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Record No. 5137

In the Supreme Court of Appeals of Virginia at Richmond

NATIONWIDE MUTUAL INSURANCE COMPANY

v.

ALICE M. GENTRY, SUBSTITUTE PLAINTIFF FOR SAM W. NATHAN, ADMINISTRATOR, ETC.

FROM THE CIRCUIT COURT OF THE CITY OF NORFOLK

RULE 5:12—BRIEFS

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 5137

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Friday the 15th day of January, 1960.

NATIONWIDE MUTUAL INSURANCE COMPANY,
Plaintiff in Error,

against

ALICE M. GENTRY, SUBSTITUTE PLAINTIFF FOR SAM W. NATHAN, ADMINISTRATOR, ETC.,
Defendant in Error.

From the Circuit Court of the City of Norfolk

Upon the petition of Nationwide Mutual Insurance Company a writ of error and *supersedeas* is awarded it to a judgment rendered by the Circuit Court of the City of Norfolk on the 24th day of July, 1959, in a certain action at law then therein depending wherein Alice M. Gentry, substitute plaintiff for Sam W. Nathan, Administrator, etc., was plaintiff and William F. Gentry, Jr., and the petitioner were defendants.

And it appearing from the certificate of the clerk of the said court that a suspending and *supersedeas* bond in the penalty of fifteen thousand, five hundred dollars, conditioned according to law, has heretofore been given in accordance with the provisions of sections 8-465 and 8-477 of the Code, an additional *supersedeas* bond in the penalty of twenty-five hundred dollars, conditioned according to law, is required.

RECORD

* * * * *

Filed 9-4-59.

W. R. HANCKEL, Clerk.

NOTICE OF APPEAL.

The co-defendant, Nationwide Mutual Insurance Company, hereby gives notice pursuant to Rule 5:1. Section 4 of the Rules of the Supreme Court of Appeals of Virginia of its appeal from the final judgment of the Circuit Court of the City of Norfolk, Virginia, dated July 24, 1959, and of its intention to apply to the Supreme Court of Appeals of Virginia for a writ-of-error and *supersedeas* to the judgment heretofore entered by the Court in favor of the plaintiff.

ASSIGNMENTS OF ERROR.

Pursuant to the above mentioned rules the said defendant assigns the following errors:

1. The Court erred in overruling this defendant's motion to strike the plaintiff's evidence at the conclusion of the plaintiff's testimony.
2. The Court erred in overruling this defendant's motion to strike the plaintiff's evidence at the conclusion of all of the evidence.
3. The Court erred in admitting evidence of the settlement negotiations and the settlement made between Alice M. Gentry and Nationwide Mutual Insurance Company.

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4. The Court erred in admitting evidence of the accident report filed by the State Trooper who investigated the accident of June 6, 1956.
5. The Court erred in granting any instructions to the plaintiff.
6. The Court erred in granting Instruction P-1 on behalf of the plaintiff.
7. The Court erred in granting Instruction P-3 on behalf of the plaintiff.
8. The Court erred in granting Instruction P-4 on behalf of the plaintiff.
9. The Court erred in granting Instruction P-6[2] on behalf of the plaintiff.

10. The Court erred in granting Instruction P-7 on behalf of the plaintiff.

11. The Court erred in refusing to grant Instruction D-4 on behalf of this defendant.

12. The Court erred in refusing to grant Instruction D-8 on behalf of this defendant.

13. The Court erred in refusing to grant Instruction D-9 as originally offered on behalf of this defendant.

14. The Court erred in refusing to set aside the verdict and enter final judgment for this defendant.

15. The Court erred in refusing to set aside the judgment and award this defendant a new trial.

NATIONWIDE MUTUAL INSURANCE COMPANY
By JOHN F. RIXEY
Of Counsel.

• • • • •

page 15 } INSTRUCTION PI.

The Court instructs the Jury that if you believe from a preponderance of the evidence that the plaintiff, Alice M. Gentry, obtained a judgment for damages against the defendant, William F. Gentry, Jr. for the death of her husband in an automobile accident and that at the time of the accident the defendant, Nationwide Insurance Company, did insure the said William F. Gentry, Jr. by a policy of automobile liability insurance for any such damages he became legally obligated to pay, and if you believe that the assured cooperated as required by the policy then the said Nationwide Insurance Company was indebted to the said William F. Gentry, Jr. in the amount of said damages awarded against him, and if you further believe from the evidence that at the time of the institution of these proceedings the Nationwide Insurance Company was so indebted to *William* F. Gentry, Jr. and he had not paid any part of the judgment against him to the plaintiff, Alice M. Gentry, then your verdict shall be in favor of the said Alice M. Gentry against the Nationwide Insurance Company for $14,093.52 with interest from June 18, 1958 and costs the amount of the judgment in her favor.

Granted.

C. H. J.

page 16 } INSTRUCTION PII.

The Court instructs the Jury that the only question in this case is whether or not William F. Gentry, Jr. cooperated according to the terms of the policy with his insurance company, the defendant, Nationwide Insurance Company; and unless the Nationwide Insurance Company proves to you by a preponderance of the evidence that he did not cooperate with them according to the terms of the policy, then the plaintiff is entitled to recover the amount of $14,093.52 with interest from June 18, 1958 and costs from the insurance company in this case.

Granted.

C. H. J.

page 17 } INSTRUCTION PIII.

The Court instructs the Jury that a failure to cooperate with the insurance company must be such a failure in some substantial and material respect; and in determining whether any failure to cooperate as charged by the insurance company is in fact substantial and material, you may consider whether or not the insurance company was prejudiced in any way by any such failure.

Granted.

C. H. J.

page 18 } INSTRUCTION PIV.

The Court instructs the Jury that even though you may believe, from the evidence, that Gentry failed to cooperate, yet if you further believe, from the evidence that the company's attorney knew of a failure to cooperate, if any, before the case of Alice M. Gentry *v.* William F. Gentry was tried on the merits on June 18, 1958, that the company's attorney participated in the trial of the case June 18th, and that he subsequently argued the motion for a new trial on the case; presented the Record to the Judge of this Court on August 18, 1958 for certification preparatory for an appeal; that he subsequently applied to the Supreme Court of Appeals of Virginia for an appeal in that case; and that the company's attorney also originally appeared for William F. Gentry, Jr. in the garnishment proceedings, then such acts on the part of the company's attorneys constituted a waiver of any breach

by Gentry of the covenants to cooperate and you shall find for the plaintiff, unless you further believe that the company reserved their right to so act and still deny liability.

Granted.

C. H. J.

page 19 } INSTRUCTION PV.

The Court instructs the Jury that after hearing the evidence you believe that it is just as probable that Gentry did cooperate with the insurance company as it is that he did not cooperate with the insurance company, then the company has failed to carry the burden of proof and you shall find your verdict in favor of the plaintiff.

Granted.

C. H. J.

• • • • •

page 21 } INSTRUCTION (PVI[2]).

The Court instructs the Jury that if you believe from a preponderance of the evidence that Mr. Gentry told Mr. Hoey, the adjuster for Nationwide Insurance Company, the true facts concerning the accident, then the fact that the written statement prepared by Mr. Hoey and signed by Mr. Gentry contained an untrue version of the accident would not be a failure to cooperate on the part of Mr. Gentry.

Granted.

C. H. J.

page 22 } INSTRUCTION PVII.

The Court instructs the Jury that in order for the defendant to rely on the signing by Mr. Gentry, Jr., of an alleged nonwaiver agreement, the burden is on the defendant to prove, by a preponderance of the evidence, that such agreement was executed by Mr. Gentry, Jr., a reasonable time before the commencement of the trial on June 18, 1958, with full knowledge of the contents of that agreement.

Granted.

C. H. J.

page 23 } INSTRUCTION DI.

The Court instructs the Jury that you are the sole judges of the credibility of the evidence and witnesses and when one witness testifies positively to a fact which is in conflict with the evidence of another witness, you may weigh the evidence and you may altogether disregard any testimony that you believe to be improbable or untrue.

Granted.

C. H. J.

page 24 } INSTRUCTION DII.

The Court instructs the Jury that you must consider this case solely upon the evidence before you and the law laid down in the instructions of the Court.

You must not let any sympathy you may feel influence your verdict. A verdict cannot be based in whole or in part upon conjecture, surmise or sympathy but must be based solely upon the evidence in the case and the instructions of the Court.

Granted.

C. H. J.

page 25 } INSTRUCTION DIII.

The Court instructs the Jury that the insurance company is not liable to pay off the judgment against Mr. Gentry if Mr. Gentry failed to cooperate with the insurance company, cooperation being a condition that Mr. Gentry must fulfill before liability can attach to the insurance company. Cooperation means aid and assistance and it requires that the facts of an accident should be fairly, fully and accurately disclosed; it includes the giving of truthful information in a substantial and material respect concerning the accident.

If you believe from the evidence in this case that Mr. Gentry did not cooperate with the insurance company in any respect as set forth above, then your verdict should be for the insurance company.

Granted.

C. H. J.

page 26 } INSTRUCTION DIV.

The Court instructs the Jury that if you believe from the evidence that Mr. Gentry intentionally and willfully falsified the true material and substantial facts concerning the accident to the representatives of the insurance company, then your verdict should be for the insurance company defendant.

Refused.

C. H. J.

page 27 } INSTRUCTION DV.

The Court instructs the Jury that Mr. Gentry's disclosure of the full and true facts on June 11, 1958, has no bearing on whether or not Mr. Gentry cooperated with the insurance company before that time by not disclosing fully, fairly, accurately and truthfully the material and substantial facts concerning the accident of June 6, 1956.

Granted.

C. H. J.

page 28 } INSTRUCTION DVII.

The Court instructs the jury that if you believe from a preponderance of the evidence that there has been a breach of the cooperation clause of the policy, it relieves the Nationwide Insurance Company of any further liability regardless of whether or not it was prejudiced or harmed by such breach.

Granted.

C. H. J.

page 29 } INSTRUCTION DVII.

The Court instructs the Jury that the plaintiff here, Alice M. Gentry, derives her rights with respect to Nationwide Insurance Company from William F. Gentry, Jr., the insured, and for the purposes of this litigation, stands in the shoes of, and has no greater rights than William F. Gentry, Jr., and his actions are binding upon her in this litigation.

Granted.

C. H. J.

page 30 } INSTRUCTION DVIII.

The Court instructs the Jury that when the testimony of a witness is shown to have been false in one detail, the rest of the evidence of this witness may be considered unworthy of belief.

Refused.

C. H. J.

page 31 } INSTRUCTION DIX.

The Court instructs the Jury that the insurance company, even after obtaining the true information of how the accident happened on July 11, 1958, did not waive its rights to deny liability under the policy for the amount of the judgment by defending Mr. Gentry in the trial of the case on June 18, 1958, if you believe from a preponderance of the evidence that reasonable notice was given Gentry and by later representing him at the beginning of these proceedings.

Refused without .....

C. H. J.

* * * * *

page 33 }

* * * * *

In the Circuit Court of the City of Norfolk, in the 24th day of July, in the year 1959.

JUDGMENT.

This day came the plaintiff and also came the defendant, Nationwide Mutual Insurance Company, by counsel, and the motion heretofore made herein having been fully heard and maturely considered by the Court is overruled. Whereupon it is considered by the Court that said plaintiff recover against said defendant the sum of Fourteen Thousand Ninety Three Dollars and Fifty Two Cents ($14,093.52), with legal interest thereon from the 18th day of June, in the year, 1958, till paid, together with her costs about her suit in this behalf expended, to which action of the Court said defendant, by counsel, duly excepted.

And said defendant having indicated its intention of applying to the Supreme Court of Appeals of Virginia for a writ of error and *supersedeas* to the foregoing judgment, it is ordered that execution upon said judgment be suspended for the period of ninety (90) days from the date hereof, upon said defendant, or some one for it, entering into a proper suspending bond in the penalty of fifteen thousand five hundred ($15,-500.00) dollars, with surety to be approved by the Clerk of this Court and with condition according to law.

• • • • •

Tr.
page 3 }

• • • • •

Mr. S. E. Sacks: (Continuing) There will also be some testimony as to the fact that within two or three days after the accident happened in Louisiana, some distance away from New Orleans, these people had to go to New Orleans because Mr. Gentry, Sr., was taken to a hospital there, and within two or three days after the accident the Nationwide Insurance Company, based on the statement that they had, settled the case by paying some money to the widow of the deceased man.

Mr. Rixey: Excuse me just a minute. Your Honor, for the purpose of the record I want to show that I object to such a statement made by Mr. Sacks, and throughout the whole trial of this case I am going to object to references to that previous settlement.

The Court: Let the record show that the statement made by counsel—

Mr. Rixey: So that I won't have to keep interrupting you.

The Court: You preserve your exception to this line of examination.

Tr.
page 4 }

Mr. Rixey: Yes, sir.

Mr. S. E. Sacks: (Continuing) We will show they paid some money, some nine hundred dollars, on account of the death of Mr. Gentry, Sr., to Mrs. Gentry. But that was the substance of the first trial here before a jury, and that jury, after hearing all of the evidence, found that Mrs. Gentry had been persuaded to sign that release for nine hundred dollars by certain statements that had been made by the insurance company representative that the release was in fact—

(Mr. Rixey rose to object.)

The Court: I think you had better not try the three cases at once. I think you are permitted to say that they made a settlement which was later set aside.

Mr. S. E. Sacks: All right, sir.

The Court: You can't go into the details or the reasons why the jury did anything.

Mr. S. E. Sacks: All right, sir.

Mr. Rixey: I ask that the jury be requested to disregard the statement.

The Court: The jury will disregard the statement as to why that jury did anything.

Mr. S. E. Sacks: Well, suffice it to say that that release was set aside and was deemed to be invalid, and subsequently the second trial was had where the fifteen-thousand-dollar verdict was awarded, less the amount of money that had been paid on account of that first release. So at the proper time you will be instructed and we, of course, contend that there has been complete and full cooperation and that this lady is entitled to the recovery against the insurance company, the very thing that this policy was purchased for.

Tr. page 5

* * * * *

WILLIAM F. GENTRY, JR.

principal defendant, called by the plaintiff as an adverse witness, and having been first duly sworn, testified as follows:

DIRECT EXAMINATION.

Examined by Mr. S. E. Sacks:

Q. Will you tell us your name, please, sir?

A. William Fraser Gentry, Jr.

Q. Mr. Gentry, you are one of the defendants; that is, the principal defendant in this proceeding today, are you not?

A. Yes, sir.

Q. Where is your home at this time?

A. 228 South Seventh Street, Kingsville, Texas.

Q. Of course you are a member of the United States Navy?

A. I am stationed in Kingsville, Texas. Yes, sir.

Tr. page 6

Q. Now, Mrs. Alice M. Gentry, the plaintiff in this case, is your mother?

A. Yes, sir.

William F. Gentry, Jr.

Q. Is she living with you now in Texas?
A. Yes, sir.
Q. Where is she today?
A. She is in Kingsville, Texas. She has a heart condition. She couldn't make the trip, under the doctor's orders.
Q. Now, Mr. Gentry, you are the William F. Gentry, Jr., against whom a judgment was rendered on July 3, 1958, in this court, for the amount of $14,093.52, are you not?
A. Yes, sir, I am.
Q. And did that judgment, sir, in favor of your mother, arise out of the death of your father caused by an accident resulting and arising out of an ownership, maintenance or use of an automobile?
A. Yes, sir.

* * * * *

Mr. S. E. Sacks: I would like to introduce this, if Your Honor please. It is a certified copy of the judgment order.
The Court: Marked by the Court Plaintiff's Exhibit No. 1.

Tr.
page 7 } (The copy of order referred to was marked Plaintiff's Exhibit No. 1.)

By Mr. S. E. Sacks:
Q. Mr. Gentry, has any part of this $14,093.52 judgment against you been paid?
A. No, sir.
Q. Now, Mr. Gentry, when did the accident happen on which the judgment was based?
A. You mean the date, the accident, sir?
Q. Yes.
A. June 6, 1956.
Q. And it did result in the death of your father?
A. Yes, sir.
Q. At the time of the accident, that is, June 6, 1956, did you have in effect an automobile liability insurance policy covering the automobile in question?
A. Yes, sir, I did.
Q. With what company did you have that policy?
A. Nationwide Mutual Insurance Company, sir.
Q. I then, sir, show you an insurance policy and ask you to please examine that and tell us what it is.

A. This is my policy, yes, sir.
Q. That is the insurance policy about which you have talked?
A. Yes, sir.

Tr.
page 8 } Mr. S. E. Sacks: I should like to—
The Court: Marked by the Court Plaintiff's Exhibit No. 2.

(The document referred to was marked Plaintiff's Exhibit No. 2.)

By Mr. S. E. Sacks:
Q. Now, Mr. Gentry, this policy is effective, according to the typewritten terms, from October 19, 1955, to April 15, 1956 unless renewed as provided in the policy?
A. Yes, sir.
Q. Did you renew this policy and make it effective as of June 1956?
A. Yes, sir, I did.
Q. I show you some papers and ask you to identify those.
A. This green paper is the premium I received from the insurance company and the money order receipt is the one I paid my premium with, sent it to the insurance company.
Q. Then, this is the premium notice and proof of your payment on April 14, 1956?
A. Yes, sir.

Mr. S. E. Sacks: I should like to introduce it.
The Court: Plaintiff's Exhibit No. 3.

Tr. (The premium notice, with receipt referred to,
page 9 } was marked Plaintiff's Exhibit No. 3.)

The Court: There is no necessity to prove that. Counsel admits that there was a policy in effect.
Mr. S. E. Sacks: He wouldn't stipulate it. He said we should prove it.

By Mr. S. E. Sacks:
Q. Now, Mr. Gentry, has the Nationwide Insurance Company paid you or your mother, or anybody, anything on account of that judgment since that judgment was entered?
A. No, sir.

William F. Gentry, Jr.

Q. Do they refuse to pay it?
A. Yes, sir.
Q. Have you, sir, at all times since the accident complied with all the terms, provisions and conditions of that policy?
A. Yes, sir, I have.

Mr. S. E. Sacks: Your Honor, we should like to introduce an execution of the Court indicating "No effects" as Plaintiff's Exhibit 4. That is, no satisfaction of the judgment against this man.

(The document referred to was marked Plaintiff's Exhibit No. 4.)

By Mr. S. E. Sacks:
Q. Did you, Mr. Gentry, at all times cooperate and assist the company and do whatever they required you to do?
Tr. page 10 } A. Yes, sir, I did.

CROSS EXAMINATION.

