

STATE OF NORTH CAROLINA GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
COUNTY OF WAKE FILE NO. 95-CVS-08788

GEORGE A. LEE,

PLAINTIFF,)

^z

^0

V.

^C.S.X. TRANSPORTATION, INC.,

DEFENDANT.)

^z - - - - -

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a:

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^z

^x

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^m

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DEPOSITION V^IA TELEPHONE

0 OF

^0.

0) RONALD D. MOONEY

cc

go

^d)

^0

AT ROCKY MOUNT, NORTH CAROLINA

JANUARY 22, 1997; 10:00 A.M.

REPORTED BY: MARTHA JEAN ROBBINS

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A P P ^R A ^R A N C ^E ^S

FOR THE PLAINTIFF: MR. RICHARD N. SHAPIRO
WILSON, ^HAJEK ^& SHAPIRO
POST OFFICE BOX 5369
VIRGINIA BEACH, VIRGINIA 23455

FOR THE DEFENDANT: MR. JOHN C. ^MILLBERG
MR. WILLIAM W. STEWART, JR.
^MILLBERG & GORDON
1030 WASHINGTON STREET
RALEIGH, NORTH CAROLINA 27605

ALSO PRESENT: MR. HEYWARD W. WATFORD, JR.
CLAIMS REPRESENTATIVE
C.^S.X. RAIL TRANSPORT

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^S ^T I P ^U ^L A ^T I O N ^S

IT IS HEREBY STIPULATED AND AGREED BETWEEN THE PARTIES TO THIS ACTION, THROUGH THEIR RESPECTIVE COUNSEL OF RECORD:

(1) THAT THE DEPOSITION VIA TELEPHONE OF MAY RONALD D. MOONEY BE TAKEN ON WEDNESDAY, JANUARY 22, 1997, BEGINNING AT 10:00 A.M., IN THE OFFICES OF ^C.S.X. TRANSPORTATION, ROCKY MOUNT YARD, 101 SUTTON ROAD, ROCKY MOUNT, NORTH CAROLINA, BEFORE MARTHA JEAN ROBBINS, A NOTARY PUBLIC.

(2) SAID DEPOSITION SHALL BE TAKEN FOR THE PURPOSE OF DISCOVERY OR FOR USE AS EVIDENCE IN THIS ACTION, OR FOR BOTH PURPOSES.

(3) ANY OBJECTIONS OF ANY PARTY HERETO AS TO NOTICE OF THE TAKING OF SAID DEPOSITION OR AS TO THE TIME OR PLACE THEREOF, OR AS TO THE COMPETENCY OF THE PERSON BEFORE WHOM THE SAME SHALL BE TAKEN, ARE HEREBY WAIVED.

(4) THE NORTH CAROLINA RULES OF CIVIL PROCEDURE SHALL CONTROL THE TAKING OF SAID DEPOSITION AND THE USE THEREOF IN COURT.

(5) OBJECTIONS TO QUESTIONS AND MOTIONS TO STRIKE ANSWERS NEED NOT BE MADE DURING THE TAKING OF THE DEPOSITION, BUT MAY BE MADE FOR THE FIRST TIME DURING THE PROGRESS OF THE TRIAL OF THE CASE, OR AT ANY PRETRIAL

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HEARING HELD BEFORE ANY STATE COURT JUDGE FOR THE PURPOSE OF RULING THEREON OR AT ANY OTHER HEARING OF SAID CASE AT WHICH SAID DEPOSITION MIGHT BE USED, EXCEPT THAT AN OBJECTION AS TO THE FORM OF A QUESTION MUST BE MADE AT THE TIME SUCH QUESTION IS ASKED OR OBJECTION IS WAIVED AS TO THE FORM OF THE QUESTION.

(6) THAT THE RIGHT TO READ AND SIGN THE TRANSCRIPT BY THE WITNESS IS HEREBY WAIVED BY THE WITNESS.

(7) EXCEPT AS WAIVED BY THIS STIPULATION, THE PROVISIONS OF THE NORTH CAROLINA RULES OF CIVIL PROCEDURE SHALL APPLY TO THE TAKING OF SAID DEPOSITION AND AS TO ITS SUBMISSION TO THE RESPECTIVE ^DEPONENT, CERTIFICATION AND FILING UNDER SEAL WITH THE APPROPRIATE NOTICING ATTORNEY.

