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Clerk, Supreme Court of Appeals
Richmond, Va.

Record No. 7115

In the Supreme Court of Appeals of Virginia at Richmond

LEWIS J. NORTHROP

v.

EDMOND duPONT, ET AL., INDIVIDUALLY and PARTNERS t/a FRANCIS I. duPONT & CO.

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 this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 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. 7115

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 4th day of December, 1968.

LEWIS J. NORTHROP, Plaintiff in error,

against

EDMOND duPONT, CHARLES MORAN, JR., DANIEL K. CHAPMAN, JOHN J. TRASK, A. PHILIP MEGNA, MORRIS GOLDSTEIN, GORDON R. FOOTE, DONALD L. GRAHAM, JAMES M. KING, JR., AUSTIN J. LYONS, HARRY A. PUJALS, HENRY STEFANY, EDWIN B. PETERSON, HAROLD A. ROUSSELOT, ELIJAH N. JONES, MILTON A. SPEICHER, GOUGH W. THOMPSON, JR., HOWARD T. KADELBURG, JOHN A. FITZRANDOLPH, WALLACE C. LATOUR, THOMAS W. THOMPSON, STANTON W. FREDERICK, PETER R. duPONT, DUDLEY J. BYERS, ANDREW I. NAMM, ARTHUR C. ALLYN, JR., JOHN W. ALLYN, WILLIS B. HAMILTON, JOHN H. RILEY, U. McCALL RICHEY, JR., ROBERT J. MONAHAN, MARK J. APPLEMAN, ALFRED R. duPONT, JR., C. KELLY REYNOLDS, JR., ARTHUR C. PERSON, LLEWELLYN P. YOUNG, HERBERT A. FRAENKEL, EDMOND duPONT, A. RHETT duPONT, JEAN V. BLOSSOM, JULIA W. CAMPBELL, FRED G. WACKER, JR., WILLIAM TURNBULL, GERTRUDE B. KNAPP, EMMETT G. BARKER, MARY L. duPONT, THOMAS A. LEWIS, FRANK HEGNER, CLARENCE M. GALVIN, HARRY G. WILLIAMS, ED-

WARD A. WHITE, ROBERT W. HILL, HUGH C. WALACE, WILLIAMSON PELL, JR., CLARK R. PACE, FREDERICK LEWIS, JR., SYDNEY PARLOW AND CHARLES J. JORDAN, INDIVIDUALLY AND PARTNERS T/A FRANCIS I. duPONT & COMPANY,

Defendants in error.

From the Circuit Court of the City of Norfolk
Thomas M. Johnston, Judge

Upon the petition of Lewis J. Northrop a writ of error is awarded him to a judgment rendered by the Circuit Court of the City of Norfolk on the 25th day of June, 1968, in a certain motion for judgment then therein depending, wherein the said petitioner was plaintiff and Edmond duPont and others, etc., were defendants; upon the petitioner, or some one for him, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of $300, with condition as the law directs.

RECORD

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page 1 }

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ASSIGNMENTS OF ERROR

1. The Trial Court committed error in refusing to enter a summary judgment in favor of the plaintiff.
2. The Court committed error in striking out the plaintiff's evidence and entering a judgment for the defendant at the conclusion of the plaintiff's evidence.

Lewis J. Northrop

By Leonard B. Sachs
Of Counsel

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Filed 8-16-68

T. A. W. Gray, D.C.

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BILL OF PARTICULARS

The plaintiff, by counsel, for its Bill of Particulars says:
1. The agent, servant, or representative referred to in paragraph 5 of plaintiff's motion for judgment is C. Jordan Ball.
2. The untrue statements referred to in paragraph 5 of plaintiff's motion for judgment were defendants' agent's overt acts in executing a series of transactions transferring Inter-American Industries from the account of Francis I. duPont and Company to plaintiff. The mere act of executing the transaction is a statement that a stock purchased is one

which may be legally purchased and sold in a regular course of business.

Lewis J. Northrop,

By Vincent J. Mastracco, Jr.
Of Counsel

* * * * *

Filed 1-23-68

Dave Ward, D.C.

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ORDER

This day came again the parties by counsel, and came also the jury heretofore impaneled and sworn herein, and upon the motion of said defendants by counsel made at the conclusion of the plaintiff's evidence it is ORDERED that said plaintiff's evidence be stricken out, the members of the jury discharged, and summary judgment entered thereon.

And the plaintiff, by counsel, duly objected and excepted to the action of the Court in striking out the plaintiff's evidence and in entering summary judgment for the defendants.

Enter this Order: 6-25-68

T. M. J., Judge

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page 3 }

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Stenographic transcript of the testimony introduced and proceedings had upon the trial of the above-entitled cause in said Court on June 24, 1968, before the Honorable Thomas M. Johnston, Judge of said Court, and jury.

Appearances:

Mr. Leonard Bert Sachs and
Mr. Vincent J. Mastracco, Jr.,
attorneys for the plaintiff.

Messrs. Williams, Worrell, Kelly
and Worthington (Mr. Joseph L.
Kelly, Jr.), attorneys for the
defendants.

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Mr. Kelly: ***

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page 23 }

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He said we were negligent in not knowing that the security had no registration statement. We did know that no registration statement had been filed in respect of this particular security. That's the answer to that. That is, covering this transaction.

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Mr. Sachs: I would like to state to the Court that I understood Mr. Kelly to say that you did know there was no registration statement filed with the SEC with respect to this security when trading with Mr. Northrop was going on. Is that a correct statement, sir?

Mr. Kelly: Certainly. Now, wait just a minute.

The Court: You make your argument, Mr. Sachs.

Mr. Sachs: All right, sir. I will move for summary judgment in a few moments on that statement, on that admission.

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page 31 }

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Mr. Sachs: ***

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page 40 }

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We feel, if Your Honor please, there is no question but what this security was one which was required to be registered with the Securities and Exchange Commission, and one upon which the registration statement should have been filed in accordance with law, and for these reasons we say—in this case, you can say a willful omission of information, or in an oral communication. We can say that there was a sale of an unregistered stock and they're not an exempt dealer, and third, it's common law negligence or deceit, and for those reasons, based on the statement made by Mr. Kelly, sir, we move for summary judgment at this time and ask the Court to set it down for damages only.

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The Court: I think I have your point, Mr. Kelly. All right, gentlemen, anything further?

Overrule both motions, note your exceptions on each side.

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The Court: All right, sir. I understand you have something further, Mr. Sachs.

Mr. Sachs: Yes, sir. If I have understood

page 47 } Mr. Kelly correctly, his position today is that he was not required to register this stock and therefore he is exempt from all of that which we're claiming to be mandatory under the act; is that correct?

Mr. Kelly: I suppose it includes—what I say is certainly the broker wasn't required to register it.

Mr. Sachs: No, that's not the question. It's most material, sir, that I understand this correctly.

Mr. Kelly: I wouldn't say it's correct that there was no—

Mr. Sachs: Was the issuer required to register the stock?