By Mr. Rixey:
Q. Mr. Gentry, you remember when this accident happened, I am sure, on June 6, 1956, in Louisiana?
A. Yes, sir.
Q. And immediately after the accident you got in touch with your insurance company, Nationwide Insurance Company, in Virginia?
A. Yes, sir, I did.
Q. And asked for some help?
A. Yes, sir.
Q. And the following day you were contacted in Morgan City, Louisiana, by a Mr. J. M. Hoey?
A. Yes, sir.
Q. Is that correct?
A. Yes, sir.
Q. And Mr. Hoey was an insurance adjuster with an independent firm known as Crawford and Company, is that right?
A. I don't know what company, sir, but Mr. Hoey did call me.
Tr. page 11 } Q. He represented to you that he was representing the Nationwide Mutual Insurance Company?
A. Yes, sir.

William F. Gentry, Jr.

Q. And I believe you saw him, did you not, in Morgan City, Louisiana, the day after the accident?

A. Yes, sir.

Q. And you talked to him in the lobby of a hotel there?

A. Yes, sir, that is true.

Q. And you discussed with him the facts of the accident?

A. Yes, sir.

Q. And you told him what had happened in the accident?

A. Yes, sir.

Q. Now, will you tell me, please, without going into where you had been before the accident or where you went after the accident, tell this jury what you told Mr. Hoey caused the accident?

A. What I told him that caused the accident?

Q. That is right.

A. I—we discussed it in the lobby prior to my making a statement to him, and I told him that I had spoke to the State Trooper and said I had fallen asleep.

Q. You told Mr. Hoey that you had fallen asleep?

Tr. page 12 } A. Yes, sir.

Q. And did you tell Mr. Hoey that you told the State trooper that you had fallen asleep?

A. Yes, sir.

Q. Let me ask you this, Mr. Gentry: Is that true?

A. Yes, sir, it is true.

Q. And you are representing here today that you did tell the State trooper that you fell asleep and you told Mr. Hoey that you fell asleep?

A. Yes, sir.

Q. Did you say anything to the State trooper about a dog running across the road in front of your car?

A. I can't truthfully answer, sir. I don't know.

Q. Is it possible that you did?

A. It is possible, yes, sir.

Q. But you don't know whether you did or not?

A. No, sir.

Q. Did you tell Mr.Hoey anything about a dog running across the road in front of your car?

A. Yes, sir, I did.

Q. You did? So you told Mr. Hoey that a dog ran across the road in front of your car, and you also told him that you went to sleep?

A. I did not tell him that a dog ran across the road in front

William F. Gentry, Jr.

Tr. page 13 } of my car, sir. I told Mr. Hoey that I had fallen asleep. When we made out the statement—he wrote the statement in longhand and I signed it—we discussed it and it was—it seemed to me better instead of having something in black and white that could be used against me, that I and Mr. Hoey both agreed that I should put in there that the dog had run across the road in front of me.

Q. My understanding now is that you and Mr. Hoey agreed that you should put in there that the dog ran across the road in front of your car?

A. Yes, sir. Whether it came from me or Mr. Hoey, whoever suggested it I am not sure, sir.

Q. Was that the first suggestion that had been made as to the dog?

A. Yes, sir.

Q. Well, now, that was after you talked to the State trooper, wasn't it?

A. Yes, sir.

Q. Well now, why is it that you can't recall whether or not you told the State trooper about the dog, when you talked to him before you talked to Mr. Hoey?

A. At the scene of the accident, sir, when we went to the Lakeview Hospital where my father was taken for emergency treatment, I carried my father in my arms on the back seat of a private automobile.

Q. Right, sir.

Tr. page 14 } A. To the best of my knowledge the State trooper escorted us there; and upon arriving there, part of his face was torn away; I in turn was injured also. The best of my—

Q. Let me ask you this. I don't think you understood my question. A few minutes ago you stated to this jury that you couldn't remember whether or not you told the trooper anything about the dog; and a few minutes ago you also said that the first time that the dog story ever came up was when you were talking with Mr. Hoey.

A. Yes, sir.

Q. Is that right? Now, you talked with Mr. Hoey after you talked with the trooper?

A. That is correct, sir.

Q. Well then, you didn't know anything about the dog story when you talked to the trooper, did you?

A. No, sir.

William F. Gentry, Jr.

Q. So you do recall that you did not tell the trooper anything about the dog running across the road in front of your car?

A. That is correct, sir.

Q. Is that right? Let's don't have any question about it now. You did not tell the trooper anything about the dog running across the road in front of your car?

A. No, sir.

Tr. page 15 } Q. Is that right?

A. (The witness nodded)

Q. All right. And when you talked with Mr. Hoey in the hotel in Morgan City, Louisiana, you told him that you went to sleep, is that correct?

A. Yes, sir, I did.

Q. And did he suggest the dog story to you?

A. I can't say whether he suggested or whether I suggested it, but we both agreed on it, sir.

Q. You mean to tell this jury that you and Mr. Hoey agreed on the dog story and that you put it in the statement?

A. That is correct, sir.

Q. And that was the first time the dog story had ever come up?

A. Yes.

Q. Is that right?

A. Yes, sir.

Q. Now, did you read the statement that you signed, that he drew up?

A. Did I read the statement that he had written out in longhand?

Q. That is right.

A. Yes, sir, I did.

Q. And was it right?

A. Yes, sir.

Tr. page 16 } Q. It was right?

A. (The witness nodded)

Q. What you said in the statement was true?

A. Yes, sir.

Q. It was. All of it?

A. All of the statement that I—that he had written out?

Q. That is right.

A. Yes, sir.

Q. It was all true?

A. Yes, sir.

Q. Including the dog story?

A. Including the dog story.

Q. Well then, the dog story is true, is that right?

A. No, sir. The dog story is not true. The fact is, I fell asleep and lost control of my car.

Q. Did you see any dog the morning of the accident?

A. Did I see any dogs?

Q. See any dog run across in front of your car, the morning of the accident?

A. No, sir.

Q. Then, if the statement refers to a dog running across the road in front of your car, the statement is not all true, then, is it?

A. No, sir; I guess not.

Tr. page 17 } Q. Just a minute ago you said it was all true?

A. Everything in that statement that you have in your hand whether it is true—I don't quite understand you, Mr. Rixey; I am sorry.

Q. Do you recall whether or not everything in the statement is true or untrue?

A. Do I recall whether everything in the statement is true or untrue?

Q. That is right.

A. I can't say, sir. I haven't read the statement lately.

Q. All right. Now, you don't know whether everything in here is true or not because you haven't read it?

A. No. sir, I haven't.

Mr. Rixey: Your Honor, this statement which I have just referred to, which I want to offer in evidence, is attached to the deposition of Mr. Hoey. If the Court will permit me, I should like to detach it from the deposition, to use it in reference to this witness at this time.

The Court: Any objection?

Mr. S. E. Sacks: I think not, sir.

The Court: All right, sir; you may.

(Mr. Rixey detached the statement from the deposition.)

Tr. page 18 } By Mr. Rixey:

Q. Mr. Gentry, I show you a statement on yellow pages, three pages long, in ink, and ask you whether or not that is the statement that was prepared by Mr. Hoey in your presence?

A. (Witness examining) Yes, sir, it is correct.

Q. And that is the statement, is it not?

A. This has my signature on it, yes, sir.

William F. Gentry, Jr.

The Court: Defendant's Exhibit No. 1.

(The statement referred to was marked Defendant's Exhibit No. 1.)

By Mr. Rixey:

Q. Mr. Gentry, do you recall whether or not you read the statement?

A. No, sir, I don't. I think Mr. Hoey read it aloud to me, sir.

Q. All right. Did you write anything on here other than your name?

A. No, sir.

Q. Did not?

A. To the best of my knowledge I didn't. No, sir.

Q. I ask you to look at the last sentence on the statement and tell us who wrote the last sentence.

Tr. page 19 } A. It says: (Reading) "I have read the above three pages and they are true." That is my writing, sir, and my signatures, yes, sir.

Q. And your signature?

A. Yes, sir.

Q. Do you recall now that you did read this statement?

A. No, sir. I can't truthfully say I did read the statement.

Q. Can you recall now whether or not the statement is true or false in all particulars?

A. No, sir, I can't. I haven't read the statement yet. You have it in front of me but I still haven't read it, sir. Mr. Rixey, at that particular time my mother was sick up topside in the hospital and I myself had had six stitches taken in my forehead. I had a terrible headache.

Q. I am reading to you from your statement. (Reading)

"I was traveling east on U. S. No. 90 at a speed of about 55 to 60 miles per hour. The road is two lanes, concrete, straight and level. Suddenly a dog ran into my path from my left. I cut toward the right should to miss the dog. When I started to come back on the highway I lost control and slid sideways in a ditch on the left side of the highway."

Tr. page 20 } Do you remember that being in the statement?

A. Yes, sir.

Q. Is that true or is it false?

A. I lost control of my car, sir, but not because of the dog; because I fell asleep.

Q. Is the reference to the dog true or false?

William F. Gentry, Jr.

A. False.

Q. That part in the statement, Defendant's Exhibit No. 1, which refers to a dog is false?

A. Yes, sir.

Q. Do you recall whether or not there was anything in the statement about your going to sleep?

A. No, sir.

Q. All right, Mr. Gentry. The following day, on the 8th of June, you and your mother and your two children went to New Orleans?

A. Yes, sir, that is correct.

Q. That was on a Friday?

A. Yes, sir.

Q. And isn't it true that the following day, Saturday, June 9th, you had a conference with a Mr. Minix in New Orleans, Louisiana?

A. June 9th, sir?

Q. June 9th; Saturday afternoon, June 9th, 1956.

A. My father died on June 8th, 1956, and—

Q. That was on Friday, wasn't it?

Tr. page 21 } A. Yes, sir. I don't know what day it was, sir, but that night in a funeral parlor is where I spoke to Mr. Minix.

Q. You spoke to him in the nighttime?

A. Yes, sir.

Q. Not in the afternoon?

A. Well, it was—I don't mean—it was, say, late evening then.

Q. You remember talking to Mr. Minix in Louisiana late one afternoon, then, is that right?

A. Yes, sir.

Q. And did you or did you not tell Mr. Minix that a dog ran across the road in front of your car?

A. We didn't discuss the accident, sir.

Q. You didn't discuss that at all?

A. My father had just passed away that morning, sir.

Q. Mr. Gentry, for that I am very sorry and I know you have told me several times; but please try to confine yourself to my questions.

A. Yes, sir.

Q. Can you recall now whether or not you and Mr. Minix discussed how the accident happened?

A. No, sir.

Q. Are you positive about that?

A. Positive.

William F. Gentry, Jr.

Q. You remember that specifically?
Tr. A. I said I don't recall it, sir.
page 22 } Q. I see. Is it possible, you think, that you did?
A. That I did discuss the accident with him
Q. Yes, sir, with Mr. Minix.
A. It is possible, yes, sir.
Q. And if you discussed it with Mr. Minix, did you tell him the dog story?
A. I can't—

Mr. S. E. Sacks: If Your Honor please, I object to that. He has no recollection, says it is possible he might have talked with him. Now he is asking him what did he tell him if it is possible.
Mr. Rixey: I have a right to refresh his memory, try to bring it out.
The Court: He is on cross examination. I think the witness has answered the question. He says he doesn't know.
Mr. Rixey: All right, sir.

By Mr. Rixey:
Q. Can you recall whether or not you told Mr. Minix that you went to sleep?
A. No, sir.
Q. You can't recall that, either?
A. No, sir.
Q. All right. Mr. Gentry, after you saw Mr.
Tr. Minix and you your family came back to Virginia,
page 23 } your mother filed a lawsuit against you?
A. Yes, sir.
Q. The same year?
A. Yes, sir.
Q. And that lawsuit was turned over to the office of Rixey and Rixey to defend you?
A. Yes, sir.
Q. Is that correct?
A. Yes, sir, it was.
Q. It was explained to you that you were required under your insurance policy to cooperate with the company?
A. It was explained to me, sir?
Q. Yes, sir.
A. No, sir. It was not explained to me.
Q. Was it ever discussed with you that you had to cooperate with the insurance company?
A. No, sir, it wasn't.

William F. Gentry, Jr.

Q. Isn't it true that you had occasion to talk with Mr. Sacks and that he explained to you that he was not representing you but that you should cooperate with my office?
A. Yes, sir.
Q. So you were told that you were to cooperate with us?
A. Yes, sir.
Tr. page 24 } Q. All right, sir. And you understood that you were to cooperate with us?
A. Yes, sir, I did.
Q. And as a matter of fact, you already testified this morning that you had at all times complied with the terms and the provisions of the policy and that you have at all times cooperated and assisted the insurance company?
A. Yes, sir.
Q. Is that right?
A. Yes, sir.
Q. Do you recall going to my office and talking with a Mr. Eley who first handled this case?
A. I remember going to the Nationwide, Boush Street Office, sir, and they in turn referred me to your—to Mr. Eley of your office, yes, sir.
Q. And you talked to him I believe on several occasions, didn't you?
A. I think I only saw Mr. Eley once, sir.

Mr. Rixey: Mr. Eley, will you stand up.

(Mr. William B. Eley, present in the courtroom, rose at this time.)

By Mr. Rixey:
Q. Do you remember this gentleman?
A. No, sir, I don't.
Q. You wouldn't know him?
Tr. page 25 } A. No, sir.
Q. Is that the Mr. Eley that you talked to?
A. I don't know him, sir.
Q. You wouldn't know, is that right?
A. No, sir.
Q. Do you recall whether or not you and this man referred to as Mr. Eley, discussed how the accident happened?
A. No, sir.
Q. You do not?
A. (The witness shook his head)

William F. Gentry, Jr.

Q. Would you deny that you did discuss how the accident happened?

A. No, sir. I wouldn't deny it.

Q. You wouldn't deny it. You wouldn't deny, would you, Mr. Gentry, that you told Mr. Eley that the dog had run across the road in front of your car?

A. No, sir, I wouldn't deny that.

Q. You wouldn't deny that. You were still sticking by that story, is that right?

A. That is correct, sir.

Q. And you say that was a false story?

A. Yes, sir.

Q. Do you recall when you first came here to this court to testify on March 12, 1958, the first trial last year? Do you remember that?

Tr. page 26 } A. The first trial; yes, sir.

Q. The first trial, yes, sir. Do you remember that?

A. Yes, sir.

Q. Do you recall whether or not I asked you at that time whether you had cooperated with me?

A. Yes, sir. I remember my answering to that, sir.

Q. I am going to read this to you and ask you if this isn't what took place. (Reading)

"Question by Mr. Rixey:

"Question: Mr. Gentry, you have cooperated with me, have you not?

"Answer: That is for you to answer, sir. I believe I have.

"Question: You have tried to cooperate with me?

"Answer: Yes, sir.

"Question: Telling me the truth as to just how it happened? Isn't that true?

"Answer: Yes."

Is that the testimony last March?

A. Yes, sir.

Q. All right. Now, as of last March when you so testified, had you told me or anyone from my office that the dog story was not true but that you had fallen asleep?

Tr. page 27 } A. No, sir.

Q. And you and I had discussed how it happened, had we not, sir?

A. Yes, sir, we had.

William F. Gentry, Jr.

Q. And you had told me that a dog ran across the road in front of your car?
A. Yes, sir.
Q. And, for the purpose of the record, you were the only witness to this accident, weren't you, Mr. Gentry?
A. Yes, sir.
Q. The only one who was in a position to testify as to what had happened?
A. Yes, sir.
Q. Your mother was asleep at the time of the accident?
A. Yes, sir.
Q. Your father was killed; and your two children are minor children?
A. Yes, sir.
Q. After the trial on March 12, 1958, do you recall coming to my office on May 1, 1958?
A. I don't remember the date, no, sir.
Q. Do you recall coming to my office and signing a one-page statement as to the facts of the accident?
A. I remember signing a statement in your office, yes, sir.

Tr. page 28 } Q. I show you on white paper a one-page statement and ask you if that is the statement that was prepared in my office?
A. Yes, sir. That is my signature. That is the statement.
Q. And is that the information that you gave me at that time?
A. Yes, sir.
Q. Did you read the statement over?
A. Before I signed it?
Q. Yes, sir.
A. Yes, sir, I did.
Q. And you signed it?
A. Yes, sir.
Q. What is the date of it down at the bottom?
A. Down here? Five/one/fifty-eight or nine? What is that, sir?
Q. May 1st, 1958, is that right?
A. Yes, sir. It looks like a nine there.

The Court: Defendant's No. 2.

(The document referred to was marked Defendant's Exhibit No. 2.)

William F. Gentry, Jr.

By Mr. Rixey:

Q. I ask you if in this statement you did not say as follows:

Tr. page 29 "My version of the facts of the accident is the same now that it was when I originally discussed the matter with the insurance adjuster for my insurance company"?

A. Yes, sir. That is in the statement.

Q. And at that time you had not said anything to me about falling asleep, had you, Mr. Gentry?

A. No, sir.

Q. The only version you had given was the dog story?

A. Yes, sir.

Q. Do you recall that I advised you that this case would be set for trial on June 18 of last year?

A. I think I received a letter from you, didn't I, sir?

Q. I think you did. You remember getting a letter, don't you?

A. Yes, sir.

Q. And do you remember that you came to my office before the trial of that case to make a clean breast of the facts of the accident?

A. Yes, sir.

Q. And I ask you to tell this jury whether you came voluntarily to my office?

A. Yes, sir. I came to your office voluntarily.

Q. You made up your own mind to come up there and to say what had happened in the accident?

Tr. page 30 A. Yes, sir.

Q. Correct?

A. (The witness nodded).

Q. And at that time, that was the first time, was it not, Mr. Gentry, that you ever advised my office or anyone from Nationwide the dog story was not true?

A. Yes, sir, that is correct.

Q. And that was on June 11, 1958, approximately?

A. I don't remember what date it was, sir.

Q. Do you recall that it was approximately seven days before the trial?

A. It was approximately a week, yes, sir.

Q. I show you a statement on three pages, three white typewritten pages, and ask you if that is the statement that you gave me in my office when you came up there voluntarily seven days before the trial on June 18?

A. (Witness looking at it) Yes, sir, that is correct.

Q. And that is the statement. Did you sign it?

William F. Gentry, Jr.

A. Yes, sir.
Q. That is your signature on it?
A. Yes, sir.

The Court: Defendant's No. 3.

(The statement referred to was marked Defendant's Exhibit No. 3.)

Tr.
page 31 } By Mr. Rixey:

Q. Mr. Gentry, I want you to take that statement and I want you to read it to the jury, please. Read it slowly and read it loud enough so they can hear you. Will you please do that?

