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IN THE

Supreme Court of Virginia

AT RICHMOND

Record No. 791126

LIBERTY MUTUAL INSURANCE COMPANY,

Appellant,

-vs-

SAFECO INSURANCE COMPANY OF AMERICA,

Appellee.

APPENDIX

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TABLE OF CONTENTS

	PAGE
Bill of Complaint (Filed February 14, 1978)	1
Testimony of Earl T. Sines (January 29, 1979 Transcript, pp. 12 et seq.)	3
Testimony of John Franklin Johnson (January 29, 1979 Transcript, pp. 28 et seq.)	19
Testimony of James B. Naylor (January 29, 1979 Transcript, pp. 70 et seq.)	61
Testimony of James Gorney (January 29, 1979 Transcript, pp. 126 et seq.)	117
Statement of Trial Court Preceding Evidentiary Hearing (April 17, 1979 Transcript, p. 3)	126
Testimony of David B. Evans (April 17, 1979 Transcript, pp. 10 et seq.)	127
Testimony of Blake Rose (April 17, 1979 Transcript, pp. 33 et seq.)	150
Ruling of the Trial Court (April 17, 1979 Transcript, p. 50)	155
Final Decree (Filed May 4, 1979)	156
Assignments of Error	158

BILL OF COMPLAINT FOR DECLARATORY JUDGMENT

[Filed 2/14/78] COMES NOW the Complainant and represents to this Court as follows:

1. On or about January 27, 1977 a collision occurred in Fairfax County, Virginia between a vehicle operated by Joe R. Blakeney and a vehicle operated by James W. Hilton in which Charlene Hilton and William Hilton were riding as passengers.

2. James W. Hilton, Charlene Hilton and William Hilton claim injuries and damages as a result of the collision aforesaid, and each has filed suit in Fairfax County Circuit Court against Joe R. Blakeney.

3. At the time of the collision Safeco Insurance Company of America (hereinafter Safeco) had issued to Joe R. Blakeney a policy of automobile liability insurance, Policy No. 8A499823.

4. At the time of the collision Liberty Mutual Insurance Company had issued to James W. Hilton a policy of automobile liability insurance which provides uninsured motorist coverage to James W. Hilton, Charlene Hilton and William Hilton in the event Joe R. Blakeney is uninsured.

5. Joe R. Blakeney has breached the conditions of the Safeco insurance contract in that he failed to notify Safeco of the occurrence of this accident, failed to notify Safeco of the filing of suit against him, and has failed to cooperate with Safeco in preparing a defense to the three suits filed against him, to the prejudice of Safeco.

6. Due to his breach of policy conditions as aforesaid, Safeco has denied and is entitled to deny liability insurance coverage to Joe R. Blakeney for claims arising out of the accident aforesaid, and Joe R. Blakeney is an uninsured motorist under Virginia law.

7. An actual controvery exists between the parties hereto as to the rights and liabilities of the insurance companies to defend and pay any judgment entered against Joe R. Blakeney and the personal liability of Joe R. Blakeney for claims arising out of the aforesaid automobile collision.

WHEREFORE, Safeco prays the Court to enter a decree declaring that Joe R. Blakeney is an uninsured motorist under Virginia law, and that Safeco is not responsible to provide a defense to Joe R. Blakeney nor to respond to any claim or judgment that may be made or entered against Joe R. Blakeney arising out of the automobile collision on the 27th day of January, 1977, and for such other and further relief as to the Court shall seem just.

SAFECO INSURANCE COMPANY OF AMERICA

By J. Howe Brown
Counsel

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Fairfax, Virginia 22030

By J. Howe Brown
J. Howe Brown
Counsel for Complainant

4 EARL T. SINES

5 a witness, was called for examination by counsel for Safeco,
6 and, after having been duly sworn, was examined and testified
7 as follows:

8 EXAMINATION ON BEHALF OF SAFECO:

9 BY MR. BROWN:

10 Q. Would you state your name, please?

11 A. Investigator Earl T. Sines.

12 Q. And by whom are you employed?

13 A. Fairfax County police department.

14 Q. What was your job on January 27, 1977?

15 A. Working the patrol division as a uniformed
16 officer.

17 Q. Did you have an occasion to investigate an
18 accident on Loisdale Road in Fairfax County?

19 A. Yes, I did.

20 Q. The morning of that day?

21 A. That is correct.

22 Q. Will you tell us what vehicles you found, what
23 you found there when you got to the scene?

1 A. From what I recall it was a trash truck
2 involved and a passenger vehicle.
3 Q. Did you ascertain the owner, operator -- Let
4 me ask you this. Did you ascertain the owner of the trash
5 truck?
6 A. I don't recall who the owner was. I'm sure I
7 did to fill out the report.
8 Q. Do you have a copy of your report?
9 A. No, I don't.
10 Q. I hand you a document and ask you if you can
11 identify it.
12 A. It's the FR300 that I filled out as a result
13 of the accident.
14 Q. All right. Now, would it refresh your recol-
15 lection to refer to that document with regard to the ascer-
16 tainment of the name of the owner of the trash truck?
17 A. Right, the owner was a Joe R. Blakeney.
18 Q. How do you spell his name?
19 A. B-l-a-k-e-n-e-y (spelling).
20 Q. Did you find Mr. Blakeney at the scene of the
21 accident?
22 A. Yes, I did.
23 Q. Did you talk to him, to Mr. Blakeney?

1 A. Yes, I did.

2 Q. Did Mr. Blakeney indicate whether or not he

3 had been in the vicinity of the accident at the time the

4 accident occurred?

5 A. I don't recall.

6 Q. Did you ask Mr. Blakeney for your form pur-

7 poses the name of his insurance company?

8 A. Yes, I did.

9 Q. And what insurance company name did he give

10 you?

11 A. According to the form here, Dairyland.

12 Q. Is that what he told you?

13 A. Yes, sir.

14 Q. Did you talk to Mr. Blakeney or was he

15 present when any activity concerning any injuries to any

16 persons in the accident was taking place?

17 A. Yes, sir.

18 Q. Can you tell us what you recall about that?

19 A. Upon interviewing him and in reference to the

20 accident finding out why the truck was parked in the manner

21 it was parked and concluding the investigation advising him

22 of what his responsibilities were as far as the State of

23 Virginia.

1 Q. What did you ascertain concerning the position
2 of the trash truck, whether it was moving or stopped at the
3 time of the accident if anything?
4 A. The trash truck was stopped. It was pulled
5 into the entrance area of the Loisdale landfill. The gates
6 at that time were locked which would prevent him from
7 pulling all the way off the highway into the entrance area,
8 thus leaving a partial amount of the trash truck extended out
9 into the highway.
10 Q. Did you ascertain whether or not there were
11 any injuries in the accident?
12 A. Yes, I did.
13 Q. Was anyone injured?
14 A. Yes, there were.
15 Q. Do you know who the injured parties were?
16 A. The --
17 Q. Did you get their names?
18 A. Right. It was James W. Hilton and Charlene
19 Hilton.
20 Q. What discussion did you have with Mr. Blakeney
21 with regard to what you referred to as his responsibilities
22 with the State of Virginia?
23 A. As far as that conversation went I advised him

1 that he would have to file with the State of Virginia within
2 ten working days from the date of the accident in regards
3 to the accident due to the involved, the case of the extent
4 of injury and also the property damage involved.
5 Q. Did you make him aware that there were injured
6 parties?
7 A. I don't recall whether I stated it to him
8 directly. I treated both persons on the scene. They had
9 severe head lacerations. I don't see how he could miss it.
10 MR. ELLIS: Objection, Your Honor. Move to
11 strike.
12 THE COURT: Sustained.
13 BY MR. BROWN:
14 Q. Was Mr. Blakeney there when you treated the
15 individuals yourself?
16 A. Yes, he was.
17 Q. Did you charge Mr. Blakeney with a traffic
18 offense?
19 A. Yes, I did.
20 Q. What offense?
21 A. I don't recall. Stopping on the highway.
22 Q. And subsequently did that case come up to be
23 heard in traffic court?

1 A. Yes, it did.

2 Q. Were you present?

3 A. Yes, I was.

4 Q. Was Mr. Blakeney present?

5 A. No, he wasn't.

6 Q. Did you make Mr. Blakeney aware of the date of

7 his traffic hearing?

8 A. Yes, sir, he was issued a summons.

9 Q. And how did the summons make him aware of the

10 date of the traffic hearing?

11 A. He signed for the summons.

12 Q. And was the date of the hearing on the summons?

13 A. That is correct.

14 MR. BROWN: I have no other questions, Your

15 Honor.

16 THE COURT: Cross examine.

17 EXAMINATION ON BEHALF OF LIBERTY MUTUAL:

18 BY MR. ELLIS:

19 Q. Based on your investigation, Officer, did you

20 determine whether or not Mr. Blakeney was actually at the

21 truck at the time the collision occurred with the Hilton

22 vehicle?

23 A. I don't recall.

1 Q. Did he indicate that he had stopped the truck
2 and had left the scene and then came back?
3 A. I don't recall that either. He advised me that
4 he had parked the truck there.
5 Q. Did he park the truck as far as he could over
6 to his right?
7 A. No, sir.
8 Q. How far was he?
9 A. As far as extending into the road?
10 Q. Yes.
11 A. I would -- If I remember right approximately
12 three feet.
13 Q. I understand that you indicated there was some
14 kind of gate closed or something which would prevent him
15 from moving off?
16 A. That is correct.
17 Q. How close was he to the gate or --
18 A. He was up against the gate.
19 Q. So he couldn't go any further to his right?
20 A. Not on the angle he was at, no.
21 Q. Did you determine whether there were any
22 witnesses to the accident other than the parties involved?
23 A. Not that I recall.

1 THE COURT: No witnesses or you don't recall
2 making any determination?
3 THE WITNESS: I don't recall, Your Honor,
4 whether there were any witnesses involved. I remember I
5 didn't take any statements from anyone. As far as anyone
6 standing around I don't recall.
7 BY MR. ELLIS:
8 Q. Your report would indicate whether or not you
9 determined if witnesses, independent witnesses had seen the
10 accident, would it not?
11 A. It should, yes, sir.
12 Q. And where is your report?
13 A. This is the only copy I have as far as -- This
14 is a copy given to me by the attorney.
15 Q. You don't have your rough notes?
16 A. No, sir.
17 Q. Based on your recollection do you recall any
18 names of witnesses being given to you?
19 A. No, sir.
20 Q. Have you ever been requested by an insurance
21 agent or investigator to determine from you if there were
22 witnesses other than the parties at the scene?
23 A. No, sir.

1 Q. Did you notice if Mr. Blakeney had any card
2 indicating Dairyland or some identification --
3 A. Evidentally he didn't because I didn't secure
4 the insurance number.
5 Q. About how long were the Hiltons at the scene
6 of the accident before they departed?
7 A. I would say a rough guess would be ten minutes
8 before rescue arrived.
9 Q. You were there how long?
10 A. The entire time?
11 Q. Well, before the Hiltons left.
12 A. Approximately ten minutes. If I remember
13 correctly I was the first unit on the scene.
14 Q. Did you talk to the Hiltons and to Blakeney
15 separately or did you have them all in one car?
16 A. No, I talked -- They went -- The Hiltons went
17 to the hospital. I didn't -- Due to the fact of their
18 injuries, the severe head lacerations, I waited until I
19 got to the hospital to talk to them.
20 Q. Do you know if in fact Blakeney was present
21 at the time the Hiltons left to go to the hospital?
22 A. That I don't know for a fact.
23 Q. As a matter of fact, you really don't know,

1 sir, do you whether or not Blakeney was there at any time
2 that the Hiltons were there?
3 A. No, I don't. I was taking care of them.
4 MR. ELLIS: I have nothing further, Your
5 Honor.
6 THE COURT: Redirect.
7 MR. BROWN: Mr. Gild may have --
8 THE COURT: Do you have any questions?
9 MR. GILD: Yes, Your Honor.
10 EXAMINATION ON BEHALF OF HILTONS AND BLAKENEY:
11 BY MR. GILD:
12 Q. Officer, do you know how long after the acci-
13 dent occurred that you appeared on the scene?
14 A. I have no idea.
15 Q. When did you receive the call?
16 A. I can't tell. The time is not correct -- The
17 time is not on the copy. Whatever time that I received it
18 would be on the accident report.
19 Q. Now, the point -- the scene of the accident,
20 just so that I understand its layout, is there a Loisdale
21 Road on which the car -- on which the truck was protruding?
22 A. That's correct.
23 Q. And was there a roadway that was at right angles

1 to Loisdale Road in which Mr. Blakeney's truck was located?

2 A. That's correct.

3 Q. And was -- How far did that roadway go?

4 A. It went down into the landfill.

5 Q. Which would have been at least several truck

6 lengths?

7 A. Well, without -- If the gate was open that would

8 be correct.

9 Q. Well, do you have your diagram?

10 A. Yes, I do.

11 Q. Your diagram reflects an area portion that's

12 at right angles to Loisdale Road and you have a notation over

13 there. Can you identify what that notation is?

14 A. It probably says private road. That's just

15 a guess.

16 Q. Why don't you look at this one.

17 A. All right, it says private road.

18 Q. And is that referring to the roadway that's

19 at right angles with Loisdale Road?

20 A. That's correct.

21 Q. Now again, just so that I understand the layout

22 of that accident scene, was that a roadway that proceeded on

23 some distance from Loisdale Road?

1 A. That's correct.

2 Q. So that actually there was room for the truck

3 to proceed further down that private road?

4 A. Right, if the gate was open, yes.

5 Q. Well -- Oh, I see. Now, the truck you men-

6 tioned was at an angle. Could you describe what angle that

7 truck was at in reference to the corners of the private road

8 that were on Loisdale Road?

9 A. I would imagine about a 45 degree angle.

10 THE COURT: Doesn't this go to the question of

11 liability more than coverage at this point?

12 MR. GILD: I think it does, Your Honor, but

13 this area was brought out and I --

14 THE COURT: Because I just can't see that it

15 would have anything to do with the breach of the conditions

16 of the policy which is the sole issue before the Court.

17 MR. ELLIS: It might have, Your Honor, only

18 in terms of notice to Blakeney of a potential claim depending

19 on how the accident occurred.

20 THE COURT: As far as the Court is concerned

21 the point in liability is not before the Court and the only

22 issue before the Court is the conditions of the policy and

23 the breach of the conditions which would justify the plaintiff

1 in refusing to defend the suit and also deny coverage. So
2 if you can connect it up as to being material to the question
3 before the Court go ahead.
4 But as to how the accident occurred I think is
5 completely immaterial.
6 MR. ELLIS: The only thing I might say with
7 reference to that, Your Honor, is while I don't think it's a
8 crucial point it might come to bear on Your Honor's decision
9 depending on what Blakeney would have considered the liability
10 factors to be in the case might have affected his judgment
11 as to whether or not the accident should or should not have
12 been reported if indeed it wasn't.
13 That's the only materiality I can see with
14 reference to your case.
15 THE COURT: Do you have argument, Mr. Gild?
16 MR. GILD: Well, I would agree with the Court
17 that the issue of liability isn't germane to what the Court
18 has to rule upon. As long as the Court takes that position
19 I would find no necessity to go further.
20 THE COURT: I can't see where it would be
21 material. Now if there's defense to the suit and Mr.
22 Blakeney had no knowledge that an accident occurred with
23 personal injuries then of course that would be different.

1 But I can't see where that's coming out as yet and if it
2 does come out as defense then you may go into it on rebuttal,
3 in rebuttal evidence.
4 BY MR. GILD:
5 Q. Now, was the Hiltons' automobile still at the
6 scene when you arrived?
7 A. That is correct.
8 Q. And was it there when Mr. Blakeney was talking
9 to you?
10 A. Yes, it was.
11 Q. And was he in a position to observe the auto-
12 mobile?
13 MR. ELLIS: Objection.
14 THE COURT: You can testify from your own
15 personal observations where he was located and where the
16 automobile was located.
17 THE WITNESS: Yes, sir.
18 BY MR. GILD:
19 Q. Was he in the vicinity of the automobile?
20 A. Yes, sir.
21 Q. And was he looking in the direction at any
22 time at the Hilton automobile?
23 A. The best that I can recall we were standing at

1 the rear of the trash truck when I was going over the summons
2 with him and that would put him right in front of the acci-
3 dent scene.
4 Q. Was there damage to the Hilton automobile?
5 A. Yes, sir.
6 Q. And that was considerable damage, wasn't it?
7 A. Yes, sir.
8 Q. In fact, the entire front end was pushed in?
9 A. That's correct.
10 Q. Now, did -- When Mr. Blakeney appeared, when
11 you spoke to Mr. Blakeney was he already at the scene when
12 you arrived?
13 A. As soon as I arrived I don't know. I went
14 immediately inside the car and started to treat the injured.
15 Q. Now did -- How long after you took care of the
16 injured did you approximately speak to Mr. Blakeney?
17 A. It was probably ten, 15 minutes.
18 Q. Did he say where he had been during this time?
19 A. I don't recall.
20 Q. Would you have made a notation of that to your
21 knowledge at that time if he had said he was not at the
22 scene?
23 A. I doubt it very seriously.

1 MR. GILD: No further questions.

2 MR. BROWN: Just one question.

3 FURTHER EXAMINATION ON BEHALF OF SAFECO:

4 BY MR. BROWN:

5 Q How did the Hiltons leave the scene of the

6 accident?

7 A By rescue squad.

8 MR. BROWN: I have nothing further of this

9 witness.

10 MR. GILD: There is one other question that I

11 had.

12 FURTHER EXAMINATION ON BEHALF OF HILTONS AND
BLAKENEY:

13

14 BY MR. GILD:

15 Q You mentioned that there were just two people

16 that were injured in the accident?

17 A It shows two on the report.

18 Q Yes. You don't know for sure how many people

19 were in the Hilton car, do you?

20 A I don't recall. There might have been someone

21 in the back seat.

22 MR. GILD: Okay. No further questions.

23 THE COURT: May the witness be excused?

5 Whereupon

6 JOHN FRANKLIN JOHNSON

7 a witness, was called for examination by counsel for Safeco,

8 and, after having been duly sworn, was examined and testified

9 as follows:

10 EXAMINATION ON BEHALF OF SAFECO:

11 BY MR. BROWN:

12 Q. Would you state your name, please?

13 A. John Franklin Johnson.

14 Q. What is your occupation?

15 A. I'm an insurance agent.

16 Q. What is the name of the agency?

17 A. National Insurance Agency.

18 Q. And is National Insurance Agency -- who are the

19 principals of that company?