The Court: Wait just one minute, gentlemen. This record has got to go down and he's got to have it right. Now, did you make any concessions? Do you care to answer that question or not?

Mr. Kelly: I would be glad to answer the question. Our position is that the stock was not registered for purpose of any sale in that we had any part in. We made no sale. There is no burden on any broker to concern him-
page 48 } self with that. Whether the stock was being sold pursuant to an unlawful distribution for which there should have been a registration statement filed by them, if that's in those pleadings, we don't know. The dealer could answer that question. The seller of the stock is in a position to know that, we are not.

The Court: As I understand your argument and what you've said during your argument, you simply say that the registration requirement which has been mentioned in the code, in both sections, both the Virginia Act and the other one, does not apply to this type of situation? Is that accurate or not?

Mr. Kelly: That is correct.

Mr. Sachs: I mean, to this defendant in this situation because he is exempt?

The Court: To this type of situation and to this defendant, therefore in this situation. Is that correct, sir?

Mr. Kelly: It is.

The Court: All right.

Mr. Sachs: That clarifies it. I just wanted to make sure I understood.

The Court: Now, gentlemen, I have ruled that
page 49 } both of your motions for summary judgment are overruled at this time, and I take it you both wish to note an exception.

Mr. Sachs: An exception should be noted, sir.

Mr. Kelly: And the defendants except to the Court in overruling the defendants' motion.

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LLEWELLYN P. YOUNG, called as an adverse witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION (Adv.)

By Mr. Sachs:

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Q. Is there a document known as the Canadian Restricted List?

A. There is.

Q. And what does that list show and for what purpose is it published and by whom?

A. It is published by the Securities and Exchange Commission, updated regularly with certain stocks being added and certain stocks being deleted from it. It is a list of companies that the Commission feels may be hav-
page 54 } ing their stocks distributed in the United States under circumstances which possibly would make registration necessary.

Q. All right, sir.

A. It is an advisory sort of knowledge to brokers.

Q. Do you know whether or not anyone in your research department looked at the Canadian Restricted List to see whether or not Interamerican Industries, Limited was being listed on the Canadian Restricted List?

A. I don't understand what you mean by being listed on any unrestricted list.

The Court: What is your answer to that?

The Witness: I said I do not understand the question, sir.

Llewellyn P. Young

By Mr. Sachs:

Q. Mr. Young, you've told us that this is a list prepared by the Securities and Exchange Commission, have you not?

A. That's correct.

Q. And this list is designed to advise the investing public that there may be certain Canadian corporations trading in the United States—

A. No, I didn't say that, sir.

page 55 } Q. Tell me what you said, sir.

A. I said it's a list of securities prepared by the SEC which the SEC believes may be being illegally distributed by certain Canadian people into the United States. It is an advisory sort of list. They can't prove it. They suspect it.

Q. What you're saying then, sir, is that Canadian stocks are being distributed in the United States without being registered?

A. I think you heard what I said.

Q. I'm putting it another way. Please don't fence with me.

A. I'm not trying to fence with you, counselor, but I don't want you to put words in my mouth.

The Court: All right. Go ahead.

A. (Continuing) This list is what I say this list is, and that is it's one prepared by the Commission indicating the names of stocks of companies which the Commission believes may be being distributed by certain persons from Canada to investors in the United States, circumstances under which registration would be required but apparently have not taken place.

By Mr. Sachs:

Q. All right, sir. When is the registration of a

page 56 } stock required for sale to the United States?

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page 58 }

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Q. All right. Thank you, sir. Just one moment, please.

Llewellyn P. Young

Now, actually, this registration certificate isn't just actually a little piece of paper that says we hereby register with the Securities and Exchange Commission—

A. You mean a registration statement.

page 59 } Q. Statement, excuse me.

A. Oh, no. Usually, depending upon the type and size of the company, it can run 50, 80, 100 pages in some cases, if you include the financial statements. It's very elaborate in detail.

Q. Actually, it contains, for instance, a location of the principal place of business for the issuer, doesn't it?

A. I mean, we could go through the contents of a registration statement and we would be here this afternoon. But it contains everything the lawyers can think to put in it.

Q. Just answer my questions, yes or no, because I'm going to go right down by the code section.

A. Well, I'll answer them all yes then if you're just reading the code.

Q. All right. Then it includes then the name and address of the directors, or the persons performing similar functions, and the chief executive; is that correct?

A. Yes.

Q. The name and address of the underwriters?

A. Yes, sir.

Q. The name and address of all persons, if any, owning of record or beneficially more than 10 per cent of the stock?

page 60 } A. Yes.

Q. It includes a statement of the general character of the business actually transacted or to be transacted by the issuer?

A. That's correct.

Q. It includes a statement of the capitalization, including the authorized and outstanding amount of capital stock, the proportion which is paid up, the number and classes of stock, par value, dividends, preferences, conversion and exchange rights?

A. That's right.

Q. It contains a statement of the securities, if any, covered by options outstanding or to be created in connection with the securities, and the names and addresses of all persons having those options?

Llewellyn P. Young

A. Certainly it contains the options. Where you have to have the name of every person I doubt.

Q. All right. And you have to set forth the amount of funded debt, that is, the long term debt, isn't that correct?

A. You have to set forth complete audited financials, which is to say, a balance sheet and profit and loss statement.

Q. As a matter of fact, you have to file a profit and loss statement three years preceding if it's a going

page 61 } concern, is that correct?

A. That's correct.

Q. And if it is an audited, certified statement or balance sheet for the corporation within 90 days of filing to reflect the balance sheet situation?

A. It must be, yes, within 90 days. The auditor's certificate should be as of the date within 90 days, that is correct.

Q. Now, they have to give the specific purposes in detail and the approximate amounts to be devoted to such purposes for which the security is offered? In other words, they have to supply in detail what they are going to do with the money that they're raising with these securities?

A. That's correct. That's very important.

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Q. Yes, sir. In essence then—I won't read any further. This statement contains detailed information about the nature of the company, the purposes of the company, how much money it has, and that's pretty current information, isn't it?

A. Well, hopefully it is current information.

Q. All right. And that's on file with the Securities and Exchange Commission where, sir?

A. Registration statements are initially filed with the SEC in Washington. Under the present practice copies of that registration statement may be sent to the regional offices or several of the regional offices, not in every case.

Q. One of which is in New York City?

A. One in New York City.

Q. That you are connected with?

A. That's correct.

Llewellyn P. Young

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Q. All right. Now, what is required for you to find out whether or not there is a registration statement filed with the SEC from your office in a brokerage house?

A. I suppose that you could call any regional office and ask them.

Q. Actually, you know that for a fact, don't you, sir?

A. Let me put it this way: it should be a
page 65 } fact. I've seen cases where the Commission has missed a step, but generally speaking that's quite correct.

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page 72 }

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Q. All right, sir. Did anybody in your office ever pick up the phone and call the Securities and Exchange Commission?