A. You want me to start up here at the top, sir, "William F. Gentry"?

Q. I should appreciate it if you would read the whole thing.

A. (Reading).

"William F. Gentry, Jr., age 30, of 220 Nansemond Arch, Norfolk, Virginia, states as follows this 11th day of June, 1958. I make the following statement voluntarily in the law office of Rixey and Rixey, Seaboard Bank Building—Citizens Bank Building"—excuse me—"Norfolk, Virginia, and this statement supplements and supersedes any and all previous statements by me at any time made heretofore concerning the automobile accident of June 6, 1956, which resulted in the death of my father. For two years now I have been sticking to the same story concerning how the accident happened but I now admit that the story is not true and that it was made up by me under the following circumstances and con-

Tr.
page 32 } ditions. Immediately after the accident happened, my father was bleeding and seriously injured and he was taken to the Lakewood Hospital and I went with him. I held my father in my arms in the back of an automobile that took him to the hospital. After getting to the hospital the police officer went back and got my mother and my two children and brought them to the hospital and then he questioned me concerning the accident. I was very nervous, worried and upset. I was tremendously concerned for my father and also concerned for myself as I was fearful of getting into any trouble in Louisiana. At the time of the accident my mother had been asleep on the back seat. My father had been asleep on the front seat to the best of my knowledge.

William F. Gentry, Jr.

The accident happened about 6:00 o'clock in the morning. I had been sleepy prior to the accident. I actually remember just cruising along at about 55 or 60 miles an hour and I was on the right-hand side of the road. The next thing I knew, I was on the left-hand side of the road. I had lost control of the car and I was in the ditch that is a drain alongside of the road. I tried to bring the car back to the right but by that time I had already hit the pole and my father

Tr. page 33 } was thrown out of the car. I suffered a cut—I myself suffered a cut on the forehead and had about six stitches taken. When the police officer asked me about the accident I told him that a dog had run across the road in front of me. I gave the same version to my mother and to my aunt Mrs. Mary L. Darling of Richmond, Virginia, and I have previously given the same story to the insurance adjuster in New Orleans and to the law firm of Rixey and Rixey in Norfolk. After living with this false story for two years, I came to see Mr. Rixey, my company's attorney, on June 11, 1958, and made a full disclosure of the true facts of the accident. There was no dog involved. The true version is as I have stated above. The reason I gave this previous false statement was because I was scared that I would get in trouble with the State police in Louisiana. I have done enough Shore Patrol work myself to know that people can get into a lot of trouble when accidents happen by the driver falling asleep at the wheel. Actually, I cannot tell you whether I fell asleep or not. I must have because one minute I was going on the right-hand side of the road and the next thing I knew I was on the left-hand side of the road. No one else

Tr. page 34 } other than my mother knows the true set of facts. I told her for the first time on Sunday, June 8, but no one but her has been told the true facts prior to my conference with Mr. John F. Rixey on June 11, 1958."

I have my signature. Do you want me to read this other, sir?

Q. That is all right.

A. About the notary public?

Q. It was notarized, was it?

A. Yes, sir. It was notarized.

Q. All right; and you signed it?

A. Yes, sir; that is my signature.

Q. And you have just read it over and you understand it, don't you, Mr. Gentry?

A. Yes, sir.

William F. Gentry, Jr.

Q. Now, tell the jury whether or not this is true?
A. Yes, sir, that is true.
Q. Is this the true statement all the way?
A. Yes, sir.
Q. This is it. Do I understand that you rest yourself finally now on this statement that you have just read, dated June 11, 1958?
A. Every word in there is true except I evidently have not—didn't tell the State trooper about the dog. Because the State trooper—

Tr. page 35 } Q. Everything else is right?
A. The State trooper's report bears out that I told him I fell asleep, sir.

Q. Well, other than the reference to the State trooper, everything in here is correct?
A. You mean everything in there is true except where about the dog?
Q. Except what you said to the State trooper?
A. Yes, sir.
Q. And I believe you testified a few minutes ago that you didn't know what you told the State trooper?
A. That is correct, sir.
Q. So why did you put it in this statement here, Mr. Gentry, that you told the State trooper about the dog running across the road if in fact you didn't tell him?
A. What was—what date was that, sir, June or May 8 or June—
Q. No, this is dated June 11, 1958.
A. And I spoke to the trooper June 6, 1956, sir. That was two years prior. I couldn't definitely say what I told him. I couldn't say exactly word for word, sir, no, sir.
Q. Well, why then did you put it in the statement last June, which was two years after the accident, that you had told the trooper that a dog had run across the road in front of your car?

Tr. page 36 } A. I can't say why I put it in there, sir. I don't—
Q. You can't explain that, can you?

A. I don't remember, no, sir.
Q. All right. In this statement you say "I have previously given the same story to the insurance adjuster in Louisiana and the law firm of Rxiey and Rixey in Norfolk," is that correct?
A. Yes, sir.
Q. So you did give Mr. Hoey, the insurance adjuster, the statement about the dog?

William F. Gentry, Jr.

A. Yes, sir, I did.

Q. Well, a few minutes ago you testified that he made up the statement.

A. I did not say that he made up the statement, sir.

Q. Who made up the statement?

A. I says I don't know whether it was suggested by him or me.

Q. But you don't say that in this statement, do you?

A. No, sir.

Q. And as a matter of fact, today, June 17, 1959, is the first time that you have ever said or suggested that you or Mr. Hoey or maybe both of you together made up the dog story, isn't that true?

A. Yes, sir. No one asked me prior to this.

Tr. page 37 } Q. And you have never told me that before, have you?

A. Told you what, sir?

Q. That you and Mr. Hoey made up the dog story.

A. Mr. Hoey was representing your firm or the company that you are working for, sir, so I assume that you knew what he told me I—

Q. But you had never told me about that, had you?

A. You never asked me, sir.

Q. It is not in this statement, is it?

A. No, sir.

Q. And you say that this statement is all true except for the reference about the police officer?

A. That is correct, sir.

Q. Now, do I understand—I want to be sure that I have got this correct—that you don't know what you told the police officer?

A. I told the police officer I fell asleep, sir.

Q. Is that what you told him?

A. Yes, sir.

Q. You remember that clearly?

Mr. S. E. Sacks: Your Honor, we have been through that about four times. I object, for purposes of brevity only.

Mr. Rixey: I get a different statement every time. I am just trying to get him pinned down as to what he told the trooper.

Tr. page 38 } The Court: He has given you four answers. I think that is sufficient.

William F. Gentry, Jr.

By Mr. Rixey:

Q. Mr. Gentry, let me ask you this: Do you remember testifying in this case last June?

A. Yes, sir, I remember being here.

Q. I ask you if this is not what transpired: (Reading)

"Question: What explanation of the accident did you give to the trooper?

"Answer: I told the State trooper that I was traveling on Highway 90 west, that a dog ran across in front of me and I swerved to the right to keep from hitting the dog and when I pulled back to the left it threw my father against the door and I reached for my father and lost control of the automobile, going to the left-hand side in a ditch and before I could bring the car under control again I hit a steel post supporting a neon sign."

Now, I ask you, Mr. Gentry, if you did not so testify last June 18th?

A. Is that in the court record there, sir?

Q. I read to you from the court record.

Tr. page 39 } A. Well, if it is in the court record it is the truth, sir.

Q. Then, if it is from the court record, it is the truth?

A. Yes, sir.

Q. That is what you testified to?

A. That is what I testified, yes, sir.

Q. And you were under oath at the time?

A. Yes, sir.

Q. Now, was that true or was that false?

A. Whether or not I told the State trooper that I had swerved?

Q. That a dog ran across the road in front of you, you swerved to the right to keep from hitting the dog.

A. It was no dog, sir. I told you time and time again.

Q. But did you tell the State trooper that there was a dog?

A. Well, I just told you a few minutes ago, sir, the State trooper's testimony, affidavit or depositoin states that I told him I fell asleep.

Q. Mr. Gentry, I want you to answer my question now, please, and I am going to keep asking you, if the Court permits me, until I get the right answer. Did you tell the State trooper that a dog ran across the road in front of you and you swerved to the right to keep from hitting the dog?

William F. Gentry, Jr.

Tr. page 40 } Mr. S. E. Sacks: That is the thing he has asked four times before and I object, Your Honor. He has already answered it.

Mr. Rixey: He hasn't given me the answer.

Mr. S. E. Sacks: He hasn't given him the answer he wants, he says. He is going to stay here all day.

Mr. Rixey: I just want him to answer yes or no and it will be all right with me.

By the Court:

Q. Just yes or no and we will conclude that line of examination. Did you tell the State trooper the dog caused this or did not tell him? Yes or no.

A. I guess I did, sir, if it is in the testimony.

By Mr. Rixey:

Q. So what you testified to last June was correct?

A. It is in the testimony.

The Court: He said it is so.

By Mr. Rixey:

Q. Just today you testified that you told the trooper that you went to sleep; isn't that right?

A. Yes, sir.

Q. And this statement that was just referred to a few minutes ago says that you told the State trooper about the dog, and that is true, isn't it, Mr. Gentry?

A. Yes, sir. I just read it aloud.

Tr. page 41 } Q. So the entire statement is true, is it not?

A. No, sir. The entire statement is not true.

Q. What else is not true, then, about the statement?

A. About the dog, sir.

Q. Well, in the statement, this last statement dated June 11, you repudiate the dog story and you say there was no dog?

A. That is correct, sir.

Q. The one you just read; so that statement is true, is it not?

A. Yes, sir.

Q. All of it is true?

A. Except for the dog, sir.

The Court: I might save some time. It is admitted that he

has made certain statements about a dog, none of which are true.

By Mr. Rixey:

Q. Let me ask you this, Mr. Gentry: When did you leave Louisiana?

A. Let's see. It was the day after my father—no. My father died June 8. I believe we left June 10, sir.

Q. And have you been back to Louisiana since then?

A. No, sir, I haven't.

Q. Have not?

A. I passed through there, sir, but I—

Tr. page 42 } Q. But you haven't been back to stay at all?

A. No, sir.

Q. I show you one white page with typewriting on it and ask you if that is an agreement which you and I had the day that we last tried this case, on June 18, 1958?

A. (Witness looking at it) Yes, sir. It is my signature.

Q. You remember signing it?

A. I don't remember signing it, sir, but it is my signature.

Mr. Rixey: We offer that as Defendant's Exhibit 4.

(The document referred to was marked Defendant's Exhibit 4.)

Mr. Rixey: For the record may I say, Your Honor, that Defendant's Exhibit 4 is an agreement.

The Witness: May I see it, sir, just a minute, the date on it?

(The document was handed to the witness.)

Mr. Rixey: It is an agreement dated June 18, 1958, between Mr. Gentry and John F. Rixey for the Nationwide Mutual Insurance Company, the agreement constituting the non-waiver by the insurance company of any of its rights under the policy by going ahead and defending Mr. Gentry in that case.

Tr. page 43 } The Witness: Your Honor, may I ask Mr. Rixey some questions about this?

Mr. S. E. Sacks: No.

The Court: You just answer his questions.

William F. Gentry, Jr.

By Mr. Rixey:
Q. You signed that, didn't you, Mr. Gentry?
A. Yes, sir, but did I sign it—

The Court: You may make any explanation, any answer you care to.

By Mr. Rixey:
Q. If you want to make some explanation, I am perfectly willing to hear it.
A. I just wanted to know did I sign it?
Q. Don't ask any questions, just tell me. Do you have any explanation to make about your signature?
A. Not about my signature, sir.
Q. Did you read it over?
A. Just now, yes, sir.
Q. Do you recall whether you read it before you signed it?
A. No, sir, I don't recall.
Q. Do you recall whether it was explained to you what it was?
A. No, sir.

Mr. Rixey: That is all.

Tr.
page 44 } RE-DIRECT EXAMINATION.

By Mr. S. E. Sacks:
Q. Mr. Gentry, this accident happened near Patterson, Louisiana?
A. Yes, sir.
Q. And that was some distance from New Orleans, was it not?
A. Approximately 90 miles from New Orleans, yes, sir.
Q. There is no question that your automobile got out of control somehow and ran off the road and ended up striking a motel signpost?
A. No, sir.
Q. That is correct?
A. Yes, sir, that is correct.
Q. And at all times from the date of the accident right on down to now you have told your insurance company and all their representatives and lawyers that your car went out of control, and everything about how the car went across the road and struck the signpost?

William F. Gentry, Jr.

A. Yes, sir.

Q. And that is the true and correct version of what happened?

A. Yes, sir.

Tr. page 45 } Q. All right, sir. Now, there is some contention here by the insurance company on why it happened that you have made different statements about it; but you at all times told them what did happen in the accident?

Mr. Rixey: I object to leading, Your Honor. He isn't cross-examining him. He didn't call him as an adverse witness.

The Court: Objection sustained.

Mr. S. E. Sacks: I did call him as an adverse witness.

The Court: He is your witness.

Mr. S. E. Sacks: No. I called him as an adverse witness, Your Honor.

The Court: You are correct.

Mr. Rixey: I don't recall that he called him as an adverse witness.

The Court: The record will show that. I recall; he is the defendant. You may cross examine him.

Mr. S. E. Sacks: Yes, sir. I did call him as an adverse witness.

By Mr. S. E. Sacks:

Q. Now, Mr. Gentry, where were you all going? What was your destination when you had that accident?

A. Norfolk, Virginia, sir.

Tr. page 46 } Q. Then you were in strange territory as far as passing through Louisiana?

A. Yes, sir, I was.

Q. I believe that they took your father into the next little town, which was Morgan City?

A. Yes, sir. I think that is the name of it.

Q. Did you and your mother put up at Morgan City for the night?

A. Yes, sir. We stayed at the hotel there.

Q. When did you first see a representative of the Nationwide Insurance Company there in Louisiana?

A. The day after the accident, June 7th.

Q. What was the first notice you had that they had sent a representative there?

A. That is when I saw him, sir.

William F. Gentry, Jr.

Q. Well, where were you when you got word he wanted to see you?

A. I was in a hotel room with my mother and children, sir.

Q. Do you know how that representative knew that you were there and that you were a Nationwide policyholder?

A. No, sir, I don't.

Q. Do you recall whether or not you notified the company before that time?

A. I believe I wired the company, yes, sir, from Morgan City or from Patterson. The accident happened in Patterson; I must have wired them from Morgan City, sir.

Tr. page 47

Q. But you are not sure about whether you wired them or not?

A. No, sir, I am not.

Q. Where did you talk with this man who turned out to be Mr. Hoey?

A. In the lobby of the Royal Palm Hotel.

Q. Your mother was upstairs?

A. Yes, sir.

Q. Had she been injured?

A. Yes, sir. She hurt her knee.

Q. This statement that the insurance company introduced here today written in longhand, three full sheets; who provided that paper and who wrote down the actual wording of the statement?

A. Mr. Hoey.

Q. It says "Royal Hotel, Morgan City, Louisiana, July 7, 1956." Is that in fact where the statement was written?

A. Yes, sir.

Q. Did this statement get this way by the man asking you to tell it, and as you told it he wrote it; or did you and he discuss it first for some time and then he write out the statement?

A. We had discussed how the accident happened before, sir.

Tr. page 48

Q. Do I understand that you say you told him that you must have fallen asleep?

A. Yes, sir.

Q. And what is your explanation, sir, of why you told him you must have fallen asleep, and he wrote down in there that a dog must have run across your path or he did run across your path?

A. Just like I told Mr. Rixey, we had discussed the accident and I told him that I evidently had fallen asleep and that I

didn't want to have it in the record or in black and white that I had fallen asleep because I was afraid of getting in trouble with the State police in Louisiana.

Q. All right, sir.

A. And like I told Mr. Rixey, I don't know whether he suggested it or whether I suggested it or whether we both arrived at it at the same time, but that he wrote the statement out that I—that there was a dog that crossed in front of me.

Q. All right, sir. Now, other than that, the sentence about the dog, is everything else in this statement true and correct?

A. Yes, sir.

Q. Did he ask you about how much your father was earning and where he worked and your driver's license and everything? Did he ask you those questions?

Tr. page 49 } A. Yes, sir, he did.

Q. Is every bit of that the truth?

A. Yes, sir.

Q. You did not then stay in Morgan City much longer, did you?

A. No, sir.

Q. Where did you go?

A. We left—June—the morning of June 8, sir, and went to New Orleans.

Q. Did Mr. Hoey know that a police officer had investigated the accident?

A. To the best of my knowledge he did, yes, sir.

Q. Did you tell him that there had been a policeman investigating the accident?

A. Yes, sir.

Q. Did you see Mr. Hoey any more other than after that statement was written by him and signed by you?

A. No, sir, I didn't.

Q. You have never seen him any more in your life, have you?

A. No, sir.

Q. That is three years ago?

A. (The witness nodded).

Q. Who was the next representative of Nationwide Insurance Company that you saw?

Tr. page 50 } A. Mr. Nimix in New Orleans, sir.

Q. Is that Mr. Minix?

A. Minix or Nimix.

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Q. Was that the next day that you saw him when you went to New Orleans?

A. June 8. My father died June 8 and I saw Mr. Nimix June 8, that evening or afternoon, late afternoon, in the funeral parlor, sir.

Q. Mr. Minix in New Orleans didn't take a written statement from you, did he?

A. No, sir.

Q. As far as you know, did he have that written statement with him at any time that he was with you?

A. I don't know whether he had it or not.

Q. Do you remember seeing it?

A. No, sir.

Q. How did you happen to get together with Mr. Minix? Did he contact you?

A. When I got to the funeral parlor he was there, sir.

Q. He was there to see you?

A. Yes, sir.

Q. What was it he wanted?

Tr. page 51 } A. He wanted to talk to me about the insurance that I had. I had a policy with the Nationwide Insurance Company. They didn't have any office in that region or that location and he was an agent representing the insurance company.

Q. Didn't he tell you, didn't he want to settle the case? Isn't that what eventually happened right there on that day?

A. I believe the—we discussed it and the settlement or the possibility of how soon I could leave and go to Richmond for my father's burial, and he wanted to know where my mother was staying and how my children were; and he, in turn, wrote out papers in longhand and I believe it was the next day, June 9, that I went with him out to the Camp Leroy Johnson, where my mother and I and my children were staying, and that is when she signed the releases, yes, sir.

Q. Well, Mr. Minix wanted certain information from you in order to fill out these releases and settlement papers, didn't he?

A. Yes, sir.

Q. Didn't you give him all the information he wanted—

A. Yes, sir.

Q. —when you talked with him?

A. Yes, sir.

Q. Did you cooperate with him?

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A. Yes, sir.

Tr. page 52 } Q. Were you talking with him about this case at the funeral parlor and your mother was somewhere else, she didn't hear that conversation?

A. No, sir, she didn't.

Q. And did you assist Mr. Minix in any way that he requested you to assist him?

A. Yes, sir.

Q. Did you take him out to your mother, where she was?

A. He followed me out in the car, yes, sir.

Q. You led him out to where she was?

A. Yes, sir.

Q. And eventually on that day, that was the day after your father died, he paid your mother some money and got her to sign a release, didn't he?