20 A. Myself and Mr. Elmer Sullivan; we're partners.

21 Q. For how long have you operated that agency?

22 A. 15 years.

23 Q. Where is it located?

1 A. 1025 King Street, Alexandria, Virginia.

2 Q. Has it been there for the duration of the time

3 you've operated it?

4 A. Yes, sir.

5 Q. Do you know a man named Joe Roy Blakeney?

6 A. Yes, sir, I do.

7 Q. How do you know him?

8 A. I've had him insured since 1973.

9 Q. Do you know any members of Mr. Blakeney's

10 family?

11 A. I know all of them.

12 Q. Well, I don't want you to -- if they're a

13 whole great number I don't want you to describe each one but

14 tell me what family you're familiar with and --

15 A. Well, I have insured at this time Mr. Jessie

16 Blakeney which is his brother. I'm not sure whether his

17 brother Charles Blakeney has a policy or not because he

18 doesn't keep his payments up but --

19 Q. Has he in the past had a policy with you?

20 A. Yes, he's been insured for several years. And

21 their lady friends, some named Blakeney and some not named

22 Blakeney. I have them insured.

23 Q. When Mr. Blakeney was first insured in 1973

1 do you recall how that came about, that is how he came to
2 you?
3 A. Well, I don't know which of the Blakeneys we
4 insured first but we bought a block of business from a Mr.
5 Lloyd which was out in Groveton and I believe the Blakeneys
6 came with that block of business.
7 Q. What is your -- the relationship of your
8 company, National, to Safeco Insurance Company?
9 A. I'm an independent agent, broker. I'm only
10 licensed with about three companies and the majority of my
11 business is written through the Virginia Assigned Risk Plan.
12 Q. Are you licensed with Safeco?
13 A. No, sir.
14 Q. When persons who come to see you are assigned
15 to Safeco do you then write Safeco policies?
16 A. If I place them with the Virginia Automobile
17 Insurance Plan and they're assigned to Safeco then I become
18 their producer. I'm not an agent. I'm not licensed with
19 the company. I cannot commit the company to any coverage
20 whatsoever.
21 Q. When Mr. Blakeney -- Let me ask you this first.
22 Did there come a time when Mr. Blakeney became insured with
23 Safeco, that is Joe Roy Blakeney?

1 A. Yes, sir.

2 Q. When was that?

3 A. I have my records back there but --

4 Q. I'll get them for you if you'll tell me which --

5 Is it this briefcase here?

6 A. Yes, sir. I think the dates in question was --

7 His renewal was November the 3rd of 1976. Now whether that

8 was a renewal of a Safeco policy -- Well, I have a policy

9 here dated 11/3/75 with Safeco.

10 Q. All right. Now, how did he get that policy?

11 That is, was that a voluntary policy or an assigned risk

12 policy?

13 A. Assigned risk.

14 Q. Was his insurance that he had had through your

15 agency prior to that also assigned risk?

16 A. Yes, sir.

17 Q. With what company was that, do you know?

18 A. Integon.

19 Q. Intergon?

20 A. I-n-t-e-g-o-n (spelling). I think that's right.

21 I've got so many.

22 Q. Now you say that his policy was originally --

23 A. The correct -- Do you want the correct name?

1 Q. Yes, sir.

2 A. It's I-n-t-e-g-o-n (spelling) General

3 Insurance Corporation.

4 Q. That's the other insurance company that you --

5 A. Yes, I wrote that on October the 2nd, 1973.

6 Q. And while he had insurance through your

7 company he only had it with the two companies, Integon and

8 Safeco?

9 A. Well, I had other coverages with Mr. Blakeney

10 or he had it with me.

11 Q. All right. The coverage that you're talking

12 about for Joe Roy Blakeney here is that on the truck?

13 A. That was on his --

14 Q. Trash truck?

15 A. --his trash trucks.

16 Q. And he had no other insurance with you on the

17 trash trucks then, on the trash truck other than with those

18 two companies?

19 A. I think so. I could check and see if we have

20 another one. It's just a matter of information. When you

21 send a policy to the Assigned Risk Plan they're only required

22 to keep it three years. So, I'm sure if his three years

23 was up we had to rewrite the policy. I think that's the only

1 two.

2 Q. Did Mr. Blakeney or anybody on his behalf

3 prior to November of 1976, had he ever had an accident

4 with that truck that required notifying your office of the

5 accident?

6 A. I've searched my files and I found one.

7 Q. And when was that?

8 A. Bear with me a minute. I'm glad I brought

9 this stuff because I didn't know what I was supposed to bring.

10 September 13th, 1976.

11 Q. And in fact did either Mr. Blakeney or someone

12 for Mr. Blakeney give your office notice of that accident?

13 A. Yes.

14 Q. Do you recall whether it was Mr. Blakeney

15 himself or someone else that gave that notice?

16 A. I don't believe Mr. Blakeney's ever given me

17 an accident report.

18 Q. You think it was someone else?

19 A. Yes.

20 Q. All right. Then when would the policy come

21 up for renewal, the Safeco policy?

22 A. November the 3rd.

23 Q. Of?

1 A. '76.

2 Q. '76, all right. And was there a premium due

3 at that time?

4 A. Yes, sir, there was.

5 Q. Did you give Mr. Blakeney a notice of premium?

6 A. Yes, he's notified by Safeco and by me.

7 Q. Did Mr. Blakeney make any effort to pay that

8 premium?

9 A. He gave me a check.

10 Q. And did you present the check to the bank for

11 payment?

12 A. Yes, sir.

13 Q. Do you recall about when it was? You said it

14 was in early November that --

15 A. Well, you have to renew your policy 15 days

16 before expiration. He gave me the check prior to that.

17 Q. He gave you the check before November the 3rd,

18 1976?

19 A. Yes, sir. I think the check was dated 10/23

20 1976.

21 Q. And did you present it promptly to the bank?

22 A. Yes, sir.

23 Q. What happened to it?

1 MR. ELLIS: Objection, Your Honor. I think
2 that's immaterial and irrelevant.
3 MR. BROWN: Well, it's not immaterial and
4 irrelevant in this sense, Your Honor. The check from Mr.
5 Johnson's understanding bounced and that means that Mr.
6 Johnson would know and would keep a careful eagle eye lookout
7 for Mr. Blakeney and would strengthen the fact that Mr.
8 Johnson is about to testify that he never saw Mr. Blakeney
9 after he gave him that bad check.
10 THE COURT: The Court would overrule the
11 objection.
12 BY MR. BROWN:
13 Q. Mr. Johnson, what happened to the check after
14 you presented it to the bank?
15 A. I presented the check twice and it bounced
16 both times. There was nonsufficient funds.
17 Q. Is that how it was stamped, nonsufficient
18 funds?
19 A. Right.
20 Q. Now do you recall over what period of time
21 these presentations of the check occurred?
22 A. Yes. The first -- I sent him a registered
23 letter on December the 13th, 1976 notifying him that -- the

1 letter said, Dear Mr. Blakeney. Please be advised that your
2 check number 278 drawn on the First Virginia Bank dated
3 10/23/1976 in the amount of $800 has been returned twice for
4 insufficient funds.
5 Please accept this letter as a ten day notice
6 before legal action is necessary.
7 Q. And did you hear from Mr. Blakeney in response
8 to that letter?
9 A. No, sir.
10 Q. What did you do if anything thereafter about
11 that check?
12 A. Well, because of my relationship with, you know,
13 the Blakeney family, I felt, you know, that eventually maybe
14 he would make it good. On March the 10th I wrote him
15 another letter saying the exact same thing that I said in
16 the letter of December the 26th and this time I followed it
17 up and I had a criminal warrant issued for him in the City
18 of Alexandria.
19 Q. Now going back to January of 1977. In the
20 month of January, 1977 and the month of February had you had
21 any response from Mr. Blakeney with regard to that check?
22 A. No.
23 Q. Did you see Mr. Blakeney in your office at any

1 time after November of -- or after he presented you the
2 check in October of 1976? From that time to this have you
3 seen Mr. Blakeney in your office?
4 A. No, sir.
5 Q. Have you received any communication from Mr.
6 Blakeney?
7 A. No, sir.
8 Q. Have you received any accident reports from
9 Mr. Blakeney?
10 A. No, sir.
11 Q. Have you received from Mr. Blakeney notice
12 of an accident that he had or may have had on January 27,
13 1977?
14 A. No, sir.
15 Q. Mr. Blakeney never gave you any notice of that
16 accident whatsoever?
17 A. No, sir.
18 Q. Orally, written or any other way?
19 A. No, sir.
20 Q. Now does your file reflect that you did at some
21 point have notice that an accident occurred on January 27th?
22 A. Yes, sir.
23 Q. What does your file reflect about the first

1 time you found out about that accident and how you found out
2 about it?
3 A. I was notified by a lawyer. Mr. Gild, I believe
4 his name was.
5 Q. Gild?
6 A. Yes, sir.
7 MR. GILD: I think I'd have to object on the
8 grounds of hearsay, Your Honor, because particularly since
9 I'm not going to be in a position to --
10 THE COURT: Just the fact that he was notified;
11 the Court would overrule the objection.
12 BY MR. BROWN:
13 Q. How did that notice come to you, was that
14 oral or --
15 MR. ELLIS: Excuse me, Your Honor. I think
16 from whom the notice came is admissible because it's been
17 represented here that Mr. Gild was the attorney for the
18 Hiltons who are a party to the suit.
19 THE COURT: I overruled the objection.
20 MR. ELLIS: Oh, I'm sorry.
21 MR. BROWN: You won, Bob.
22 MR. ELLIS: I usually do and I don't say
23 anything.

1 BY MR. BROWN:

2 Q. Now, how did the notice come to you? That is

3 was it oral or in writing or how did --

4 A. It was in writing. The general or first letter

5 from the lawyer notifying that they were going to represent

6 somebody.

7 Q. Do you have that letter here?

8 A. I believe I do. It's in here somewhere. I

9 think you photostated it. Do you have it?

10 Q. Well --

11 A. I can probably find it if I dig through here.

12 I'm not sure I have all of the correspondence. At various

13 times my photostat machine doesn't work.

14 Q. I didn't make a copy of it and I'm not sure

15 that you do have a copy of it is why I asked you that.

16 A. Yes.

17 Q. Because when I talked to you before you didn't

18 have a copy of it and so that's what I'm asking you. Do you

19 now?

20 A. No.

21 Q. You didn't keep a copy of the lawyer's letter

22 to you?

23 A. No, sir.

1 Q. What did you do if anything with what the lawyer
2 sent you?
3 A. Well, I have a form that has my letterhead on
4 it and has the name of the policy holder, the policy number,
5 the accident date, the effective dates of the policy. Every
6 letter I get from anybody, I don't care what it -- who it's
7 from I fill it out and attach whatever the letter is and
8 send it straight to the insurance company.
9 Q. All right. Now is what I just handed you a
10 copy of the form that you sent --
11 A. Right.
12 Q. --the letter from the lawyer to Safeco?
13 A. Yes, I've got on here a letter from B. S. Gild
14 is attached. It said no accident was attached with his
15 letter.
16 Q. What does no accident is attached with his
17 letter --
18 A. I meant to say no accident report.
19 Q. No accident report?
20 A. Right.
21 Q. Oh, one further thing -- There's a notation
22 down here 1/27/77. Do you remember that you wrote that on
23 there when you and I were talking in your office?

1 A. Right. Right.

2 Q. So that notation was not on there when this was

3 sent to Safeco?

4 A. Correct.

5 MR. BROWN: All right. I'd offer this copy,

6 Your Honor. Your Honor, I would ask also at this time if

7 Mr. Gild has a copy of the letter that I be allowed to see

8 his copy. This is the thing that I want him for. I don't

9 have a copy and Mr. Johnson doesn't have a copy and for this

10 limited purpose if I could ask Mr. Gild for a copy that would

11 be the only thing I'd ask him for.

12 THE COURT: Do you have a copy?

13 MR. GILD: Yes, I do, Your Honor.

14 MR. BROWN: Your Honor, I'm requesting Mr.

15 Gild for a copy of the letter and with the Court's approval

16 I will take the copy. We offer the form letter from Mr.

17 Johnson --

18 THE COURT: Any objection to the form letter?

19 MR. ELLIS: No, Your Honor.

20 THE COURT: It will be admitted. I assume you

21 wish the court to disregard the 1/27/77?

22 MR. BROWN: Please, Your Honor.

23

1 (The document referred to above
2 was marked Complainant's Exhibit
No. 2 for identification and was
3 received in evidence.)

4 BY MR. BROWN:

5 Q. Mr. Johnson, let me show you a letter and ask
6 you if you have any recollection of that?

7 A. Yes.

8 Q. What is that?

9 A. That's the letter from Mr. Gild to me.

10 Q. Is that the letter -- a copy of the letter that
11 you attached with the form that we've just introduced into
12 evidence?

13 A. Yes, sir.

14 MR. BROWN: Your Honor, I would offer this
15 letter. I'm sure we don't have a copy of it. Do you mind
16 if the original goes in? We can make a copy of it.

17 THE COURT: Any objection?

18 MR. ELLIS: No, Your Honor.

19 THE COURT: It will be admitted subject to a
20 copy being made. Is there any objection to having a copy
21 made and receiving the letter and this copy being returned
22 to Mr. Gild?

23 MR. GILD: No, Your Honor.

1 (The document referred to above
2 was marked Complainant's Exhibit
No. 3 for identification and was
3 received in evidence.)

4 BY MR. BROWN:

5 Q. Mr. Johnson, did you have any further contact
6 with Mr. Gild after that letter?

7 A. Yes, sir.

8 Q. What was the nature of that contact?

9 A. Well, I think the next thing we established
10 that there was no report attached to his letter.

11 Q. How did you establish that?

12 A. Pardon?

13 Q. What do you mean you established that?

14 A. Well, he threatened to notify the State
15 Corporation Commission for my failure to assist in this.

16 Q. And did you --

17 MR. GILD: I object unless the -- Are you --
18 unless it's referring to correspondence and if so I think
19 the correspondence should be introduced in evidence.

20 THE COURT: You may have him on cross examin-
21 ation.

22

23

1 BY MR. BROWN:

2 Q Mr. Johnson, did you in some way make Mr.

3 Gild aware of the fact that at least as far as you were

4 concerned there was no accident report attached to the

5 letter that he had sent?

6 A Right. Right.

7 Q And did Mr. Gild subsequently send an accident

8 report?

9 A Yes, sir, he did.

10 Q And when did that come?

11 A Well, I sent it to the insurance company on

12 April the 29th of '77.

13 Q April 29th you sent the accident report to

14 Safeco?

15 A Right. I sent a DMV report received from

16 attorney. Please find letter from lawyer and also Southland

17 Insurance Company.

18 Q Now what is Southland Insurance Company? What

19 does that represent?

20 A That I don't know.

21 Q Did you -- Do you know whether you received any

22 communication from Southland Insurance Company?

23 A I don't have anything in my file. If I did

1 I attached it straight to the copies that went to the insur-
2 ance company because like I said I have a very weak copy
3 machine and I copy when it works and when it doesn't work I
4 don't.
5 Q. Let me show you a document and ask you if you
6 can identify that?
7 A. Yes, that's the one I was just reading from.
8 Q. Now what is that? Tell the court what that is.
9 A. Well, this is my notification of accident in
10 reference the accident date of 1/27/77 where I notified the
11 insurance company that DMV report received from attorney,
12 please find letter from lawyer and also Southland Insurance
13 Company, stapled it and sent it on to Safeco.
14 Q. All right. That's another one of your forms?
15 A. Yes, sir, same form.
16 Q. Let me ask you if you can identify this docu-
17 ment while I show the form to counsel.
18 A. Yes, I've seen this.
19 Q. Is that a copy of the letter from Southland
20 that you attached --
21 A. Right.
22 Q. --with this form?
23 A. Right.

1 MR. ELLIS: No objection, Your Honor, to either
2 one.
3 THE COURT: Any objection, Mr. Gild?
4 MR. GILD: I haven't seen them yet, Your Honor.
5 None.
6 THE COURT: They're admitted.
7 (The documents referred to above
8 were marked Complainant's
Exhibits Nos. 4 and 5 for iden-
9 tification and were received in
evidence.)
10 BY MR. BROWN:
11 Q. Mr. Johnson, before you got the letter from
12 Mr. Gild that we introduced previously dated March 17, 1977
13 had you gotten notice of this accident from anybody?
14 A. No, sir.
15 Q. What addresses do you show in your file for Mr.
16 Blakeney in January and thereafter or November, the last
17 address that you have?
18 A. 2402 Terrett Avenue.
19 Q. In what city?
20 A. Alexandria, Virginia.
21 Q. How do you spell Terrett?
22 A. T-e-r-r-e-t-t (spelling).
23 Q. That's the latest address you show for him?

1 A. Yes, sir.

2 Q. Did your office -- Well, strike that.

3 MR. BROWN: That's all the questions I have.

4 EXAMINATION ON BEHALF OF LIBERTY MUTUAL:

5 BY MR. ELLIS:

6 Q. Mr. Johnson, it's a fact, is it not that your

7 office was notified by Mr. Gild by telephone prior to the

8 March 17th letter? Isn't that true?

9 A. To my knowledge I don't know.

10 Q. Well, does your file contain any notes of any

11 telephone calls received from Mr. Gild?

12 A. Just one.

13 Q. When?

14 A. When he called about the accident report which

15 he did not attach to the letter. I called him at that time

16 that it wasn't attached and he said he would send us one.

17 Q. Well, on the Exhibit number 3 the March 17

18 letter to National Insurance Agency from Mr. Gild refers to

19 a telephone conversation prior to the writing of the letter

20 does it not?

21 A. Yes, sir.

22 Q. Now, who, if you know, in the office received

23 a call from Mr. Gild, you or anyone else?

1 A. It was probably me.

2 Q. Probably you?

3 A. Yes, sir.

4 Q. Well, then you did talk to Mr. Gild prior to

5 his writing his letter of March 17th?

6 A. I said I don't know if I did or not. I get

7 about 20 calls a day on accidents. I don't record -- Every-

8 body -- People call me and ask me if somebody's insured. I

9 say yes or no and I hang the phone up.