A. I don't know.

Q. All right, sir.

A. I better—

Q. To see if there was a registration statement filed?

A. I don't know that.

Q. Because that would contain a lot of raw data, wouldn't it, sir?

A. What?

Q. The registration statement, a registration statement with the Securities and Exchange Commission?

A. Well, if there had been a current registration statement and a prospectus, I'm sure that would have appeared in our files.

Q. That's just a guess on your part?

A. No. I see them all the time.

page 73 } Q. But in this case—well, let me just ask you this one question: a registration with the Securities and Exchange Commission would contain a great deal

of the raw data that would be in Standard and Poor's or any other Standard work, wouldn't it?

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The Witness: I'll answer it yes, Your Honor.

By Mr. Sachs:

Q. All right. You may explain now if you like.

A. Well, what Standard and Poor's do, and what Moody does, is to take all these registration statements and all these annual reports and compile their summaries in that material, so in most cases what most brokers do is to use Moody's and Standard and Poor's, which have gathered together all this material in compact form instead of going directly to the Commission to review the original documents.

Q. They really abstracted it in essence?

page 74 } A. It's more than abstract. They go on to some length. In New York we used to have two additional copies of every one of these things sent to New York from Washington, they had to be furnished by the issuer just for the use of one for Standard and Poor's and one for Moody's, and they have a man there all week long doing nothing but transcribing this information.

Q. All right, sir. One minute, please, and I may be finished. Now, let me ask you, sir, in a transaction like the one we have here—let me give you this hypothetical, which is actually the facts, that Mr. Northrop came in and asked his account representative in Norfolk at Francis I. duPont to purchase for his account a given number of shares with the mechanics of how that order is filled, sir? This is an Interamerican Industries, Limited. Would you tell us, sir, over-the-counter market. I would like to have your description of the transactions?

A. First of all, the account executive would write up the order on an order ticket, which is a standard form of blocks and boxes. Some of you may have seen a salesman doing that. He checks this box and writes in this figure, what-have-you. Then the account executive should take the order ticket to the teletype operator and the teletype operator should then set it up on the teletype ready to

page 75 } wire it to New York. If she is doing what she should do, after she has gotten the wire all set to go, she should compare it back to the ticket again.

Llewellyn P. Young

Q. Do you have direct wires between all your offices into New York?

A. That's right. And then the teletypist sends it on the wire to New York. Now, in this case if it were a listed security it would go directly to the floor of the Exchange in which it was listed. If it's an unlisted security it would go to our over-the-counter department in New York City. It would be received by the over-the-counter department, and at that over-the-counter department there are a number of men who are referred to in the business as traders. I don't know if the jury knows about how the over-the-counter market operates.

Q. That's what I'm trying to get into here.

A. Fine. Let me tell you what—the over-the-counter market is the term used to describe all securities that are not listed on a stock exchange, like the New York Stock Exchange or the American Stock Exchange. On an exchange you have with respect to each stock that's listed on the exchange one man, or sometimes two men, who are called specialists and who themselves are buying and selling stock or sort of referring the business and sales of stock among brokers with orders to buy or sell to cluster
page 76 } around them. It's all centered in one particular post on the exchange. Those are all listed stocks, and that probably means three thousand out of the fifty thousand stocks. Everything else is considered over-the-counter. And in the over-the-counter market, the markets are made by individual brokers or groups of brokers—I should say brokerage firms or groups of brokerage firms, and each firm, they make a market in maybe ten securities, maybe 110 securities, maybe 510 securities. duPont makes a market in some three to four hundred over-the-counter stocks, basically banks and insurance company stocks, which frequently are not listed. When I say makes a market, what I mean is this: that we as principal, we own these stocks, stand ready to buy and sell with you or with other brokers at any time. In other words, we in a sense are doing exactly what the specialist is doing on the New York Stock Exchange, with one difference though, and that is particularly in the stocks that we handle there may be 20 other firms doing exactly the same thing. The result of this is that you have a substantial number of firms each standing ready to buy and sell these particular stocks. Not the entire fifty

thousand, but a selective group that they want to trade. Now, when an order comes in from Norfolk to buy a particular stock in which we do make a market, which page 77 } is not this stock, then we can execute it either as a principal, selling directly to the customer, or if the customer wishes we can still execute it on what we call an agency basis. If, however, we do not make a market on the stock, and we did not make a market in this Interamerican Industries' stock, what we do is we go to something that is called the pink sheets—Joe, do you have a copy of the pink sheets there?

Mr. Kelly: I hand the witness a copy of the pink sheets.
The Witness: Any day will do.

A. (Continuing) Now, these pink sheets list approximately six to eight thousand securities each day. Not the same securities each day because there's considerable overlap, and against every security there is a list of the firms which are making a market in this particular security and are advertising the facts, and they put their most recent bid and ask quotations in this pink sheet. For example, the pink sheets that will appear tomorrow morning will be prepared about two o'clock this afternoon based upon two-o'clock prices this afternoon. They will hit the brokers' houses about nine o'clock in the morning. In other words, generally about 18 hours late. But in any event, if we wanted to find out where we could buy Interamerican for a customer, acting as a customer's agent, because we don't sell it our- page 78 } selves, we would turn to the pink sheets and we would see the brokers who advertise themselves in the pink sheets as standing ready to buy and sell Interamerican Industries, and then we would call each—at least three of those brokers and ask him what his market was. We wouldn't tell him whether we wanted to buy shares or sell shares because that would be tipping our hand. We say what's your market? And he may say five and a half, six, and another one may give you another figure and another one will certainly give us another figure.

By Mr. Sachs:
Q. Tell us what five and a half six is, sir?
A. That means that a broker stands ready to buy it

from you at five and a half dollars a share, or sell it to you for six dollars a share. Sometimes there is room for negotiations. So what you generally do, you take the best of the three prices and then you haggle a little bit to see whether you can't get it even better for the customer. Then you end up like executing the trade with that broker on behalf of your customer. So far so good. That's done by the trader. Now, the trader then sees to it, either directly or through a clerk, that a so-called report goes back over the wire to Norfolk. It should come back very, very promptly.

page 79 } This is sort of an internal memorandum which tells the account executive that we have bought for his customer so many shares of Interamerican at such and such a price plus commission. Then that day, or hopefully that day, or that evening, late that evening, what is called a confirmation, a little slip of paper should be mailed to the customer from New York as a rule, not from Norfolk, which tells him formally that we have this day bought for his account and risk so many shares of Interamerican, where we executed the order, whether we executed as agent or principal, and in this case it will be agent because we don't own the stock, we didn't make a market in it, what the price was, and in our case we act as agency basis, and over-the-counter stock, we charge an equivalent of a normal stock exchange commission on the transaction. And that's about it.

Q. All right, sir. Now, then, do you deliver that security to the buyer?

A. Depends very much on what the customer's instructions are.

Q. All right, sir.

A. The customer can ask us to deliver, physically deliver, the certificates to him. We put a so-called automatic T on the accounts. Some accounts the customers like to hang onto their own stock certificates. They keep them

page 80 } in their safe deposit box, in their desk drawers, but they like the feeling of hanging onto them. That's fair enough. So when they want that, what happens is this: we have just bought this Interamerican for our customer from some other broker whose name appears in the sheets. So the five business days following that transaction he should be delivering to us the hundred shares and so forth, or whatever it was, that we bought for him, and these heavy market volume days—well, sometimes it's not five days.