A. He didn't pay her any money, sir.

Q. Well, he arranged for the money to be paid?

A. Yes, sir.

Q. You and Mr. Minix didn't discuss how the accident happened, he wasn't interested in that on that day, was he?

A. No, sir.

Q. When was the next time you saw Mr. Minix, if ever?

A. I didn't see him until—in Louisiana at all. I saw him in this courtroom at a trial, sir, when he came up to testify.

Tr. page 53 } Q. Well, in other words, Mr. Minix didn't ask you to do anything more after you filled out—after you helped him in New Orleans?

A. No, sir, he didn't.

Q. You have never seen him any more except the time he came here to testify about the releases?

A. That is correct, sir.

Q. Was that release eventually found to be invalid?

Mr. Rixey: That is not for him to say, Your Honor. I don't think that is for this man to say.

The Court: The Court will instruct the jury that what happened to the release and what happened on the other trial is of no interest to you in deciding this case. This is just a case based on a policy of insurance. If this plaintiff has obtained a binding, final judgment against the defendant who has a policy of insurance, whether the company who issued that policy have become liable to pay that gentleman is for you, the jury, to say, regardless of what happened in the other cases.

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Mr. S. E. Sacks: Your Honor, we advance the fact that the releases were determined to be invalid. That is a relative—

The Court: I might say that proper credit for the amount paid has been applied to the judgment.

Tr.
page 53-A } (Later, out of the presence of the jury, exception was stated by counsel as follows:)

Mr. H. A. Sacks: The plaintiff objects and excepts to the action of the Court in refusing to permit evidence that the defendant company had previously obtained from the plaintiff a release of her claim for the death of her husband, which release was subsequently set aside by this court on the ground that it had been obtained by fraud or misrepresentation. The adjuster who negotiated the release and obtained it testified in this case as to what statement Mr. Gentry, Jr., had made to him immediately after the accident. Certainly, reference to the release and this witness's conduct at the time he took the release should have been admissible for the purpose of affecting his credibility.

Tr.
page 54 } By Mr. S. E. Sacks:

Q. Now, when you got back from New Orleans you went to Richmond, did you not?

A. Yes, sir. I left directly from New Orleans and flew to Richmond.

Q. And a part of the money that you were going to get came to you from the Richmond office of Nationwide Insurance Company?

A. Yes, sir. I had to go to the office in Richmond, pick up the checks for my mother.

Q. Did you do whatever they requested you to do, if anything? Did you cooperate with the Nationwide people there?

A. Yes, sir, I did.

Q. Did you see any more Nationwide people? Did they come to you, ask you any more questions or ask you to do anything until you were served with papers of the lawsuit?

A. No, sir.

Q. When you got the lawsuit papers, where were they served on you, sir?

A. In my home, 220 Nansemond Arch, in Norfolk, Virginia.

Q. What did you do with those lawsuit papers?

A. I took them to the Boush Street office, Nationwide In-

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Tr. page 55 } surance Company, and they in turn informed me I should take them to Mr. Rixey's office or to the law firm of Rixey and Rixey.

Q. Why did they tell you to take them to the law firm of Rixey and Rixey? Why did they tell you you should go there?

A. Well, they said that they—the law firm of Rixey and Rixey would handle it, that they would represent me.

Q. And did you take the papers immediately to that law firm?

A. Yes, sir.

Q. Did you go out and get an attorney for yourself to represent your interests?

A. No, sir. I had the law firm of Rixey and Rixey to represent me.

Q. Did you rely on that law firm to protect your interests?

A. Yes, sir, I did.

Q. Did you leave the papers with them?

A. Yes, sir.

Q. With whom did you leave them?

A. I can't truthfully say, sir. I don't remember whether it was Mr.—it wasn't Mr. Rixey, Jr. here, sir. I believe that I—

The Court: I think it is immaterial. They admit they represented him in the proceeding.

Tr. page 56 } By Mr. S. E. Sacks:

Q. All right. Well, at any rate, do you remember whether you had any conversation with anybody at that law firm at that time?

A. We discussed—I put—I gave them the papers and they told me they would take care of it and notify me when the trial was set, sir.

Q. Were you subsequently notified?

A. Yes, sir.

Q. Did you ever go back to their office when they called you?

A. Yes, sir. I have been in their office six or seven times.

Q. Did you always cooperate with them and tell them what they wanted to know?

A. Yes, sir, I did.

Q. When they notified you to come here to stand trial about the release or attend the trial, were you here for them?

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A. Yes, sir, I was.

Q. Did they call you as their witness and ask you questions here in court?

A. Yes, sir, they did.

Tr. page 57 } Q. Did you go to the office between the first trial and the second trial in which judgment was rendered against you for the $14,000?

A. Yes, sir.

Q. Did you help them prepare their case, with anything they wanted to know?

A. Yes, sir. I told Mr. Rixey about my father's health, gave him the doctors' names and people—the amount of money he received from Mutual of Omaha and the Railroad Retirement Board and everything, sir.

Q. Did Mr. Rixey want to know, before the case was tried, concerning your father's death, all about your father's health and who his doctors were?

A. Yes, sir.

Q. Did he get that information from you?

A. Yes, sir.

Q. Do you know whether or not he contacted those people on the strength of the information you gave him?

A. Yes, sir. He had my aunt subpoenaed here to testify.

Q. Who gave him your aunt's name and address?

A. I gave it to him, sir. She came from Richmond.

Q. Did you come here on the day of the second trial and did he call you as a witness and you testified?

A. Yes, sir.

Tr. page 58 } Q. Did you cooperate with him at all times there?

A. Yes, sir, I did.

Q. Mr. Gentry, before this case in which the judgment was rendered against you was even tried in this courtroom, do I understand that a week before that time you had been to Mr. Rixey and told him you wanted to tell him there wasn't any dog there, that you must have fallen asleep?

A. Yes, sir.

Q. You told him that?

A. Yes, sir.

Q. And what did he tell you he was going to do about that, if anything?

A. He didn't say anything sir.

Mr. Rixey: Wait a minute, Mr. Gentry, please. If Your Honor please, I don't know what he is going to testify as to

what I said but I don't know that is material. I am not here to testify in this case, I am here to try the case.

The Court: What is the materiality of that?

Mr. Rixey: I don't know what the answer is going to be but I just object to it.

The Court: Don't quote what he said but what you propose to prove by it, is it material?

Mr. S. E. Sacks: Just facts surrounding whether or not the insurance company did properly notify this man that they were going to defend him but they weren't going to waive their right not to pay off the judgment. They claim they gave him a waiver on the day of the trial.

Tr. page 59

The Court: He has offered in evidence a written agreement in which that was done, and he admits he signed it.

Mr. S. E. Sacks: All right, sir. I will ask him this.

By Mr. S. E. Sacks:

Q. You have identified as your signature, a signature on a stipulation and agreement? You identify the signature, do you not?

A. Yes, sir, that is my signature.

Q. Now, do you remember seeing this paper before?

A. No, sir.

Q. Do you know what that paper is?

A. No, sir, I don't.

Q. This paper purports to have been signed—somebody has put "18" in the blank for the date. Do you state that you signed this paper? Do you know whether you signed it on the 18th of June 1958 or not?

A. No, sir.

Q. Wasn't the 18th of June the very day that the trial involving your father's death was held here?

A. Yes, sir, it was.

Q. Did Mr. Rixey tell you at any time that he was trying the case but that if you lost the case he wasn't going to pay off the judgment?

Tr. page 60

A. No, sir, he did not.

Q. If he had told you that, would you remember it?

A. I would remember it, sir.

Q. Did you understand on the day of the trial that he was going to defend you but he wouldn't pay the judgment? Did you understand that to be the situation?

A. No, sir, I did not.

Q. Did he give you an opportunity on the day of the trial,

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tell you "Either sign this or go get your own lawyer"?

A. No, sir, he did not.

Q. Did you have a lawyer representing you on the 18th day of June when you were tried?

A. Mr. Rixey represented me that day, yes, sir.

Q. Was this paper explained to you before you signed it as to what it meant?

A. No, sir. It was not.

Q. Do you even recall where it was signed or under what circumstances?

A. No, sir, I don't recall seeing the paper until now.

Q. But you admit you signed it?

A. It is my signature, yes, sir.

Tr. page 61 } Q. Were you in Mr. Rixey's office at all on the morning of the trial or did you meet him here in court?

A. I can't truthfully say, sir, whether I met him in court or whether I met him in his office.

Q. You don't remember?

A. No, sir, I do not.

Q. Even after a judgment was rendered against you for the $14,000, you got a second set of legal papers which are, in fact, these garnishment papers, didn't you?

A. Yes, sir, I did.

Q. Where did you get those?

A. They were served on me at my home, sir.

Q. When you got those legal papers at your home, what did you do with those?

A. I took them to the office of Rixey and Rixey.

Q. Did he tell you he didn't want them, that he wasn't going to represent you, or did he tell you he—

A. He wasn't there, sir. I gave them to his father, Mr. Rixey, Sr.

Q. And do you know or not, as a matter of fact, that Mr. Rixey appeared in this case as your counsel and filed an answer on your behalf?

Mr. Rixey: We will stipulate that. The record shows it.

Mr. S. E. Sacks: You will agree the record shows you appeared in this case for him.

Tr. page 62 } By Mr. S. E. Sacks:

Q. Now, did Mr. Rixey ever notify you that he

wasn't going to be your lawyer any more and that he considered the policy had been broken or breached by you?

A. The only letter I received form Mr. Rixey stating that he wouldn't represent me was when I received a letter from him saying that the amount of money, rather than $25,000 had been increased to $50,000 and that I was not covered by insurance for that $50,000 and that if I wanted to hire another attorney to defend me for the other $25,000 I could do so, but that he would defend me for the amount of the first judgment, the twenty-five—the first lawsuit, which was $25,000.

Q. Well, but after the judgment and after the garnishment proceeding was instituted against you, didn't he in 1959 write you a letter that he was going to withdraw from the case and no longer be your lawyer in these proceedings?

A. Yes, sir. I received a letter from him so stating.

Q. Well, do you recall whether or not that was in 1959?

A. I can't recall what year it was, whether it was '59 or '58, I am not sure.

Q. That was the first notice, or not, sir, that you had had that the insurance company's lawyers were not going to protect you any more?

Tr. page 63 } A. Yes, sir, that was.

Mr. Rixey: Your Honor, I don't deny this letter here but I don't know the materiality of this to the case. I have tried to object and my objection ran through a whole lot of testimony and just runs on and on. The material is all right with me.

The Court: The waiver that you introduced in evidence I think is material. It has material effect on that.

Mr. S. E. Sacks: This is a letter we would like to introduce, addressed not to Mr. Gentry but to us as attorneys.

The Court: That is Plaintiff's Exhibit 6.

(The letter referred to was marked Plaintiff's Exhibit No. 6.)

By Mr. S. E. Sacks:

Q. I might ask you this: Do you know whether or not Mr. Rixey attempted to appeal the case in which judgment was rendered against you, to the Supreme Court of Appeals in Richmond?

A. Yes, sir, I called him on the phone to find out what story was—what was going on. I had been to his office and I was more or less left in the dark. He said he was handling it, so

Tr. page 64 } I took him for his word. And several days or maybe a week later, I don't remember when but I called him at his office and he told me that he had appealed it to the Supreme Court in Richmond.

Q. Did you ever hear from him as to what happened there?

A. No, sir, I did not. The next thing I remember is that I received that letter, as I stated, that he had dumped me as a client, that they would not represent me any more.

Mr. S. E. Sacks: With Your Honor's permission, I will read this Exhibit 6.

The Court: It is in evidence.

Mr. S. E. Sacks: Letter dated February 7, 1959, addressed to Messrs. Sacks and Sacks, Attorneys at Law, National Bank of Commerce Building, Norfolk, Virginia. (Reading)

"Gentlemen: *Re*: Gentry against Gentry and Nationwide Insurance Company.

"Please be advised that at—

Mr. Rixey: What is the date of that?

Mr. S. E. Sacks: February 7, 1959. (Reading)

"Please be advised that at 9:15 A. M. on Thursday, Februarp 12, 1959, I shall appear before Judge Jacob of the Circuit Court of the City of Norfolk and petition the said court for leave to withdraw as counsel of record for the principal defendant, Walter F. Gentry, Jr., and for permission to file an amended answer and grounds of defense for the co-defendant in view of the recent Supreme Court action denying my writ of error in the previous case between the parties. I wish to acknowledge Mr. Stanley Sacks' letter of February 5. The matters contained therein and referred to in our telephone conversation of late yesterday will be given immediate consideration. I will communicate with you about that matter at a later time.

"Very truly yours"—Rixey and Rixey, By John F. Rixey.

"Copy to Mr. Sam W. Nathan, Attorney at Law, Citizens Bank Building, Norfolk."

Tr. page 65 }

By Mr. S. E. Sacks:

Q. Now, Mr. Gentry, we have heard, of course, that you went up to Mr. Rixey's office a week before the trial and told him the truth. Why did you do that? Why did you go there?

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A. He was my attorney. I felt he should know the true facts.
Q. And you did tell him the truth at that time?
A. Yes, sir, I did.

Tr.
page 66 } Mr. S. E. Sacks: That is all the questions of this witness at this time.

RE-CROSS EXAMINATION.

By Mr. Rixey:
Q. Mr. Gentry, I did defend you in those two cases last year?
A. Sir?
Q. I represented you in those two cases last year?
A. Yes, sir, you did.
Q. Were you dissatisfied with your representation?

Mr. S. E. Sacks: I object to the materiality.

By Mr. Rixey:
Q. You didn't want another lawyer, did you?
A. No, sir, I didn't want another lawyer.
Q. You were satisfied for me to represent you?
A. Yes, sir, I was.
Q. And after the verdict came in, I told you that we were going to appeal this case, isn't that true?
A. Yes, sir. You told me you were going to appeal it.
Q. And it was while the case was on appeal that this case was started, you got the new suit papers?
Tr. A. Yes, sir.
page 67 } Q. And I told you that I would handle the matter for you because the other case was on appeal?
A. Yes, sir.
Q. And it was when the appeal was lost that you got the letter from me advising that I no longer would represent you, I was going to petition the court to withdraw, is that correct?
A. Yes, sir, that is correct.
Q. Now, about this statement on June 18, this agreement-stipulation. I want to understand you. Let's you and me understand each other. Are you by any stretch of the imagination insinuating that you did not sign this statement, that stipulation on June 18, 1958?

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A. That is my signature, yes, sir.

Q. Well, are you suggesting to this court that you did not sign it on June 18, 1958?

A. I don't know what date I signed it, Mr. Rixey.

Q. You don't?

A. It is dated June 18th, isn't it, sir?

Q. Can you deny that it was signed on June 18th in 1958?

A. That is my signature, sir, yes, sir.

The Court: He has already denied—

Mr. Rixey: He didn't know whether he signed it or not.

Tr. page 68 } By Mr. Rixey:

Q. One or two other facts and I will be through. You got in touch with your insurance company in Virginia before the insurance adjusters contacted you in Morgan City, Louisiana, is that right?

A. Yes, sir.

Q. Another thing I want to ask: After you went to New Orleans, you talked to the adjuster up in Houma, Louisiana, and asked him to have somebody get in touch with you in New Orleans, is that right?

A. No, sir. I didn't tell him that.

Q. Did you not want somebody down in New Orleans to get in touch with you?

A. He said that there would be somebody there, sir.

Q. As a matter of fact, you talked to the adjuster on the phone and asked him to come over to the funeral parlor and meet you, didn't you?

A. I can't recall such a conversation over the phone, sir.

Q. But you do recall that you—

A. I remember Mr. Nimix was at the funeral parlor when I arrived, sir.

Q. Isn't it a fact that you were at the funeral parlor when you talked with Mr. Minix and you asked him to come over there and meet you there?

Tr. page 69 } A. I don't recall that conversation over the phone, sir.

Q. You don't recall

A. No, sir, I don't.

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Tr. page 81 }

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WILLIAM F. GENTRY, JR.,
recalled as an adverse witness, testified further as follows:

Examined by Mr. Rixey:

Q. Mr. Gentry, you heard Mr. Cowling testify positively that he interrogated you about the accident at the scene of the accident, is that correct?

A. That is the State trooper testimony?

Q. Yes.

A. Yes, sir.

Q. It is true that Mr. Cowling, the State trooper—and you remember him, don't you?

A. I remember there was a State trooper there, sir; yes, sir.

Tr. page 82 } Q. He interrogated you and asked you questions about the accident at the scene of the accident?

A. Yes, sir.

Q. Or did he interrogate you at Lakewood Hospital?

A. It was at the scene of the accident, sir.

Q. He testified he was at the scene of the accident and that is what you say?

A. Yes, sir.

Q. Mr. Gentry, I want you to listen carefully while I read from testimony of the trial of June 18, 1958, and I want you to listen; I will ask you if this is correct. You were on the stand and I am asking you a question: (Reading)

"Question: When this accident happened, Mr. Gentry, did you have occasion to talk the matter over with the State trooper?

"Answer: After the accident, yes, sir.

"Question: Where did you talk with the State trooper?

"Answer: To the best of my knowledge, sir, I talked to the State trooper at the Lakewood Hospital, in the reception room.

Tr. page 83 } "Question: When the accident was over, did you go to the hospital with your father?

"Answer: When the accident happened, as I stated, my mother and the two children were in the back.

"Question: I asked you if you went to the hospital with your father?

"Answer: As a patient, no, sir. I am trying to explain.

"Question by the Court:

"He did not ask you as a patient. Did you accompany him? Did you go where he was?

"Answer: I accompanied my father to the hospital."

Question by the Court: "You have answered it."

"Question by Mr. Rixey:

"Question: When you left the scene of the accident to go to the hospital had the trooper arrived?

"Answer: No, sir, not that I know of.

"Question: Where did you talk with the trooper?

Tr. page 84 } "Answer: I just told you; in the Lakewood Hospital reception room.

"Question: Did you ever talk with him at any other place about the accident?

"Answer: I don't remember whether I discussed the accident with him at that time or not."

And, Mr. Gentry, I ask you to tell this jury whether or not you testified in accordance with what I just read, on June 18, 1958?

A. Yes, sir. That is—

Q. So now you are changing your testimony and admit that you did not talk to the State trooper at the scene of the accident?

A. I did not admit it, sir. I says I don't remember; I stated before at the other trial, Mr. Rixey.

Q. Just a few minutes ago you testified, did you not, that you talked to him at the scene of the accident—because that is what Mr. Cowling testified to?