10 Of if they want to ask me any information I

11 can give them I give it to them. I don't record it. I

12 inform them that so and so is insured with me.

13 Q. If you receive a call from someone, a potential

14 claimant or his attorney and he informs you that he might

15 represent an individual involved in an accident are you not

16 concerned about securing as much information as you can at

17 that time so that you might forward it to the company?

18 A. Am I -- No. No, sir.

19 Q. You're not?

20 A. (Shaking head.)

21 Q. So you personally are not concerned then or

22 you did not feel any concern at that time that when Mr. Gild

23 called you prior to sending the letter to you you did not

1 believe it important or necessary for you or for the company
2 that you were representing in this matter, Safeco, to secure
3 the information regarding the date of the accident and the
4 people involved in it and whether there were any injuries?
5 MR. BROWN: Objection. I object to the question
6 on two grounds, Your Honor. First the man says he doesn't
7 recall any such conversation and secondly, the nature of the
8 conversation hasn't been revealed. What was it?
9 Was it a conversation in which he said was
10 Mr. Blakeney insured or --
11 THE COURT: I think he can get into the pro-
12 cedure on it since he doesn't recall.
13 THE WITNESS: Okay. Would you like for me --
14 MR. BROWN: --was it a conversation on anything
15 else? Well, I --
16 THE WITNESS: I'll explain exactly what I do
17 with everybody that calls me.
18 BY MR. ELLIS:
19 Q All right.
20 A Now, I'd like to establish one thing first;
21 maybe it'll help you, you know, clarify something. I do
22 not represent anyone who has an assigned risk policy. I'm
23 a producer. I have no binding authority. I have no claims

1 authority. I cannot give out any information in reference to
2 this policy which will hinder the insurance company or help
3 them.
4 Q Let's stop right there, sir.
5 A I just --
6 Q You are aware are you not that under the law
7 even though the insured happens to be an assigned risk --
8 A Right.
9 Q --that you are agent for that company with
10 reference to that
11 A No, sir, I'm not an agent.
12 MR. BROWN: Your Honor, I don't think it's
13 fair to ask this man what under the law he is or isn't --
14 BY MR. ELLIS:
15 Q Well, what did you believe it to be?
16 MR. BROWN: --unless he has some --
17 THE COURT: He amended the question. Go
18 ahead.
19 BY MR. ELLIS:
20 Q Did you not believe that as the producing
21 agent that you had a duty to notify the company, even an
22 assigned risk company --
23 A I did notify them.

1 Q. So is it your statement now that when you are
2 notified of an accident that you are interested in securing
3 the information --
4 A. Yes, sir.
5 Q. --concerning facts?
6 A. Yes, sir. I'll tell you exactly what I do
7 if somebody calls me. If you have an accident with one of
8 my clients and you call me and you say you had an accident
9 with Mr. Brown. I'd say, yes, sir, Mr. Brown is insured with
10 me.
11 I'd say, all I need to do is get the facts to
12 the insurance company. I can get them one of two ways,
13 either you give it to me or Mr. Brown will come in and give
14 it to me. I say if he doesn't come in you give me a copy
15 of a police report or a Division of Motor Vehicles report
16 and I'll send it to the insurance company.
17 Q. Now, you didn't make --
18 A. I do that in each and every accident.
19 Q. Now did you make any effort either prior to
20 March 17 when you probably or someone in your office received
21 a phone call from Mr. Gild concerning the accident or upon
22 receipt of Mr. Gild's letter of March 17th, did you make any
23 effort to contact Mr. Blakeney?

1 A. No, sir.

2 Q. Did you make any effort to contact any members

3 of Mr. Blakeney's family to determine where he might be or

4 might be located or why there wasn't a report filed, et

5 cetera?

6 A. I may have. Generally, if someone calls and

7 says they've had an accident with --

8 Q. I didn't say maybe. I said do you have any

9 recollection of doing it in this particular case?

10 A. No, sir.

11 Q. So you upon receipt of Mr. Gild's letter even

12 though there was no accident report attached to it you then

13 sent that letter on to Safeco by memorandum I believe dated

14 March 19th?

15 A. Yes, sir.

16 Q. Did you contact Mr. Gild and say, look I got

17 your letter but you didn't enclose any report?

18 A. No, sir.

19 Q. As a matter of fact, Mr. Gild then wrote you

20 later and you finally wrote back sometime when asking for

21 the report?

22 A. He called me.

23 Q. He called you when?

1 A. I don't recall.

2 Q. I'm sorry.

3 A. I don't recall.

4 Q. Would it have been prior to April 4th which

5 appears to be the date when the letter was written by Mr.

6 Gild to you, April 4th of '77 --

7 A. The only thing --

8 Q. --enclosing an accident report?

9 A. Right it was prior to that he -- we talked and

10 I told him it was not attached.

11 Q. Did he give you any information at that time

12 concerning the names of parties in his telephone call?

13 A. I don't recall that.

14 Q. Did you ask him?

15 A. No, sir.

16 Q. But in any event you did receive by letter of

17 April 4th an accident report filled in by whom, the Blakeneys

18 or was this a DMV report or what was it?

19 A. It was a DMV report.

20 Q. Was it a police report or --

21 A. Well, Mr. Gild sent it to me and I sent it to

22 the insurance company.

23 Q. What kind of a report was it?

1 A. It was a Division of Motor Vehicles report.

2 Q. And did that Division of Motor Vehicles report

3 contain all of the names of the parties and where the

4 accident happened and how it happened, et cetera?

5 A. They generally do.

6 Q. Pertinent information?

7 A. Sure.

8 Q. When did you send that to the company?

9 A. April the 29th.

10 Q. Do you know why the delay between the receipt

11 of April 4th and the sending out to Safeco on April 29th?

12 A. I must not have got it because I send out the

13 mail every day when I get it.

14 Q. Well, do your records indicate that the letter

15 of April 4th did not reach you by the 5th or the 6th?

16 A. It didn't lay around my office for 20 some

17 days. I don't know what day he typed it up.

18 Q. After you received the report -- Strike that.

19 I believe you indicated that you had a -- you filed suit

20 for a check that had bounced from Mr. Blakeney --

21 A. That's correct.

22 Q. --and you did that when, in March?

23 A. Well, my letter went out in March. I'd say

1 sometime in April.

2 Q. When did your letter go out?

3 A. My last letter went out March the 10th.

4 Q. I'm sorry?

5 A. March the 10th.

6 Q. Had you known about the accident by then?

7 A. Sure.

8 Q. How long after receiving the notice of the

9 accident did you file suit against Mr. Blakeney?

10 A. Oh, I filed suit before I got the accident

11 report.

12 Q. I just asked you the other and you said --

13 MR. BROWN: You said did he know about the

14 accident.

15 MR. ELLIS: I'm sorry.

16 MR. BROWN: I object to the characterization

17 of the testimony.

18 BY MR. ELLIS:

19 Q. Did you file suit against Mr. Blakeney because

20 of the accident?

21 A. Well, I didn't file suit. I just had a

22 criminal warrant issued for him.

23 Q. A criminal warrant issued.

1 A. Now what was your question again?

2 Q. Did you have a criminal warrant issued because

3 of or as a result of the report of the accident with Mr.

4 Blakeney?

5 A. No relationship between the two.

6 Q. It was just a coincidence that they occurred

7 about the same time?

8 A. Right.

9 Q. Now when you received Mr. Gild's letter of

10 March 17 you testified that you had already received notice

11 of the accident or some wind of the accident prior to your

12 having a criminal warrant issued. Would that have been by

13 the telephone call or something from Mr. Gild?

14 MR. BROWN: If Your Honor, please, he has a

15 letter in the files prior to that time. Do you not?

16 THE COURT: I think the exhibit he's referring

17 to is the letter from Mr. Gild giving notice to National

18 Insurance which refers to a telephone call.

19 THE WITNESS: I don't understand what the

20 accident report's got to do with the check.

21 BY MR. ELLIS:

22 Q. Well, I asked you whether or not you had been

23 notified, whether you knew of the accident at the time you

1 filed the criminal warrant and you said, yes.

2 A. Right.

3 Q. You did say that the two are unrelated; it

4 just happened to be coincidence that it occurred. What I'm

5 trying to ascertain is how long prior to your filing the

6 criminal warrant did you hear about the accident if you know?

7 A. The first notice I had of the accident was

8 Mr. Gild's letter.

9 Q. Now, sir, that doesn't jive with what we've

10 just gone through and spent a great deal of time on

11 questioning you about. We did talk about the fact that

12 evidentally, or at least it would appear that a phone call

13 had been made to your office, is that correct?

14 MR. BROWN: He didn't testify to that.

15 MR. ELLIS: Well, we talked about it.

16 MR. BROWN: You talked about it.

17 BY MR. ELLIS:

18 Q. Are you denying that the phone call was made or

19 did you not imply that you --

20 A. I said I don't remember.

21 Q. But you did testify that prior to your filing

22 the criminal warrant you were aware of the accident somehow?

23 I mean you don't have --

1 A. Sure. Sure. I had to.

2 Q. Now can you tell me how long prior to filing

3 the criminal warrant you became aware of the accident?

4 A. Well, let me say this. I knew about the

5 criminal warrant the day the check bounced. I knew about

6 the accident the day that Mr. Gild called me. You have those

7 two dates. I don't understand your question.

8 Q. Well, the simple fact of the matter is, Mr.

9 Johnson that you filed a criminal warrant on March the 10th,

10 1977 and --

11 THE WITNESS: No, I --

12 MR. BROWN: Your Honor, please, that's not

13 what he testified.

14 THE WITNESS: I wrote a letter notifying him

15 of his bad check on March the 10th.

16 MR. ELLIS: All right.

17 THE WITNESS: I also wrote one on December.

18 BY MR. ELLIS:

19 Q. When did you file the criminal warrant?

20 A. Well, I gave him his ten days on March the

21 10th. I filed it in the end of March. Now the exact date

22 I don't know. You can check the Alexandria police; the

23 warrant is still outstanding.

1 Q. At the time that you wrote him on March 10
2 did you know about the accident?
3 A. Yes, sir. Well, I would assume I did. I don't
4 know.
5 Q. But you don't know how you came about that
6 information?
7 A. March the 10th. Sure I knew about the check
8 by then.
9 Q. You knew about the what? The accident?
10 A. The accident.
11 Q. Do you know how you found out?
12 A. Through Mr. Gild.
13 Q. That must have been then by telephone?
14 A. Well, according to you he talked to me prior
15 to the letter.
16 Q. Yes.
17 A. Which more than likely I would have to say that
18 we did because I get a lot of calls and I acknowledge the
19 coverage and then I hang the phone up and then if I get a
20 letter or something I respond. That's it.
21 Q. Now as I understand your procedures at that
22 time you would not have taken down from Mr. Gild the perti-
23 nent information regarding the facts of the accident. You

1 would have simply asked him to send you a report and then --

2 A. No, sir. I simply tell him that Mr. Blakeney

3 is insured with me.

4 Q. Right. But you would not have made any effort

5 to secure from the person reporting the accident to you the

6 particulars regarding the date, place, time, et cetera?

7 A. Never. No, sir. I never get any information

8 from an attorney or a client on the telephone.

9 Q. May I see your file or --

10 MR. BROWN: If Your Honor, please, just to see

11 the man's file is not a proper question.

12 MR. ELLIS: Your Honor, he has had the file --

13 MR. BROWN: If he'd like to see something in

14 the file, that's fine.

15 MR. ELLIS: He has had the file in front of

16 him throughout the course of his testifying and he's

17 referred to it.

18 THE COURT: If he's using anything in the file

19 to testify from, what he testifies from you're entitled to

20 see.

21 MR. BROWN: That's what I'm suggesting. He

22 can show him what he testified from in the file but just to

23 rifle through the man's file is not a fair question.

1 MR. ELLIS: I think, Your Honor, if he has
2 notes concerning Mr. Blakeney and correspondence I think
3 we're entitled to look at it particularly since he has
4 referred to the file during the course of his testifying.
5 MR. BROWN: You can ask him that question,
6 does he have any notes.
7 THE COURT: I think you're going to have to
8 lay a foundation for it, Mr. Ellis a little more broader
9 than just the fact that he had looked at it.
10 BY MR. ELLIS:
11 Q During the course of your files, Mr. Johnson,
12 you've referred from time to time to your files have you
13 not to refresh your recollection of incidents and dates?
14 A. Yes, sir.
15 Q Have you looked through the entire file?
16 A. Yes, sir.
17 MR. ELLIS: I think that's sufficient, Your
18 Honor.
19 THE COURT: Any questions of the witness?
20 MR. BROWN: No.
21 THE COURT: You can look through the file.
22
23

1 BY MR. ELLIS:

2 Q. Did Mr. Blakeney, did he appear to be at this

3 2402 Terrett Avenue, Alexandria address?

4 A. No, sir.

5 Q. Wasn't correspondence returned to you?

6 A. Yes, sir.

7 Q. How about the letter of December 13, 1976

8 when you wrote him concerning the check that had bounced,

9 the ten day notice, did he respond to that?

10 A. No, sir.

11 Q. Did he receive it if you know?

12 A. I don't think -- No, he never signed for any-

13 thing.

14 Q. Did you have any other addresses in your file

15 other than the Terrett Avenue address?

16 A. I don't know. You --

17 Q. For Mr. Blakeney. Do you recall any? I'm

18 just kind of thumbing through here.

19 A. No, sir, I believe that's just a central

20 location that all the Blakeneys use where they more or less

21 park their trash trucks.

22 Q. Would you ever contact any of the rest of the

23 Blakeney family at any other address other than the Terrett

1 Avenue one?

2 A. The only Blakeney you can get a hold of is

3 Jessie. The rest of them are --

4 Q. Where is Jessie?

5 A. --they have ways of getting lost. He lives in

6 Maryland.

7 Q. He lives in Maryland. And have you always

8 been able to get a hold of Jessie when you've wanted to?

9 A. Yes, sir.

10 Q. Now at any time, sir, from the time you first

11 conceived of this accident until the present day have you

12 made any attempt to contact any member of the Blakeney

13 family to locate the whereabouts of Joe Blakeney?

14 A. I talked to several of them.

15 Q. Who and when?

16 A. Well, I talked to Jessie; I talked to Charles.

17 Q. When did you first talk to Jessie?

18 A. Oh, I talk to Jessie about every two weeks.

19 Q. Well, when did you first talk to him about

20 trying to locate Joe if you did?

21 A. When I tried to collect the check. The check

22 was no good. I said, where can I get a hold of Joe.

23 Q. When was that, back in December?

1 A. December.

2 Q. What were you told at that time?

3 A. They were looking for him too.

4 Q. I'm sorry?

5 A. I said they were looking for him too.

6 Q. Did you ever contact any member of the family

7 thereafter regarding his whereabouts?

8 A. Yes, there was -- There's a lady that goes by

9 the name of Gladys Blakeney and she relayed messages to him

10 from me.

11 Q. And would he then contact you or call you?

12 A. No, sir, never called.

13 Q. Well, but you were in essence communicating

14 with him?

15 A. Yes, Mrs. Gladys Blakeney which is his sister-

16 in-law cashes a lot of checks at my office and every time

17 she'd cash a check I'd ask her if she'd seen him and she

18 would say, yes, I gave him your message but he never --

19 Q. In looking through your file, sir, I failed

20 to see -- perhaps I missed it because I went through hurridly

21 but I failed to see any letter from your agency to Blakeney

22 requesting that he fill out an accident report concerning

23 the accident of January 27th or that he contact you or that

1 he contact Safeco. Is that a fair review of --

2 A. That's correct.

3 Q. Did you ever receive a copy of any reservation

4 of rights for the amount of coverage letter from Safeco?

5 A. I don't think so.

6 Q. When was the first time you had any contact

7 from Safeco regarding this case if you ever had?

8 A. I talked to a claims man on the phone.

9 Q. When?

10 A. Now the dates I don't know but I talked to

11 him several times.

12 Q. Well, can you tell me approximately when you

13 had talked with him?

14 A. Well, I think it was probably in the summer of

15 '77; late spring and summer.

16 Q. Do you have any notes of that conversation?

17 A. No, sir. I believe I had his name written

18 down just one time.

19 Q. But you don't know what the conversation was

20 about?

21 A. I can't remember his name even. Yes.

22 Q. What was it?

23 A. About the accident with Mr. Blakeney, how he

1 could get a hold of him.

2 Q. What information did you give, if any, to

3 that adjuster?

4 A. Well, I gave him his addresses and people, you

5 know, possible people to contact.

6 Q. Who did you tell him he could contact?

7 A. I don't recall but I believe I gave him the

8 150 Williams Street address.

9 Q. Where did you secure that from?

10 A. That's where Charles Blakeney lives; that's

11 where Gladys Blakeney lives and I gave him that address to

12 try.

13 Q. How about Jessie Blakeney's address?

14 A. Jessie lives in Maryland and he doesn't deal

15 too much with his brothers.

16 Q. Do your files reflect or does it come to your

17 recollection that you ever -- that Dairyland ever insured

18 Blakeney through your office?

19 A. Dairyland?

20 Q. Yes.

21 A. Yes, he's insured with Dairyland.

22 Q. When? When did he become insured with Dairy-

23 land?

1 A. Well, he had a motorcycle which was insured
2 with Dairyland.
3 Q. Was that insured with Dairyland at the time
4 of the accident?
5 A. Well, let's see. I don't see a Dairyland
6 policy. I see a policy in here on 3/4/75 to 3/4/76 with
7 Calvert Fire Insurance Company for a motorcycle.
8 Q. How about any Dairyland -- do you recall any-
9 thing at all about that?
10 A. Nothing in that file. No Dairyland files.
11 Q. I'm sorry.
12 A. I don't see any.
13 Q. Could there have been one that may not be
14 located in the file?
15 MR. BROWN: Your Honor, could there have been
16 one is not a proper question. Anything is possible.
17 THE COURT: Sustained.
18 THE WITNESS: Well --
19 MR. BROWN: Don't answer the question, Mr.
20 Johnson. The objection was sustained.
21 BY MR. ELLIS:
22 Q. Now you received a letter I believe from the
23 insurance carrier sometime in April, 1977, do you recall

1 that, sir?

2 A. Not offhand.

3 MR. ELLIS: Is there a Southland letter,

4 Your Honor, in evidence?

5 THE COURT: There was one. I don't know the

6 date of it.

7 BY MR. ELLIS:

8 Q. Evidentally, somehow Southland by April 25,

9 1977 had become notified that you were the agent for Mr.