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MR. MOONEY PAGE 5

WHEREUPON,

2

3 RONALD D. MOONEY,

4 RAVING FIRST BEEN DULY SWORN,

5 WAS EXAMINED AND TESTIFIED

^6 AS FOLLOWS:

7 DIRECT EXAMINATION BY MR. ^MILLBERG:

8 MR. ^MILLBERG: MR. MOONEY, THIS IS JOHN

9 ^MILLBERG, I'M THE LAWYER FOR THE ^C.S.X.

10 TRANSPORTATION, INC., THE DEFENDANT IN THE

11 LAWSUIT IN WHICH WE'RE TAKING YOUR DEPOSITION,

12 GEORGE LEE V. C.S^.X. YOU UNDERSTAND THAT I'M

13 THE LAWYER FOR THE RAILROAD?

14 WITNESS: I DO UNDERSTAND.

15 ^Q FOR THE RECORD, WOULD YOU STATE YOUR FULL NAME, SIR?

16 A RONALD D. MOONEY.

17 ^Q AND YOUR ADDRESS?

18 A IT IS 5007 CLOVERDALE ROAD, ROANOKE, VIRGINIA

19 24019.

20 ^Q IS THAT YOUR RESIDENTIAL ADDRESS, I TAKE IT?

21 A THAT IS CORRECT.

22 ^Q ARE YOU EMPLOYED, SIR?

23 A I AM NOT.

24 ^Q I UNDERSTAND THAT AT ONE TIME YOU WERE EMPLOYED AS

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MR. MOONEY PAGE 6

^1 AN INVESTIGATOR FOR THE WILSON & ^HAJEK LAW FIRM. IS
2 THAT ACCURATE?

3 A YES.

4 ^Q AND APPROXIMATELY WHEN WERE YOU SO EMPLOYED?

5 A IN THE FIRST PART OF 1993 AND RESOLVED (SIC) AND
6 LEFT THE FIRM IN ABOUT OCTOBER OF 1994.

7 ^Q DID YOU SAY "RESOLVED" OR "RESIGNED"?

8 A "RESIGNED."

9 RESIGNED. SO, YOU WERE THERE FOR A YEAR AND A HALF
^10 TO TWO YEARS OR SO.

11 A WELL, IN THAT TIME FRAME.

12 ^Q HOW WERE YOU EMPLOYED BEFORE THAT EMPLOYMENT, MR.
13 MOONEY?

14 A I WAS EMPLOYED FOR THE NORFOLK SOUTHERN RAILWAY.

15 ^Q AND WHAT WAS YOUR LAST JOB CLASSIFICATION WITH
1^6 NORFOLK SOUTHERN BEFORE YOU LEFT THEIR EMPLOY?

17 A IT WOULD HAVE BEEN A BRAKEMAN.

is ^Q WERE YOU AT ONE TI14E REPRESENTED BY THE WILSON &
19 HAJE^K LAW FIRM?

20 A I WAS.

21 ^Q AND I TAKE IT, THAT WAS BEFORE YOU WERE EMPLOYED BY
22 THE LAW FIRM?

23 A THAT'S CORRECT.

24 ^Q DO YOU RECALL YOUR INVOLVEMENT WITH THE GEORGE LEE

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MR. MOONEY PAGE 7

^1 CASE?

2 A YES, I DO.

3 ^Q CAN YOU TELL ME, GENERALLY, WHAT YOUR INVOLVEMENT

4 WAS IN THE INVESTIGATION OF THAT CASE?

5 A THERE WAS ONE THING OF INVOLVEMENT, AND THAT WAS TO

6 INTERVIEW A MR. KELLY PARKER.

7 WERE DID YOU RESIDE AT THAT TIME?

a A I WAS IN ROANOKE, VIRGINIA.

9 ^Q AND DID YOU INTERVIEW MR. PARKER OVER THE TELEPHONE?

^10 A THAT'S CORRECT.

11 ^Q DID YOU EVER MEET HIM FACE TO FACE?

12 A NO.

13 ^Q DID YOU INTERVIEW ANY OTHER PEOPLE IN CONNECTION

14 WITH THE LEE CASE?

15 A NO.

16 ^Q DID YOU EVER GO TO THE SCENE OF THE LEE ACCIDENT?