A. May I explain to you, sir, instead of answering?

Q. Explain to these people.

A. The scene of the accident it happened June 6, 1956, as these people well know. My father was thrown completely out of the car. I myself was injured. I spoke to a lot of people on the morning of June 6. Whether the State trooper was

Tr. page 85 } there I couldn't swear. I had a cut above my forehead. It had six stitches in it. I saw my father laying on the ground. I was naturally upset over him. I was worried because of my mother in the back. She had injured her knee. I had my two minor daughters who I had full custody of since I had been divorced, that I was taking care of. I stated in that testimony that I—as Mr. Rixey just read to you—that I accompanied my father to the hospital. The best of my knowledge, that is the truth. Whether or not I spoke to the State trooper at the scene of the accident I can't say whether I spoke to him or Mr. Rixey. Mr. Rixey may have been there that morning. I don't know because I was in a state of shock myself, to the best of my

knowledge. I do know that I spoke to a lot of people. I do know that I spoke to the State trooper at the hospital.

Q. All right. Mr. Gentry, let's go back to it again. Mr. Cowling has testified that he talked to you and interrogated you about the accident and got your version of the accident at the scene of the accident and before you went to the hospital. Is that true or not?

A. If he states so, yes, sir.

Q. All right. And then your testimony of last June that I just read to you whereby you say that he hadn't even arrived when you went to the hospital and that you talked to him at the hospital, is incorrect, is that right?

A. I talked to him at the hospital, yes, sir.

Tr. page 86 } Q. Did you or did you not?

A. Did I talked to him at the hospital?

Q. That is right.

A. Yes, sir. He brought my mother and children to the hospital.

Q. And so it was at the hospital that you talked to him about the accident, the State trooper?

A. I don't know whether I talked to him about the accident or not, sir. We talked about a lot of things.

Q. Did you see him at the scene of the accident?

A. To the best of my knowledge, yes, sir.

Q. Then your testimony of last June that he had not arrived when you left the scene and went to the hospital, is false, is that correct?

A. Sir, I don't remember the State trooper's name. I do know that there was a State trooper that accompanied me or escorted me in a private automobile to the hospital. Whether it was that trooper you are speaking of, sir, I don't know.

Q. If you testified last June that you did not talk to him at the scene but that you did talk to him in the Lakewood Hospital, that is not correct, is that right?

A. I talked to him at the Lakewood Hospital, yes, sir.

Q. Did you talk to him at the scene?

Tr. page 87 } A. I don't know, sir.

Q. And so if you said last June that you didn't talk to him at the scene but you did talk to him in the hospital, you would have been wrong last June?

A. You mean I would have been lying, sir?

Q. They are your words, Mr. Gentry, not mine.

A. Well, I am asking you, sir.

Q. I am asking you whether you were telling the truth last June or whether you are telling the truth now.

William F. Gentry, Jr.

A. I say that I spoke to the State trooper at the hospital, sir. Whether or not I spoke to him at the scene of the accident I couldn't say. I don't know, sir.

Q. All right. You don't know whether you talked to him at the scene of the accident?

Mr. S. E. Sacks: Your Honor, I object. He has said three or four times. He is just repeating the same question. He said he didn't know.

The Court: He said he certainly talked to him at the hospital but he doesn't know whether he talked to him at the scene or not.

Mr. Rixey: Right.

By Mr. Rixey:

Q. And do you understand the testimony I just read to you from last June?

A. That is part of the testimony of the second trial, yes, sir.

Tr. page 88 } Q. And is what I read to you correct or not?

A. Well, I didn't give all that testimony, sir. Some other people were there. I imagine it is correct, sir.

Q. You imagine what I read to you a few minutes ago is correct?

A. Yes, sir.

Q. And the part about the trooper not having arrived when you went to the hospital?

A. I can't—I didn't understand you, sir.

Q. The part about the trooper not having arrived at the scene when you went to the hospital, is that correct also, or don't you know?

A. I don't know, sir. You know how—have an automobile accident, how people gather around. Like I stated to you, I was injured myself. There were dozens of people around there. I don't know whether the State trooper was there or not, sir.

Q. The truth of the matter is, you don't remember whether you talked to him at the hospital or at the scene of the accident?

A. I know I talked to him at the hospital, sir, because he himself stated he brought my mother and children to the hospital and I was there with my father.

Tr. page 89 } Q. Did you talk to him about the facts at the hospital?

A. The facts of the accident?

Q. Yes, sir.

A. I don't remember whether it was the facts of the accident or not. I know I spoke to him.
Q. Did he interrogate you about the accident at the hospital?
A. He inter—

Mr. S. E. Sacks: He says he doesn't know. He won't know if we keep on an hour.
Mr. Rixey: I will agree to that.
Mr. S. E. Sacks: He said he doesn't know whether he did or not. That is what he said last June.
Mr. Rixey: He didn't say that last June, either.
Mr. S. E. Sacks: Well, I will ask him.
The Court: His testimony is negative as to the scene, positive as to the hospital.
Mr. Rixey: All right, sir.

By Mr. Rixey:
Q. And if Mr. Cowling says he did not interrogate you at the hospital but that he did interrogate you at the scene, you would have to dispute that, is that correct?
A. I am not disputing any officer's word, sir.

Mr. Rixey: That is all we have.

Tr.
page 90 } CROSS EXAMINATION.

By Mr. S. E. Sacks:
Q. Mr. Gentry, just briefly as to that exchange of testimony from last June's trial, did you testify this way to Mr. Rixey then? (Reading)

"Question: Where did you talk with the trooper?
"Answer: I just told you; in the Lakewood Hospital reception room.
"Question: Did you ever talk with him at any other place about the accident?
"Answer: I don't remember whether I discussed the accident with him at that time or not."

Did you tell him that last June?
A. Yes, sir.
Q. Is that the same thing you are saying today?
A. Yes, sir, it is.

William F. Gentry, Jr.

Q. Now, Mr. Gentry, let me just ask you this, please, sir. Getting back briefly to the situation where you put into the original statement that there was a dog that crossed your path, why was it that you wanted to put in the statement that it was a dog and you didn't want to put in the statement that you had fallen asleep?

Tr. page 91

A. Well, as I gave Mr. Rixey testimony before the second trial, as he stated, seven days prior to the second trial, I stood Shore Patrol both Corpus Christi, Texas, here in Norfolk, I have worked with the State police here in Virginia, in Norfolk, Virginia, and I know for a fact that people can get in trouble by admitting right off the bat that they could have fallen asleep. It didn't—I discussed this with Mr. Hoey—is that his name, the first adjuster that I saw—and I asked him like I stated before, I don't know whether he suggested it, whether I suggested it or whether we both suggested it, that I didn't want to put in a statement, black and white, right the day after the accident, that I had fallen asleep. It didn't make any difference to him he stated. So when he wrote the thing up, it was for my benefit that I would not say that I fell asleep, that I would say that there was a dog that ran across the road in front of me, so I wouldn't get in trouble.

Q. All right, sir. Now, finally, I ask you this: There are a number of statements here in evidence. I will ask you, was every one of these statements signed by you for the insurance company, prepared by either the insurance company's adjusters or their attorneys?

A. Those that I have seen this morning? Yes, sir.

Tr. page 92

Q. All right. Now, on each occasion that they prepared such a statement and you signed, did they give you a copy of them?

A. Yes, sir. They gave me a carbon copy.

Q. When it came to this agreement that they say you signed on the day of the trial that they were going to defend you but not pay off any judgment, did they give you a copy of that?

A. No, sir, they did not.

Mr. S. E. Sacks: That is all.

Mr. Rixey: No questions.

The Court: Stand down. Both sides rest?

Mr. S. E. Sacks: May I ask one question of the witness?

The Court: Just make it one.

William F. Gentry, Jr.

By Mr. S. E. Sacks:

Q. I will simply ask you, Mr. Gentry, after the trial on June 18, 1958, were you in Mr. Rixey's office at all?

A. Yes, sir, I was.

* * * * *

PLAINTIFF'S EXHIBIT 1.

C. H. J.

In the Circuit Court of the City of Norfolk, on the 3rd day of July, in the year 1958.

Sam W. Nathan etc., Plaintiff,

v.

William F. Gentry, Jr., Defendant.

This day came again the parties, by counsel, and the motion for a new trial heretofore made by the defendant having been fully heard and maturely considered by the Court is overruled; whereupon it is considered by the Court that said plaintiff, Alice M. Gentry, recover against said defendant, William F. Gentry, Jr., the sum of Fourteen Thousand Ninety-three and 52/100 ($14,093.52) Dollars, with legal interest thereon from the 18th day of June, 1958, until paid, and her costs about her suit in this behalf expended, the defendant having previously paid to the plaintiff the sum of Nine Hundred Six and 48/100 ($906.48) Dollars on account of the death of her husband in the accident involved in this action, to all of which said defendant, by his attorney, duly excepted.

* * * * *

PLAINTIFF'S EXHIBIT 7.

Deposition, on oral examination, of W. C. Cowling, transcribed from the shorthand notes of R. E. Bell, Shorthand Reporter, taken under stipulation of counsel, at the offices of Crawford & Company, Room 205, 2025 Canal Street, in New Orleans, Louisiana, on Friday, April 10, 1959, beginning about 4:30 P. M.

W. C. Cowling.

Appearances: Sacks & Sacks, Stanley E. Sacks, Esq., 508 National Bank of Commerce Building, Norfolk, 10, Virginia, Attorneys for plaintiff.

Rixey & Rixey, John F. Rixey, Esq., Citizens Bank Building, Norfolk, Virginia, Attorneys for defendants.

Dep.
P. Exh. 7
page 2 }

* * * * *

W. C. COWLING,
having been first duly sworn by R. E. Bell, Notary Public, was examined and testified as follows:

Mr. Sacks:

Q. State your name, please.

A. Trooper W. C. Cowling.

Dep.
P. Exh. 7
page 3 }

Q. And your home address?

A. 218 Henderson Street, Houma, Louisiana.

Q. What is your occupation?

A. Louisiana State Police.

Q. And how long have you been so engaged?

A. Two and a half years.

Q. You are on active duty with the Louisiana State Police at this time?

A. I am.

Q. Trooper Cowling, did you have occasion to investigate an accident near Patterson, Louisiana, on June 6, 1956, involving a family named Gentry?

A. I did.

Q. Did you go to the scene of the accident personally?

A. I did.

Q. Can you tell us approximately what time of day or night that was?

A. About, the time I arrived at the scene, about 6:30 in the morning.

Q. Tell us when you got there briefly what you did see.

Dep.
P. Exh. 7
page 4 }

A. I arrived at the scene and found the Gentry vehicle against a post, I believe, of the Patterson Motel, in the yard of the Patterson Motel.

Q. What kind of a post was this?

A. It was on a large concrete base, an upright four inch steel pipe, holding up a large neon sign.

W. C. Cowling.

Q. All right?

A. And after first checking for injuries and all, and talking to the driver, I checked the scene, or, rather, I followed the vehicle's path from where it left the road, and found it had run off the black-top on the right side of the east bound lane, then apparently skidded to the left across the highway, going into the ditch, hitting a culvert, the Patterson Motel culvert driveway, and going on skidding to the post.

Q. Well, now, what was the condition of the car and the signpost as far as being damaged or not?

A. The car was, I would say, totally demolished. I don't know what I put down for an estimate. The car hit the sign—hit the post, and bent the big 4-inch pipe over, hit it a good lick, and damaged the neon sign also.

Dep. P. Exh. 7 page 5

Q. Did you have any conversation with the driver of that automobile there at the scene of the accident?

A. I did; I asked him what happened, and he told me as far as he remembers he felt a lurch, or a bump, and when he went off the road, he jerked back and he lost control and started skidding. I asked him what happened, and he said he apparently fell asleep, and didn't remember anything prior to feeling the lurch.

Q. Who was the man that identified himself to you as being the driver?

A. That was Gentry, Jr., the young man.

Q. Was there an older man identified as Mr. Gentry?

A. Correct; he was the one injured.

Q. Was he taken to the hospital?

A. To the Lakewood Hospital, where he later died I found out.

Q. Officer, did the man you call Gentry, Jr., was that the story he told you?

A. It was.

Q. Did he at any time give you any other explanation or reason for the happening of the accident other than what you have just testified to?

Dep. P. Exh. 7 page 6

A. No; he couldn't remember anything before he felt the bump at all.

Q. And that is his explanation to you?

A. Well, he said he had been driving all day and all night, and he was very tired and all, and he told me he apparently fell asleep.

Q. Was this conversation with that man and your presence at the scene a part of the official investigation by you or not?

A. It was.

W. C. Cowling.

Q. Who filed the official accident report with the traffic authorities concerning this accident?

A. I did.

Q. And did you complete that report in your own handwriting and give the information you got at the scene?

A. I completed that, got most of the information at the scene, I finished getting a little more information at the Lake-Wood Hospital, where I went and checked on Gentry, Sr., and I completed it and turned it in at trooper headquarters at the end of my tour of duty.

Q. Did you or not in your official accident report, report the same explanation of Gentry, Jr., as you have testified to today?

Dep.
P. Exh. 7
page 7 } Mr. Rixey: I object to that question; but go ahead and answer.

A. I did.

Mr. Sacks:

Q. Let me ask you this, can you remember what you reported in your official accident report as to William Gentry's explanation of the happening of the accident?

Mr. Rixey: For the record, I would like to object to any reference by the officer to the accident report itself and to what it says. I know he is entitled to refresh his memory from the report itself; but I do not think it is proper for him to quote from the report or to state what the report itself says.

Mr. Sacks: You can answer for this purpose.

Q. (Read by reporter) Let me ask you this, can you remember what you reported in your official accident report as to William Gentry's explanation of the happening of the accident?

Dep.
P. Exh. 7
page 8 } A. If I remember rightly, on my accident report I put down the vehicle headed east on U. S. 90, driver apparently fell asleep and lost control of vehicle skidding across road into a sign-post.

Mr. Sacks:

Q. When did you file your report with reference to the happening of the accident?

A. The same date.

Q. Officer Cowling, I show you a photostatic copy of a document and ask if you can identify the document it represents?

Mr. Rixey: I object again to the document and to the use of the document.

A. I do.

Mr. Sacks:

Q. What is that, sir?

A. This is a photostatic copy of a copy of the original accident report.

Q. And is any of the handwriting or sketch in the photostatic copy your handwriting and sketching?

A. No, sir.

Q. Is this your writing I point to, depicting the positions of automobiles and so forth?

Dep. P. Exh. 7 page 9 } A. No; let me explain—

Q. That is all right. I withdraw that. Let me ask you this, do you know who completed the document I show you?

A. The Troop C secretary takes all the accident reports and types them out and sends them into Baton Rouge. Baton Rouge don't have the original. The original stays in Troop C. I believe I had the original the last time I talked to you.

Q. Is this a copy of the original?

A. It is.

Q. What do you mean by Troop C?

A. That's my troop headquarters at Franklin, State Police.

Mr. Sacks: I offer in evidence this document as Plaintiff's Exhibit 1.

And I believe that is all the questions I have.

CROSS EXAMINATION.

Mr. Rixey:

Q. Do I understand you did or did not fill in the report, the original?

Dep. P. Exh. 7 page 10 } A. I did.

Q. What part did the secretary of Troop C take in the report?

A. None in my part of the report.

W. C. Cowling.

Q. Did she copy the diagram or take any part in it at all?
A. She copied it completely.
Q. She copied your original, and this is a photostatic copy of what she wrote down?
A. That's what I said a while ago for the record.
Q. This is a photostatic—
A. (Interrupting) A photostatic copy of the copy.
Q. (Continuing)—of the copy of the original accident report?
A. Yes.
Q. And accordingly this is not in your handwriting?
A. True.
Q. And is not signed by you?
A. No; it is all typed in.
Q. Mr. Cowling, you have been on the Louisiana State Police force about three and a half years?
A. Right.

Dep. P. Exh. 7 page 11

Q. This accident happened in early June, 1956: how long had you been on the force when the accident happened?
A. About ten months.
Q. And it has been almost three years since the accident?
A. That's correct.
Q. Are you able to remember clearly all the facts concerning this accident?
A. I remember clearly all the ones I have told so far, in so far as it has not been too long ago I had to get the original accident report and give a statement in Houma in reference to the accident.
Q. Is there any possibility, Mr. Cowling, you could be mistaken about statements made to you or parts of your investigation, because of the time elapsed?
A. None in anything I have said so far.
Q. You are positive?
A. Positive.
Q. Without any question, everything you have said so far is absolutely the way you know it to be?
A. That is true.

Dep. P. Exh. 7 page 12

Q. Your memory is clear on this point?
A. It is.
Q. As I recall your testimony, you say you found evidence that the Gentry vehicle ran off the highway on the right side?
A. I did.

W. C. Cowling.

Q. On to the shoulder?
A. Yes.
Q. And then apparently came back on the highway, crossed over to the left-hand shoulder and went across a ditch and hit the post?
A. I did.
Q. Is that correct?
A. That is correct.
Q. Did you find any skidmarks on the highway itself?
A. I did.
Q. Can you tell me approximately how long the skidmarks were?
A. They were right across the highway from the point it was marked, there were skidmarks left by the Gentry vehicle from where he ran off the highway on up to where he hit the sign.

Dep. P. Exh. 7 page 13

Q. Were there any marks on the highway before he ran off on the right side?
A. No, sir.
Q. There were not?
A. No, sir; I checked it.

Q. When you talked to Mr. Gentry, did he tell you he had been driving all day and all night and was very tired?
A. He did.
Q. Can you recall he told you that he had stopped driving on the night of June 5, and had pulled over and had slept and did not resume driving again until about two hours before the accident happened?
A. No, sir, he did not; I asked him why he had been driving, why not let somebody else drive, and he said nobody else in the car could drive.
Q. How long continuously did he tell you he had been driving before the accident happened?
A. He did not tell me definitely; he told me he had been driving all night and the day before.
Q. Did he say anything about pulling over on the side of the road and stopping and sleeping, if you can recall?

Dep. P. Exh. 7 page 14

A. Not that I can recall; it is possible he could have and I don't remember it.
Q. You just don't remember it?
A. No, sir.

Q. Do you remember specifically that you talked to Mr. Gentry, Jr., at the scene of the accident?
A. I did.
Q. He was in a rather shaken up condition, was he not?

W. C. Cowling.

A. He was un-injured. He was—he wasn't hurt in any way; I guess he was excited, because his dad was injured: but I mean he was acting normally.

Q. Let me ask you this, was his father still there when you talked with him?

A. If I am not mistaken, his father was there; and the ambulance arrived about the same time I did.

Q. The ambulance arrived at the scene about the same time you did?

A. Correct.

Q. And so before you had your talk with him at the scene, his father was taken to the hospital?

Dep. A. Correct.

P. Exh. 7 page 15 } Q. How about his mother and the children?

A. They were at the Motel, in a room.

Q. Are you sure he did not go to the hospital with his father?

A. I don't remember.

Q. You are unable to recall whether or not he went to the hospital with his father? Is that a fair statement?

A. I don't know if he went on with his—I don't recall if he went with his father, or the lady—it seems like I took the children—it seems like he went with me.