Llewellyn P. Young

I have seen it go 35 days and people get quite upset and we are upset, too. But in any event, the stock comes in to us and then in the normal course of events we take that stock and we send it to the transfer agent for the company asking the transfer agent to transfer that certificate out of the name into which it came into which it was when it came in to us and into our customer's name because he wants to hold the certificate.

The Court: Generally to the customer.

The Witness: Generally comes back to us, Your Honor. The physical certificate is mailed by the transfer agent back to us and we in turn deliver it to the customer.

The Court: If it's transferred directly from the seller, or dealer, to your customer—

The Witness: Yes.

page 81 } The Court: I don't mean delivery, but the name transfer on it—

The Witness: Actually, as you know, what they do, they don't scratch out a name on the certificate and issue a completely new certificate and destroy the old one.

By Mr. Sachs:

Q. Now, what is the other alternative on that?

A. A great many customers, particularly those customers who have reasonably active trading accounts as opposed to long term investment accounts, don't want to go through the trouble of having the securities transferred into their name and then when they want to sell them having them transferred out of their name again. They say will you please keep them registered for me for my account in what is known as street name. These are fully paid for certificates, registered in street name. Now, street name means the name of a member firm of the New York Stock Exchange, and in this case, instead of asking the transfer agent to transfer the shares into the name of the customer himself and sending him the certificates, we would ask him to transfer it into our street name, IE, Francis I. duPont and Company, and then when it came back we would take the certificate

page 82 } and put it in our vault, in a segregated part of our vault. These are customers' fully paid for certificates, and there they sit. Now, if this happened to be a margin account it would be a little different, but this is the cash account.

Llewellyn P. Young

Mr. Kelly: Excuse me. I want to make sure that you weren't misheard. You said "if it were a margin account"?

The Witness: If it were, which I believe this was not. The procedure would be a little different, but in a cash account that's the way it works, but in some future time the customer changes his mind and wants the physical certificate, we go down to the vault, we pull it back, we send it down to the transfer agent, say please put it in the customer's name, we'll ship it out to the customer.

By Mr. Sachs:

Q. So actually you have an internal accounting system when you hold stock in the street name that tells you how many of those shares actually in your name belong to customer A, B, C and D? That's an internal accounting matter?

page 83 } A. That's what we call bulk segregation, and that's right. You keep a record—you have all the certificates in one group of one company, and then you have a record of that group, which may be ten thousand shares of stock, five thousand belonging to Mr. Jones and thirty-five hundred to Mrs. Smith and so forth.

Q. All right.

The Court: Let's get to this particular case. Now, were the stocks in this instance held in the street name?

The Witness: I believe they were held in the street name, Your Honor, yes.

The Court: All right.

Mr. Sachs: That's all I have of this witness, sir.

Just one moment.

That's all I have.

The Court: All right. Any questions at this time, Mr. Kelly?

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CROSS EXAMINATION (Adv.)

By Mr. Kelly:

Q. Mr. Young, in regard to the questions concerning the

stocks about which you can and those about which you can't in your research department find any information, is there anything unusual about not being able to learn anything about a stock that some customer has asked you about?

Mr. Sachs: Your Honor please, I would like to object to that on two grounds. One, it's leading, and two, it calls for a conclusion of the witness.

Mr. Kelly: I don't understand the objection, Your Honor.

The Court: I'm going to permit it. Overruled.

Mr. Sachs: He says if there is anything unusual about it, and I do object to it, sir.

The Court: I take it what your question is directed to is is this a usual occurrence or is it not a usual
page 85 } occurrence that you're unable to determine.

Mr. Kelly: That's correct.

The Court: Overruled. Go ahead.

Mr. Sachs: All right. Note my exception, please, Your Honor.

The Court: All right.

A. It's an occurrence which with today's trading markets has been increasingly less unusual, if I may say. We have been flooded with orders for various stocks of unknown companies. That's been one of the complaints. I think you have heard the SEC say something about this in the paper, presidents of the stock exchanges say the same thing, and the head of the National Association of Securities Dealers. There was a time when you thought you knew most stocks that were being actively traded. That time has long passed, and we have lots of cats and dogs creeping in under the door that we never heard of before.

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page 86 }

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By Mr. Kelly:

Q. I would ask the witness whether the fact that there is no information available through a research department would suggest to an experienced and careful broker that he should not trade in it?

Llewellyn P. Young

Mr. Sachs: Your Honor please, of course that would depend on the facts and circumstances and would require a hypothetical question, I believe, and I object to it.

The Court: State it in the form of a hypothetical question, Mr. Kelly.

By Mr. Kelly:

Q. In a hypothetical case in which the members of your research department of a brokerage house have
page 87 } an inquiry about a stock which a customer wants to buy, and upon reviewing its files and all sources of information available to it finds no information about it, in such case, would a reasonably prudent broker find any grounds to consider that he should tell his customer not to trade in that stock?

Mr. Sachs: Your Honor please, I move to strike the question, and would object to any answer on the grounds that it's an incomplete statement of the facts if he purports to apply it to this case, and it would be prejudicial and without basis in fact.

The Court: No. This pertains, I think, to your question asked on direct. Overruled. Go ahead.

Mr. Sachs: This is direct here, sir. I was on cross-examination.

The Court: All right. sir.

Mr. Sachs: My exception, sir.

The Court: All right.

Mr. Sachs: May I state my exception to the question?

The Court: I think you have, Mr. Sachs.

Mr. Sachs: No. With respect to the material omissions.

page 88 } The Court: All right, sir.

Mr. Sachs: First of all, it does not state that there were repeated requests for a period of nine months, if he's attempting to relate it to this case.

The Court: Overruled. Note your exception.

Mr. Sachs: Your Honor—

The Court: Overruled. Note your exception.

Mr. Sachs: All right. My exception is noted, sir.

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By Mr. Kelly:

Q. The hopothetical situation we have just suggested, is the fact that no information was available grounds for the reasonably prudent broker to decline to trade in the security?

A. No.

Mr. Sachs: Of course, my objection continues as to the subsequent question.

The Court: Yes, sir.

The Witness: May I explain my answer, Your Honor, at this point?

The Court: You may explain your answer, yes. Go ahead.

A. (Continuing) The fact that we can't get any information about a company doesn't prove it's no good. There are lots of sound companies that just have not had enough national interest to merit the attentions of our research department, and frequently some of these companies are smaller companies and they don't put in any financial, page 90 } and for business and competitive reasons they aren't going to talk to you about it. It may be that your customer has private information of his own about the company unavailable to us and he wants to buy the stock. All we can say to him is if you think you know what you're doing, we can't recommend it to you, but you're over 21, go ahead and buy it if you want to. It's your choice.