17 A NO.

18 DID YOU EVER TAKE ANY PHOTOGRAPHS IN CONNECTION WITH

19 THE LEE CASE?

20 A NO.

21 ^Q DID YOU TAKE ANY VIDEOTAPE IN CONNECTION WITH THE

22 LEE CASE?

23 A NO.

24 ^Q AND I TAKE IT THAT YOU'VE NEVER TAKEN ANY

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MR. MOONEY PAGE 8

1 MEASUREMENTS OF ANY TYPE IN CONNECTION WITH THE LEE
2 CASE?

3 A NO.

4 ^Q HAVE YOU EVER LOOKED AT ANY SIGNS, ANY ADVANCE
5 WARNING BOARDS, SIGNPOSTS OR ANYTHING OF THAT
6 NATURE, IN CONNECTION WITH THE LEE CASE?

7 A NO.

8 ^Q DO YOU HAVE A COPY OF THE STATEMENT THAT YOU TOOK
9 FROM MR. PARKER?

10 A I DO.

11 ^Q DO YOU HAVE THAT WITH YOU THIS MORNING?

12 A YES.

13 ^Q OKAY. DO YOU HAVE THE TAPE OF THAT STATEMENT?

14 A NO.

15 ^Q DO YOU KNOW WHERE THE TAPE IS?

16 A AT THIS POINT IN TIME, NO.

17 ^Q WHAT DID YOU DO WITH IT?

18 A I MAILED IT TO MY SUPERVISOR.

19 ^Q WHICH WAS WHOM?

20 A IT WOULD HAVE BEEN THE CHIEF INVESTIGATOR, LUTHER

21 ^Yopp.

22 ^Q ALL RIGHT. WAS MR. ^YOPP THE GENTLEMAN FROM WHOM YOU
23 RECEIVED YOUR INSTRUCTIONS?

24 A YES.

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MR. MOONEY PAGE 9

^1 ^Q DID YOU TRANSCRIBE THE TAPE, OR WAS THAT DONE BY
2 SOMEONE ELSE?

3 A I CAN'T SAY IF I DID IT OR NOT. I DON'T REMEMBER
4 WHO DID THE TRANSCRIBING.

^5 CAN YOU TELL, FROM LOOKING AT THE TRANSCRIPTION,
6 WHETHER THAT LOOKS LIKE SOMETHING THAT YOU MIGHT
^7 HAVE DONE OR NOT?

^8 A IT DOESN'T LOOK LIKE IT --- THAT I DID IT.

9 ^9 IT DOES NOT LOOK LIKE YOU DID IT?

^10 A T^HAT'S CORRECT.

11 ^Q HOW DID YOU OBTAIN MR. PARK^ER'S PHONE NUMBER?

12 A MY RECOLLECTION, IT WOULD HAVE BEEN FURNISHED TO ME
13 BY 14Y SUPERVISOR.

14 ^Q AND DID YOU CALL HIM AT ROME?

15 A I WOULD HAVE TO SAY I BELIEVE IT WAS AT ROME, YES,
1^6 IF MY --- IF MY MEMORY SERVES ME RIGHT.

17 ^Q I TAKE IT THAT THIS TYPE OF ACTIVITY, THAT IS,
is TAKING A RECORDED STATEMENT OF A WITNESS, WAS
19 SOMETHING THAT YOU HAD DONE FROM TIME TO TIME ON
20 OTHER MATTERS IN CONNECTION WITH YOUR WORK FOR
21 WILSON & ^HAJEK?

22 A COULD YOU REPEAT THAT? I COULDN'T HEAR YOU REAL
23 WELL.

24 ^Q YES, SIR. I TAKE IT THAT YOU HAD TAKEN RECORDED

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MR. MOONEY PAGE 10

^1 STATEMENTS FROM OTHER INDIVIDUALS IN CONNECTION WITH
2 YOUR WORK FOR WILSON & ^HAJEK ON OTHER CASES?

3 A THAT'^S CORRECT.

4 WHEN YOU TOOK MR. PARKER'S STATEMENT, MR. MOONEY,
^5 CAN YOU TELL ME LOGISTICALLY OR PHYSICALLY HOW YOU
6 RECORDED IT?

7 A I HAD A SPEAKER PHONE WITH A HAND-HELD TAPE
8 RECORDER.

9 DID YOU TELL MR. PARKER THAT YOU WERE GOING TO BE
^10 RECORDING YOUR CONVERSATION?

11 A THAT IS A COMMON THING THAT YOU DO WHEN YOU PHONE
12 SOMEONE, IS MAKE THEM AWARE OF IT --- THAT YOU ARE
13 GOING TO TRANSCRIBE --- OR NOT "TRANSCRIBE," BUT
14 RECORD THE CONVERSATION.