Q. Didn't you go right in behind the ambulance with Mr. Gentry to the hospital, and you talked to Mr. Gentry at the hospital?

A. No, sir. I talked to him at the scene.

Q. After his father left and went to the hospital, you remember now that you talked to him at the scene?

A. No, I told you before I talked to him there.

Q. Do you remember specifically his father went to the hospital without him? Or you are unable to remember that? If you don't know, just say you don't know.

A. I am trying to think, because I am sure I took the lady and the two children, it seems like, to the hospital.

Dep. P. Exh. 7 page 16 } Q. How about Mr. Gentry himself?

A. That's what I am trying to recall. Let's see now—I am certain the ambulance left without him, because we finished talking at the scene, talking to Mr. Gentry.

Q. Did you finish talking to Mr. Gentry at the scene?

A. Yes.

Q. You are positive the father went to the hospital without his son?

A. I believe that is correct.

W. C. Cowling.

Q. And the son went to the hospital later?
A. That is true.
Q. You conducted your investigation, as far as interrogating the boy was concerned, I mean Mr. Gentry, Jr., at the scene of the accident?
A. At the scene; and talked to the lady also, who she said she didn't know what happened, because she was asleep.
Q. This was within a short time after the accident?
A. I believe the accident happened, as far as I remember, approximately five-thirty.

Dep. P. Exh. 7 page 17

Q. Roughly within what time did you talk with him, an hour after?
A. Within an hour.
Q. You are positive your conversation with him, and your investigation as far as Gentry, Jr., was concerned, took place at the scene?
A. That is right.
Q. And not at the Lakewood Hospital?
A. That is right.
Q. All right. And you say he was not in a condition of shock?
A. No, sir, not as far as I could see. He appeared normal and acted normally.
Q. He appeared to be all right?
A. Yes.
Q. He told you he felt a lurch or a bump?
A. Yes.
Q. Did you inquire what the lurch or the bump was?
A. I checked his—I followed the skidmarks back to where he lost control of the vehicle, and seen when he went off the road, about a three inch drop from the asphalt pavement to the shoulder.

Dep. P. Exh. 7 page 18

Q. Didn't he tell you he felt a lurch or a bump on the highway?
A. No, sir; he said as far as he remembered, he didn't remember anything prior to he felt the lurch and jerked the wheel.
Q. Which way?
A. To the left.
Q. You don't know if the lurch or bump—you assume that was where he went off on the right side shoulder of the road?
A. When he jerked the wheel it made the car skid sidewise across the highway.
Q. Isn't it true that, as a result of your investigation, the physical evidence, and talking with the people, that your con-

clusion was that apparently Mr. Gentry had fallen asleep, and that was the cause of the accident?

A. That is what he told me, yes.

Q. Did he, in positive, clear, unmistakeable words, say to you, "I apparently went to sleep."?

A. He said he didn't know what happened, he guessed he fell asleep.

Q. He said he didn't know what happened, but he guessed he went to sleep?

Dep. A. That is right.

P. Exh. 7 Q. And when you wrote that apparently he went
page 19 } asleep, that is your language, is that not correct?

A. Correct.

Q. The language, "apparently fell asleep," is what you deducted after talking with him and making your investigation?

A. Correct.

Q. He just said to you he guessed he went to sleep?

A. Yes.

Q. And you remember that positively?

A. Yes.

Q. At the scene of the accident?

A. Yes.

Q. And that is where he told you that?

A. Yes.

Q. Did he tell you that a dog had run across the road in front of his car?

A. No, sir.

Q. Are you positive about that?

A. I am positive he didn't mention a dog at all.

Dep. Q. Did not mention any dog at all?

P. Exh. 7 A. No, sir.

page 20 } Q. You did not interrogate him any further after he got to the hospital?

A. I believe I talked with him down there, too.

Q. I mean about the facts of the accident?

A. I believe I had all the information I wanted, and got the rest of the information about how his father was.

Q. As far as the accident you did not talk with him at the hospital?

A. It is possible I did.

Q. Do you recall?

A. I don't remember discussing at all with him about anything at the hospital; I mean he was in the hall and I talked with him, to see how he was, and a few words passed back and forth.

W. C. Cowling.

Q. And you don't remember about the dog?
A. No.
Q. Or any animal running across the road in front of him?
A. Not that I recall. If he had told it to me, that a dog ran in front of him, it would have been on the report like that.

Dep.
P. Exh. 7
page 21

Q. Let me ask you this, did you place any charges against Mr. Gentry, Jr.?
A. No, sir.
Q. Do I understand that this man told you he guessed he went to sleep, and he was involved in a very serious accident, which resulted in the death of his father two days later, and you did not place any charges against him?
A. I felt he had been punished enough already.
Q. And that was the reason?
A. Yes, sir.
Q. Or because he was in New Orleans when his father died?
A. No, sir.
Q. It was because you felt he had been punished enough?
A. Correct.
Q. Is that the way you generally handle your charges in Louisiana?

Mr. Sacks: I object to that. The officer investigating uses his own initiative as far as the law has been broken about placing charges he feels fit.

Dep.
P. Exh. 7
page 22

Mr. Rixey:
Q. Well, if the operator of a motor vehicle goes to sleep at the wheel in the State of Louisiana, do you in your official capacity as a Louisiana State Patrol officer consider that reckless driving?

Mr. Sacks: The same objection, to this line of questioning.

A. No, sir, I don't call it reckless driving; it is a violation all right.

Mr. Rixey:
Q. What type of violation is it? What charges do you usually make when an operator tells you he goes to sleep at the wheel?
A. I don't remember offhand. It all depends if he hit a car, and how the accident occurred, on the charges. I wouldn't charge him with falling asleep at the wheel, because I don't believe there is a specific Louisiana law covering that charge.

W. C. Cowling.

Q. Are the seriousness of the damages or injuries considered in determining the charges?

A. No, sir; when the law is violated, it does not make any difference how serious the property or personal damages are involved.

Dep. P. Exh. 7 page 23 } Q. When the law is violated, you make a charge?

A. Most of the time.

Q. But in this case he violated a law and you did not make a charge for it?

A. Well, he did something wrong; as far as what law he violated, I would have to get a little help; I couldn't tell you offhand.

Q. You are not an attorney as to the law: but you were satisfied that by going to sleep at the wheel he did violate a law, is that right?

A. Well, it is not—I don't remember reading anything in the law about you have to be awake at the wheel.

Q. Do I understand the driver of a motor vehicle is involved in an accident and he tells you he has been asleep at the wheel, and you do not make a charge?

A. It all depends on what happens.

Q. Do you consider the seriousness of the accident?

A. No, sir.

Dep. P. Exh. 7 page 24 } Q. Or the type of accident?

A. The type of accident, yes, sir.

Q. And in what type of accident would you press charges against such a man?

Mr. Sacks: I object; the same objection continues.

A. Well, if the law has been violated, I would file a charge on what law is violated.

Mr. Rixey:

Q. In what type of accident, where the man goes to sleep at the wheel, would you make a charge against the operator?

A. If he hit another car, and was on the wrong side of the road, I would charge him with that.

Q. Mr. Gentry, Jr., was on the wrong side of the road, wasn't he?

A. He didn't meet another car and hit him.

Q. That was fortunate on his part?

A. Yes, but as long as he didn't hit anything he can go on the other side of the road.

Q. He was a non-resident of Louisiana?

W. C. Cowling.

A. Yes.

Q. And he did damage to property in Louisiana?

A. Yes.

Dep. P. Exh. 7 page 25

Q. And he caused a serious personal injury to his father?

A. Yes.

Q. And he told you he guessed he went to sleep at the wheel?

A. That's right.

Q. And you did not make charges against him?

A. I did not.

Q. Is it your practice in Louisiana, when a death results from an automobile accident, to place a charge, technical or non-technical, of manslaughter in an accident causing death, against the operator of the motor vehicle.

A. I don't get that?

Q. (Read by reporter at request of witness) Is it your practice in Louisiana, when a death results from an automobile accident, to place a charge, technical or non-technical, of manslaughter in an accident causing death, against the operator of the motor vehicle?

A. You will have to explain yourself a little more?

Q. When an accident happens in Louisiana, and a person is killed as a result, and you investigate the accident, do you place charges against the operator of the motor vehicle?

Dep. P. Exh. 7 page 26

A. It all depends.

Q. On what?

A. If I felt that he—there was negligence or a law violated by the operator that caused it; in other words, if there is reasonable grounds that would hold up.

Q. And you came to the conclusion that he was guilty neither of negligence nor violated any law, is that right?

A. I don't know about that; I am not—

Q. (Interrupting) And you did not place any charges?

A. No.

Q. If you had felt he was guilty of negligence, you would have placed a charge?

A. He was guilty of negligence in so far as the operator of a vehicle in no shape to do it and asleep.

Q. And tired?

A. Yes.

Q. And fatigued?

A. Yes.

W. C. Cowling.

Dep. P. Exh. 7 page 27

Q. You did not mark that on the accident report, did you? Can you recall?

A. I believe I did.

Q. Do you state on this accident report filed by you, did you mark that, there is a place for "Fatigued," did you mark that?

A. I don't believe.

Q. But you remember that is what he was?

A. I don't know if he was or not.

Q. That was an oversight on your part?

A. No, sir, it wasn't an oversight.

Q. Let's go back to the charge against the man, if you had felt he was guilty of negligence you would have placed a charge against him?

A. That's right.

Q. And you did not place a charge?

A. No, sir.

Q. So it follows, does it not, that you felt he was not guilty of negligence?

A. Well, the way I felt, he was guilty, he was negligent in driving the vehicle in his condition, and the reason I did not file charges is because I figured he had already been punished enough in so far as his father was injured very seriously at that time.

Dep. P. Exh. 7 page 28

Q. You did not know of any particular violation of the law he had violated?

A. I imagine I could have dug up one.

Q. But you did not bother to do that?

A. No, sir, I believed he was punished enough already.

Q. You are positive of all these things you have testified to, or is it possible you could be mistaken about certain features?

A. No, sir, I am positive.

Q. Of all of it?

A. Yes, sir.

Q. And if Mr. Gentry, Jr., said he positively did not talk to you at the scene of the accident, about the accident and how it happened, but talked to you at the hospital, he would be mistaken in that regard?

A. He would be.

Mr. Rixey: I think that is all.

Mr. Sacks:

Q. Officer, did you know any of the Gentry's or had you ever seen them before the time of this accident?

W. C. Cowling.

A. No, sir.

Mr. Sacks: That is all.

(And the witness was excused.)

• • • • •

DEFENDANT'S EXHIBIT 1—C. H. J.
R. E. Bell
April 10, 1959

Royal Hotel
Morgan City, La.
June 7, 1956

I am William F. Gentry, Jr., age 28, white, male, divorced, and my present address will be Air Anti-Submarine Sqdn. #36, NAS, Norfolk, Virginia. I am an AD 3/c in the U. S. Navy. My serial number is 3022822. I am in the process of being transfered to Norfolk from Corpus Christi, Texas.

On June 6, 1956 about 5:30—6:00 a. m. I was involved in an accident on U. S. #90 in Patterson, Louisiana, when my car went out of control. I was driving my 1952 Ford bearing motor #A2DL-130784. I had left Corpus Christi on Monday afternoon, June 4th, 1956. My father, William F. Gentry, Sr., age 51, mother, Alice M. Gentry, age 49, my children, Linda Marie, age 4, Deborah Sue, age 3, were all with me. My parents live with me where I am stationed and have no other permanent address other than my duty station. We drove all Monday night and stayed at a roadside park near Beaumont, Texas, on June 5th. We slept in the car until 5:30-6:00 p. m. then drove until about 12:00 midnight on June 5th. We again stopped at a roadside park until about 3:30 a. m., June 6th. I was driving the whole time.

I was traveling east on U. S. #90 at a speed of about 55-60 MPH. The road is 2 lanes, concrete, straight and level. Suddenly a dog ran into my path from my left. I cut toward the right shoulder to miss the dog. When I started to come back on the highway I lost control and slid sideways in a ditch on the left side of the highway. My car hit a neon sign post. I was knocked out a few moments. I then saw my father lying on the shoulder near the car. He had fallen out the right front door where he had been sitting. He was unconscious and had a bad cut on the right side of his forehead. I understand his

jaw was broken. He is suffering with a concussion. He was taken to Lakewood Hospital in Morgan City, La., and then transfered to Baptist Hospital, New Orleans, La. My father suffered a stroke in May, 1955, and was partially paralyzed on the right side. My mother received a badly bruised left knee and leg. She was treated at Lakewood Hospital and dismissed. I got a bad cut on my head. I was treated and discharged. Dr. Russo attended all of us. Neither of my 2 children were hurt in the accident. The State Patrol investigated. I understand the neon sign was damaged in the amount of about $500.00. My mother and the children were on the back seat asleep. My car was towed to Tri-City Motors in Morgan City.

I had a small property damage accident in about 1955. I have been driving 11 years. I hold Virginia driver's license #220691 which expires 11/30/56. My father has not worked for the past year since the stroke and has been drawing disability benefits from R. F. & P. Railroad of $56.02 per month, $100.00 per month from Mutual of Omaha Ins. Co. on accident & health policy. I had not been drinking at the time of the accident.

I have read the three above pages and they are true.

/s/ WILLIAM F. GENTRY, JR.

Witness: J. M. HOEY, JR.

DEFENDANT'S EXHIBIT 2.

C. H. J.

WILLIAM F. GENTRY, JR.,
age thirty (30) years, 220 Nansemond Arch, Norfolk, Virginia, states as follows:

I was driving my automobile on June 6, 1956, when it was involved in an accident resulting in the death of my father, William F. Gentry. My version of the facts of the accident is the same now that it was when I originally discussed the matter with the insurance adjuster for my insurance company.

In about May, 1955, my father suffered a stroke. At the time he was working for the State of Virginia in the Agricultural Department. I believe he had worked there approximately six or seven years and before that he had worked ap-

proximately seventeen years for the R. F. & P. Railroad. When he was stricken he was then living in Richmond, Virginia, with some relatives, and my mother was in Texas with me helping me to look after my two children, since I was divorced from my wife. My father did not return to work after his stroke. He stayed in Richmond for three or four months and then came to Texas and lived with me and my mother. While he was not working he drew $100.00 per month from Mutual of Omaha and approximately $56.00 per month from railroad retirement. This was the extent of his income. He did not own any securities or real estate. My mother was then, and is now my dependent. My father did not have any dependents that I know of.

My father was cared for in Richmond by Dr. Sam Weinstein. To the best of my knowledge Dr. Sam Weinstein has died. However, I think he had a brother who also helped to look after my father and who took over the practice.

WILLIAM F. GENTRY, JR.

Witness:
JOHN F. RIXEY 5/1/58.

DEFENDANT'S EXHIBIT 3.

C. H. J.

WILLIAM F. GENTRY, JR.,
Age 30, of 220 Nansemond Arch, Norfolk, Virginia, states as follows this 11 day of June, 1958:

I am making the following statement voluntarily in the law office of Rixey and Rixey, Citizens Bank Building, Norfolk, Virginia, and this statement supplements and supersedes any and all previous statements by me at any time made heretofore concerning the automobile accident of June 6, 1956 which resulted in the death of my father. For two years now I have been sticking to the same story concerning how the accident happened, but I now admit that that story is not true and that it was made up by me under the following circumstances and conditions.

Immediately after the accident happened my father was bleeding and seriously injured, and he was taken to Lakewood Hospital and I went with him. I held my father in my arms in the back of the automobile that took him to the hospital.

William F. Gentry, Jr.

After getting to the hospital a police officer went back and got my mother and my two children and brought them to the hospital, and then he questioned me concerning the accident. I was very nervous, worried, and upset. I was tremendously concerned for my father and also concerned for myself as I was fearful of getting in any trouble in Louisiana. At the time of the accident my mother had been asleep on the back seat and my father was asleep on the front seat, to the best of my knowledge. The accident happened about 6:00 in the morning. I had been sleepy just prior to the accident. I actually remember just cruising along at about 55 or 60 mph and I was on the right-hand side of the road, and the next thing I knew I was on the left-hand side of the road. I had lost control of the car and I was in the ditch that is a drain along the side of the road. I tried to bring the car back to the right, but by that time I had already hit the pole and my father was thrown out of the car. I myself suffered a cut on the forehead and had about six stitches taken. When the police officer asked me about the accident I told him that a dog had run across the road in front of me. I gave this same version to my mother and to my aunt, Mrs. Mary L. Darling of Richmond, and I have previously given the same story to the insurance adjuster in Louisiana and to the law firm of Rixey and Rixey in Norfolk. After living with this false story for two years I came to see John F. Rixey, my company's attorney, on June 11, 1958 and made a full disclosure of the true facts of the accident. There was no dog involved. The true version is as I have stated above.

The reason that I gave the previous false statements was because I was scared that I would get in trouble with the State Police in Louisiana, and I have done enough shore patrol work myself to know that people can get in a lot of trouble when an accident happens by the driver falling asleep at the wheel. Actually I couldn't tell you whether I fell asleep or not, but I must have because one minute I was going along the right-hand side of the road and the next thing I knew I was on the left-hand side of the road.

No one else other than my mother knows the true set of facts. I told her for the first time on Sunday, June 8, but no one but her had been told the true facts prior to my conference with John F. Rixey on June 11, 1958.

WILLIAM F. GENTRY, JR.

State of Virginia,
City of Norfolk, to-wit:

I, E. Pryor Wormington, a Notary Public in and for the City and State aforesaid, to certify that William F. Gentry, Jr. personally appeared before me on the day of June, 1958 and acknowledged his signature to the foregoing writing, and further gave oath that the foregoing facts were true to the best of his knowledge and belief.

My commission expires: August 13, 1961.
Given under my hand this 11th day of June, 1958.

E. PRYOR WORMINGTON
Notary Public.

DEFENDANT'S EXHIBIT 4.

C. H. J.

IT IS HEREBY STIPULATED and AGREED by and between the Nationwide Mutual Insurance Company of Columbus, Ohio, and William F. Gentry, Jr. of Norfolk, Virginia, that any action taken by the said insurance company in investigating and/or attempting to adjust and/or adjusting and/or defending any claim and/or handling any litigation growing out of an automobile accident which occurred on or about June 6, 1956, on U. S. Route 90 near Patterson, Louisiana, resulting in the death of William F. Gentry, Sr., shall not be construed as a waiver of the said insurance company's right to deny liability under any policy or policies issued to William F. Gentry, Jr., and in effect at the time said accident occurred, nor shall the execution of this agreement be considered a waiver of the assured's rights under said policy or policies.

DATED this 18 day of June, 1958.

NATIONWIDE MUTUAL INSURANCE COMPANY
By RIXEY & RIXEY
By JOHN F. RIXEY
Its Attorneys.
WILLIAM F. GENTRY, JR.

