and two copies of a:

1. Praecipe
2. Notice of Appeal

Please file these documents in the above-referenced matter in the order stated above.

Please call me if you have any problems with the enclosed documents.

Very truly yours,

Michael S. Horwatt

Enclosures

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ROANOKE

GEORGIA ANNE SNYDER-FALKINHAM, )

Plaintiff, )

v. )

BRUCE C. STOCKBURGER, et al. )

Defendants. )

Case No.: CL91-1212

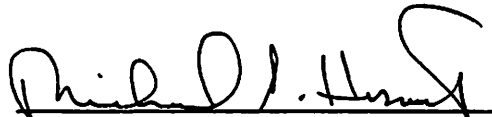
PRAECIPE

TO THE CLERK OF THE COURT:

Please find for filing Plaintiff Georgia Anne Snyder-Falkinham's Notice of Objections and Request for Correction of Transcript pursuant to Part Five of the Rules of the Supreme Court of Virginia. Please transmit Plaintiff Georgia Anne Snyder-Falkinham's Objections and Request for Correction of Transcript to the Honorable Barnard F. Jennings, the Judge Designate at the February 15, 1994 proceedings in this matter.

Dated: March 22, 1994

Respectfully submitted,



Michael S. Horwatt

Charles F. Wright

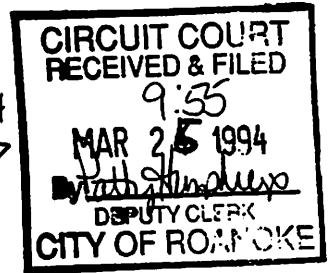
MICHAEL HORWATT & ASSOCIATES P.C.

8300 Boone Boulevard, Suite 800

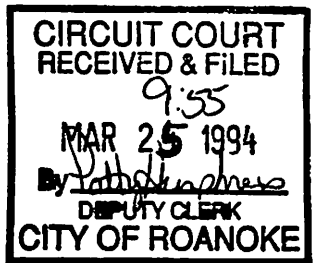
Vienna, VA 22182-2626

(703) 847-1900

Counsel for Plaintiff



Mar 25 1994 →



VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ROANOKE

GEORGIA ANNE SNYDER-FALKINHAM, )

Plaintiff, )

v. )

Case No.: CL91-1212

BRUCE C. STOCKBURGER, et al. )

Defendants. )

PLAINTIFF GEORGIA ANNE SNYDER-FALKINHAM'S NOTICE OF  
OBJECTIONS AND REQUEST FOR CORRECTION OF TRANSCRIPT

Pursuant to Rule 5:11 of the Rules of the Supreme Court of Virginia, Plaintiff Georgia Anne Snyder-Falkinham, by counsel, respectfully notes the following objections to the transcript of the February 15, 1994 proceeding in the above-referenced matter before the Honorable Barnard F. Jennings, Judge Designate:

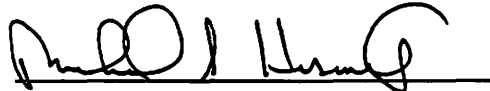
Line 10 of Page 97 of the current transcript incorrectly states Mr. Joseph Anthony's testimony. Mr. Anthony testified that "The existence of two notes from Bruce Stockburger to her purchase of approximately 50 percent \* \* \* ." The current Line 10 of Page 97 incorrectly reflects Mr. Anthony's actual testimony, stating that Mr. Anthony testified " \* \* \* approximately 15 percent \* \* \* ."

WHEREFORE, Plaintiff Georgia Anne Snyder-Falkinham respectfully requests that the Honorable Barnard F. Jennings, Judge Designate, correct the transcript by ordering the court reporter at the proceedings to correct and change Line 10 of Page 97 from 15 percent to

50 percent. In doing so, the court reporter shall include all testimony, cross-examination and judicial statements and rulings from inception through the conclusion of the proffer by Ronald D. Hodges, Esq., Gentry, Locke, Rakes & Moore's defense counsel, of Mr. Agee, a witness called by Ronald D. Hodges, Esq.

Dated: March 2, 1994

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michael S. Horwatt", written over a horizontal line.

Michael S. Horwatt

Charles F. Wright

**MICHAEL HORWATT & ASSOCIATES P.C.**

8300 Boone Boulevard, Suite 800

Vienna, VA 22182-2626

(703) 847-1900

Counsel for Plaintiff

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ROANOKE

GEORGIA ANNE SNYDER-FALKINHAM, )

Plaintiff, )

v. )

Case No.: CL91-1212

BRUCE C. STOCKBURGER, et al. )

Defendants. )

ORDER

This matter came before the Court on Plaintiff Georgia Anne Snyder-Falkinham's Notice of Objections and Request for Correction of Transcript and upon consideration of such Notice of Objections, the Court ORDERS that Amy Faulkner Logan, court reporter at the February 15, 1994 proceedings in this matter, correct the transcript as follows:

Lines 9 through 11 of Page 97 of the current transcript shall be changed to read:

A: The existence of two notes from Bruce Stockburger back to her to purchase approximately 50 percent back in December 1990, that was a part of that transaction.