15 DO YOU RECALL FOR SURE WHETHER YOU DID THAT IN MR.
16 PARKER'S SITUATION?

17 A TO THE BEST OF MY RECOLLECTION, THAT'S SOMETHING
18 THAT IS A GENERAL FORMALITY THAT YOU DO. I --- I'D
19 HAVE TO SAY, YES, BECAUSE THAT IS WHAT I WOULD DO IN
20 THAT PARTICULAR CASE.

21 ^Q RAVE YOU EVER TAKEN STATEMENTS WITHOUT ADVISING THE
22 PERSON THAT YOU WERE TALKING TO THAT YOU WERE GOING
23 TO BE RECORDING IT?

24 A NO, SIR, I HAVE NOT.

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MR. MOONEY PAGE 11

1 ^Q OKAY. HOW DID YOU INTRODUCE YOURSELF TO MR. PARKER?

2 A NORMALLY, WHEN I PHONE, I TELL HIM WHO I AM, THE
3 PURPOSE OF THE CALL --- BASICALLY, THAT'S THE FORMAT 1
4 USE.

5 ^Q AND WHAT WOULD YOU TELL HIM IN THAT REGARD?

6 A I WOULD JUST SAY THAT, "THIS IS RON MOONEY. I'm
7 WITH THE WILSON & HAJEK LAW FIRM," AND THAT WE
8 REPRESENT ^SUCH-AND-SUCH AND THAT I WOULD LIKE TO
9 INTERVIEW ABOUT THE INJURY AND THAT I WOULD LIKE TO
10 RECORD THE CONVERSATION.

11 ^Q WHEN YOU MAKE THAT KIND OF --- WHEN YOU PERFORM THAT
12 KIND OF AN INTERVIEW, MR. MOONEY, WOULD YOU HAVE
13 YOUR TAPE RECORDER ON FROM THE BEGINNING?

14 A (NO RESPONSE AUDIBLE).

is ^Q DID YOU HEAR ME, MR. MOONEY?

1^6 A YES. NY ANSWER WAS "YES."

17 ^Q I'M SORRY, I MISSED YOUR ANSWER.

18 SO, THEN, YOUR RECORDER WOULD TYPICALLY --- YOU
19 WOULD RAVE ON TAPE YOUR ADVISING HIM WHO YOU WERE
20 AND THAT IT WAS GOING TO BE RECORDED AND THAT KIND
21 OF THING?

22 A YES. THERE HAS BEEN CASES OF WHERE THERE IS JUST
23 CLEAR TAPE, WHERE THE TAPE ITSELF JUST STARTS---
24 STARTS OFF AND THERE'S A LITTLE SPACE THERE. I

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MR. MOONEY PAGE 12

^1 DON'T KNOW WHY IT IS, BUT IT'S DEAD SPACE. AND A
2 LOT OF TIMES, IF YOU DON'T MOVE YOUR MACHINE FORWARD
3 A LITTLE BIT, IT WILL NOT PICK UP THE FIRST OF YOUR
4 CONVERSATION.

5 ^Q I'D LIKE TO ASK YOU TO LOOK AT THE STATEMENT THAT
^6 YOU HAVE IN FRONT OF YOU TODAY OF MR. PARKER. CAN
7 YOU DO THAT FOR ME?

8 A SURE.

9 ^Q IT'S DATED NOVEMBER 2, 1993.

10 A YES.

11 ^Q AND CONSISTS OF EIGHT TYPEWRITTEN PAGES?

12 A UH-^HUH (YES).

13 DO YOU SEE WHERE IT STARTS KIND OF IN MID-QUESTION
14 FRO14 YOU?

15 A YES, I DO, ^UH-HUH.

1^6 ^Q DO YOU BELIEVE THAT'S BECAUSE OF SOME BLANK SPACE ON
17 THE TAPE AT THE BEGINNING?

18 A I WOULD SAY THAT'^S WHAT HAPPENED BECAUSE, YOU KNOW,
19 IT --- IT DOESN'T LOOK TO ME LIKE A NORMAL TAKEOFF OF
20 WHAT I DO ON A STATEMENT.

21 ^Q OKAY. HAVE YOU TAKEN A FEW MINUTES THIS MORNING OR
22 YESTERDAY TO READ BACK OVER THIS STATEMENT IN
23 PREPARATION FOR THE DEPOSITION?