J. M. Hoey, Jr.

DEFENDANT'S EXHIBIT 5.

* * * * *

DEPOSITION, on oral examination, of J. M. HOEY, JR., transcribed from the shorthand notes of R. E. Bell, Shorthand Reporter, taken under stipulation of counsel, at the offices of Crawford & Company, Room 205, 2025 Canal Street, in New Orleans, Louisiana, on Friday, April 10, 1959, beginning about 5:15 P. M.

Appearances: Sacks & Sacks, Stanley E. Sacks, Esq., Attorneys for plaintiff, 508 National Bank of Commerce Building, Norfolk 10, Virginia.

Rixey & Rixey, John F. Rixey, Esq., Attorneys for defendants, Citizens Bank Building, Norfolk, Virginia.

* * * * *

Dep.
D. Exh. 5
page 2 }

J. M. HOEY, JR.,
having been first duly sworn by R. E. Bell, Notary Public, was examined and testified as follows:

Mr. Rixey:

Q. State your name, please.

Dep.
D. Exh. 5
page 3 }

A. J. M. Hoey, Jr.

Q. And your address?

A. 136 Brentwood Boulevard, Lafayette, Louisiana.

Q. How old are you?

A. Thirty-three.

Q. What is your occupation?

A. I am branch manager, Crawford & Company, insurance adjusters, in Lafayette.

Q. Crawford & Company is a nation wide insurance adjusting firm?

A. That's right.

Q. I take you back to June, 1956, Mr. Hoey, and ask you what your occupation was at that time?

A. I was branch manager, Crawford & Company, in Houma, Louisiana.

Q. And in that capacity as branch manager of Crawford & Company in Houma, Louisiana, did you have occasion to in-

vestigate an accident that happened on June 6, 1956, involving Mr. William F. Gentry, Jr.?

A. I did investigate such an accident.

Q. For whom were you doing that work, Mr. Hoey?

Dep. D. Exh. 5 page 4 }

A. Well, I was working for the insurance company who represented the liability insurance of Mr. Gentry.

Q. What company was that?

A. Having refreshed my memory recently, it was Nationwide Insurance Company.

Q. Can you recall how you first got information concerning the accident, briefly?

A. Frankly I can not.

Q. But in any event you investigated the accident?

A. That's right.

Q. When did you, can you recall what day you began your investigation, whether it was the day of the accident, or the day after, or any other day?

A. The day following the accident, to the best of my recollection.

Q. Would that be June 7, 1956?

A. Yes, if the date of the accident was June sixth it was.

Q. I will ask you did you have occasion to interview Mr. William F. Gentry, Jr.?

A. I did.

Dep. D. Exh. 5 page 5 }

Q. Can you recall where you interviewed him?

A. In a little hotel, in Morgan City, Louisiana.

Q. Can you tell me the name of the hotel?

A. From referring to notes, yes, I can; from memory I couldn't.

Q. Now, with your memory refreshed, or that your memory has been refreshed, what hotel was it?

A. The Royal, I believe.

Mr. Sacks:

Q. Do you have the notes with you?

A. The statement I took from him.

Q. They are the notes you speak of?

A. Yes.

Q. Do you have the original statement you took?

A. No, I don't.

Mr. Rixey: Let the record show that I have it in my hand, and I will offer it in evidence in a few minutes. I have shown it to Mr. Hoey.

J. M. Hoey, Jr.

Mr. Sacks:

Q. That's the notes to which you referred, is the statement?

A. That's right.

Mr. Rixey:

Dep. D. Exh. 5 page 6 } Q. Can you recall approximately what time of day or night it was that you interviewed Mr. Gentry, Jr.?

A. It was in the day time, and it was after noon, sometime during the middle of the afternoon, to the best of my recollection.

Q. Was anyone else present?

A. To the best of my knowledge, no.

Q. Can you tell us where in the hotel you talked with Mr. Gentry?

A. Again to the best of my knowledge, it was in the lobby.

Q. Do you remember talking with Mr. Gentry's mother, Mrs. Gentry?

A. Yes, I did.

Q. Where was she?

A. In bed, in a room upstairs.

Q. Did you discuss with her the facts of the accident?

A. Yes, I interviewed her as to the facts, but she knew nothing, because she said she was asleep on the back seat, and did not know how the accident happened or any facts surrounding it.

Dep. D. Exh. 5 page 7 } Q. Where were you and Mr. Gentry when he gave you his version of how the accident happened?

A. In the lobby of the hotel.

Q. Did you question him in some detail about how the accident happened?

A. Yes, I did.

Q. What version of the accident did Mr. Gentry give you?

A. Well, I first went back as to where he was going to and coming from at the time, and when he had left his point of departure, and as I recall after having referred to the statement, he had stayed in a roadside park somewhere—

Q. (Interrupting) I think we can skip that part.

A. The description of the accident was, he was driving along the highway and in his right lane, a two-lane highway, he was just on the west outskirts of Patterson, Louisiana, travelling on highway U. S. 90—

Mr. Sacks: I object to the statement being offered for the truth of it, but it is admissible for the fact it was stated to him.

Mr. Rixey: We will take that matter up at the trial.

Dep. D. Exh. 5 page 8 } Mr. Sacks: The objection is as far as the introduction of it for the truth of the matter.

The Witness: He was travelling along the highway, and he said a dog ran out in front of him from his left, as he was travelling east; he cut to his right to miss the dog, and then went out of control when he hit the right shoulder, and went back across to the left side of the highway, and slid down a drainage ditch, and the right side of the car collided with a neon sign-post in front of a motel.

Mr. Rixey:

Q. Do you specifically remember he stated a dog ran across the road in front of the car?

A. If I put it in the statement, that is what he told me.

Q. Have you had occasion to refresh your memory with the statement you refer to?

A. Yes.

Q. After refreshing your memory, do you recall he positively told you a dog ran across the road in front of his car?

A. Yes.

Dep. D. Exh. 5 page 9 } Q. Do you recall, Mr. Hoey, whether or not he stated to you he guessed he had fallen asleep, or apparently had fallen asleep?

A. If he had told me he had fallen asleep, I am certain I would have put it in the statement. He did not tell me he had fallen asleep.

Q. You do not recall that he said anything about him, Mr. Gentry, going to sleep?

A. No, sir.

Q. After the accident and on June 7, 1956, when you interviewed Mr. Gentry, and took the statement, did you again have occasion to talk to him or to see him?

A. To the best of my knowledge, no. The reason is, his father had been brought to New Orleans, possibly the same afternoon, and they came to New Orleans, and I did not have occasion to see him after that.

Q. You had nothing further to do with Mr. Gentry?

J. M. Hoey, Jr.

A. Nothing whatsoever, other than I received a 'phone call from him.

Q. When?

A. The following day, I feel certain, after taking the statement, he called me from New Orleans.

Dep. D. Exh. 5 page 10 } Q. For what purpose?

A. He wanted to know what was to be done about taking care of some of the expenses he had; his father had died, and they wanted to transport him back to Virginia. I told him I couldn't tell him anything definitely; I would contact the New Orleans office, and they would contact him that day in New Orleans, and discuss it with him further.

Q. Did you arrange for the New Orleans office to contact him?

A. I did.

Q. In the New Orleans office who was it you made the arrangement with?

A. Mr. Minix, the manager.

Q. Is he here to-day?

A. Yes.

Q. I show you three yellow sheets of paper, with ink writing on them, and ask you if you recognize those papers?

A. I recognize my handwriting on all the pages.

Q. What is that you hold, the sheets of paper?

A. It is the statement obtained from William F. Gentry, Jr., June 7, 1956, in the Royal Hotel, in Morgan City, Louisiana.

Dep. D. Exh. 5. page 11 } Q. Is that the signed statement you have referred to and that you obtained from Mr. Gentry?

A. Yes, it is the signed statement I obtained from Mr. Gentry on that date.

Q. Is it the original statement?

A. It is the original.

Q. Was that statement written in your handwriting or in his handwriting?

A. In my handwriting.

Q. Was it written as a result of your conversation with Mr. Gentry?

A. It was.

Q. Do you know whether or not Mr. Gentry read it over?

A. I know Mr. Gentry read it over himself, because he has written in his own handwriting, and I quote, "I have read the three above pages and they are true," signed, William F. Gentry, Jr.

Q. The language you have quoted is in his handwriting?

A. In Mr. Gentry's handwriting.

Q. Did you witness the statement?

Dep. A. I did witness the statement.

D. Exh. 5 Q. Did you sign it as a witness?

page 12 } A. Yes.

Q. Is that your signature?

A. It is my signature.

Mr. Rixey: I offer it in evidence as Defendants' Exhibit 1.

Mr. Sacks: I object to the statement, on the ground the witness has testified it is in his handwriting and it is what was told him by the other defendant.

Mr. Rixey:

Q. Mr. Hoey, if Mr. Gentry had subsequently given you any other version of the accident, other than the version of the dog running across the road in front of the car, what would you have done?

A. I would have taken a supplemental signed statement from him.

Q. But you did not find any reason to do that?

A. I did not.

Q. Can you remember whether or not you asked Mr. Gentry about talking with the police officer?

A. I can't recall.

Dep. Q. Did you have any reason to doubt Mr.

D. Exh. 5 Gentry's version that a dog had run across the

page 13 } road in front of him?

A. None whatsoever.

Mr. Rixey: All right. Answer Mr. Sacks.

CROSS EXAMINATION.

Mr. Sacks:

Q. Mr. Hoey, you are right now employed by Crawford & Company?

A. That's right.

Q. And how long have you been working for them?

A. It will be ten years in August, 1959.

Q. So it was about seven years that you had been working for them at the time you investigated this accident?

A. That is right.

Q. Is it not true that Crawford & Company—if I may ask

that differently, do you know how many offices of Crawford & Company across the country they have?

A. At this time?

Q. Yes?

A. I would estimate about 108.

Dep. D. Exh. 5 page 14

Q. And as I understand it, you are the manager of one of the offices?

A. That is correct.

Q. Now, does not Crawford & Company now adjust and represent Nationwide Insurance Company in that capacity throughout the country?

A. That I can not state.

Q. Do they do that now in your office?

A. I don't handle any claims for them in my office in Lafayette.

Q. How about the New Orleans office of Crawford & Company?

A. I don't know.

Q. At the time you investigated this accident in 1956, it was on behalf of Nationwide Insurance Company, one of the defendants in this suit?

A. That is right.

Q. And at that time your office was at Lafayette, Louisiana?

A. No, out—I was branch manager in Houma, Louisiana.

Q. How far is Houma from where—well, from Morgan City, Louisiana, where you interviewed Mr. Gentry?

A. Approximately 37 miles.

Q. You had to travel 37 miles to go over there and talk to him?

Dep. D. Exh. 5 page 15

A. That is right.

Q. Wasn't it your purpose, when you went there, to investigate this accident, from the standpoint of the liability of the insurance company, Nationwide?

A. Actually my purpose was to investigate the accident, as to the facts surrounding it.

Q. For whom?

A. For Nationwide Insurance Company.

Q. The primary purpose in their investigation by an insurance company of an accident, it was on behalf and in the interest of that insurance company, wasn't it?

A. It was on behalf of their insured, Mr. Gentry, and Nationwide Insurance Company, both.

J. M. Hoey, Jr.

Q. It was Nationwide Insurance Company that requested your investigation?

A. That is correct—I will qualify that, I assume I got the call from Nationwide, or from Mr. Gentry, he might have had a service card in his billfold.

Q. You were an insurance adjuster at that time?

A. (Laughing) I had seven years experience.

Dep. D. Exh. 5 page 16 } Q. All right. Didn't you investigate this case in the same way you investigated other cases, or was this one treated differently?

A. It was treated no different than any type accident involving a serious injury such as this.

Q. I notice you testify to-day without the aid of any notes, except the original statement Mr. Rixey had in his file, is that correct?

A. That is right.

Q. Didn't you have a file and make notes back at that time?

A. Yes, I have a file in Houma.

Q. What did you do with that file?

A. Well, three years ago I imagine it has been destroyed over there. I reported to the insurance company.

Q. To whom?

A. To Nationwide. Where or what office, I don't recall.

Q. Even though this matter has been in litigation up until this very moment, is it your thought the file has been destroyed?

A. The file in my Houma office.

Dep. D. Exh. 5 page 17 } Q. Did you report to the New Orleans office of Crawford & Company the result of the investigation?

A. Yes, I did. They would have received a copy of my investigation.

Q. Do I understand, other than the facts you have refreshed your memory by use of the original statement, you have no independent recollection of the investigation?

A. No; I have looked at today the report I sent in to the insurance company at the time of the accident, of which the New Orleans office has a copy.

Q. Is there a copy here today in the office of Crawford & Company of what you sent to them?

A. Yes.

Q. Now, this statement of course that you have introduced here today of William F. Gentry, Jr., is entirely in your handwriting, except for the last paragraph and the signature?

J. M. Hoey, Jr.

A. The last sentence and the signature.

Q. And I understand the last sentence, to the effect, "I have read the three above pages and they are true," is actually in the handwriting of William F. Gentry, Jr.?

Dep. D. Exh. 5 page 18 } A. That is correct.

Q. But you told him what to write, didn't you?

A. Yes, I did, after he had read it.

Q. After he had read it, you told him what words to write down about it being true?

A. I told him if the statement is true, to write down, "I have read the statement and it is true."

Q. This was one day after the accident that you took the statement, is that correct?

A. Yes, by referring to the statement.

Q. And at that time his mother was upstairs in the hotel in bed?

A. Yes.

Q. And his father was in the hospital in New Orleans, as a result of the injuries, or perhaps dying, is that correct?

A. Yes.

Q. You do not have any independent recollection of anything else that was said by William F. Gentry, Jr., to you, other than what you put in the statement?

A. That is correct.

Dep. D. Exh. 5 page 19 } Q. And, therefore, if you can not remember what he told you, you can not state for sure what he might have told you other than what you wrote on the paper?

A. Well, I would say this, relative to the facts of the accident I wrote everything he told me as to how the accident happened.

Q. You testify that way because I suppose you say that is what you do in every case, you write what they tell you?

A. I write what they tell me.

Q. But you can not deny that he may have told you something else, since you have no independent recollection?

A. No, I can not deny he might have told me something else; undoubtedly I had further conversation with him, other than just to obtain the statement.

Q. There was something else said between you and Mr. Gentry but you can not remember what it was?

A. Certainly.

Q. All right. Now did you have anything else to do with the case, after you investigated by taking the statement?

Dep. D. Exh. 5 page 20 } A. The only thing I had further to do was to establish the amount of the damage to the sign and to settle that claim.

Q. Then, the truth of the matter is you continued to investigate this case, after you took the statement from young Gentry, by adjusting and settling the property damage claim with the Motel owner?

A. I did settle that claim.

Q. On that very day?

A. No.

Q. Did it require you to make further investigation?

A. No further investigation, other than to get a bill establishing the amount of damage to the sign.

Q. How much did you eventually settle or pay the Motel owner for the damage to the sign?

A. I don't recall the exact figure, but somewhere in the vicinity of $500.

Q. And that was paid by settlement, and not by court action brought against anyone?

A. That is correct.

Q. Who paid the $500 approximately to the Motel owner?

Dep. D. Exh. 5 page 21 } A. A draft was sent me by Nationwide Insurance Company.

Q. And Nationwide Insurance Company, the defendant in this case, paid that $500?

A. That is right.

Q. Didn't you get an accident report from the police or traffic authorities covering this accident?

A. I did not.

Q. Is it not the practice in adjusting claims to get a police report, or an official accident report?

A. Usually it is.

Q. Isn't the official accident report and investigation by the police one of the best methods of obtaining the true facts, in adjusting, or investigating rather?

A. I would not say that. I would say it is wonderful for information: but as far as getting the true facts, no.

Q. It is customary and the usual procedure to gain information when you are investigating?

A. That is right.

Q. But you did not do that in this case?

A. I did not.

J. M. Hoey, Jr.

Dep.
D. Exh. 5
page 22

Q. There was nothing to prevent you getting a copy of the accident report, was there?

A. No.

Q. Did you talk to the investigating trooper, Officer Cowling?

A. I did not.

Q. Your office was at Houma, Louisiana?

A. That is right.

Q. Did you know that Trooper Cowling lived in Houma at that time?

A. I did not.

Q. Your testimony has been if this man had told you something different later, you would have taken a supplemental signed statement?

A. Something different pertaining particularly to the facts of the accident.

Q. If he told you that at a later time?

A. That is right, if I had been able to, but he left within the day, twenty-four hours.

Q. I assume by your use of the terminology that a supplemental signed statement is not necessarily an unusual thing, is it?

A. Yes, it is somewhat unusual.

Q. But it occurs?

A. It does occur, yes, sir.

Mr. Sacks: I think that is all.

Dep.
D. Exh. 5
page 23

Mr. Rixey:

Q. After you talked with Mr. Gentry on June 7, 1956, and obtained from him this statement, and you talked with his family, did you feel that any further investigation was required of you?

Mr. Sacks: I object to the leading form.

Mr. Rixey:

Q. Will you state whether or not you felt any further investigation was required by you?

Mr. Sacks: The same objection.

A. I did not feel any further investigation of the facts was warranted at the time.

Mr. Rixey:

Q. Did you know that on June 8 Mr. Gentry had left your territory, your part of the country where you resided and worked?

A. I knew it when he called me from New Orleans.

Dep. D. Exh. 5 page 24

Q. Approximately how long after the accident was it that you settled the property damage claim with the Motel owner, your best estimate?

A. I would say approximately between July 1 and August 1.

Q. And to conclude that claim, will you state whether or not you had to get a check from Nationwide's office somewhere?

A. Yes, I did.

Q. It was after the check came in that you settled the claim?

A. I took the release, I can remember that so specifically, the fact I was being transferred to Lafayette, Louisiana, at the time, and going out and back and forth for a while, and my wife came over with me, and it was one night, a Sunday night, we stopped off at the tourist court so I could furnish the draft.

Q. For the purpose of the settlement you did not feel that additional investigation was required?

A. No.

Mr. Sacks: I object to the leading questions.

Mr. Rixey:

Q. State whether or not for the purpose of that settlement you felt any further investigation was required?

Mr. Sacks: The same objection.

A. I did not feel any further investigation was required.

Dep. D. Exh. 5 page 25

Mr. Rixey:

Q. Can you recall whether or not Mr. Gentry expressed to you any concern over his being charged by the police or by the Louisiana authorities, with any criminal offense?

A. I do not recall discussing with Mr. Gentry any charge being made against him by the police; I do not recall any conversation.

Forrest Lee Minix.

Mr. Sacks:

Q. Do you recall whether or not you asked Mr. Gentry had a policeman come to the scene and investigated the accident?

A. I don't recall. In the normal course of investigation I would have asked, but to make a definite statement I can not do that.