The Court: All right, sir.

Mr. Sachs: My objection to his answer and the explanation, sir.

The Court: Yes, sir.

By Mr. Kelly:

Q. All right. Let me inquire on the subject now about the information that would be available if there were a current registration statement in effect. You will recall that Mr. Sachs asked you at considerable length about what would be in the registration statement. Now, referring to the

case in which you have for any customer conducted a succession of trades spread over some months, in the first place, would there be in any such case any way for you to know whether there was a current registration statement in effect or not?

The Court: You said any way for you to know?

Mr. Kelly: Yes, sir. Would it be any way for
page 91 } you to know?

The Court: All right.

By Mr. Kelly:

Q. If you had been executing trades in the stock for your customer, after the first trade would there be any way that you would know whether a current registration statement was in effect or not, or was on file?

A. We would surmise from the fact that no prospectus was delivered to us by the broker from whom we bought the stock for the account of our customer that this was not a registered—

Mr. Sachs: Your Honor please, I object to any surmise.

The Court: Just a moment.

A. (Continuing) —that this was not a registered offering and was just part of a trading pattern on the part of that broker from whom we bought the stock.

The Court: All right. Now, wait just one minute. Mr. Sachs?

Mr. Sachs: I object to any surmise or any answer which states a surmise or a guess or conjecture on the part of the witness.

The Court: Well, we do not want conjecture
page 92 } about the issue. If you know what this would indicate, then by all means tell us.

The Witness: Well, I would like—

The Court: If you do not know what it would indicate and must guess at it, then do not give that answer.

The Witness: Well, I would like to take away the word "surmise." In any fully registered offering, Your Honor, the seller under the SEC law is required to deliver a copy of the prospectus to the purchaser in connection with the sale. That's the purpose of the prospectus. So if no *porspec-*

tus arrived, you would assume either that the seller was violating the law, which is improbable, or that it was not a sale under a registration statement.

Mr. Sachs: Your Honor please, I ask the Court to instruct the witness to refrain from the conjecture, assuming this, it's improbable, and all those sort of things.

The Court: I think we have the answer to the question. Anything else, Mr. Kelly?

Mr. Kelly: Yes, sir.

By Mr. Kelly:

page 93 } Q. Well, now, if there was not a current registration statement in effect, would there be any hope of obtaining any useful information by getting in touch with the Securities and Exchange Commission about some possible—

A. The answer is no, to this extent: that a registration statement, as I think I testified before, relates to an offering of a particular block or group of securities by a particular person or company at a particular time, and all of the facts of the registration statement relate to that particular time and the circumstances of that particular offering. The fact that at some earlier period, five years ago, the company at one previous time or another officer of the company had had a registration statement filed covering his then offering has nothing to do with what is happening right now. The company may have rolled up hill or down hill in five years.

Q. Well, are there, among these fifty thousand, or whatever the correct number is—no one actually knows the number of securities being traded in the market today, but I believe we both used the question of possibly fifty thousand or more. Now, among those is there a registration statement filed with respect to those distributions of some part of its shares for every one of those stocks?

page 94 } A. No. The answer is no.

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page 97 }

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By Mr. Kelly:

Q. Mr. Young, within your experience has it ever been

the practice of the research department of Francis I. duPont in seeking information concerning any security to seek that information if they could not find it in their own library and their own files from the Securities Exchange Commission?

A. Rarely, if ever.

The Court: What was that answer?

The Witness: Rarely, if ever, Your Honor.

Mr. Sachs: Your Honor please, I object to the question and the answer because of its leading nature, sir.

The Court: Overruled.

page 98 } Mr. Sachs: My exception, sir.

By Mr. Kelly:

Q. Can you explain why they would not do that?

Mr. Sachs: Excuse me. I did not hear your question.

By Mr. Kelly:

Q. Can you explain why your research department would not, as counsel has asked you about, why they would not resort to the—

Mr. Sachs: Now, I object to that. That would strictly call for a hearsay conclusion on the part of this witness who is not a member of the research department, and he would have to be relying on a guess, really.

The Court: Let me ask you, sir, if in your capacity with the Francis I. duPont Company you would be able to answer this question? Do you have the information sufficient to answer this question of your own knowledge, or would you be relying upon what somebody else told you?

The Witness: I believe I can answer that question of my own knowledge, Your Honor. While I'm not a

page 99 } member of the research department, I do work very closely with it. I also happen to run the office of the SEC where brokers could if they wanted to come in and look at files.

The Court: All right. I'll permit it.

Mr. Sachs: My exception, sir.

A. Brokers rely upon the compendiums, the condensations,

the summaries prepared with respect to all of these SEC filings by Standard and Poor's and Moody's. In my experience, neither we as a brokerage firm or any other brokerage firm except on the various occasions will call the SEC for information because then if the SEC has it it's already in Moody's or in Standard and Poor's.

By Mr. Kelly:

Q. Well, suppose you happen to know or learn by any means that a security being traded openly on the market had never had a registration statement filed in respect of it. Would that indicate to you any reason why you should not trade in it?

Mr. Sachs: If Your Honor please, that's a leading question once again, sir. This is Mr. Kelly's witness now. It's the defendant and I object to his leading his client.

page 100 } Mr. Kelly: I do not intend to be leading, I can assure Your Honor of that. I would like to ask whether the witness can say what indication—what that would indicate to him, if anything, in respect—

The Court: Well, now, what we have to get, you see, for the record, is a definite question and a definite answer. Suppose you ask the definite question and then let Mr. Sachs object. All right.

By Mr. Kelly:

Q. Mr. Young, if you were seeking as a broker information about a stock and happen to know from any source that there had never been a registration statement filed in respect of that stock—

The Court: Now, let me interrupt you, Mr. Kelly. Are you speaking of a registration in the sense that we were discussing, that this witness was discussing when Mr. Sachs objected? Where registration is required under his understanding of the law? Is that what you were asking? Is that what you are inquiring about?

Mr. Kelly: I'm referring to registration under Section 5 of the Securities Act of 1933.

page 101 } The Court: Where the witness had testified the three instances where the registration was required?

Mr. Kelly: That is it.
The Court: All right, sir. Go ahead.

By Mr. Kelly:
Q. And if you were aware that this security which is being traded openly in the market on the stock exchange or in the over-the-counter department, that about that security there had never been a registration statement, what significance, if any, would that have to your mind as an experienced broker?

Mr. Sachs: Now, again, objection as to the leading question, if Your Honor please.
The Court: Overruled.
Mr. Sachs: My exception, sir.

A. That in my judgment would not be at all remarkable. There are thousands of such securities. I think we have to remember that the major stock exchanges were founded long before the SEC came into existence. As to the companies then on those exchanges with outstanding securities, there was no need to file the type of registration statement that you describe. Since that time a great many companies have come onto the market and sold their securities openly—

The Court: You mean since the time of the
page 102 } Security Exchange law?
The Witness: 1934, Your Honor.
The Court: Yes, uh-huh.

