



Record No. 760182

Nationwide Insurance Company, Appellant

v. 217VA 916

Cynthia V. Muncy, Appellee

SUPPLEMENT TO APPENDIX

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VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF RADFORD

RAYMOND K. MOORE

V.

X RESPONSE TO MOTION FOR
DECLARATORY JUDGMENT

CYNTHIA V. MUNCY

TO: THE HONORABLE W. S. JORDAN, JUDGE OF SAID COURT

The undersigned Cynthia V. Muncy, for response to the Motion for Declaratory Judgment, and without waiving the Motion to Dismiss, says the following:

1. The allegations of Paragraph 1 are admitted.

2. The allegations of Paragraph 2 are denied; and the undersigned further affirmatively alleges that even assuming the execution of some document, the nature of which was misrepresented to her, the same was without any consideration and was in no way designed or intended to release Raymond K. Moore from liability for personal injuries sustained by the undersigned in the accident mentioned; that Nationwide Insurance Company, the insurer of Raymond K. Moore, through its agents, for the purpose of repair or replacement of a motor vehicle for which it and Raymond K. Moore were admittedly liable, induced the undersigned to execute a document which was not, insofar as the undersigned is or was advised, a general release.

3. The allegations of Paragraphs 3 and 4 are admitted.

4. In connection with the allegations of Paragraph 5, it is denied that a full or complete release of any claims for personal injury was knowingly or intentionally granted or given.

5. The undersigned alleges that the true party in interest is Nationwide Insurance Company, and that said company should be made a party to this suit.

6. The undersigned affirmatively alleges:
 - a. The so-called release, if such it be construed, was executed by the undersigned under misapprehension and mistake of fact.
 - b. The execution of the document alleged to constitute a release was based upon material misrepresentations of complainant or those acting in his behalf as employees or agents of Nationwide Mutual Insurance Company reasonably relied upon by the undersigned.
 - c. There was a lack of consideration for said release, and subsequent failure of such consideration.
 - d. The execution of the alleged release was based upon inadequate consideration, fraud, imposition and duress practiced on the undersigned by and through Nationwide Mutual Insurance Company and/or its agents, representatives, servants and employees, who were then and there allegedly acting for the benefit of the complainant.

7. Any other allegations of the Bill of Complaint not specifically admitted are denied.

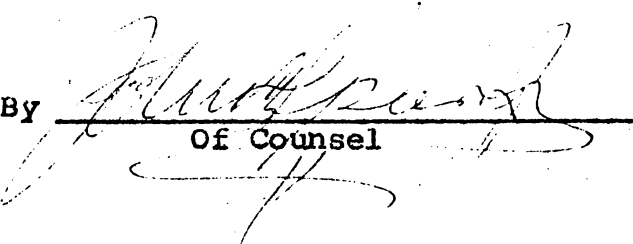
Accordingly, the undersigned prays as follows:

1. Nationwide Mutual Insurance Company be made a party to this proceeding in order that complete disposition of the matters involved be possible, as provided in Section 8-129 of the Code of Virginia.

2. That the alleged release be annulled, set aside and be declared void and without binding effect.
3. That a jury be impaneled to determine the factual issues involved herein insofar as any conflict may exist and, in the absence of conflict, the Court declare said release void as a matter of law.
4. That the undersigned be granted leave to join third parties to this proceeding for the purpose of cross claims or counterclaims, including Nationwide Mutual Insurance Company, D. A. Wall, its adjuster, and Benny C. Ridpath, an agent or representative of Nationwide Mutual Insurance Company, the named individuals for participating in obtaining the document referred to as a release as representatives of Nationwide Mutual Insurance Company.
5. That damages be awarded to the undersigned for counsel fees, expenses, anguish and embarrassment by reason of this proceeding.

Respectfully,

Cynthia V. Muncy

By 
Of Counsel

Spiers, Spiers & Mink
Attorneys at Law
P. O. Box 1052
Radford, Virginia 24141

I hereby certify that on December 10, 1974, a true copy of the foregoing pleading was delivered to counsel for complainant.

V I R G I N I A:

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY

RAYMOND K. MOORE	:	DISCOVERY
vs.	:	DEPOSITIONS
CYNTHIA V. MUNCY	:	

The depositions of Benny C. Ridpath, Douglas A. Wall, Cynthia Victoria Muncy and Tommy O. Hall, taken before me, Nellie S. Boggess, a Notary Public for the State of Virginia at Large, on the 29th day of August, 1975, at the Law Offices of Spiers, Spiers & Mink, Norwood Street, Radford, Virginia, between the hours of 2:30 P.M. and 5:00 P.M., said depositions taken pursuant to agreement of counsel and to be filed in the above styled proceeding now pending in the Circuit Court of Montgomery County, Virginia.

APPEARANCES:

For the Plaintiff - Jerry K. Jebo, Attorney

For the Defendant - Cynthia V. Muncy, in person,
and by her Attorney,
John B. Spiers, Jr.