10 Blakeney, is that correct?

11 A. Right, uh-huh.

12 Q. Was this letter of April 25 sent out to the

13 company?

14 A. Yes, sir.

15 Q. Was all the correspondence you received from

16 any source sent out to the company?

17 A. Yes, sir, everything.

18 Q. I'm just slightly confused about one point,

19 sir. When did you become aware of the Williams Street

20 address in Alexandria regarding Blakeney's location?

21 A. Well, like I said, that's is Charles Blakeney's

22 address.

23 Q. And that is his brother?

1 A. That's his brother. And I just suggested try
2 that address because sometimes they move around and he might
3 be living there because he didn't have a family.
4 MR. ELLIS: I have nothing further, Your
5 Honor.
6 THE COURT: Mr. Gild?
7 MR. GILD: Nothing, Your Honor.
8 FURTHER EXAMINATION ON BEHALF OF SAFECO:
9 BY MR. BROWN:
10 Q. Do you have that Williams Street address in
11 your file? You said 150.
12 A. I think it's 150.
13 Q. Could it be 130?
14 A. That's possible.
15 Q. Do you have the address with you?
16 A. I don't -- I don't think I have it in this
17 file.
18 Q. You don't have that file?
19 A. Unh-unh. I was going by memory but I think
20 it's 130 or 150.
21 MR. BROWN: I have nothing more.
22 THE COURT: May the witness be excused?
23 MR. BROWN: Yes, Your Honor.

9 Whereupon

10 JAMES B. NAYLOR

11 a witness, was called for examination by counsel for Safeco,

12 and, after having been duly sworn, was examined and testified

13 as follows:

14 EXAMINATION ON BEHALF OF SAFECO:

15 BY MR. BROWN:

16 Q Would you state your name, please?

17 A James B. Naylor.

18 Q And how are you employed?

19 A I'm the adjuster in charge of the Alexandria

20 service office for Safeco.

21 Q Are you in charge of the records and files of

22 that office including the files of notice of accidents and

23 that sort of thing?

1 A. Yes, sir.

2 Q. Does that include this accident we're talking

3 about, the Blakeney files?

4 A. Yes, sir, it does.

5 MR. ELLIS: If Your Honor, please, I think we

6 should make some distinction as to whether he's in charge

7 as a supervisor of the office which might contain files as

8 opposed to the custodian of records or the one responsible

9 for same.

10 I don't think -- If you intend to get in any

11 information based on office records then I would object

12 unless it can be shown that the witness is the custodian of

13 the records in fact just as --

14 THE COURT: Are you going to try to get records

15 in through this witness?

16 MR. BROWN: Yes, sir.

17 THE COURT: Then you'll have to lay the proper

18 foundation for the introduction of office records.

19 BY MR. BROWN:

20 Q. How many people are in your office?

21 A. Four.

22 Q. And what is your relationship to those persons

23 who are in the office?

1 A. I would be their manager.

2 Q. Who maintains the records?

3 A. I would.

4 Q. You maintain the records?

5 A. Oh, I don't -- You know, I'd probably just be

6 in charge of them actually. The girl in the office really

7 maintains them.

8 Q. Does she maintain them in accordance with your

9 supervision and control?

10 A. Yes.

11 Q. Do you have access to those records?

12 A. Yes.

13 Q. Do you check her work from time to time and

14 ascertain that she's keeping the records properly?

15 A. Yes.

16 MR. ELLIS: Objection, Your Honor. It's all

17 very leading and it's not going to get to the crux of the

18 matter, basically that the witness is not the custodian of

19 the records. I don't care much --

20 THE COURT: We want to get to the crux of the

21 matter if the records are kept under his supervision.

22 Wouldn't that satisfy the requirements under his control and

23 supervision?

1 MR. ELLIS: Your Honor, we know definitely
2 that if a hospital administrator who has overall responsi-
3 bility for everything that happens in the hospital comes in
4 and attempts to identify records and testify that these are
5 what the records are unless --
6 I think the reason the rule requires the
7 custodian of the records to come in because that person has
8 first-hand knowledge of all the records, where they are,
9 what comes in and what doesn't come in.
10 Obviously, this man having overall responsi-
11 bility for the office cannot and has not qualified himself
12 to testify to the minute and day to day, day in and day out
13 receipt of mail and where these pieces are filed and parti-
14 cularly with reference to this particular case.
15 THE COURT: Isn't that the reason for the rule
16 that records that are kept under his supervision and control
17 if he can identify them and say that they were made pur-
18 suant to his supervision and control does that not satisfy
19 them?
20 MR. ELLIS: No, sir. I -- There is a distinction
21 between a custodian of the records and one having overall
22 responsibility for keeping of the records. Now that's -- the
23 latter is what this gentleman obviously is. He certainly

1 hasn't qualified himself to testify to the custodian.

2 THE COURT: The purpose of the rule -- Isn't the

3 general purpose of the rule that the custodian of the records

4 can appear in court because rather than taking say a presi-

5 dent of the company or someone like that, bringing them into

6 court? Isn't that the purpose?

7 MR. ELLIS: No, the purpose is to have the

8 person who has first-hand knowledge of the records rather

9 than the president who obviously has none.

10 MR. BROWN: Your Honor, in a four person

11 office this -- We're not talking about the hospital admini-

12 strator, the president or some large person. We're talking

13 about the very man who runs that office.

14 Now, I could bring in his secretary if that's

15 what --

16 THE COURT: The Court will check this at the

17 luncheon recess and if you can go onto some other part of

18 his testimony and the Court will rule on that at the break.

19 MR. BROWN: Well, actually, most of his

20 testimony if not all is relative to what records reflect.

21 Some letters he wrote himself, some letters were written

22 before --

23 THE COURT: Can't you go to those that he

1 wrote himself?

2 MR. BROWN: I suppose so. I'll try.

3 BY MR. BROWN:

4 Q Well, let me start with this. Are you familiar

5 with the policies that are issued by Safeco?

6 A Yes.

7 Q Do you know what policy was issued to Mr.

8 Blakeney?

9 A Yes.

10 Q Can you identify that policy?

11 A Yes, I could if I had a copy of it.

12 Q Let me show you a cpoy of a policy and ask you

13 if this is a copy of it?

14 MR. ELLIS: Your Honor, I might inquire -- At

15 this time I'm going to object. There's no basis or foundation

16 laid on which this witness knows which policy was issued to

17 Mr. Blakeney.

18 MR. BROWN: Well, he's the man in charge of

19 the office. I can't get much higher. I don't know who I

20 could bring other than this man that would know that.

21 MR. ELLIS: Well, I assume you could have --

22 MR. BROWN: If we want to say that he wasn't

23 insured by Safeco then I'll withdraw and we'll let Mr. Ellis

1 worry about --

2 THE COURT: You don't want the policy in,

3 Mr. Ellis?

4 MR. ELLIS: Your Honor, the pleadings establish

5 that Safeco insured him. That's not an issue in this case.

6 MR. BROWN: Well, I'll nonsuit the case and

7 withdraw the defense and let you have that at it then if

8 that's the way you want it.

9 MR. ELLIS: I'm only concerned, Your Honor,

10 about -- No, we have no issue about that.

11 THE COURT: Well, if the Court finds that

12 no policy existed then it would follow that there would be no

13 coverage.

14 MR. ELLIS: That's not an issue in the case,

15 Your Honor. The issue is --

16 THE COURT: It's not?

17 MR. ELLIS: No, sir. No, there is no issue

18 in this case that Safeco did not insure Blakeney. They have

19 alleged that in their pleadings.

20 THE COURT: Well, can you stipulate to the

21 policy then?

22 MR. ELLIS: That is what I'm not quite sure of

23 because I have a feeling that sometimes these policies differ

1 depending on whether they're assigned risk or what. That's
2 the thing that puzzles me.
3 MR. BROWN: Well, I asked Mr. Naylor if he
4 was familiar with the policy that was issued and he said he
5 was.
6 THE COURT: Do you have further objections,
7 Mr. Ellis.
8 MR. ELLIS: No, let it go. We tried.
9 THE COURT: It will be admitted.
10 (The policy referred to above
11 was marked Complainant's Exhibit
No. 6 for identification and
12 was received in evidence.)
13 BY MR. BROWN:
14 Q. Mr. Naylor, did you bring with you today the
15 Blakeney file?
16 A. Yes.
17 Q. Would you get it?
18 A. (The witness complied with the request.)
19 Q. How did this file come to you? How did you
20 get that very piece of file material that you've got there?
21 A. Well, I inherited it. I wasn't the original
22 adjuster on this. Dave Evans who was the adjuster in charge
23 at the time had the file. When he left I took over the

1 handling of it which -- and this included one of his files.

2 Q. Where is Dave Evans now?

3 A. He works for Ohio Casualty.

4 Q. Where is that file physically maintained in

5 the office?

6 A. In my desk drawer.

7 Q. In your desk drawer?

8 A. Right.

9 Q. For how long has it been maintained in your

10 desk drawer?

11 A. Well, since I've been the adjuster in charge

12 which is about a year and one-half.

13 Q. And who physically puts things into that file?

14 Who puts documents and other material in it?

15 A. I sort my own mail.

16 Q. You sort your own mail?

17 A. Right.

18 Q. Before you inherited the file who physically

19 put material in there?

20 A. Dave Evans would have. The same procedure.

21 Q. When you inherited the file did you throw any-

22 thing out of the file?

23 A. No.

1 Q So is the file in the manner in which you
2 inherited it?
3 A Yes, sir.
4 MR. BROWN: Your Honor, I would submit that now
5 there can't be any question as to the custodian of the records.
6 This man maintains the records himself and physically is in
7 charge of it.
8 And, I don't see how he could possibly have
9 any objection to him testifying to everything that's in the
10 file.
11 MR. ELLIS: I have no problem with the fact
12 that since this individual came in contact with the file
13 that what is in the file is that which he has received and
14 has put in the file concerning this case.
15 However, I certainly have a problem with what
16 may have been or may not have been in the file prior to the
17 time that he took over actual custody of same.
18 Now for that limited purpose I have no objection
19 to this particular witness testifying but I do not stipulate
20 and I object if the admission of the record is to be con-
21 strued to be all of the correspondence, notations, memor-
22 andums concerning this case since the date of this accident.
23 I will stipulate --

1 THE COURT: I don't think it could be received
2 for the negative.
3 MR. ELLIS: Well, I would hope not but I can
4 understand --
5 THE COURT: I can only receive it for what's
6 contained in the file and offered into evidence and not that
7 that excludes everything else possibly that could have
8 happened in the case.
9 MR. BROWN: What I'm going to ask him, Your
10 Honor, is whether there is any reflection in the file of
11 having received any notice from anyone concerning this
12 accident.
13 THE COURT: He can testify to that but that
14 does not mean that he did not receive notice.
15 MR. BROWN: Well, if there's some positive
16 testimony that he did I'll be glad to proceed and deal with
17 it when it comes. Now, so we can proceed on that basis.
18 THE COURT: Go ahead.
19 BY MR. BROWN:
20 Q. Now, would you tell us what the record shows
21 with regard to the first notice to Safeco of this accident
22 of January 27, 1977?
23 A. I'd have to refer, of course, to what Dave

1 Evans had in it and he's got the form filled out as May 18th
2 would have been our first record in our office of having
3 received notice of a claim
4 Q. All right. And from whom did that notice come?
5 A. From the agent.
6 Q. That is National?
7 A. Right, National Insurance Agency.
8 Q. Mr. Johnson?
9 A. Well, it doesn't actually state Mr. Johnson.
10 Q. National Insurance Agency?
11 A. Right.
12 Q. What does the file reflect was done if any-
13 thing was done when notice was received by Safeco?
14 A. Well, he makes a note down here as to the fact
15 that he just got all this information from the agent and it
16 includes who the claimant would be and whatnot.
17 Q. And what was done? Was anything done with
18 regard to Mr. Blakeney himself?
19 A. Well, they made the note to a previous file.
20 Apparently, it appears that they couldn't contact -- I'll
21 have to refer to his phone messages. He called, apparently,
22 the -- or got the address of Mr. Blakeney's sister at --
23 He's got it listed here at 130 Williams Street.

1 Then apparently he makes note of a conversation on that same
2 day of speaking to Mr. Johnson. And apparently -- It says
3 in here that Mr. Johnson says that the insured, meaning Mr.
4 Blakeney, never reported the claim to him.
5 Then also on that same date he called Mr. Gild
6 and informed Mr. Gild that we may or may not insure Mr.
7 Blakeney.
8 MR. ELLIS: I'm sorry. Did the witness refer
9 to the date of that memorandum?
10 THE WITNESS: 5/18. This is all 5/18 what
11 I'm referring to.
12 BY MR. BROWN:
13 Q. Is there any correspondence to Mr. Blakeney or
14 any effort to reach Mr. Blakeney reflected in the file around
15 this time?
16 A. The first one would have been I think it is --
17 written correspondence would be on June 16th.
18 Q. Is there any reflection of an earlier effort
19 to reach Mr. Blakeney or a conversation with Mr. Blakeney
20 orally or by telephone?
21 A. No, no conversations.
22 MR. ELLIS: Excuse me, what year is that? I
23 don't mean to interrupt.

1 MR. BROWN: June, 1977.

2 THE WITNESS: That's '77.

3 BY MR. BROWN:

4 Q Would you show us that letter that was sent

5 and tell us to what address it was sent?

6 A Well, I believe there were four of them. We've

7 got a 2402 Terrett Avenue; a 1306 Duke Street, these are all

8 in Alexandria; 2347 Green Street and that's in D.C. and 130

9 Williams Street in Alexandria.

10 Q Would you give me one of those letters out of

11 the file?

12 MR. ELLIS: Your Honor, may we have all four?

13 THE COURT: The Court is going to recess at

14 this point. You may go through the file.

15 MR. ELLIS: Sir, I wonder, before we go into

16 recess if the Court might make the same ruling that you made

17 before with regard --

18 THE COURT: If he's using his file to testify

19 from then you can have access to it. The Court will recess

20 to 2:00 o'clock. If I'm able to come on the bench before

21 that time I'll send someone to contact counsel.

22 (Whereupon, at 12:00 o'clock p.m., the Court

23 recessed to reconvene at 1:45 o'clock p.m. that same day.)

1 AFTERNOON SESSION

2 EXAMINATION ON BEHALF OF SAFECO (Resumed):

3 BY MR. BROWN:

4 Q. Mr. Naylor, I believe before we broke I had

5 asked you to take out of your file, out of the clips there,

6 the letter that was the communication, the first written

7 communication from your company to Mr. Blakeney which I

8 believe is dated in June 1977. I had asked you for one

9 copy. Mr. Ellis asked that they all be removed, all four

10 of those particular letters.

11 MR. BROWN: You've seen these, Mr. Ellis,

12 haven't you, and I think Mr. Gild has not.

13 MR. ELLIS: Yes.

14 MR. GILD: May I have just a minute to read

15 this, Your Honor? I understand that counsel represents that

16 these were all the same letters?

17 MR. BROWN: Yes.

18 BY MR. BROWN:

19 Q. Are these all four the same letters, Mr. Naylor?

20 A. Right.

21 Q. And they were sent to different addresses?

22 A. Right.

23 Q. Would you tell us to what addresses the letters

1 were sent?

2 A. Well, we had 130 Williams Street in Alexandria.

3 1306 Duke Street also in Alexandria. 2402 Terrett Avenue

4 also in Alexandria and one to 2347 Green Street in D.C.,

5 southeast.

6 MR. BROWN: Your Honor, I would propose to

7 offer in evidence only one of these for the sake of the

8 clerk's office economy and not have so many copies to --

9 THE COURT: Any objection to that?

10 MR. ELLIS: No objection

11 MR. GILD: No objection.

12 THE COURT: Admitted.

13 MR. BROWN: I'll offer the one that is

14 addressed to the Terrett Avenue address which has attached

15 to it the addresses to which the other copies were sent.

16 (The document referred to above
17 was marked Complainant's Exhibit
No. 7 for identification and
was received in evidence.)

18

19 BY MR. BROWN:

20 Q. What method of mail, Mr. Naylor was used to

21 send those?

22 A. They were sent certified mail, return receipt

23 requested.

1 Q. Do you know whether or not you received or the
2 company received back any of the return receipts?
3 A. They were all marked unclaimed.
4 Q. Then did your company make any further effort
5 to make contact with Mr. Blakeney?
6 A. Yes, on July 28 we sent out those same letters
7 to the same addresses and we just changed the date and
8 the certified mail number.
9 Q. And would you get those out of your file
10 there?
11 A. Well, I've got -- I think I only have one here.
12 But I've got -- I believe we only have one here. What
13 number is that last --
14 Q. 851537.
15 A. 38, well, I know we had 38, 36 -- Okay. That's
16 the only letter that I've got.
17 Q. Did this -- Did the letter that I'm now showing
18 to Mr. Gild which is dated July of '77 go to the same addresses
19 as the June letter did?
20 A. Right. The only thing we changed on those
21 letters was the date and the certified mail number.
22 Q. Was it the same letter?
23 A. Same letter. I believe it's word for word.

1 Q. And that was also sent certified mail?

2 A. (Nodding head.)

3 Q. Do you know what the -- whether any of those

4 were returned to you?

5 A. I think they all came back unclaimed also.

6 No, just it says return to writer on one of them. They all

7 would have come back unclaimed then, return to sender. All

8 of them were marked that way.

9 Q. All of them marked return to sender?

10 A. Yes.

11 MR. BROWN: Your Honor, I'd offer this letter

12 which is a copy of one of four as the other letter.

13 THE COURT: Any objection?

14 MR. ELLIS: No objection, Your Honor.

15 THE COURT: Admitted.

16 (The document referred to above
17 was marked Complainant's Exhibit
No. 8 for identification and
was received in evidence.)

18

19 BY MR. BROWN:

20 Q. Now after the sending of that letter in July

21 of 1977 did there come a time when your office received

22 suit papers in the tort suits arising out of this accident?

23 A. Yes.

1 Q And how did you receive those suit papers?

2 A Through our registered agent in the state.

3 Q Did you receive the suit papers from Mr.

4 Blakeney at any time?

5 A No.

6 Q And subsequent to receipt of the suit papers

7 did you do anything else with regard to attempting to contact

8 Mr. Blakeney?

9 A Before we --

10 Q No, after.

11 A After. Yes, after we got the suit papers we

12 had an independent adjuster see if he could track down

13 Blakeney at those or any known addresses, canvas the neighbor-

14 hood.