A. (Continuing) The securities come out in any one of a number of ways. Each of the regional offices of the Commissions process some things which are called regulations, which are small public offerings of three hundred thousand dollars or less. At one time there were hundreds of those a year coming out. None of those securities was registered. None was subject to registration. There are special exceptions or control people who can sell during any one month—any six-month period up to one per cent of the issues in outstanding stock in their company, even though it is controlled stock. If they wanted to sell much more than that they would have to file, so they sell up to that amount. There are private placements in substantial amounts where the people who buy

the stock in private placements, so-called non public offering, they've satisfied their investment content. They're not control people of the company. They're free to sell without going through a registration statement. An example we see more and more these days—

Mr. Sachs: Your Honor please, I would ask—

The Court: I think you answered the ques-
page 103 } tion. Go ahead.

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By Mr. Kelly:

Q. Since we have been talking about stocks generally which are being traded, is Interamerican being traded on the market?

A. Yes, it is.

Mr. Sachs: Your Honor please, I object to that question as to whether or not it's a lawful trade.

A. (Continuing) And it's being traded lawfully right now.

Mr. Sachs: That's your opinion, sir.

The Witness: It certainly is.

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page 104 }

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Q. You made reference in your testimony this morning to the pink sheets. Can you tell the Court and jury who subscribes to the pink sheets?

A. Almost all broker dealers who are members of the National Association of Securities Dealers, which is a combination trade association and regulatory body. The sheets themselves are put out by the National Quota-
page 105 } tion Service, which I think is now a subsidiary of Commerce Clearing House, but all broker dealers who are engaged in that kind of over-the-counter purchases or sales in behalf of their customers have to sub-

scribe to the pink sheets in order to find out who is making a market in what.

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page 107 }

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Q. Is it public information or private information when a broker offers through the pink sheets—

A. It's clearly public information. These sheets, our number of subscribers are somewhere between five and ten thousand, and they go to banks and brokerage houses.

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page 110 }

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By Mr. Kelly:

page 111 } Q. Yes, sir. Have brokers been offering to buy and sell Interamerican through the pink sheets daily since February of 1967?

A. Except for the period of the Commission's suspension of trading. I forget the exact date of that, but except for that period when trading was suspended briefly by the Commission, the answer is yes.

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page 113 }

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Q. All right, sir. You say there are some companies listed and unlisted which never filed a registration statement as required by the Securities Act of '33?

A. Uh-huh.

Q. All right, sir. Some of those went on the market before the Act was passed in 1933?

A. That's correct.

Llewellyn P. Young

Q. And since then there are some other small exceptions?
A. I wouldn't necessarily call them small. I would suspect that most of the stock now being traded in the
page 114 } United States was never originally the subject of a registration statement.
Q. Correct me if I'm wrong. You said it was small.
A. Well, I said another word for registration filing is a small issue filing, three hundred thousand dollars and more, but I didn't say the aggregate number was small.

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page 116 }

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Q. Now, my question, sir, is did your research—my question specifically is you don't know whether or not your research people determined or made any effort to determine whether or not the securities or shares of Interamerican Industries, Limited was a security which fit the qualifications or terms of conditions of any of the exceptions you can imagine or know of, do you?
A. I'm quite—
Q. Yes or no, sir.

The Court: That is if you can answer yes or no, and then explain.

A. (Continuing) Yes. Now, the answer is I'm sure they did not, and I'm sure no other research department could do it either.

By Mr. Sachs:
Q. Wait a minute. That's all.

Mr. Kelly: Let him explain it.
The Court: He may explain.

A. This is not an area which is of concern to any research department. Once securities have reached the
page 117 } hand of public investors, you and me and the ladies and gentlemen of the jury, it's free stock in our hand, it's freely traded.

Phillip Clark

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page 119 }

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PHILLIP CLARK, called as an adverse witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION (Adv.)

By Mr. Sachs:

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page 123 }

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Q. All right, sir. Now, did you make any inquiry into the nature of the corporation?

A. We did at some time during these transactions, yes.

Q. I meant you personally, sir.

A. I don't recall whether I did personally or one of the men did at my request.

Q. All right.

A. We were asked several times by clients to try to find out some information on the company, which we tried to do.

Q. And Mr. Northrop wasn't the only man trading in this security, was he?

A. No, there were other people.

Q. How many would you estimate?

A. It's difficult to estimate. Approximately 20, somewhere in that area.

page 124 } Q. Trading with your office in the security?

A. Yes.

Q. Now, is it your recollection, sir, that this trading started in August of '66?

A. Yes, I believe that's the date.

Q. Now, did you personally, or did you have someone in your office make inquiry of your research department in New York to determine what they could find out about this stock?

Phillip Clark

A. We made inquiry from our office, yes, at the request of some of our customers.

Q. And you found nothing the first time?

A. That's correct.

Q. Well, did the research report back to you?

A. Indicated they could find no information.

Q. Now, did your customers again ask for information at a later date?

A. Oh, yes, repeatedly.

Q. Repeatedly over a period of months then your customers did ask for information concerning this corporation?

A. Well, weeks or months, yes, sir.

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page 125 }

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Q. Now, when nothing could be learned from your securities' research department in New York, did you give your account executives any specific instructions on how to handle or treat Interamerican Industries?

A. I don't recall any specific meeting that we had on it. We definitely were not interested in encouraging
page 126 } anyone to purchase stock in this company that we couldn't find out anything about. Our library contained no information, and our local library didn't either, and our research department could find none, so we had no interest in it.

Q. All right, sir. Now, do you recall talking to one man in particular and asking him "Why are you dealing in this junk?"

A. Yes, I do as a matter of fact.

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page 127 }

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Q. Well, actually, didn't he tell you that the stock had good potential because they were dealing in researching a birth control pill?

Phillip Clark

A. No, I don't think so. I don't recall that.

Q. All right. I don't mean to contradict you, sir, but I'll ask you to look here. Do you remember giving a deposition on February 13, 1968?

page 128 } A. Yes, sir.

Q. I know your memory can fail you on that. Starting at Line 8, sir, I'll ask you to read that and ask you if you can refresh your recollection.

A. Line 8 over in the left border?

Q. Yes.

A. "There is one man in particular, I recall his order because I said 'Why are you dealing in this junk,' and he says, 'I hear that the stock has good potential because of the possible use of a birth control pill'."

Q. And then your answer was?

A. "It's your money, shoot."

Q. All right. Now, what steps do you take, or what steps are taught to you, both as an account executive and as a manager, when you reach that position—what steps are taught to you for the protection of your investors when you find that they're dealing with this type of security like Interamerican Industries, Limited, which you say you couldn't find any information on?

A. Well, in many cases—in all cases, we will discourage its purchase. In many cases we could very well refuse to take an order, depending on the client. If the client was the type that would deal in this type of junk, then we probably would try to serve him.

page 129 } The Court: Was the purchase of this stock discouraged or encouraged, this particular stock?