The Court further ORDERS that the court reporter shall include all testimony, cross-examination, direct examination, judicial statements and rulings, and all other incidents of the February 15, 1994 hearing from inception through the conclusion of the proffer by Ronald D. Hodges, Esq., Gentry, Locke, Rakes & Moore's defense counsel, of Mr. Agee, a witness

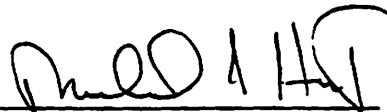
called by Mr. Hodges.

Entered this \_\_\_\_ day of March, 1994.

---

The Honorable Barnard F. Jennings  
Judge Designate

We ask for this:



Michael S. Horwatt  
Michael Horwatt & Associates, P.C.  
8300 Boone Boulevard, Suite 800  
Vienna, VA 22182  
Counsel for Plaintiff Georgia Anne Snyder-Falkinham

Seen:

---

Ronald D. Hodges  
Wharton, Aldhizer & Weaver  
A Professional Limited Liability Company  
100 South Mason Street  
Harrisonburg, VA 22801  
Counsel for Defendants

---

Frank B. Miller, III  
Sands, Anderson, Marks & Miller  
P.O. Box 1998  
Richmond, VA 23216  
Counsel for Defendant Bruce C. Stockburger



# CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Plaintiff Georgia Anne Snyder-Falkinham's Praecipe, Notice of Objections and Request for Correction of Transcript and proposed Order were sent by U.S. mail, postage pre-paid, this 22<sup>d</sup> day of March, 1994, to counsel as follows:

Frank B. Miller, III, Esquire  
Sands, Anderson, Marks & Miller  
P.O. Box 1998  
Richmond, VA 23216

Counsel for Defendant Bruce C. Stockburger

Ronald D. Hodges, Esquire  
Wharton, Aldhizer & Weaver  
A Professional Limited Liability Company  
100 South Mason Street  
Harrisonburg, VA 22801

Counsel for Defendants Gentry, Locke, Rakes & Moore,  
S.D. Roberts Moore, William R. Rakes, James R. Austin,  
Charles L. Williams, Jr., Eugene R. Derryberry, William J.  
Creech, James C. Joyce, Jr., Linda Davis Frith, W. David  
Paxton, W. William Gust, Guy M. Harbert, III, David C.  
Weaver



---

Michael S. Horwatt

**MICHAEL HORWATT & ASSOCIATES P.C.**

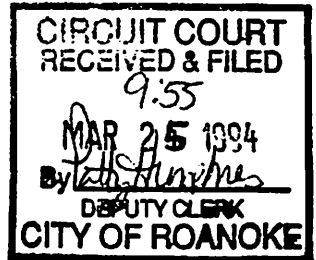
8300 BOONE BOULEVARD  
VIENNA, VIRGINIA 22182-2626  
703 847-1900

**MICHAEL S. HORWATT**

DIRECT DIAL  
703 847-1919

FACSIMILE: 703 847-4616

March 22, 1994



By Express Mail

Mr. Arthur B. Crush, III  
Clerk of the Court  
Circuit Court for the City of Roanoke  
315 West Church Avenue  
Roanoke, VA 24016

RE: Georgia Anne Snyder-Falkinham v. Bruce C. Stockburger, et al.;  
Case No. CL91-1212;  
Our File No. H8180.146.1

Dear Mr. Crush:

Please find enclosed originals and one copy of Praecipe, Plaintiff Georgia Anne Snyder-Falkinham's Notice of Objections and Request for Correction of Transcript and proposed Order in the above-referenced case.

Please file the enclosed documents and return the copies, bearing the court's file stamp, to the undersigned in the enclosed postage-paid envelope.

Please call me if you have any questions or problems with the enclosed documents. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael S. Horwatt".

Michael S. Horwatt

jcb

Enclosures

VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ROANOKE

GEORGIA ANNE SNYDER-FALKINHAM,

*Plaintiff,*

*versus*

No. CL91-1212

BRUCE C. STOCKBURGER, ET AL.,

*Defendants.*

ORDER

This day came all the parties, by counsel, and agreed that the February 15, 1994 hearing transcript before the Honorable Barnard F. Jennings should be corrected in the following places:

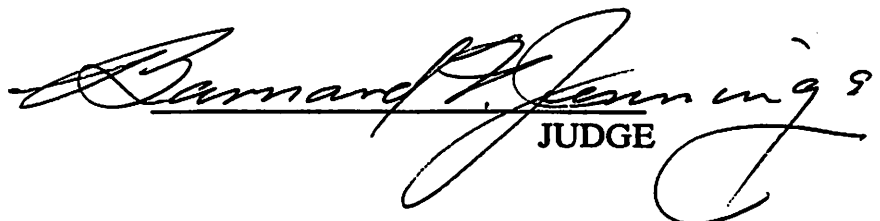
1. Page 288, line 3 should read:

And to a great extent it does boil down to a question of credibility; that is whether I believe . . . .