15 Q And who was the independent adjuster?

16 A I believe his name is Jim Gorney from Crawford

17 and Company.

18 Q And did he report to you whether or not he had

19 found Blakeney?

20 A Yes, he did.

21 Q What was his report?

22 A He found Mr. Blakeney -- Actually, I don't

23 remember what address he found him at but he did. Apparently,

1 somebody referred him to Mr. Blakeney and he found Mr.
2 Blakeney and took a statement from him.
3 Q. Did his statement that he took from Mr. Blakeney
4 or any of the reports that Crawford and Company gave to your
5 company indicate anything at all with regard to a discussion
6 of coverage?
7 A. A discussion of coverage?
8 Q. Yes.
9 A. No.
10 Q. What was the nature of the statement that was
11 taken from Mr. Blakeney?
12 A. I believe he was just asked to go out there
13 and locate the man and take a statement from him on how
14 the accident happened.
15 Q. And was that what the statement related to?
16 A. Yes, I believe so.
17 Q. Was there any further effort to reach Mr.
18 Blakeney by your company after that?
19 A. Yes. Actually, I personally tried to follow
20 up on Mr. Gorney with no success. I can't tell you how
21 but I just tried to follow up on those addresses one time
22 myself, couldn't locate him so I turned around and sent some
23 more letters out hoping he'd respond to that because we had

1 a lot of questions at that point to ask him.

2 Q. What was the date of the Gorney finding of

3 Mr. Blakeney?

4 A. Actually, I don't think I've got a copy of that

5 statement.

6 Q. Do you remember what month it was?

7 A. I guess it would have been I think October then

8 of '77.

9 Q. Did you thereafter send further correspondence

10 to Mr. Blakeney?

11 A. Yes, we wrote him again on -- Let's see.

12 On November 16th of '77.

13 Q. Would you get that letter out and let us see

14 that?

15 A. Actually I don't see a certified number on it.

16 Q. To what address did that go?

17 A. Well, we would have sent, we would have sent,

18 it would have been exactly the same setup once again to those --

19 We changed one thing. We changed the Terrett address to

20 Terry Avenue. I believe everything else then would have

21 been identical because in the adjuster's signed report I

22 believe he put down 2402 Terry Avenue instead of Terrett

23 Avenue.

1 Q When you say the adjuster who are you referring
2 to?
3 A Jim Gorney again. I'm sorry.
4 Q Did you send that letter to, the letter of
5 November 16, 1977 did you send that letter to the 130 Williams
6 Street address?
7 A Yes, and to the Green Street address in D.C.
8 and the Duke Street address in Alexandria.
9 Q Was there any response from Mr. Blakeney as a
10 result of that letter?
11 A No, there wasn't.
12 Q Now down at the -- on the bottom of each page
13 of that letter the name Joe R. Blakeney is written as if
14 handwritten by someone. Can you tell me how that comes to
15 appear on that document?
16 A On that particular document you have there?
17 Q Yes.
18 A When I finally met Mr. Blakeney which would
19 have been I guess two, three weeks ago I asked him to sign
20 one of these letters as a -- to let him know that we were
21 reserving our rights.
22 He did not sign those in November of '77.
23 That's a little misleading. It was the only copy I -- It

1 was a copy of a letter I had and I wanted him to understand
2 that we were reserving his rights before we went ahead --
3 reserving our rights before we went ahead any further.
4 And I had him sign a copy of that letter.
5 That's the reason for that signature. He didn't do that in
6 November of '77. That was just one I had handy with me and
7 I simply asked him to sign it.
8 Q I want to come back to that but for the
9 present moment this letter is as it was mailed in November
10 of '77 except that Mr. Blakeney's signature at the bottom
11 did not appear on the copy in November of '77?
12 A. Yes, that's correct.
13 MR. BROWN: Your Honor, I would offer this in
14 evidence?
15 THE COURT: Any objection?
16 MR. ELLIS: No objection, Your Honor.
17 THE COURT: It will be admitted.
18 (The document referred to above
19 was marked Complainant's Exhibit No. 9 for identification and was received in evidence.)
20
21
22
23

1 BY MR. BROWN:

2 Q Did you make any further effort to reach

3 Mr. Blakeney by correspondence or otherwise?

4 A Actually it seems that we sent him a letter in

5 the summertime but I don't have a copy of it. I know I

6 rewrote him then on December 15th of '78.

7 Q Did you say you thought you sent him a letter

8 in the summertime?

9 A Yes. I seem to remember it but I don't have

10 a copy of it here so maybe that's --

11 MR. BROWN: If the Court please, in the Court

12 file there is a letter to Mr. Blakeney dated June 21, 1977

13 which shows service by posting at 130 Williams Street by a

14 special process service and I would ask that that be

15 admitted at this time.

16 THE WITNESS: I believe that was '78.

17 MR. BROWN: '78, I'm sorry. At least I hope

18 it's in the clerk's file.

19 MR. ELLIS: No objection.

20 MR. BROWN: I'd offer the letter of June 21,

21 1978 which has the stamp on it of the special process.

22 THE COURT: Any objection, Mr. Gild?

23 MR. GILD: I have none.

1 (The document referred to above
2 was marked Complainant's Exhibit No. 10 for identification and
3 was received in evidence.)

4 BY MR. BROWN:

5 Q After June 21, 1978 did Mr. Blakeney make any
6 contact with your office during the summer?

7 A No.

8 Q When did you attempt to contact him again if
9 there was another attempt made to contact him?

10 A December 15th we wrote him again at those
11 same addresses.

12 Q Do you have a copy of that letter?

13 A Yes. I think that's the only one I have.

14 MR. BROWN: I'd offer that.

15 THE COURT: Any objection?

16 MR. ELLIS: No objection, Your Honor.

17 THE COURT: Admitted.

18 (The document referred to above
19 was marked Complainant's Exhibit No. 11 for identification and
20 was received in evidence.)

21 BY MR. BROWN:

22 Q And to what addresses was that sent?

23 A They were sent to all the same ones and I

1 think we still sent the same address to the Terry Avenue
2 again instead of Terrett. I think.
3 Q. What was the result of that certified mailing?
4 That is, did they come back or --
5 A. We had I know one or two returns but he did
6 respond to that. He called Ed Grove who is -- I guess I can
7 say this -- defending him or defending him in the action
8 that Safeco hired.
9 Q. When did you hire Ed Grove?
10 A. When the original suit papers came in a year
11 and one-half ago.
12 Q. And has he filed pleadings on behalf of Mr.
13 Blakeney in the court suits?
14 A. Yes, he has.
15 Q. Is he aware of this suit having been filed?
16 A. Yes.
17 Q. Subsequent or after the December 15 letter
18 do you know whether or not Mr. Grove had any contact with
19 Mr. Blakeney?
20 A. Yes. Mr. Grove told me that Mr. Blakeney just
21 showed up in his office a little bit before Christmastime I
22 believe, just before or just after, just showed up in his
23 office one day.

1 Q. In '78?

2 A. Right.

3 Q. And did there come a time when you met Mr.

4 Blakeney?

5 A. Yes.

6 Q. When was that?

7 A. On January 10th, '79 that should be, that's

8 dated wrong.

9 Q. Did you at that time discuss with Mr. Blakeney

10 the circumstances under which Mr. Grove was representing him?

11 A. Yes.

12 Q. And what was the discussion and what was done?

13 A. Well, we explained to him at that time Mr.

14 Grove was defending him in the action and that we had hired

15 another attorney which was you to defend Safeco because we

16 really didn't think -- we didn't know at that time whether

17 or not we would provide any coverage to him for the accident.

18 Q. Did you give him the letter dated in November

19 of '77 which bears a copy of his signature?

20 A. Yes.

21 Q. Did you give him a copy of that?

22 A. Yes. Yes, I did.

23 Q. And he signed a copy?

1 A. Right.

2 Q. And did you subsequently bring him to my office?

3 A. Yes.

4 Q. On that same day?

5 A. Right.

6 Q. And was there any discussion in my office

7 concerning the importance of this case today?

8 A. Yes.

9 Q. Do you recall my giving him a copy of the

10 pleading in this case?

11 A. Yes, I do.

12 Q. The Bill of Complaint. Do you recall whether

13 or not I wrote anything on the Bill of Complaint before I

14 gave it to him?

15 A. Yes. I believe you wrote the trial date on

16 it and what time.

17 Q. Today's date?

18 A. Today's date at 10:00 o'clock I believe.

19 Q. Was there any discussion among the three of

20 us concerning the importance, the impact of this case, what

21 this case meant?

22 A. Right. As a matter of fact you put in rather

23 layman terms that you were the bad guy and that you were

1 representing Safeco in the action trying to get, trying to
2 put it so that Safeco would not have to provide coverage
3 and you explained your position.
4 He already understood that because Ed Grove I
5 believe had explained the same thing already to him. And
6 he knew what this action today was about.
7 Q Did he express any lack of understanding of
8 what we were telling him?
9 A No, he didn't.
10 Q Up until today right now at this moment has
11 Mr. Blakeney ever notified your company, gotten in touch with
12 your company or anyone for your company to your knowledge
13 and told them a notification of accident?
14 A He's never --
15 MR. ELLIS: If Your Honor, please, the witness
16 has stated that back in October, 1977 that a statement was
17 given to Crawford and Company who was acting as agent for
18 Safeco at that time concerning the accident.
19 MR. BROWN: Well, that was not a notification
20 of the accident. That was a -- I'm not trying to mischar-
21 acterize that but --
22 MR. ELLIS: Well, the witness has testified
23 that he --

1 MR. BROWN: I'll rephrase the question.

2 THE COURT: Rephrase the question.

3 BY MR. BROWN:

4 Q. Has Mr. Blakeney initiated any contact with

5 your company or to your knowledge anyone on behalf of your

6 company to report an accident up until today, that is the

7 accident of January 27th?

8 A. Other than going into Ed Grove's office that

9 one time. He responded to the letter. He's never called

10 our office for any reason or come into the office.

11 MR. BROWN: I have no further questions.

12 THE COURT: Cross examine.

13 EXAMINATION ON BEHALF OF LIBERTY MUTUAL:

14 BY MR. ELLIS:

15 Q. I'm sorry, I've forgotten your last name?

16 A. Naylor.

17 Q. It's Jim Naylor?

18 A. Right.

19 Q. Mr. Naylor you indicated at the beginning of

20 your testimony that the first notification of this accident

21 was on a memorandum in your file dated May 18, 1977, is that

22 correct?

23 A. That's true.

1 Q. As a matter of fact didn't the agent send over
2 a memorandum dated March 19, 1977 in which he enclosed a
3 copy of Mr. Gild's letter --
4 A. Well --
5 Q. --making notice of the claim and report of the
6 accident?
7 A. That's his date there. We didn't have any
8 record of that accident until May 18th.
9 MR. BROWN: We don't contest Your Honor that
10 we are bound if you will by the notice to the agent. And
11 that date is --
12 THE COURT: That is Mr. Johnson's form?
13 MR. BROWN: Yes, March 19 I think we've got to
14 buy that by our own testimony. His testimony was that Safeco's
15 own file doesn't show notice until later but we're not
16 contesting the earlier date.
17 THE COURT: The Court will accept that March
18 date then as the notification date.
19 MR. ELLIS: And can we stipulate that the
20 company received Exhibit number two?
21 MR. BROWN: We have no way of knowing that
22 the company received that at any time before May 18. We
23 feel that because of the circumstances we cannot take the

1 position that we did not technically have notice of the
2 accident as of the date of that letter but the Safeco file
3 shows not an earlier receipt date so I can't stipulate to
4 that.
5 BY MR. ELLIS:
6 Q. Now the memorandum of March 19, 1977 indicates
7 that not only was the letter attached from Mr. Gild notifying
8 the agent of the accident but also that the insured had not
9 filed an accident report, is that correct?
10 MR. BROWN: That's not what the witness
11 testified to, Your Honor. The witness testified, if I under-
12 stood him correctly, Mr. Johnson, that that letter says that
13 no accident report is attached to the letter that's going to
14 Safeco.
15 MR. ELLIS: I'm sorry. All right.
16 BY MR. ELLIS:
17 Q. But at least at the time that the company would
18 have received either the March 19th memo from the agent or
19 the April 29th memo from the agent it was clear at that time
20 that the insured had not supposedly at least according to
21 the correspondence, the insured had not notified the agent of
22 the accident or notified the company, is that correct?
23 A. When we first got notice, yes.

1 Q. Well, I'm talking about even in accordance with --
2 Let me see one thing in here. In going through this file
3 during the luncheon recess I noticed a copy of one of those
4 two memorandums in the file.
5 MR. BROWN: The April one is in the file.
6 MR. ELLIS: All right. We'll stipulate that
7 the -- Counsel, can we stipulate rather than go through the
8 entire file again that the memorandum Exhibit number four
9 is contained in the file brought here today by Mr. Naylor?
10 MR. BROWN: Can I see that list of the exhibits?
11 Yes, that is in the Safeco file.
12 BY MR. ELLIS:
13 Q. Now if the, that report was in the file would
14 you agree Mr. Naylor that back shortly after at least April
15 29th Safeco, not counting the agent, just Safeco itself was
16 aware of the fact that there had not only been an accident
17 but there was nothing to indicate that the insured had filed
18 an accident report?
19 A. If we had received it, yes, at that time.
20 Q. Well, it was in your file. I assume you
21 received it.
22 A. I thought you asked me if we had received it
23 on or about April 29th.

1 Q. Right.

2 A. And all I can testify to is what is in here and

3 according to the file we didn't get anything until May 18th.

4 Q. Just to clarify this one point it's stipulated

5 with counsel that the memorandum Exhibit number four --

6 A. Is in --

7 Q. --was part of your file?

8 A. Right. But we don't know if we received it --

9 We wouldn't have received it before May 18th is all I'm

10 saying.

11 Q. Now this file has been torn apart, has it not

12 on several occasions?

13 A. That's right. We had to recopy it twice.

14 Q. And in the process of recopying it isn't it

15 possible that this notification of accident sent by the agent

16 to the company dated April 29th may have been the first

17 document in the file?

18 A. No, it isn't.

19 Q. Why is that not possible?

20 A. Because we start every file with these blue

21 accord forms they're called, it's named accord form up at the

22 top and they're dated -- We take everything -- When a claim

23 comes in we fill out one of these forms and the date it's

1 received.

2 Q. Now in your file contrary to the testimony of

3 Mr. Johnson I fail to see a DMV report which was submitted --

4 Oh, unless this is it right here. Is this the accident

5 report that was submitted by --

6 A. Yes, that's --

7 Q. --the memorandum of April 29th?

8 A. Right.

9 Q. And the first time that Safeco sent out a letter

10 on the form of either a reservation of rights or denial of

11 coverage or notification of possible denial of coverage was

12 June 16th, is that correct?

13 A. That's right.

14 Q. You referred to a, quote, previous file, un-

15 quote. What did you have in mind when you --

16 A. I was simply reading from a memo written from

17 Dave Evans in which he referred to a previous file apparently

18 that they had in the office or knew about to try and get a

19 couple of known addresses on Mr. Blakeney. Or that was my

20 assumption. I --

21 Q. Now is it possible that the notification of

22 accident sent by Johnson on March 19th, '77 to the company

23 got misplaced and put in that other file?

1 A No.

2 Q Did you look at the other file before coming

3 here today?

4 A No, I didn't.

5 Q Well, what -- You don't dispute the fact that

6 either one of these memorandums reached the company, do you?

7 A No, I don't.

8 Q Is it possible that they may have gone to

9 someplace other than your office?

10 A Yes. I don't know where he sent it to.

11 Q So the fact that they're not in your file,

12 at least the March 19th letter, you're not suggesting that

13 the company didn't get it --

14 A No, I'm just saying that --

15 Q --within a couple of days after?

16 A The company as far as I'm concerned never

17 received it a couple of days later.

18 Q You mean it's not in your file?

19 A Right. I --

20 Q But you're not implying that they didn't get

21 it?

22 A No, I just, you know, we're the only claims

23 office that, you know, in the area or the closest one to

1 them.

2 Q. Now, when was the plaintiff's attorney first

3 notified of the decision of Safeco to proceed under some

4 reservation of rights?

5 A. It would have been on May 18th according to

6 the file.

7 Q. Would you show me that?

8 A. Sure. Now this is a phone call. There was, I

9 believe, a written letter in here.

10 Q. When did the written letter go out?

11 A. On July 28th.

12 Q. Now when is that phone call that you have

13 reference to?

14 A. It's just a note in here --

15 Q. Let me see that, if you would, please.

16 A. Sure. All right, they attained Mr. Gild.

17 Q. Now at the time of the conversation with Mr.

18 Gild on May 18th, of course, there's no dispute about the

19 fact that the company knew the insured had not notified the

20 agent, is that correct?

21 A. I -- That's tough for me to assume because I

22 wasn't on the file at the time.

23 Q. Well, that's what the file would appear to show?

1 A. Right. Okay.

2 Q. The first time -- And that telephone conver-

3 sation indicated that the company might or might not insure,

4 isn't that correct? It didn't say it wasn't going to insure,

5 it just said it might or might not?

6 A. That's right.

7 Q. And the first written notification then to

8 Mr. Gild would have been I think you said on July 28th, 1977,

9 is that correct?

10 A. Right.

11 Q. Is that when you sent him a copy of the

12 correspondence that had been dated June 16th, 1977?

13 A. I don't know if a copy of it was sent.

14 Q. Well, what does the letter show?

15 A. Yes, attached is a copy of the reservation

16 of rights letter.

17 Q. And according to your file that is the first

18 time that Mr. Gild had been notified that you had already

19 sent out a reservation of rights letter dated June 16th, is

20 that correct?

21 A. To my knowledge, right.

22 Q. Now you received a copy of the suit papers

23 and sent them over to Mr. Grove for answer, is that right?

1 A. That's correct.

2 Q. When Mr. Blakeney was sued?

3 A. Right.

4 Q. Did Mr. Grove file a Motion to Quash the suit

5 papers on the grounds that it did not appear that the suit

6 papers filed had ever reached nor were designed to reach

7 Mr. Blakeney regarding notice of the suit?

8 A. I don't know what his motion was.

9 Q. Well, didn't he send you copies of his

10 pleadings?