I N D E X

WITNESS	EXAMINATION BY	
	MR. SPIERS	MR. JEBO
Benny C. Ridpath	1	
Douglas A. Wall	4	
Cynthia Victoria Muncy	64	41, 65
Thomas O. Hall	83	66, 87

EXHIBITS	PAGE
Wall Deposition Exhibit 1	25
Wall Deposition Exhibit 2	28
Wall Deposition Exhibit 3	33
Wall Deposition Exhibit 4	36

STATE OF VIRGINIA

CITY OF RADFORD, to-wit:

I, Nellie S. Boggess, a Notary Public for the State of Virginia at Large, do hereby certify that the foregoing depositions of Benny C. Ridpath, Douglas A. Wall, Cynthia Victoria Muncy and Tommy O. Hall, were lawfully taken by me at the time and place specified in the caption hereof.

Given under my hand this 6th day of September, 1975.

My Commission Expires: March 8, 1977.



Notary Public

1 VIRGINIA:

2 IN THE CIRCUIT COURT OF THE CITY OF RADFORD

3
4 NATIONWIDE MUTUAL INSURANCE COMPANY,

5 PLAINTIFF,

6 vs.

7 CYNTHIA V. MUNCY,

8 DEFENDANT.

9 STENOGRAPHIC REPORT of all the testimony,
10 together with the motions, objections and exceptions
11 on the part of the respective parties, the action of the
12 Court in respect thereto, and other incidents of the
13 trial of the case of Nationwide Mutual Insurance Com-
14 pany, Plaintiff, vs. Cynthia V. Muncy, Defendant,
15 tried at Radford, Virginia, on September 12, 1975,
16 before the Honorable W. Southall Jordan, in the Circuit
17 Court of the City of Radford, Virginia.

18 APPEARANCES:

19 Jerry K. Jebo, Esq.

John Dalton, Esq.

of

20 Messrs. Dalton and Jebo
Radford, Virginia

Counsel for Plaintiff;

21 John B. Spiers, Jr., Esq.

of

22 Spiers, Spiers and Mink
23 Radford, Virginia

Counsel for Defendant.

TABLE OF CONTENTS

<u>Witnesses</u>	Direct	Cross	Redirect
<u>For the Plaintiff</u>			
Douglas A Wall	8	20	51
<u>For the Defendant</u>			
Cynthia V. Muncy	53	70	82
<u>Rebuttal</u>			
Douglas A. Wall	83		
 <u>Exhibits</u>			
Plaintiff's Exhibit #1(Release)		16	
Plaintiff's Exhibit #2(Release)		16	
Plaintiff's Exhibit #3(Report to company)		19	
Defendant's Exhibit A(Check)		41	

1 CERTIFICATE

2 I, W. Southall Jordan, Judge of the Circuit
3 Court of the City of Radford, do hereby certify that
4 the foregoing is a true and correct stenographic copy
5 and report of the evidence and other incidents of the
6 trial therein, all questions raised and all rulings
7 thereon and exceptions noted in the case of Nationwide
8 Mutual Insurance Company, Plaintiff, vs. Cynthia V.
9 Muncy, Defendant, in said Court at Radford, Virginia,
10 on September 12, 1975, and it appears in writing that
11 the Plaintiff had reasonable notice when this report of
12 the testimony and other incidents of the trial would be
13 presented for certification, and which was presented
14 to me within sixty days after final judgement and sign-
15 ed by me within seventy days.

16 I also certify that the Court Reporter report-
17 ing said case was sworn to take down and transcribe
18 said testimony and other incidents faithfully and
19 accurately to the best of her ability.

20 Given under my hand this
21
22

23 _____
24 JUDGE
25

1 REPORTER'S CERTIFICATE

2 I, Clara L. Mosher, Court Reporter, report-
3 ing the trial in the case of Nationwide Mutual Insur-
4 ance Company vs. Cynthia V. Muncy in the Circuit
5 Court of the City of Radford, Radford, Virginia, on
6 September 12, 1975, before the Honorable W. Southall
7 Jordan, Judge of said Court, do hereby certify that the
8 foregoing transcript of the testimonies of the witnesses:
9 Douglas A. Wall and Cynthia V. Muncy given at said
10 trial is a true and correct record of these testimonies
11 as recorded by me stenographically and electronically
12 and reduced to typewriting under my supervision.

13 Given under my hand this December 1, 1975.

14
15 Clara L. Mosher
16 COURT REPORTER

VIRGINIA: IN THE CIRCUIT COURT OF THE CITY OF RADFORD

RAYMOND K. MOORE

vs.

X ORDER

CYNTHIA V. MUNCY

On motion of Cynthia V. Muncy, by counsel, as set forth in the pleadings and after hearing evidence thereon, the Court doth ADJUDGE and ORDER that the true party in interest in this case is not Raymond K. Moore but is Nationwide Mutual Insurance Company and rules that the said Raymond K. Moore be stricken from the caption and dismissed as a party.

With the consent of Cynthia V. Muncy, this action is not dismissed and it is hereby ORDERED that Nationwide Mutual Insurance Company be substituted as party plaintiff and this suit shall proceed under the style of Nationwide Mutual Insurance Company versus Cynthia V. Muncy.

I ask for this Order

Of Counsel for Cynthia V. Muncy

I have seen this Order and object to the entry thereof

Of Counsel for Raymond K. Moore and Nationwide Mutual Insurance Company

ENTER: _____
Judge

DATE: September , 1975