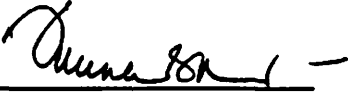
As a result of the above correction an additional line is added to the transcript.

2. The presiding judge was Barnard F. Jennings.

ENTER: 3/26/94

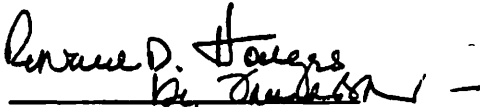
  
JUDGE

WE ASK FOR THIS:



Frank B. Miller, III  
M. Pierce Rucker, II  
Rudolph Bumgardner, IV  
SANDS, ANDERSON, MARKS & MILLER  
P. O. Box 1998  
Richmond, Virginia 23216  
(804) 783-7255

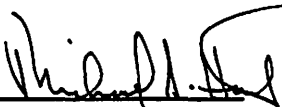
Counsel for Stockburger



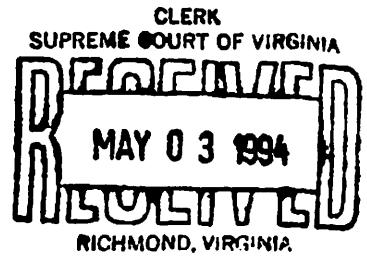
Ronald D. Hodges  
Marshall H. Ross  
WHARTON, ALDHIZER & WEAVER  
100 South Mason Street  
Harrisonburg, Virginia 22801  
(703) 434-0316

Counsel for Gentry, Locke, Rakes & Moore

AGREED:



Michael S. Horwatt, Esquire  
Michael Horwatt & Associates, P.C.  
8300 Boone Boulevard, Suite 800  
Vienna, Virginia 22182.



VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF ROANOKE

GEORGIA ANNE SNYDER-FALKINHAM )

Plaintiff, )

v. )

Case No.: CL91-1212

BRUCE C. STOCKBURGER, et al. )

Defendants. )

ORDER

This day came all the parties by counsel and agreed that the February 15, 1994 hearing transcript before the Honorable Barnard F. Jennings should be correct in the following place:

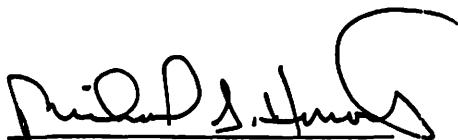
Lines 9 through 11 of Page 97 of the current transcript shall be changed to read:

A: The existence of two notes from Bruce Stockburger back to her to purchase approximately 50 percent back in December 1990, that was a part of that transaction.

Entered this 28<sup>th</sup> day of April, 1994.

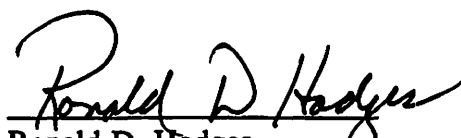
  
The Honorable Barnard F. Jennings  
Judge Designate

We ask for this:



Michael S. Horwatt  
Michael Horwatt & Associates P.C.  
1501 Farm Credit Drive  
McLean, VA 22102  
Counsel for Georgia Anne Snyder-Falkinham

Agreed:



Ronald D. Hodges  
Wharton, Aldhizer & Weaver  
100 South Mason Street  
Harrisonburg, VA 22801  
Counsel for Gentry, Locke, Rakes & Moore, et al.


Frank B. Miller, III  
Sands, Anderson, Marks & Miller  
P.O. Box 1998  
Richmond, VA 23216  
Counsel for Stockburger

### **Assignments of Error**

- A. The Circuit Court Erred in Admitting Discussions and Events that Occurred in Court Ordered Mediation Proceedings as Evidence of Ms. Snyder-Falkinham's Former Trial Attorneys' Authority to Have Her Cases Dismissed with Prejudice**
- B. The Circuit Court Erred in Holding that Ms. Snyder-Falkinham's Trial Attorneys Could Have Her Case Dismissed without Proof that They Had Her Express Permission**
- C. The Circuit Court Erred in Admitting into Evidence a Statutorily Invalid and Unsigned Mediation Memorandum of Agreement to Establish the Existence of a Settlement Agreement Although the Parties Still Had Not Agreed to All Essential Terms of Settlement**
- D. The Circuit Court Erred in Ruling that Mere Oral Settlement Discussions Bound the Parties When the Parties Intended to Enter a Formal, Written Agreement**