11 A. He might have; I'm just not familiar with them.

12 Q. You're not familiar with them? When did you

13 take over this case?

14 A. A year and one-half ago. Just I guess a little

15 bit after they would have filed suit.

16 Q. Well, you were aware of the fact, were you not,

17 that Mr. Grove was going to file a Motion to Quash the

18 service of process on the grounds that Mr. Blakeney had never

19 received them and they were not -- the manner in which they

20 were filed they were not designed to have been received by

21 him? Weren't you aware of that, sir?

22 A. I knew he wanted to file a Motion to Quash.

23 He never told me exactly what reasons they were for. I'm

1 sure he might have but --

2 Q Did Mr. Grove thereafter advise you that he had

3 appeared before the Court and the Court considered that

4 Mr. Blakeney was a nonresident and therefore service against

5 the Division of Motor Vehicles was valid service?

6 A Well, I know his Motion to Quash was denied

7 but again I don't know exactly.

8 Q Well, I show you this Order and ask if you've

9 ever seen that; it's a copy of an Order.

10 A I can't state whether or not I actually ever

11 saw that. I don't see any reason why I wouldn't have but --

12 MR. ELLIS: Counsel, I wonder if we could

13 stipulate that this was the Order that was sent. At least

14 it was the copy that was provided to me.

15 MR. BROWN: Your Honor, I don't want to be

16 difficult. I've never seen this and it's Law No. 40978 in

17 this court. Sometimes judges make changes in proposed

18 Orders and this is not a certified copy. It's Judge Morris'

19 and I don't know how often he makes changes but it'd be a very

20 simple matter to get that file and see whether that is the

21 Order.

22 I haven't seen the Order and so I can't

23 stipulate that that's the Order that was entered. But we can

1 certainly get the file and whatever the Order is, if that's
2 it I'll certainly stipulate.
3 MR. ELLIS: All right. Fine.
4 BY MR. ELLIS:
5 Q Now after the judge made his ruling that the
6 service was proper upon Mr. Blakeney in the liability case
7 pending he, Mr. Grove then filed an answer and proceeded to
8 defend, is that correct? Defend the case.
9 A Yes, I believe so. I --
10 Q Now has it ever been brought to your attention
11 that there were any witnesses to this accident that are no
12 longer available or that you cannot locate because of the
13 delay and passage of time?
14 A Wait a minute. What exactly is your question
15 again?
16 Q My question is, has it ever become known to
17 the company that if you had received notice of this accident
18 earlier than when you did that you could have done something
19 that say would have revealed a witness who is now no longer
20 available?
21 A Well, when Mr. Blakeney finally gave me a
22 statement, when he gave me a statement he told me that there
23 was another man at the dump but he wouldn't have been

1 qualified as a witness I don't believe. I don't --

2 Q. Did he --

3 A. Mr. Blakeney couldn't tell us whether or not

4 he saw the accident. He knew there was somebody else at the

5 dump.

6 Q. But he had no idea who he was?

7 A. No.

8 Q. So even if you had talked to Mr. Blakeney

9 shortly after you don't know what would have resulted from

10 that discussion with him?

11 A. No, I don't know what would have gone on.

12 Q. Or even that he would have witnessed the acci-

13 dent or saw any part of it?

14 A. No, Mr. Blakeney didn't know so.

15 Q. Is there anything that you can think of since

16 you first became aware of this case that has adversely

17 affected Safeco's position regarding the defense of this

18 case based on any late notice to the company?

19 A. Besides late notice, you're asking me? Well --

20 Q. If you allege that there's late notice has the

21 company's position been prejudiced or has the company been

22 adversely affected by the notice?

23 A. Well, that's a little tough. We never had --

1 We never really checked into this witness thing. We don't
2 know how -- if the thing, if it had been reported initially
3 to us if we would have been able to locate a witness.
4 Q. Well, now did you in response to that infor-
5 mation when you got the word from Mr. Blakeney that there
6 might have been somebody over at the dump, thereafter did
7 you make any attempt or did any of your adjusters make any
8 attempt to go to the dump area to talk to anybody connected
9 with the dump as to whether or not, whether there were any
10 witnesses to the accident?
11 A. No. It was so long after the accident I
12 didn't.
13 Q. Well, you talked to him in October of 1977,
14 you secured a statement did you not? Or at least Crawford
15 and Company did with reference to the accident, is that right?
16 A. That's right.
17 Q. And in October of '77 there was no attempt
18 made at that time to go back to the dump area to talk to
19 any employees who might have been working there to see if
20 they knew anything about this accident?
21 A. That's right.
22 Q. Okay. Any other areas that you can think of
23 whereby the problem of what you considered to be a late notice

1 or the late notice to the company, how that has adversely
2 affected Safeco?
3 A. Well, we never had an opportunity to talk to
4 the people in the other car.
5 Q. You mean for settlement purposes?
6 A. For any reason. Just to -- Just even to
7 investigate how the accident itself occurred.
8 Q. Now if I advised you, sir, that the plaintiffs
9 in the other car were represented by Mr. Gild no later than
10 January 31, four days after the accident, would that alter
11 your opinion?
12 A. Not necessarily. If the claim was reported
13 right away, generally, we have a rule to try and make a
14 business hour contact.
15 Q. You mean reported right away, you mean on the
16 very day of the accident?
17 A. The very day, right.
18 Q. But it's not unusual for Safeco to receive
19 notices after a one day period, is it?
20 A. Oh, I wouldn't say it's unusual, no.
21 Q. No. In fact, it's perhaps the most common
22 thing that notices don't come into the company until --
23 A. Yes.

1 Q. --well after -- I don't mean -- Well, we're
2 using a question of semantics now. But you rarely get a
3 notice of an accident on the same day it occurs?
4 A. Yes, it depends on the people involved.
5 Q. But that's a rare situation where you would
6 find out on the same day the accident occurred?
7 A. I wouldn't call it rare. I'd say less than
8 average but I wouldn't say rare.
9 Q. Anything else where -- You say you might have been
10 able to talk to the people but you're not sure about that.
11 Anything else?
12 A. Maybe a scene investigation. I don't know if
13 that would have revealed anything.
14 Q. Well, did you talk -- By the way, has -- does
15 your file reflect whether any adjuster or representative of
16 the company ever personally talked to the police officer
17 about this case?
18 A. No, it doesn't reflect it.
19 Q. Well, your file would reflect it, would it not,
20 if an adjuster went out to talk to the police officer about
21 the investigation and what he found and what the injuries
22 were, et cetera, that would appear in your file, is that
23 right?

1 A. Right, it should have been in there somewhere.

2 Q. So even after the company got the accident

3 report, the DMV report in May, there was no effort evidentally

4 by any of the adjusters to go out and interview the officer

5 or make an investigation and talk with him?

6 A. No, we didn't see anything in the police

7 report that we felt was conflicting.

8 Q. Now you received a statement also from the

9 insured on January the 10th, 1978 --

10 A. '79. I'm sorry. That's dated wrong. That

11 was just two weeks ago, two or three weeks ago.

12 Q. I see. And in that statement -- That was from

13 Mr. Blakeney?

14 A. Right.

15 Q. In that statement he advised the company --

16 MR. BROWN: Your Honor, excuse me but I

17 object to that statement on this grounds. That statement,

18 what Mr. Ellis is attempting to do is to get Mr. Blakeney's

19 side of the story as to why he didn't give notice or as to

20 what notice he claims he gave before the Court.

21 Mr. Blakeney -- That statement relates solely

22 to the question of notice. If Mr. Blakeney was here he could

23 testify but that statement of what Mr. Blakeney told Mr.

1 Naylor is rank hearsay as to any evidence introduced by the
2 truth of what it says.
3 And the fact that Mr. Blakeney told Mr. Naylor
4 something about the insurance coverage question is stipulated.
5 They talked about it. But what Mr. Blakeney claims is not
6 in evidence until Mr. Ellis produces Mr. Blakeney here to
7 tell the Court what his position is.
8 And to try to get Mr. Blakeney's position in
9 by virtue of a statement he gave to Mr. Naylor, not under
10 oath, talking to an insurance adjuster in the context of
11 trying to protect himself, if you will, having been told by
12 me, having been told by Mr. Grove about all these bad things
13 that were going to happen to him I think would be highly
14 prejudicial and totally inadmissible.
15 MR. ELLIS: Your Honor, Mr. Blakeney is a
16 party defendant to this suit but he's not my client. Now,
17 I think anything another party defendant says in the way
18 of an admission, an admission of adverse party -- and we are
19 not on the same side of the fence here, so to speak.
20 I mean we may have some mutual interests but
21 certainly I don't represent him and our interests are not
22 coincidental to each other. And therefore, any hearsay
23 statement made by such a party defendant I think I can use

1 in my own case.

2 THE COURT: Without subject to cross examination?

3 MR. ELLIS: Yes, sir.

4 THE COURT: What's your authority for that?

5 MR. ELLIS: Admission of adverse party, Your

6 Honor, which is one of the exceptions to the hearsay rule.

7 MR. BROWN: It has to be an admission against

8 interest, if the Court please, even to get to that, to rise

9 to that level and this certainly isn't an admission against

10 interest.

11 MR. ELLIS: There are two admissions that we

12 talked about if I remember my evidence days correctly.

13 One is an admission against interest when a third party

14 not a party to the suit makes a statement which is against

15 his interest that statement is admissible.

16 Now, that distinguishes that from an admission

17 of adverse party who is a party to the suit and I don't

18 believe there the statement has to be necessarily against

19 his interest. It's just a statement and admission of adverse

20 party.

21 MR. BROWN: It isn't an admission; it's an

22 exculpatory attempt.

23 THE COURT: In the Law of Evidence by Charles

1 E. Trent they distinguish the party admissions as well as the
2 extrajudicial statement by a party to the proceeding and it
3 seems like both of them are to be admitted but one of them,
4 the party admissions rule affords evidence of a most
5 satisfactory nature and may furnish the strongest most con-
6 vincing evidence of the truth.
7 So that is a --
8 MR. BROWN: It certainly isn't admissible
9 against another party in the case, Your Honor.
10 THE COURT: The extrajudicial declarations
11 made by a party to a litigation are admissible against that
12 party as a party admission.
13 MR. BROWN: Against that party.
14 THE COURT: Right.
15 MR. BROWN: But he's not introducing this --
16 THE COURT: Are you offering this against
17 Mr. Blakeney?
18 MR. BROWN: --against Mr. Blakeney because it's
19 favorable to Mr. Blakeney.
20 MR. ELLIS: Yes, sir.
21 THE COURT: You're offering it against him?
22 MR. BROWN: Oh, Mr. Ellis. You can't say that
23 with a straight face.

1 MR. ELLIS: Well, Your Honor --

2 MR. BROWN: You're laughing.

3 MR. ELLIS: No. I know obviously whether I'm --

4 I mean the Court -- I wouldn't kid the Court about this.

5 Obviously, I want it in for one reason.

6 THE COURT: I think both of them would be

7 admissions against that individual that made the admission

8 only, not against someone else.

9 MR. ELLIS: All right. For that reason I

10 would -- Only for that reason I will ask the Court --

11 THE COURT: An admission can only be admitted

12 against the party making the admission.

13 MR. ELLIS: Right.

14 THE COURT: So if you're offering it against

15 Mr. Blakeney then the Court would only receive it in that

16 area and not for any other purpose.

17 MR. ELLIS: Well, I don't know how the --

18 THE COURT: I mean I don't know what the

19 statement is so the Court can't --

20 MR. BROWN: Well, the statement, very frankly

21 we've alluded to it, the statement says he did give notice,

22 all right. So that certainly isn't anything that's against

23 Mr. Blakeney's interest.

1 THE COURT: Well, we don't have a jury and the
2 Court can disregard it if it is not against the interest of
3 Mr. Blakeney.
4 MR. ELLIS: Well, then, Your Honor, I would
5 ask that the document be marked as an exhibit, Defendant's
6 Exhibit number one. I would consider moving for its
7 admission.
8 MR. BROWN: Note my objection on the further
9 grounds that Mr. Blakeney is in default and doesn't have any
10 right even to appear in this case. He has no --
11 THE COURT: The Court has admitted it under
12 the admission section as an exception to the hearsay rule
13 if it is an admission against Mr. Blakeney. If it is not
14 then the Court will disregard it.
15 (The document referred to above
16 was marked Defendant's Exhibit
17 No. 1 for identification and was
received in evidence.)
18 BY MR. ELLIS:
19 Q. Now based on your recollection of the statement
20 and I didn't see the statement in your file but the statement
21 that Mr. Blakeney made in October of 1977 to Crawford and
22 Company did you learn anything more about the accident that
23 you already hadn't picked up from the information contained

1 on the suit report, basically? Not the suit report the --

2 MR. BROWN: May I show a copy of the report to

3 the witness, Your Honor?

4 MR. ELLIS: Not the suit report but the accident

5 report.

6 MR. BROWN: May I show the witness a copy of

7 the document he's being cross examined about?

8 THE COURT: If he needs it?

9 THE WITNESS: Yes. I'm really not familiar

10 with it. I don't remember. In the police report does it

11 state that he says that Blakeney was a witness to the acci-

12 dent, the police officer?

13 MR. ELLIS: No.

14 BY MR. ELLIS:

15 Q It names him as a party.

16 A. What?

17 Q It names him as the owner.

18 A. Oh. Yes, in there Mr. Blakeney states that

19 he, the other vehicle would have been speeding or whatever.

20 That's the only thing.

21 Q Well, was there anything different that your

22 company did in handling this case after receiving Blakeney's

23 version of the accident as opposed to before, based on the

1 information you had before?

2 A. If we did anything different?

3 Q. Yes. Based on the statement that you eventually

4 secured from Blakeney did you handle the case any differently

5 than you had been handling it --

6 A. Well, we wanted to get more information out of

7 him but we didn't essentially do anything that much differently.

8 Q. And your position in the case didn't change

9 any --

10 A. No.

11 Q. --regarding the evaluation of either liability

12 or medicals or whatever?

13 A. No.

14 Q. Now there's something in your file, sir, about

15 this Terry Avenue. Is that where Crawford and Company --

16 A. I believe -- I think there on that first or

17 second page it says Terry, doesn't it?

18 Q. Yes.

19 A. Somewhere there.

20 Q. Now this was the first time according to your

21 information in the file that the 2402 Terry Avenue appeared,

22 is that correct?

23 A. Right, before we were writing Terrett Avenue.

1 Q. Now, all of the correspondence prior to October
2 of 1977 was Terrett, is that correct?
3 A. That's right. Right.
4 Q. Now the letter that you sent to Mr. Blakeney on
5 December 15, 1978 a copy of that was also sent to Terry
6 Avenue, was it not?
7 A. Yes, I believe that was Terry, right.
8 Q. And within four days or at least your file
9 indicates that on December the 19th Mr. Blakeney called Ed
10 Grove and showed up at his office as a matter of fact, within
11 four days after that letter went out?
12 A. Right.
13 Q. Is that correct?
14 A. Right.
15 Q. And he was very cooperative with Mr. Grove
16 as far as you know?
17 A. Yes. That's what Ed Grove said. He was
18 very cooperative.
19 Q. And since that time he's been in to see you
20 in your office?
21 A. No.
22 Q. Oh, he hasn't. Where did you meet with him?
23 A. I met with him -- Apparently when he met with

1 Ed Grove they had to answer interrogatories at the time that
2 were outstanding. And they sat down and drew them up and
3 then he was going to have them typed up and he wanted Mr.
4 Blakeney back in his office.
5 That was on the 10th, the day of that signed
6 report.
7 Q The 10th of January?
8 A Right.
9 Q So he came back in on that day and signed
10 interrogatories?
11 A Right and Ed Grove had called me beforehand and
12 said Mr. Blakeney's coming in; if you want to meet him he
13 said he'd be here and he was.
14 Q And he was also cooperative in going over to
15 see Mr. Brown?
16 A That's right. I put him in my car and we drove
17 over here together.
18 Q That was on the 10th, was it?
19 A Right, it was all done on the 10th.
20 Q Did any of the letters that you sent out appear
21 to have reached Mr. Blakeney except for that series you sent
22 out on the 15th of December?
23 A No.

1 Q. With reference to the suit that was filed
2 against him, Mr. Blakeney, as far as you know, timely answers
3 were filed or at least timely objections or Motions to Quash
4 were filed and heard in accordance with the normal time
5 procedure?
6 A. I believe so. I really kind of threw the ball
7 to Ed Grove and he handled everything and didn't seem to
8 incur any particular problem.
9 Q. Did you ever ask the Crawford and Company to
10 ever go back out again after October of 1977 to attempt to
11 locate Mr. Blakeney?
12 A. No.
13 Q. Finally, if I can take just a very quick look
14 at the file and I think that might be it.
15 A. Sure.
16 MR. ELLIS: I have nothing else, Your Honor.
17 THE COURT: Mr. Gild.
18 MR. GILD: I have no questions.
19 THE COURT: Redirect.
20 MR. BROWN: No questions, Your Honor.
21 THE COURT: You may step down.
22 (Witness excused.)
23 MR. BROWN: Mr. Gorney.

1 Whereupon

2 JAMES GORNEY

3 a witness, was called for examination by counsel for Safeco,

4 and, after having been duly sworn, was examined and testified

5 as follows:

6 EXAMINATION ON BEHALF OF SAFECO:

7 BY MR. BROWN:

8 Q Mr. Gorney would you state your name?

9 A James Gorney.

10 Q By whom are you employed?

11 A Crawford and Company.

12 Q Were you so employed in October, November,

13 December of 1977?

14 A Yes, sir.

15 Q What is your job and was then your job at

16 Crawford and Company?

17 A I'm a claims adjuster.

18 Q Did you receive an assignment from Safeco

19 Insurance Company with regard to a man named Joe Roy Blakeney?

20 A Yes, sir.

21 Q When did that assignment come in?

22 A Okay. That was called in to us on October 6th,

23 1977.

1 Q. What was the assignment?

2 A. Our assignment was to locate Mr. Blakeney,

3 get a signed statement from him regarding the accident of

4 January 27th, 1977.

5 Q. Were you given the names of claimants, injured

6 parties in that accident?

7 A. No, sir.

8 Q. Were you given any information about injuries

9 at all in the accident?

10 A. No, sir, none.

11 Q. Did you attempt to contact Mr. Blakeney?

12 A. Yes, sir, I did.

13 Q. What addresses did you have for Mr. Blakeney?

14 A. The address that I first tried to locate him

15 at was 2402 Terrett Avenue in Alexandria.