The Witness: In many cases, sir, it was discouraged, and in no case to my knowledge was it ever encouraged because we didn't really know anything about it and we just couldn't encourage the purchase of something we didn't know anything about.

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page 130 } The Court: May I interrupt you one moment, Mr. Sachs. Was there ever any solicitation to sell, that is, solicitation of the E. I. duPont's clients to purchase this particular stock?

Mr. Sachs: If Your Honor please, we are—

A. No, sir.

Mr. Sachs: Excuse me. If I may interject, we are going to take the position that this may be a legal question, and so I don't know if it's competent for the witness to answer.

The Court: Well, I'm going to permit the question.

Mr. Sachs: I know I'm in trouble. Note my exception, sir.

The Court: All right, sir.

The Witness: No, sir, we didn't solicit or encourage anyone to buy the stock.

The Court: All right.

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page 131 }

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Q. All right, sir. Now, you make commissions on each purchase, don't you, that Mr. Northrop makes through your office?

A. Yes, we would charge a commission on each page 132 } purchase and on each sale, yes.

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page 134 }

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Q. All right, sir. Now, if this security were unregistered, sir, based on your training with the company would you have sold it to a customer of yours if you knew it to be unregistered?

A. What do you mean by unregistered, sir?

Q. Well, not registered in accordance with the requirements of the Securities Act of 1933 under Section 5 of that Act. Is that more specific, sir? A registration certificate required on the issuance of a public offering of stock in Interstate Commerce?

A. To my knowledge there was no public offering at this

time on the stock. There was no registration statement required on these sales to my knowledge. Is that what you meant, sir?

Q. Well, if that's your answer today, I'm going to ask you once again, sir, if you recall testifying on February 13, 1968, at the offices of Howell, Anninos and Daugherty?

A. Yes, sir.

page 135 } Q. And I will ask you, sir, whether or not you made this statement at that time? This was on Page 46, Mr. Kelly, at Line 17.

"Question: Have you been told not to make purchases in securities which are unregistered?"

This is by Mr. Mastracco.

"Answer: You are talking about now from the duPont Company?

"Question: From the duPont Company.

"Answer: From my training?

"Question: Yes, sir.

"Answer: Not to make purchases of the stock that is unregistered?

"Question: Uh-huh.

"Answer: If we have knowledge of that fact then we would not make purchases in it." Did you make that statement, sir?

A. Yes, sir.

Q. Was there any confusion in your mind then about what was meant by registration?

A. Absolutely. This followed about three hours or something of questions and answers, at which time we talked about registration and unregistered, and registered, and there was a great deal of confusion about that question. I think you will find it in there, sir.

page 136 } The Court: Well, you may explain your answer if you have any explanation for it, or if you do not.

A. (Continuing) If a registration statement was necessary on a particular sale I would know about it, and then I would be concerned about registration.

C. Jordan Ball, Jr.

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Q. Let me ask you whether or not it is a fact, sir, that at the taking of this deposition over continued objections by your attorney, Mr. Kelly, you were asked time and time again whether or not you knew it was unlawful to sell unregistered stock? Isn't that correct?

A. There was a lot of discussion on it, sir, yes, sir.

Q. About the sale of unregistered stock because it was unlawful. Those questions were objected to; is that correct?

A. There was legal, lawful and a lot of other words.

Q. Right. And then ultimately this question was asked to you on Page 47: "Have you ever been told not to make purchases in securities which are unregistered?" And you said, "You mean according to my training with duPont?"

page 137 } "Question: Uh-huh.

And you said, "If we have knowledge of that fact we would not make purchases in it."

Did you not make that statement?

A. Yes, sir, and I wouldn't make purchases in it.

Q. All right. Thank you, Mr. Clark.

A. Yes, sir.

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page 139 } C. JORDAN BALL, JR., called as an adverse witness, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION (Adv.)

By Mr. Sachs:

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page 145 }

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Q. Did you ever ask your research department for information on Interamerican?

A. Yes, sir.

Q. And did they ever furnish you with any information?
A. We never received anything from our research department concerning Interamerican.
Q. And did you tell Mr. Northrop that you never received anything?
A. Yes, sir.

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LEWIS J. NORTHROP, the plaintiff, called as a witness on his own behalf, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Sachs:
Q. You're going to have to speak up, sir, and slowly and distinctly because the speakers aren't on yet.
Tell us your name, please, sir?
A. My name is Lewis J. Northrop. I'm generally known, however, as Lew.
Q. All right. And your age, sir?
A. 77.
Q. And where are you employed?
A. I'm retired.
Q. From what business?
A. I'm retired from the sporting good business.

page 149 }

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Q. When did you first become interested in the stock market, sir?
A. After I had retired and I talked to my banker and he suggested that perhaps I might be interested in securities and trading and so on, so I went down to visit Mr. Clark at his suggestion.
Q. At the banker's—

Lewis J. Northrop

A. At the banker's suggestion, Mr. Paul Brickey.

Q. And when was that?

A. In 1966 I believe.

Q. When, sir?

A. No, pardon me. Around 1962 perhaps.

page 150 } Q. All right. Now, had you ever traded in the stock market before then?

A. No.

Q. Now, since that time have you had your account with Francis I. duPont?

A. Basically, yes.

Q. Now, who did you begin trading with at Francis I. duPont when you began trading with duPont?

A. Mr. Phil Clark.

Q. And how long did you trade with him?

A. Not too long. And then he referred me—he said, I have a new man with us, Mr. Jordan Ball, and I would like to turn your account over to him, which I said would certainly be satisfactory. I knew Mr. Ball, knew him as a kid, a golfer. I knew he was a fine boy, so I said that would be perfectly all right with me.

Q. All right. Now, did you then begin to trade with Jordan Ball?

A. Yes.

Q. Did you ask and receive information and advice from Mr. Ball on securities purchases?

A. Yes, I depended on him entirely because I'm an amateur in the field, and naturally I went to an expert who is a professional and trusted him, trusted his organiza-

page 151 } tion for the information I would need in trading with my money.

Q. What affect did duPont's research department have on your keeping your account with them?

A. Well, I really knew very little about—in fact, I've heard more today about the stock market than I ever knew really. I didn't know what the function of the research department was.

Q. All right, sir. Then I take it you were dealing primarily with Mr. Ball?

A. Dealing with him, definitely.

Q. Whatever his sources were, you were counting on him?

A. Definitely.

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Lewis J. Northrop

Q. I meant what was the nature of your investment objective?

A. Well, actually, because of my age, it certainly wasn't any sense for me to buy stock for the next 10 or

page 152 } 20 years, so I figured if I could make money in the market by trading I would and which I did in many cases.

Q. All right, sir. Now, did you ever give Mr. Ball a sum of money to be used at his discretion for trading commodities?

A. Yes, I did, and I knew nothing about commodities. Jordan said, Mr. Northrop, why don't you try dealing with commodities, sometimes you can make a lot of money. I said, Jordan, I know nothing about it, go ahead, take four thousand dollars and trade. He started trading in potatoes—

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page 154 }

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Q. All right. Now, did you ever give Mr. Ball a sum of money to buy and sell stocks at his discretion?