Q. You do not recall whether or not Mr. Gentry told you what he told the police at the scene of the accident?

A. All I can recall is what I see written in the statement I took at the time.

Dep. D. Exh. 5 page 26

Q. Do you have a file concerning your investigation and adjustment of the property damage claim with the Motel owner, or is that destroyed?

A. That is part of the same file.

Mr. Sacks: That is all.

* * * * *

DEFENDANT'S EXHIBIT 6.

DEPOSITION, on oral examination, of FORREST LEE MINIX, transcribed from the shorthand notes of R. E. Bell, Shorthand Reporter, taken under stipulation of counsel, at the offices of Crawford & Company, Room 205, 2025 Canal Street, in New Orleans, Louisiana, on Friday, April 10, 1959, beginning about 5:50 P. M.

Appearances: Sacks & Sacks, Stanley E. Sacks, Esq., Attorneys for plaintiff, 508 National Bank of Commerce Building, Norfolk 10, Virginia.

Rixey & Rixey, John F. Rixey, Esq., Attorneys for defendants, Citizens Bank Building, Norfolk, Virginia.

Dep. D. Exh. 6 page 2

* * * * *

FORREST LEE MINIX,

having been first duly sworn by R. E. Bell, Notary Public, was examined and testified as follows:

Forrest Lee Minix.

Mr. Rixey:

Q. State your name, please.

Dep. A. Forrest Lee Minix.

D. Exh. 6 Q. Where do you live?

page 3 } A. 4535 Arthur Drive, New Orleans, Louisiana.

Q. And how old are you?

A. Thirty-two.

Q. Your occupation is?

A. Insurance claims adjuster.

Q. For whom do you work?

A. Crawford & Company, New Orleans.

Q. What is your capacity with Crawford & Company?

A. Manager.

Q. Mr. Minix, I take you back to June, 1956, and ask you if you recall a Mr. William F. Gentry, Jr., a conference you had with him about an accident he had in Louisiana in June, 1956?

A. I remember Mr. Gentry and the conversation we had together.

Q. Do you recall what day it was in June, 1956, you had this conversation?

A. I can not recall the specific date, but it was a Saturday in June.

Dep. Q. Have you a file in your office on the claim?

D. Exh. 6 A. Yes.

page 4 } Q. Do you have the file with you?

A. Yes.

Q. Can you tell from the file, Mr. Minix, what day it was you conferred with Mr. Gentry, Jr.?

A. (Examining papers) It was on June 9, 1956.

Q. And how did Mr. Gentry's accident come to your attention?

Mr. Sacks: May I examine the papers to which the witness is referring, in order to refresh his memory, or may I ask him what are the papers?

The Witness: This is a report dated June 14, 1956, to the Nationwide Insurance Company.

Mr. Sacks:

Q. Whose report would that be?

A. My report to them.

Q. Based on information received by you from what sources?

A. From the source of—well, it covers conversations and information we obtained from Mr. Gentry; it contains reflec-

tions on my telephone conversation with Mr. Hoey, and on my subsequent telephone conversation with the insurance company; in other words, my investigation on this end of the file.

Dep.
D. Exh. 6
page 5 } Mr. Sacks: I object to it as being hearsay.

Mr. Rixey:

Q. Mr. Minix, when this matter was first called to your attention by Mr. Hoey, state please what explanation of the accident you were given.

A. Mr. Hoey called me on June 7, 1956, and advised me—

Mr. Sacks: I object to this on those grounds.

The Witness: He advised me Mr. William F. Gentry, Jr., was an insured of the Nationwide Insurance Company; that he had been referred a claim of the Nationwide Insurance Company arising out of an accident near Houma, Louisiana, June sixth, whereby William F. Gentry, Jr., was driving an automobile and he had an accident, and the father was killed. At that particular time, I beg your pardon, the father had not died—the father was seriously injured, and brought to Baptist Hospital in New Orleans. Mr. Hoey advised me the facts of the accident, briefly, saying the insured was travelling on the highway and dodged a dog and lost control of the vehicle and went into a ditch.

Dep.
D. Exh. 6
page 6 } Mr. Rixey:

Q. State whether or not you have records or any written evidence of that conversation with Mr. Hoey?

A. I have a record of what we call a telephone assignment sheet.

Q. What does that telephone assignment sheet say exactly as to the facts of the accident?

A. Insured dodged dog and went off road and into ditch and then hit neon pole, and as a result injured father who is claimant and was in right front seat.

Q. Is that in your handwriting?

A. Yes.

Mr. Sacks: The objection continues.

Mr. Rixey:
Q. Dated what?
A. June 8, 1956.
Q. Subsequent to the telephone call did you have occasion to talk with Mr. Gentry, Jr.?
A. Subsequent to?
Dep. Q. Yes?
D. Exh. 6 A. Yes.
page 7 } Q. Where did you have the conversation with Mr. Gentry, Jr.?
A. Mr. Gentry called me on Saturday morning, which I believe would be June ninth, and advised me he was at a funeral home, and he had spoken to Mr. Hoey and Mr. Hoey advised him I was handling the claim.
Q. Did you talk to him that Saturday?
A. Yes.
Q. Can you remember whether or not in your conversation with Mr. Gentry he made any reference to the dog running across the road in front of the car?

Mr. Sacks: I object to the leading form.

A. I can not remember any specific incident that we discussed that particular point.

Mr. Rixey:
Q. Did you take an additional signed statement from him?
A. No, sir.
Q. Can you recall whether or not there was anything different about Mr. Gentry's version of the accident to you from what had been related to you by Mr. Hoey?
Dep. A. No, there was no indication Mr. Gentry made
D. Exh. 6 any remark to me that would call my attention to
page 8 } anything different.
Q. Do you recall whether or not Mr. Gentry stated to you he apparently had gone to sleep, or that he guessed he had gone to sleep, and that caused the accident?
A. There was no conversation at all about going to sleep, no reference to going to sleep.
Q. Did you know Mr. Gentry before June 9, 1956?
A. Never saw him before in my life.
Q. Did you see him on any day other than that day?
A. Yes.
Q. Where did you see him?

Forrest Lee Minix.

A. I don't recall the date of the trial, but in Norfolk, Virginia, some time in 1958.

Q. The trial of the lawsuit?

A. Yes.

Q. But in Louisiana, did you see him any day other than June 9, 1956?

A. No, sir.

Q. Can you recall whether or not Mr. Gentry, Jr., expressed any concern to you over getting in trouble with the authorities in Louisiana?

A. No, sir.

Dep.
D. Exh. 6
page 9 } Mr. Sacks: I object as hearsay and leading.
The Witness: I can not recall that was even discussed.

Mr. Rixey: All right. Thank you. Answer Mr. Sacks.

CROSS EXAMINATION.

Mr. Sacks: I ask that I be allowed to look at the papers to which this witness has referred from the file he has with him, and from which he testified. I call for it.

Mr. Rixey: Have you any objection, Mr. Minix?

The Witness: No.

(And Mr. Sacks examined papers handed to him by the witness.)

Mr. Sacks: I want to state for the record I have just examined the paper this witness referred to in his direct testimony, which apparently is a letter written by him dated June 14, 1956, and addressed to the Claim Department, Nationwide Insurance Company, at Lynchburg, Virginia, and consists of four pages, and I would now call for the production of that paper as an exhibit in this matter.

Dep.
D. Exh. 6
page 10 } Mr. Rixey: I object to the production for the record: but I will agree with Mr. Sacks, in the event the court rules the said letter is admissible, I will furnish him with a copy of it, and make it available to the court.

Mr. Sacks: That is agreeable.

Mr. Rixey: And I object to any questions about the report.

Forrest Lee Minix.

Mr. Sacks:

Q. Mr. Minix, at the time this accident occurred in 1956 I believe you were the manager of the New Orleans office of Crawford & Company?

A. That is correct.

Q. And you have now been working for them how long altogether?

A. It will be ten years in June of this year.

Q. Of course you are employed by them in that capacity at this time?

A. Yes.

Q. At the time of the accident your investigation was in the interest of and at the request of Nationwide Insurance Company, a defendant in this case, is that correct?

A. That is correct.

Dep. D. Exh. 6 page 11 } Q. Does your office now adjust claims at this time for Nationwide Insurance Company?

A. Yes.

Q. You are currently so engaged in claims?

A. Yes.

Q. And there is no question, is there, that at the time of your investigation and adjustment of the Gentry claims, it was as agent for or on behalf of Nationwide Insurance Company?

A. Will you re-read that, repeat the question?

Q. Weren't you acting as agent for or solely in the interest of Nationwide Insurance Company in investigating and adjusting the Gentry claims?

A. I do not think we were acting solely in the interest of the Nationwide: we had some interest of Mr. Gentry, Jr., the insured.

Q. As a policy holder?

A. As a policy holder.

Q. Of Nationwide?

A. Right.

Dep. D. Exh. 6 page 12 } Q. You were compensated in money for the services you rendered Nationwide?

A. Yes.

Q. And the compensation was paid by Nationwide?

A. Yes.

Q. And no one of the Gentrys paid you anything of course?

A. No, sir.

Q. Now was this case as it came to you unusual or was it investigated and adjusted as every other case?

Forrest Lee Minix.

Mr. Rixey: I object to the question.

A. I don't quite know what you mean by unusual? Obviously it is unusual if it involved a fatality, because you don't have nearly as many fatalities as other types of cases. In that respect it was possibly unusual.

Mr. Sacks:
Q. Let me ask you, didn't your offices, that is the New Orleans and Houma, investigate this or have reason to investigate this case as any other fatality claim?
A. Yes.

Mr. Rixey: I object to the question as irrelevant and immaterial to the particular lawsuit, and I object to this whole line of questioning.

Dep.
D. Exh. 6
page 13 } Mr. Sacks:
Q. I notice, Mr. Minix, you have a rather complete file, or a file before you, representing the Gentry claims I assume?
A. Yes.
Q. Is that correct?
A. Yes.
Q. And this file is a part of the official records of this office?
A. Yes.
Q. Would you say it is fair to say probably there are 15 or 20 pages in that file?
A. There probably are, but the bulk of the correspondence regards the file after most of the lawsuits were filed and not before.
Q. Is there an accident report in the file from any source at all reflecting the investigating police officer's findings?
A. I do not think so. I do not find one, no, sir. May I correct that? Do you mean any reference to a police
Dep. report, or anything of a—in other words, do you
D. Exh. 6 mean there is or not a police report in the file?
page 14 } Q. That's right?
A. There is no official police report in the file.
Q. Was the police officer that investigated the accident contacted by any of your adjusters in investigating the claim?
A. No one in New Orleans contacted him, and I did not contact him because the Houma office handled the initial investi-

gation, and that is not in our territory, and we would not have contacted the officer here at all: it would not have been up to us; he was too far away.

Q. But certainly it is usual in an accident case that the investigation includes a copy of the accident report, or at least a conference or conversation with the investigating police officer?

Mr. Rixey: I object to this whole line of questioning.

A. Not necessarily, Mr. Sacks, because in Louisiana the criminal part of the case is not admissible in a civil action: and many times we waive obtaining a police report for that reason. Of course the police officer's testimony has some bearing on the case: but in this particular case, why it was not obtained, perhaps it could not have been obtained; I do know you can not obtain a police report in writing except going direct to Baton Rouge, and it takes one or two weeks to get one.

Dep. D. Exh. 6 page 15

Q. You do not know why it is not there?

A. I just know it was not up to me to get it.

Q. Did you know a police officer had investigated the accident?

A. Only unless it was reflected in the conversation with Mr. Hoey, or if Mr. Gentry mentioned it.

Q. You can not say whether or not you knew it?

A. I can not.

Q. You can not say whether or not any effort was made to find what was told any police officer?

A. I did not make any, no, sir.

Q. Mr. Gentry never made any statement to you concerning the happening of the accident, because it had been investigated by your other office?

A. If we discussed the accident's details, it was purely conversation and not from my investigating the details, because I had no reason to believe it happened any other way than as reflected in the conversation with Mr. Hoey.

Dep. D. Exh. 6 page 16

Q. You can not recall what conversation you had with Mr. Gentry at this time, can you?

A. Not the entire conversation exactly, because it covered a period of four hours or more.

Q. Were you familiar with the fact that after Mr. Gentry left here Crawford & Company effected a settlement from

Forrest Lee Minix.

Nationwide of property damage done to the Motel owner's property?

A. Only by seeing carbon copies of correspondence sent me from Mr. Hoey. I did not effect the settlement here.

Q. Even after the Gentrys left New Orleans, apparently there was further work done as far as concluding a claim that arose out of the accident?

A. Yes.

Q. Now, Mr. Minix, as a result of your meeting Mr. Gentry, Jr., in New Orleans you did on behalf of Nationwide Insurance Company pay him or some money on the claims against him, did you not?

Mr. Rixey: I object to this line of questioning, also.

Dep.
D. Exh. 6 page 17 } A. I agreed to pay a certain stipulated sum of money by taking certain stipulated forms from him. The money was not actually paid in New Orleans. As I recall it was paid at Richmond.

Mr. Sacks:

Q. At any rate you were the adjuster on behalf of Nationwide that settled the claim of Mrs. Gentry, as beneficiary of her deceased husband, and for her own personal injuries, did you not?

A. Correct.

Q. Can you tell me how much you caused to be paid to them at that time?

A. May I refer to the forms?

Q. I think so.

A. (After examining papers) I took a release from William Gentry, Jr., for the injuries to one of his minor children, $10; I took a lease from a medical payment, proof of loss, from William F. Gentry, Jr., and Alice Mabel J. Gentry, Sr., for $500; I took a release from Alice Mabel J. Gentry,
Dep. Sr., for $300; that $300 was her own personal in-
D. Exh. 6 page 18 } jury; and I took another release from Alice Mabel J. Gentry, Sr., for a total of $906.48 for the claim for the death of her husband, William F. Gentry, Sr.

Q. When you say you took a release from those people for those amounts and those things, does not it mean that Nationwide Insurance Company was agreeing to pay those amounts to those people for those purposes?

A. Not necessarily.

Forrest Lee Minix.

Q. Didn't you pay 900 and some dollars on account of the claim for the death of Mr. Gentry, Sr.?

A. Yes.

Q. Didn't you cause $300 to be paid for Mrs. Gentry's personal injuries?

A. Yes.

Q. And $10 to be paid for the child's injuries?

A. Yes; and $500 to be paid to Mr. Gentry, Jr., and Mrs. Gentry, Sr.

Q. Now, if you were agreeing on behalf of Nationwide to pay those claims, is it not correct you felt that Mr. Gentry, Jr., was legally liable for the damages that had been caused, and that Nationwide Insurance Company, his insurer, would be responsible to pay for it?

Dep. D. Exh. 6 page 19

Mr. Rixey: The objection still runs to all this line of questioning.

A. We have a certain amount of discretionary authority with any insurance company to settle a claim. In this particular claim I used that authority. As a general rule, and as a possible 99 out of 100 per cent, the insurance company relies on our judgment. In this particular case, though, the forms that were taken are release forms, and they expressly deny any liability and were taken solely for the purpose of compromise or release.

Mr. Sacks:

Q. I understand, and that is what the form says, but I ask you based on the statement that your adjuster, Mr. Hoey, told you was made by your insured, didn't you feel the insurance company had a case of liability on which they were going to have to pay money?

A. Yes.

Q. Then that was with full knowledge of the statement Mr. Hoey said Mr. Gentry, Jr., made?

A. Yes, based on the facts as they were presented to me.

Dep. D. Exh. 6 page 20

Q. Just assuming at this time that Mr. Gentry may have made a different statement at a later time that would make him equally responsible for the accident, what he said would make no difference to you as long as you felt he was legally responsible for the accident to begin with?

A. As I understand, you mean this, that had Gentry told me a different set of facts than what had been related to me by

Hoey, I would have even then gone on and made the same settlement? Is that the question?

Q. Essentially.

A. Possibly I may have made the same settlement, but not without going further into the matter with Gentry, and doing something, or perhaps taking an additional statement from Gentry, or perhaps questioning him more closely, and checking back with Mr. Hoey. As it was, I had no reason to suspect the facts of the accident were any different than as related to me by Mr. Hoey: and that particular thing is theoretical, and never came up.

Dep. D. Exh. 6 page 21 } Q. But based on what Mr. Hoey told you he had been told by Gentry, Jr., you felt and were of the opinion it was a case of liability that should be settled?

Mr. Rixey: I object to the witness' opinion, even if the line of questioning is admissible.

A. The question of liability in the claims business and in the insurance adjusting field, the question of liability sometimes is ignored completely, in view of the exposure perhaps.

Mr. Sacks:

Q. You did not ignore it in this case from the standpoint of liability, you felt the liability was there?

A. Enough to make a settlement of the claim. The question of how much would of course enter the picture.

Mr. Sacks: I believe that is all.

Mr. Rixey: Without waiving my objection to part of your testimony on cross examination, and to the questions:

Q. Can you tell us, please, when your participation in the claims resulting from the Gentry accident ceased, before any lawsuit was filed?

Dep. D. Exh. 6 page 22 } A. (After examining papers) The Monday morning after June 9, which would be June 11, I telephoned the office in Richmond concerning the fact the people would be in Richmond to pick up the draft.

Other than that I delivered or mailed a check a few days later, I don't recall the date, let's say within a week or ten days thereafter, to the Leitz-Eagan Funeral Home for money which they had advanced to the Gentrys, and was a part of the consideration for the release that we would repay Leitz-Eagan that amount.

A. Was that per the agreement of June 9?

Forrest Lee Minix.

A. Yes, and set out in the release. After that I believe my file was completely closed: and the only thing I received thereafter was correspondence from Mr. Hoey as he closed his portion in Houma.

Q. Was there any reason to obtain a police report after June 9, 1956?

A. No, sir.

Mr. Sacks:

Dep. D. Exh. 6 page 23

Q. Mr. Minix, the claims were all adjusted within the day you spoke of, while Mr. William Gentry was here in New Orleans with you?

A. Yes.

Q. And at that time did he not fully cooperate and do whatever you requested of him or whatever he was asked to do?

A. Yes.

Q. You had nothing further to do with him thereafter?

A. No, sir.

Mr. Sacks: All right. That is all.

Mr. Rixey:

Q. He was not in Louisiana any more after June 10?

A. Not that I know of.

Mr. Sacks:

Q. You never requested him to do anything after that that he did not do, did you?

A. When in our conversation we settled the case June 9, I requested him to get a draft on June 11 from the Richmond office of Nationwide, but of course I had no control over issuing the draft, other than telling him they should issue it.

Dep. D. Exh. 6 page 24

Q. There was never anything that you as manager of Crawford & Company requested of William Gentry, Jr., to do, as far as settling the claims or investigating the claims or cooperating with you, that he did not do?

A. No, sir.

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk.

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