16 Q. How do you spell Terrett?

17 A. T-e-r-r-e-t (spelling).

18 Q. Where is that?

19 A. That's located right off of Mount Vernon

20 Avenue.

21 Q. Is it in Alexandria proper?

22 A. Yes, sir.

23 Q. And what is it? Is it a house or what?

1 A. Yes, it's a house, a private residence.

2 Q. Did you ascertain who lived there?

3 A. Okay. When I went to that residence on

4 October 7th at approximately 4:30 p.m. I asked for Mr.

5 Blakeney and the woman there said that he was no longer

6 living at that Terrett Avenue address and he was living at

7 130 Williams Street in Alexandria.

8 Q. Did the woman indicate that he ever had been

9 at the Terrett Avenue address?

10 A. I got the impression that she had known him

11 and he had lived there.

12 Q. Then what further efforts did you make to

13 locate him?

14 A. Okay. She did not have a telephone number

15 at which I could reach him so on October 10th at approxi-

16 mately 10:00 a.m. I went to that 130 Williams Street and

17 there was no answer at that address.

18 And I went across the street to one of the

19 neighbors at 129 Williams Street and they had no knowledge

20 whether or not Mr. Blakeney lived there or not. And I had

21 left my business card with a note on the back asking Mr.

22 Blakeney to call me regarding this accident.

23 Q. Did you eventually make contact with him and

1 take a statement from him?

2 A. Yes, sir, I did.

3 Q. When did you take that statement?

4 A. I met with him on October 19th, 1977.

5 Q. Where physically were you when you met with

6 him?

7 A. At 130 Williams Street in Alexandria.

8 Q. Do you have a copy of the statement with you?

9 A. Yes, sir.

10 Q. Would you look at what I'm going to hand you

11 and tell me if it's a copy, although be it not a very good

12 copy, of the statement?

13 A. Yes, that's just a copy of the same statement

14 I have.

15 Q. Now up at the top of that statement in the

16 very first few words Mr. Blakeney is recorded -- Incidentally,

17 did you write that yourself?

18 A. Yes, that's my handwriting.

19 Q. And Mr. Blakeney is recorded living at 2402

20 Terry, T-e-r-r-y (spelling) Avenue.

21 A. Yes, sir.

22 Q. Do you see that?

23 A. Right.

1 Q. Is there a Terry Avenue?

2 A. Not as far as I know. The only reason I think

3 there may be the difference between Terry and Terrett is

4 perhaps because of his pronunciation.

5 Q. And did he sign the statement?

6 A. Yes, sir. He signed each page individually

7 after he had read the statement.

8 MR. BROWN: I have no further questions, Your

9 Honor.

10 THE COURT: Cross examine.

11 EXAMINATION ON BEHALF OF LIBERTY MUTUAL:

12 BY MR. ELLIS:

13 Q. Did you have any conversations with Mr. Blakeney

14 as to whether or not he had notified his agent about the

15 accident?

16 A. I can't recall whether I did discuss that with

17 him.

18 Q. Did you advise Mr. Blakeney that you were

19 there on behalf of Safeco, his insurance company?

20 A. Yes, I did.

21 Q. Did you leave him any instructions at all after

22 you secured the statement?

23 A. I left him a copy of the statement and told

1 him what our limited assignment was, was to get a statement
2 from him regarding the facts and that I would turn it over
3 to Safeco and they would contact him any further regarding
4 this.
5 Q. You didn't tell him that it was necessary for
6 him to call Safeco or call the agent or anything of that
7 sort?
8 A. No, sir.
9 Q. Was Mr. Blakeney cooperative when you talked
10 to him?
11 A. When I spoke with him, yes. I had quite a
12 difficult time finding him. I had to leave several messages
13 at his residence and I also dropped letters at the 130
14 Williams Street address.
15 Q. But when you and he met -- By the way, this
16 was on what day?
17 A. October 19th, '77.
18 Q. The first assignment had been given to Crawford
19 and Company when?
20 A. October 6th.
21 Q. So within 13 days after receipt of the assign-
22 ment you were sitting down talking with him about the case
23 and securing all the facts of the accident from him?

1 A. Right.

2 Q. Was he cooperative in providing this information

3 to you?

4 A. Very much so.

5 MR. ELLIS: I have nothing further, Your Honor.

6 THE COURT: Mr. Gild.

7 EXAMINATION ON BEHALF OF HILTONS AND BLAKENEY:

8 BY MR. GILD:

9 Q. Mr. Gorney, when you spoke to Mr. Blakeney did

10 he show any knowledge that his insurance company was trying

11 to reach him?

12 A. I can't recall ever having discussed that with

13 him.

14 Q. Did he indicate any knowledge that, or aware-

15 ness that there was correspondence directed to him about the

16 accident?

17 A. None other than mine that I know of. He didn't

18 discuss that; just the letters that I had written to him.

19 Q. And what address did he receive -- at what

20 address did he receive correspondence from you?

21 A. I sent it to the Williams Street address, 130

22 Williams Street.

23 Q. Did he indicate that he was living there?

1 A. Well, when I took the statement he still gave
2 me the address, 2402 -- I said Terry Avenue in the statement.
3 Q. Green Street?
4 A. I'm sorry.
5 Q. 2402 what, Green Street?
6 A. No, Terry Avenue.
7 Q. I'm sorry.
8 A. Terry Avenue and I assumed it was Terrett but
9 I just misunderstood him. But he told me that he was living
10 at the 2402 Terrett Avenue address.
11 Q. Did he indicate why it was that you were able
12 to reach him at Williams Street but not at Terry, Terrett?
13 A. No. No, he didn't.
14 Q. Do you have a better copy of that report than
15 the one that was --
16 A. Of the statement?
17 Q. Yes. Yes, that's right.
18 A. Yes.
19 Q. May I take a look at it, please? This is in
20 your handwriting as opposed to his?
21 A. Yes, it is.
22 Q. His statement to you was that he was standing
23 right by the car at the time of the accident?

1 A. Right, by the truck.

2 MR. GILD: No further questions.

3 MR. BROWN: I have no further questions of

4 this witness.

5 THE COURT: May the witness be excused?

6 MR. ELLIS: Your Honor, may I ask just one

7 question?

8 FURTHER EXAMINATION ON BEHALF OF LIBERTY MUTUAL:

9 BY MR. ELLIS:

10 Q. I gather, sir, that when you made contact at

11 the 130 Williams Street address he responded to that?

12 A. Right.

13 Q. He called you in response to either a letter

14 or card that you left or something like that?

15 A. I can't recall if he called me but I did not

16 have any phone number at that 130 Williams Street address

17 so I assume he called me to set up the appointment but I

18 can't recall a specific phone call.

19 Q. But you didn't have to go out and chase him

20 down and go over -- I mean --

21 A. No.

22 Q. --you didn't just stumble across him?

23 A. No, we did have an agreed appointment at a

1 P R O C E E D I N G S :

2 (The Court Reporter was sworn.)

3 THE COURT: This is coming on on the memorandum

4 of law filed by Mr. Ellis raising the question of Code

5 Section 38.1-389.1 of the Code, concerning notice, and it

6 being an evidentiary matter, the Court was not in

7 possession of any evidence concerning this 38.1-389.1 of

8 the Code, and the Court could not rule on the matter on

9 a motion before the Court, so I assume that counsel has

10 evidence.

7 Whereupon,

8 DAVID B. EVANS,

9 a witness, was called for examination by counsel for the

10 complainant, and having been previously duly sworn, was

11 examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. BROWN:

14 Q Mr. Evans, will you state your name, please?

15 A David B. Evans.

16 Q And what is your present address?

17 A 4702 Alcon Drive, Camp Springs, Maryland.

18 Q And what is your occupation?

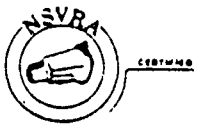
19 A Insurance Claims Adjuster, or representative.

20 Q For whom now?

21 A Ohio Casualty Insurance Company.

22 Q For how long have you been so employed?

23 A Approximately a year and a half with Ohio



1 Casualty.

2 Q. In the period around January to June of 1977,

3 how were you employed?

4 A. At that point in time I was the adjuster in

5 charge of the Alexandria office for Safeco Insurance

6 Company.

7 Q. And do you recall actually the time when

8 you left the employment of Safeco?

9 A. Yes. It was in August of that year that I

10 left, the first of August of, I believe it would be 1977,

11 is when I went to Ohio Casualty.

12 Q. While you were at Safeco in the capacity that

13 you have mentioned, did you maintain any files?

14 A. Yes, I did.

15 Q. Do you have the file with you that you main-

16 tained?

17 A. One of them, yes.

18 Q. Do you have the file with regard to Mr. Blakeney?

19 A. Yes.

20 Q. Have you reviewed that file prior to coming here

21 today?

22 A. Yes, I have. I have looked through it to refresh

23 my memory.

1 Q When did you first learn of an accident
2 involving someone named Joe Roy Blakeney?
3 A Well, in reviewing the documents, I find
4 that on or -- well, specifically on May 18 of 1977, I
5 prepared a loss report based on information that was
6 received in the mail,that led us to believe that there was
7 a claim of Mr. Blakeney.
8 Q Did you do anything else on May 18 with regard
9 to that claim?
10 A Yes. On May 18 at the same time that I set this
11 file up, I made three phone calls that day. One was in an
12 attempt to find Mr. Blakeney. One was to the agent involved,
13 which is how I constructed the loss report, which is in the
14 file, and the third call I made was to Mr. Gild, because
15 when we received the claim, there was correspondence
16 indicating that he represented the other parties in the
17 matter.
18 Q And what conversation did you have with Mr. Gild?
19 A The conversation on that date was to advise
20 Mr. Gild that I was somewhat familiar with the individual
21 Blakeney, in that we had failed to communicate, or even
22 reach him regarding a prior claim.
23 MR. ELLIS: Objection, Your Honor, and I am

1 going to move to strike; that has no materiality or relevance
2 to this case.
3 THE COURT: It may go to the question of notice;
4 it says notice to claimant's counsel.
5 MR. BROWN: You can go ahead and complete your
6 answer.
7 THE WITNESS: On that date I advised him that
8 I was familiar with an individual by the name of, I
9 believe it is Joe Roy Blakeney, and the fact that we had
10 been unable to communicate with him regarding a prior
11 claim.
12 I advised Mr. Gild that if we continued
13 to experience problems in not being able to communicate
14 with Mr. Blakeney, and were not able to reach him, then
15 there would be a coverage problem as far as his policy was
16 concerned.
17 BY MR. BROWN:
18 Q And would you tell us what you did with regard
19 to attempting to contact Mr. Blakeney at that point?
20 A. Well, the first thing I did is I got his old
21 file out, and I went through, and I don't recall exactly
22 what documents I had in the beginning, but from all
23 documents that I had from this file, and from the previous

1 file, I tried to construct a list of addresses where he
2 might be contacted, and then later we proceeded after being
3 unable to reach him at any telephone number that we had,
4 proceeded to start writing him by certified mail at all
5 known addresses.
6 Q. Before you made these telephone calls on
7 May 18, that is the call to the agent, and incidentally, who
8 is the agent that you called; do you recall, or can you
9 find the record of it?
10 A. Well, it would indicate in my notes. National.
11 I guess it was National Claim, or -- National was the name
12 of the agency, and Johnson was the name of the agent.
13 Q. Before you made those calls, what information
14 was in your file with regard to this accident?
15 A. Before I made those calls?
16 Q. Before you made those calls?
17 A. There wasn't any information up until that
18 date. That is the date that the claim came into our
19 office.
20 Q. After May 18, did you have any written
21 communication with Mr. Gild, and let me hand you a letter,
22 and ask you if you can recognize it. Do you recognize
23 that letter?

1 A. Yes. On June 16th, the date of the letter, I
2 referred to -- I referred to the conversation that Mr. Gild
3 and I had had on May 18 when I wrote him and advised him
4 of the contents of that letter.
5 Q. Is this the copy of the letter that you sent
6 to Mr. Gild?
7 A. Yes, it is.
8 Q. And was it sent under your supervision on or
9 about June 16th?
10 A. It was obviously dated June 16th when it came
11 out of dictation, and went to Mr. Gild at my direction.
12 MR. BROWN: I would offer this letter, Your
13 Honor.
14 THE COURT: Any objection?
15 MR. ELLIS: No objection, Your Honor.
16 (The document referred to above
17 was marked Complainant's Exhibit
No. 12 for identification and
admitted into evidence.)
18
19 BY MR. BROWN:
20 Q. And then I will ask you if you recognize this
21 letter?
22 MR. ELLIS: What number is this, Your Honor, the
23 last --

1 THE WITNESS: Yes, I do.

2 THE COURT: This would be Complainant's No. 12.

3 BY MR. BROWN:

4 Q. Will you tell the Court what that document is?

5 THE COURT: This is already into evidence,

6 June the 16th, 1977, letter, as No. 7 I think. It has

7 already been entered.

8 MR. BROWN: Is that the letter to Mr. Gild

9 that is already in evidence? I was under the impression

10 that it was a letter to Mr. Blakeney that was in evidence,

11 and that that letter wasn't. I don't mean to duplicate

12 exhibits here, but --

13 THE COURT: June 16, 1977, is a letter to

14 Mr. Joe Roy Blakeney. So that would not be No. 7.

15 MR. BROWN: At the same time this letter was

16 then sent. That would be No. 12.

17 BY MR. BROWN:

18 Q. Now, will you tell us what the letter is that

19 I just showed you here?

20 A. This letter is dated July 28th, 1977. It is a

21 letter to Mr. Gild attaching a copy of a reservation of

22 rights letter that we were attempting to have delivered

23 to Mr. Blakeney, and advising him that we were continuing

1 in our efforts to try and reach him.

2 Q. Was this letter also sent under your

3 supervision on or about the time it is dated?

4 A. Yes, it was.

5 MR. BROWN: I offer that letter, Your Honor.

6 THE COURT: It will be No. 13.

7 (The document referred to above
was marked Complainant's Exhibit
8 No. 13 for identification, and
received into evidence.)

9

10 MR. GILD: Your Honor, I am going to object,

11 because I think the issue here is whether notice was given

12 to me as -- with regard to a defense of non-representation,

13 or responsibility.

14 The letter that has been introduced as

15 Complainant's No. 12 establishes that already. Anything

16 after that, certainly is merely cumulative of what has

17 already been established by No. 12.

18 In other words, I don't see that it would have

19 any relevancy to the issue of when was notice first given.

20 THE COURT: The Court would admit it.

21 BY MR. BROWN:

22 Q. Mr. Evans, did you ever hear from Mr. Blakeney

23 in response to any of your attempted communications to him?

1 A. Not on any date did I ever hear from him, no.

2 Q. Will you tell us what transpired within your

3 company with regard to this question of coverage of

4 Mr. Blakeney during the period of time that you have been

5 testifying to?

6 A. I am sorry. Would you repeat that again.

7 Q. Will you tell us what happened within your

8 company? That is, what decision was made, if any,

9 concerning coverage to Mr. Blakeney during this period of

10 time?

11 MR. ELLIS: If Your Honor please, I think I

12 am going to object to the form of the question. It is much

13 too broad.

14 THE COURT: The Court would permit him to

15 answer it within his own personal knowledge.

16 MR. ELLIS: What decision he may have made,

17 not what decision someone else may have made.

18 THE WITNESS: Well, at that time I was

19 operating under instructions to continue to attempt to

20 contact Mr. Blakeney, and as the correspondence indicated,

21 we were attempting to send, or we were sending the

22 reservation of rights letter out, not just one time only,

23 to the four or five addresses we had, but I was attempting

1 to repeat that within thirty days or so in order to attempt
2 to get the letter delivered to him, and to give him a
3 chance to come forward.
4 BY MR. BROWN:
5 Q. Why is it that May 18 -- what is it about
6 May 18 that makes that the first date that you contacted
7 Mr.Gild?
8 A. What is it about May 18?
9 Q. Yes. Why May 18 as opposed to some other date
10 sooner or later?
11 A. That was the date that the claim actually came
12 into existence.
13 Q. What do you mean by, came into existence?
14 A. Well, the claim was received in our office
15 along with the letter from Mr. Gild, a confirmation of
16 coverage from New Jersey where all of the assigned risk
17 policies and coverage data was stored, and it was received,
18 and with that information I set up a claim.
19 I filled out a loss report based on information
20 from Mr. Gild. I believe there was a letter from Mr. Gild
21 based on that information, and a telephone call with the
22 agent. I put together enough information to send the
23 first report into the company, and advise them of the

1 existence of that claim.

2 Q And what does confirmation of coverage mean?

3 You used that term.

4 A Well, within Safeco, all assigned risk policies,

5 at least on the entire east coast, were issued out of their

6 Riveredge office in New Jersey.

7 And in order to determine if a person was

8 insured with the company, it could not be done in any

9 fashion other than to send a notification through Riveredge,

10 whereupon they would research the dailies; check the

11 policy dates; check the date of the alleged claim, and

12 send a form either denying or confirming that coverage

13 was in order for the date of the accident.

14 Q And did you receive such a confirmation form

15 from Riveredge?

16 A Yes. It was sent from Riveredge. It is

17 marked an urgent coverage request, and it does indicate that

18 coverage was in existence for Mr. Joe Roy Blakeney, and

19 the coverage dates.

20 MR. BROWN: I have no further questions of

21 this witness.

22 THE COURT: Cross examine.

23 CROSS EXAMINATION

1 BY MR. ELLIS:

2 Q. Mr. Evans, look back in your file, if you

3 will, to the early stages of it, and tell us again how

4 you personally happened to become aware of this accident,

5 and show us the documents you received, will you please?

6 A. The file is not exactly in chronological

7 order, and I believe that I looked through here before

8 for the original letter from Mr. Gild. I think that you

9 might have it, but I don't, but there was a letter from

10 Mr. Gild, because that is how I got his name on that date.

11 It was attached with this form, this urgent coverage

12 request, and those documents came in the mail on that date.

13 Q. From where?

14 A. From Riveredge, New Jersey.

15 Q. On the 18th you received them?

16 A. That is correct.

17 Q. What did you receive from Riveredge? I assume

18 that is your home office?

19 A. That is the office on the east coast where

20 all assigned risk policies were issued from, the home office.