A. Yes, I did.

Q. When was that, sir?

A. Ten thousand dollars.

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page 155 }

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Q. All right. Now, did you require Mr. Ball to call and ask your permission and authority to buy or sell any security?

A. No. I told Jordan to go ahead and buy what he wanted and sell it, and that was it.

Q. Did you at the same time continue to trade for your own account?

A. Yes.

Q. Did there come a time, sir, when you went to Mr. Ball to buy a stock known as Interamerican Industries, Limited?

Lewis J. Northrop

A. No, I didn't go to him. I called him over the telephone.
Q. Now, did you call him for that?
A. Yes, I called him.
page 156 } Q. And did you ask to purchase a lot of it?
A. Yes.

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page 159 }

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The Witness: The buy date is 8-10. The trade date—pardon me. This is hard to read. But anyway, the trade date was actually 8-10-66, and then there's another date which you have to pay for it, which is the 16th. I bought five hundred Interamerican Industries at two and five-eighths, I paid thirteen hundred twenty dollars fifty cents, commission was forty-one twenty-five.

By Mr. Sachs:
Q. Was that your first purchase?
A. Yes.

The Court: That's the first purchase of this particular stock, or the first purchase of any stock through this broker?
The Witness: This particular stock.
The Court: All right.
page 160 } The Witness: Yes, sir.

By Mr. Sachs:
Q. With duPont?
A. Yes, sir.
Q. All right. Now, thereafter, sir, did you continue to buy and sell this security?
A. Yes, I did.
Q. Did you ask Mr. Ball at any time, sir, to find out what he could for you about the nature of the corporation?
A. Yes, I did.
Q. Did you ask him on one or more occasions?
A. Many occasions.
Q. Was he ever able to report anything to you, sir?
A. No, He never could say, he never told me to buy or to

sell, in that sense that he never could tell me what to do, but he certainly knew how the stock was moving because I was buying and selling it. I was on the market several times and went back in. I never was told not to go back in.

Q. All right, sir.

A. I depended on Mr. Ball and his organization fully.

page 161 }

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By Mr. Sachs:

Q. Were you ever told, sir, during the time that you were buying and selling the stock that the stock was not one which had been registered with the Securities Exchange Commission?

A. I don't quite understand that either.

Q. All right.

A. I know I wouldn't have bought it if it hadn't been registered.

Q. Were you ever told it wasn't registered?

A. No, sir.

Q. Would you have bought it if you had known?

A. No, sir. That would be the dog the man was talking about.

page 162 } Q. That would be the dog. Now, at the end of the trading how many—when the stock was suspended by the Securities and Exchange Commission, how many shares of stock were you left holding?

A. Seven hundred.

Q. And do you know what the cost to you of those seven hundred shares of stock was, sir?

A. Well, it's over ten thousand dollars.

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Q. Now, I hand you, sir, what has just been identified and admitted into evidence as Plaintiff's Exhibit 4, and ask you whether or not in that form you can tell us the number of

shares which you purchased and the price at which you purchased them which were remaining in your possession on the day trading was suspended in the stock by the SEC?

A. There were seven hundred shares remaining, three hundred at twelve and a half, two hundred at seven and a half, one hundred at eighteen, one hundred at

page 164 } eighteen and a half. That's it.

Q. That totals how many, sir? That's seven hundred shares?

A. Seven hundred shares.

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Q. Do you know how many buys you made or how many sells? You can count them up from that resume if you like.

A. I can tell fairly well. I did make a misstatement when I was examined—I did get confused in the number of trades and buys. Actually I bought forty-nine hundred shares and sold forty-two hundred shares, and I think I traded—I bought twenty-two times and sold thirteen times.

Q. So you bought twenty-two times and sold thirteen times?

A. Yes.

Q. All right, sir.

A. That was over a period of eight months.

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CROSS EXAMINATION

By Mr. Kelly:

Q. Mr. Northrop, I understood you to say that you wouldn't have bought Interamerican Industries if you had thought it was unregistered?

A. Sir, no, I would not have. Now, wait a minute. I would say this: I would not have bought it had I known it was an illegal stock being brought in from Canada, we'll say that. I don't know what registration means. Until today. I found out.

Lewis J. Northrop

Q. If you had known that it was an illegal stock, what do you mean by that, sir?

A. Well, it was a bootleg stock. It was proved later it was. I certainly wouldn't have touched it. I wouldn't have bought it, I wouldn't have been interested in it certainly.

Q. You do not know that now, do you?

A. Oh, yes.

Q. How do you know that?

A. Well, because the FCC stopped trading in the stock and it was more or less proven that it was brought in here through illegal channels.

Q. Well, they started again, did they not, after an investigation?

page 167 } A. Oh, that's a very fine time to do it, of course, but I wouldn't know the legal phases of that or why it was done.

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Q. I haven't made any suggestion that anything is wrong with what you've done at all. I'm not trying to suggest that. I want to inquire though if it would be fair to say that you have bought as many as thirty or forty different stocks?

A. Yes.

Q. Is that fair enough?

A. Oh, I've bought more than that.

Q. Now, with how many of them did you receive a prospectus?

A. I didn't bother with that. That's their business to look after that. I don't know what a prospectus is, until today. They tell you what you have to do.

Q. Well, be that as it may. Did you ever yourself, sir, receive a prospectus in respect of any one of those stocks?

A. I can't say that I did. If I did—beg your pardon.

Q. Since you have testified that you had the idea yourself that there was something illegal about this, would you suggest that every stock you ever bought was an

page 173 } illegal sale?

A. Oh, I wouldn't say so. They wouldn't be in

business if it were true. duPont wouldn't be in business if that were true.

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The Court: All right, gentlemen. Have you anything further? I'm prepared to rule on this. I'm going to sustain the motion. I do not feel that the particular transactions made out by this evidence come within the statutes, either federal or state. There has been no proof here of misrepresentation under the appropriate provision of the Act. I believe the provision is 77k. Moreover, it appears that the transaction here is exempt, both in Virginia 1514, and under the Federal Code, 77d, so insofar as the statutory and the page 204 } fraudulent, or misrepresentation aspects of the case are concerned, the case does not come within the statute under the evidence here. Insofar as the issue of negligence is concerned, the Court need only say that in this, and in all cases, negligence is not presumed, nor may it be based upon speculation, but must be proven, and there is no proof of negligence in this case on the part of the plaintiff. The plaintiff in the case has stated in his testimony that the defendant could give him no information and was unable to advise him about this. I think he put it in the words, "They could not tell me what to do with this stock." I think it's perfectly clear that this was an over-the-counter proposition in which Mr. Northrop, perhaps unfortunately, but nevertheless in fact was dealing in a highly speculative stock, and he was not encouraged, nor was the sale of this stock solicited by the defendant, and the motion will be sustained, summary judgment will be entered for the defendant, and when the jury comes in tomorrow I will release them.

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A Copy—Teste:

Howard G. Turner, Clerk.

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