21 Q. What did you physically receive on the 18th?

22 A. This form, number one.

23 Q. May I see that? Will you take it out, please?

1 A (The witness complied with the request.)

2 Number two.

3 Q Which is the March 1st letter?

4 A This is all recent correspondence.

5 MR. BROWN: That is March 1st, 1979.

6 THE WITNESS: In addition to that document I

7 know there was a letter from Mr. Gild. That is how I got

8 his name, and I know that there was a form from the agency

9 with Mr. Johnson's name on it, because on that date in order

10 to set up a loss report, I had to call all of those

11 individuals to get enough information to fill out a loss

12 report, which I did.

13 BY MR. ELLIS:

14 Q In other words, you made -- did you receive a

15 copy of the police report?

16 A I couldn't tell you at this point in time

17 if there was a police report with that.

18 Q Well, would you check your file to see if there

19 is a police report in there?

20 A (The witness complied with the request.)

21 It could possibly have been removed in the

22 meantime.

23 MR. BROWN: I think actually I have a police

1 report in my file that was in that file at one time.

2 MR. ELLIS: May I have that, counsel?

3 MR. BROWN: Let me confer with the present

4 adjuster to see if this is the copy that was in there at

5 the time. I have one that has clips in it. I don't know

6 if that is the one or not, or whether there is any way

7 to tell.

8 We think it is in that file now, Your Honor.

9 MR. ELLIS: You think it is in that file?

10 MR. BROWN: In that file.

11 MR. ELLIS: May I see that one for a moment?

12 MR. BROWN: Sure.

13 THE WITNESS: There is a copy of a police report

14 in there.

15 BY MR. ELLIS:

16 Q. And what is the stamped in date shown when it

17 was received in your office?

18 A. I am sorry.

19 Q. Do you stamp the material as it comes into

20 your office?

21 A. No. We do not date stamp anything. This

22 appears to be a copy of the police report. It is in the

23 middle of the file at this point in time.

1 Q. Do you have a copy of the letter in there from
2 Mr. Johnson, any memorandums in that particular file?
3 A. I haven't found one yet. There was an
4 original memorandum from Mr. Johnson.
5 Q. Dated when?
6 A. There is the date. This is one of the documents
7 that came in with the urgent coverage request.
8 Q. And that is the document that has already been
9 marked as an exhibit; it is dated April 29, 1977?
10 MR. ELLIS: Your Honor, it is the exhibit
11 from Mr. Johnson to Safeco.
12 THE COURT: What is the date?
13 MR. ELLIS: April 29.
14 THE COURT: That is the second one?
15 MR. ELLIS: Yes, sir.
16 BY MR. ELLIS:
17 Q. Now, if you would look through there and see
18 if you can find another one of these memorandum type
19 things from Mr. Johnson?
20 THE COURT: There is one dated March 19, 1977.
21 MR. ELLIS: Now, just for clarification, the
22 memo from Johnson which was sent to Safeco, and then later
23 sent down to you, which you received on the 18th of May,

1 this memorandum from Johnson was received with the
2 correspondence from New Jersey; is that correct?
3 THE WITNESS: That is correct. With that top
4 document, that urgent coverage request, and he indicates
5 here that there was a letter from a lawyer. So those
6 documents were assembled, and sent to Riveredge.
7 Riveredge established the fact that there was
8 coverage in order for a particular date, and sent the
9 claim to the Claims Office that would handle Northern
10 Virginia, which was us. It was received, and on that date
11 I initiated, or filled out the accord form; set up a claim
12 and reported it to our Division, which was in Atlanta, and
13 advised them that we had notice of a claim.
14 BY MR. ELLIS:
15 Q. Well, your company in New Jersey had already
16 had notice of a claim, but I assume that that is just a
17 procedure to notify your claims down in Atlanta; is that
18 correct?
19 A. No. The people in Riveredge only serve the
20 function of looking up and confirming coverage, because the
21 dailies were all stored there in New Jersey. It was an old
22 system that went way back for years. Why, I don't know, but
23 all dailies for assigned risk policies were issued out of

1 that New Jersey office, and before a claim could be
2 established, before we could open up the claim in our Claims
3 Office, we had to have that urgent coverage request,
4 indicating that there indeed was coverage for the individual.
5 Q If you could find that April 29th memorandum
6 again, if you will, please?
7 A From Johnson?
8 Q Yes, sir.
9 A Here it is.
10 Q Do you know where that would have been sent
11 to?
12 MR. BROWN: Well, Your Honor, I object to that
13 question; would have been sent to --
14 THE COURT: He can testify from his own personal
15 knowledge if he knows where it was sent to.
16 BY MR. ELLIS:
17 Q Do you know where it was sent to? What part of
18 the company, what part of Safeco, it was sent to, Mr.
19 Johnson's memorandum?
20 MR. BROWN: You mean originally by Mr. Johnson?
21 MR. ELLIS: Yes.
22 THE WITNESS: I wouldn't have any way of
23 knowing for certain. I know where it ended up.

1 MR. ELLIS: I just wanted to know where it
2 went in the beginning.
3 THE WITNESS: Because it came back with the
4 urgent coverage request from New Jersey, so it had to get
5 to New Jersey somehow.
6 BY MR. ELLIS:
7 Q When you received the information on the 18th of
8 May, did you or anyone in your office attempt to go out to
9 personally find Mr. Blakeney?
10 MR. BROWN: On the 18th of May?
11 MR. ELLIS: Or thereafter.
12 MR. BROWN: Your Honor, there is already
13 testimony as to an event of sending someone out to
14 find the witness after this man left the company. Now, I
15 assume you mean while he was --
16 MR. ELLIS: While he was there.
17 BY MR. ELLIS:
18 Q While you were there, did you or anyone under
19 your control, make any personal effort to go out and find
20 Mr. Blakeney?
21 A I had a conversation with a woman who said
22 that she was his -- with a woman who said that she was his
23 sister-in-law, and at that time I explained the whole

1 situation to her.

2 Q. When was that, what date?

3 A. The same date, the 18th. The date the file

4 that was opened up. I told her what the situation was,

5 and she said that she did not know what his current address

6 was, or exactly where he was living, but if she heard

7 from him, then she would have him contact us. So, I

8 used her address as one of the addresses where I sent

9 certified letters.

10 Q. And the certified letters were returned to

11 you; were they not?

12 A. That is correct.

13 Q. As a matter of fact, during your handling of

14 the file, there is no indication at all that Mr. Blakeney

15 ever personally received any of your correspondence; is

16 there?

17 A. If I am not mistaken, we sent four letters out.

18 All four came back, but I would have to check the dates

19 on these cards.

20 Q. But while you were there, there is no

21 indication that Mr. Blakeney ever received any of your

22 correspondence?

23 MR. BROWN: He just said he would have to check

1 the cards. That is the answer to the question, if that
2 is the question you are asking him. He is checking it.
3 BY MR. ELLIS:
4 Q. Check them if you will.
5 A. Well, there are so many in here.
6 Q. To your recollection?
7 A. It is my recollection the letters came back.
8 We opened the letters; took out the original letters; saved
9 the envelopes, and the postal slips; simply lined out the
10 date on the original letters; changed the date to show the
11 next date that they were being sent out,and sent them
12 back again certified mail.
13 Q. Was there any attempt by you or anyone under
14 your control to interview the police officer with regard
15 to the circumstances of the case?
16 A. No, sir. I would not have any reason to
17 interview the police officer as a rule.
18 Q. Did you make any attempt, or did you have at
19 that time, the copy of the police report? Was that
20 received from your New Jersey office?
21 MR. BROWN: Your Honor, I object to this line
22 of questioning. I think we have gone beyond the question
23 of when Mr. Gild was notified, which is the question for

1 which the Court allowed the case to be reopened.

2 THE COURT: The only thing it would go to is

3 the provision when the decision was made that they were

4 going to deny coverage.

5 MR. BROWN: Interviewing the police office, I

6 would submit, has nothing to do with that decision.

7 THE COURT: I cannot second guess that at this

8 time. It would conceivably have to do with when a

9 decision was made by the company to deny coverage to the

10 insured, and start your twenty days running at that time.

11 BY MR. ELLIS:

12 Q. Did you make, or did anyone under your control

13 make any effort to investigate the facts of the accident,

14 other than sending the letters out to Mr. Blakeney, which

15 were returned to you while you were there?

16 A. I do know that there was a police report that

17 indicated essentially who was involved, and what the officer

18 reported occurred. I did talk to Mr. Gild, and since there

19 was no Mr. Blakeney, there was really no one else to talk

20 to.

21 Q. And you left the company when, Mr. Evans?

22 A. August 1 of that year.

23 Q. Was there any further correspondence sent to

1 Mr. Gild regarding the matter of whether or not you were
2 going to provide coverage, other than the letter of June 16,
3 1977?
4 MR. BROWN: Your Honor, I have introduced
5 into evidence the letter of July.
6 MR. ELLIS: I am sorry. July 28. Other than
7 those two.
8 MR. BROWN: While he was there?
9 MR. ELLIS: Yes.
10 THE WITNESS: Other than July 28? Well, two
11 days later I was gone. So, other than that letter, there
12 were only two days remaining, and I don't think that I was
13 doing much in terms of working, other than packing up my
14 files, and cleaning out my desk.
15 BY MR. ELLIS:
16 Q. These two letters are the only two letters that
17 were sent to Mr. Gild?
18 A. To the best of my knowledge, that is correct.
19 Q. When you called Mr. Johnson, were you aware of the
20 fact that there was no accident report filed by the insured,
21 by Blakeney?
22 A. That was essentially my purpose in calling him,
23 to find out if Blakeney had reported the accident to him.

1 Q. And Johnson told you no?

2 A. That is correct. He told me that if he ever

3 got ahold of Blakeney, well, I am not going to go into that.

4 MR. ELLIS: Nothing further.

5 THE COURT: Mr. Evans, what was the date that

6 you made the decision, made a determination, that you were

7 going to rely upon your insured's breach of the terms

8 and conditions of the contract as a defense.

9 MR. ELLIS: If Your Honor please, I hesitate

10 to object to the Court's question, but I would only like

11 to point this out, that I don't know whether this

12 correspondence indicates that he ever made that decision.

13 THE COURT: That is argument, and I want his

14 opinion as to when he made that decision.

15 THE WITNESS: Well, Your Honor, if I

16 understand your question correctly, the best answer I can

17 give you is, I knew that there was a problem from the

18 day the claim was received, and from that point in time,

19 until August 1, when I left the company, we were doing

20 two things.

21 We were attempting to advise Mr. Blakeney

22 by certified mail that he must contact us, and give him an

23 opportunity to come forward, and secondly we were keeping

1 Mr. Gild advised of our inability to contact Mr. Blakeney.

2 THE COURT: So, in other words, you cannot

3 say what date you made that decision to rely upon the

4 defenses of the contract?

5 THE WITNESS: Well, again, the best answer

6 I can give is the first conversation I had with Mr. Gild

7 the day the claim was received was essentially what I

8 said to him, the very words were, if this man does not

9 come forward, as he didn't in the past, we will have to

10 deny coverage for failure to cooperate.

11 THE COURT: Any further questions?

12 MR. BROWN: I have no further questions.

13 THE COURT: You may step down.

14 (Witness excused.)

15 MR. BROWN: I have no further evidence, Your

16 Honor.

17 THE COURT: Mr. Ellis?

18 MR. ELLIS: Your Honor, I will proceed with --

19 take the file with you if you will.

20 May Mr. Evans remain in the courtroom?

21 THE COURT: Sure.

22 Whereupon,

23 BLAKE ROSE,

1 a witness was called for examination by counsel for Liberty
2 Mutual Insurance Company, and having been previously duly
3 sworn, was examined and testified as follows:
4 DIRECT EXAMINATION
5 BY MR. ELLIS:
6 Q. Mr. Rose, your full name, please?
7 A. Blake Gerard Rose.
8 Q. And for whom are you employed?
9 A. Liberty Mutual Insurance Company.
10 Q. In what capacity?
11 A. Claims Adjuster.
12 Q. Mr. Rose, have you had an occasion in your
13 capacity as a Claims Adjuster to work the file with
14 reference to the Hilton versus Blakeney case, and then a
15 U. M. claim thereunder?
16 A. Yes, I have.
17 Q. And were you, and are you the Chief Adjuster
18 with reference to the actual work done on that file?
19 A. With reference to the actual work, yes, I was.
20 Q. Now, Mr. Rose, do you have with you the
21 complete file with reference to the U. M. claim?
22 A. Yes, I do.
23 Q. Would you go through your file, if you would,

please, and first of all, if you can determine, tell us when Mr. -- when Liberty Mutual was aware that an accident had occurred?

MR. BROWN: If Your Honor please, I object to this. I don't see the relevance of when Liberty Mutual found out.

THE COURT: What would be the relevance? All notice goes to the claimant or claimant's counsel.

MR. ELLIS: Because there is a requirement under the policy that the claimant's attorney advise the U. M. carrier as soon as practicable about a U. M. claim, and this evidence is simply here for this reason, Your Honor, to establish --

THE COURT: Wouldn't that be a further action between the uninsured motorist, and the claimant?

MR. ELLIS: That could very well be, but I think in this particular court, since this is -- we are sitting in equity, that not only do we have the Code provision involved, but we also have the situation where I will proffer for the evidence that Liberty Mutual did not become aware of the fact that there was to be a U. M. claim made, or even suggested that there was a U. M. claim until suit was filed in September or October of 1977.

1 Now, if we can proffer that for the record as
2 a stipulated fact --
3 THE COURT: Well, I still don't think that it
4 goes to the compliance or non-compliance with the Code
5 section you have cited as to the twenty days' notice to the
6 claimant, or claimant's counsel, after discovery of the
7 breach.
8 MR. ELLIS: I agree with that, Your Honor.
9 THE COURT: So, the Court would sustain the
10 objection.
11 BY MR. ELLIS:
12 Q Did you personally make contact with Mr.
13 Blakeney?
14 A Yes, I did.
15 Q And approximately when was that?
16 A The first time I spoke with him, the first and
17 only time, was on March 30, 1978.
18 Q And when does it appear from the file that the
19 first effort was made to locate him, and at whose request
20 was that made?
21 A Okay. The --
22 MR. BROWN: Your Honor, I object to this line
23 of questioning also. If we are talking about something in

1 May of 1978, I don't see how it could have anything to do
2 with the situation. I don't see how it could have to do
3 with it whenever it was, and I object to it.
4 THE COURT: Mr. Ellis.
5 MR. ELLIS: I think it goes to -- we would
6 proffer, Your Honor, that Mr. Rose has made personal
7 contact with Mr. Blakeney; that he talked to him about the
8 case, and certain statements were made by Mr. Blakeney
9 with reference to having talked to Safeco: that they were
10 defending him, and that as far as he knew there was
11 no further problem.
12 MR. BROWN: I would certainly object to that.
13 That would be rank hearsay.
14 THE COURT: It would be hearsay if you are
15 offering it for the truth contained in the statement.
16 MR. BROWN: And further, irrelevant to the
17 issue that we are here today for.
18 MR. ELLIS: I think the issue we are here
19 today for, Your Honor, goes a little bit past the limited
20 matter of notice.
21 THE COURT: No. I think it only goes to notice,
22 because you have raised it as a defense to the declaratory
23 judgment.

1 THE COURT: From the evidence at the first
2 hearing, and the evidence today with reference to the
3 notice requirement, 38.1-389.1 of the Code, it would
4 be the opinion of the Court that the plaintiff in this
5 case, Safeco Insurance Company of America, is entitled to
6 the relief prayed for, and the defendant, Joe Roy Blakeney,
7 should be treated as an uninsured motorist, and that
8 Liberty Mutual Insurance Company as the uninsured motorist
9 to defend the action, and therefore it is continued.

[Filed May 4, 1979]

This cause came on to be heard for trial before the Court, ore tenus, on the 29th day of January, 1979; and

The complainant appeared by its representative and by counsel, and the defendants Hilton appeared by counsel, and the defendant Liberty Mutual appeared by counsel; and

The Court heard evidence and statements of counsel and granted counsel leave to submit memoranda, and counsel to complainant and counsel to defendant Liberty Mutual subsequently submitted memoranda after which the Court, by letter dated March 5, 1979, allowed counsel to complainant to have this cause placed on the docket for the taking of evidence reference to the defense raised in the memoranda of counsel to the defendant Liberty Mutual with reference to Virginia Code §38.1-389.1; and

This cause came on to be heard before the Court for further evidence as above stated on the 17th day of April, 1979, and the complainant appeared by its representative and by counsel, and the defendants Hilton appeared by counsel, and the defendant Liberty Mutual appeared by its representative and by counsel, and the Court heard further evidence with regard to the compliance of the complainant with the provisions of Virginia Code §38.1-389.1, and the Court heard argument of counsel; whereupon

Upon consideration of the pleadings filed, the evidence and argument of counsel and the memoranda filed herein, the Court announced its decision that the complainant Safeco is entitled to the relief prayed for in this action, and

It is ADJUDGED, ORDERED, DECREED and DECLARED that Joe R. Blakeney is an uninsured motorist under Virginia law, and that Safeco Insurance Company of America is not responsible to provide a defense to Joe R. Blakeney nor to respond to any claim or judgment that may be entered against Joe R. Blakeney arising out of the automobile collision on the 27th day of January, 1977, and Liberty Mutual Insurance Company as the uninsured motorist insurer of Charlene Hilton and James W. Hilton and William Hilton shall respond to their respective claims and actions arising out of the said automobile collision in accordance with the Virginia uninsured motorist law.

This Decree is final, and the Clerk is directed to deliver certified copies hereof to counsel for the parties forthwith.

ENTER this _____ day of _____, 1979.

_____
BURCH MILLSAP, JUDGE

ASSIGNMENT OF ERRORS

1. The trial court erred in finding that Blakeney had not complied with the condition of the Safeco policy that notice of an occurrence should be given by or for the insured to Safeco or any of its authorized agenst as soon as practicable.

2. The trial court erred in finding that Blakeney did not comply with the condition of the Safeco policy which required the insured to forward to Safeco suit papers received by him or his representative.

3. The trial court erred in finding that Blakeney had failed to cooperate with Safeco in preparing a defense to the suits filed against him under the conditions of the Safeco policy.

4. The trial court erred in finding that Safeco had been prejudiced by the action or inaction of Blakeney in its defense of the suits filed by the Hiltons against Blakeney.

5. The trial court erred in finding that Safeco had complied with §38.1-389.1, Virginia Code (1950), as amended.