24 A I HAVEN'T REALLY READ IT THOROUGHLY. I JUST PULLED

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MR. MOONEY PAGE 13

1 IT OUT OF THE DESK THIS MORNING AND LOOKED AT THE
2 FRONT OF IT. THAT --- THAT'S ABOUT THE EXTENT OF
3 LOOKING AT IT.

4 DO YOU RECALL IF MR. PARKER TOLD YOU, WHEN YOU
5 INTERVIEWED HIM ON NOVEMBER 2ND, THAT THE SIGN IN
6 QUESTION HAD A SHARP OR A POINTED END?

7 A WHAT PAGE IS THAT ON?

8 Q PAGE SEVEN, RIGHT ABOUT THE MIDDLE OF THE PAGE.

9 A OKAY. LET ME TURN TO THAT PAGE.

10 I SEE IT THERE.

11 Q SO, THAT IS WHAT HE SAID, ISN'T IT?

12 A THAT'S CORRECT, UH-HUH (YES).

13 Q TO YOUR KNOWLEDGE, THIS TRANSCRIPT IS AN ACCURATE
14 TRANSCRIPT OF YOUR INTERVIEW OF MR. PARKER. IS IT
15 NOT?

16 A TO THE BEST OF MY RECOLLECTION, IT IS. OTHER THAN
17 THE TAKEOFF OF IT, EVERYTHING ELSE SEEMS TO BE WHAT
18 THE CONVERSATION WAS ALL ABOUT.

19 Q BY "THE TAKEOFF," YOU MEAN JUST THE VERY BEGINNING
20 OF IT?

21 A THE VERY BEGINNING, THAT'S CORRECT.

22 Q OKAY. DID YOU EVER HAVE ANY OTHER CONVERSATIONS
23 WITH MR. PARKER?

24 A NO. THIS STATEMENT WAS THE ONLY ONE.

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MR. MOONEY PAGE 14

1 ^Q D^ON'T TELL ME WHAT YOUR CONVERSATION WAS, BUT ^t7UST

2 LET ME ASK YOU THIS, HAVE YOU EVER DISCUSSED THE

3 CASE DIRECTLY WITH MR. LEE?

4 A NO.

5 ^Q HAVE YOU EVER MET MR. LEE?

^6 A NO.

7 ^Q DO YOU PERSONALLY KNOW, TO YOUR KNOWLEDGE, MR.

8 MOONEY, ANY OF THE OTHER ^C.S.X. EMPLOYEES THAT MAY

9 BE INVOLVED IN THIS CASE?

^10 A (NO RESPONSE AUDIBLE).

11 MR. SHAPIRO: DID YOU ANSWER THAT, RON?

12 WITNESS: I SAID "NO.

13 MR. ^MILLBERG: OKAY.

14 ^Q (BY MR. ^MILLBERG) DO YOU KNOW ^L.O. STONE, A

15 ^ROADMASTER FOR ^C.S.X. IN ROCKY MOUNT?

16 A NO.

17 ^Q DO YOU KNOW HEYWARD WATFORD, A CLAIMS REPRESENTATIVE

18 FOR ^C.S.X. IN ROCKY MOUNT?

19 A NO.

20 ^Q AND I TAKE IT, YOU DID^N'T KNOW MR. PARKER OTHER THAN

21 JUST THIS ONE TELEPHONE CALL?

22 A THAT'S CORRECT.

23 MR. ^MILLBERG: THANK YOU, MR. MOONEY.

24 THOSE ARE ALL THE QUESTIONS I HAVE.

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MR. MOONEY PAGE 15

^1 WITNESS: OKAY, SIR.

2 MR. MILLB^ERG: WE APPRECIATE YOU MAKING

3 YOURSELF AVAILABLE FOR US TODAY.

4 WITNESS: YES, SIR, GLAD TO DO IT.

^5 MR. SHAPIRO: THANK YOU, MR. MOONEY.

^6 THAT'S THE END OF THE DEPOSITION.

7 WITNESS: OKAY, SIR.

a MR. SHAPIRO: RON, DO YOU WANT TO REVIEW A

9 COPY OF THE TRANSCRIPT OF THE DEPOSITION, OR DO

^10 YOU WAIVE THAT RIGHT?

11 WITNESS: I'LL WAIVE IT.

12 MR. ^MILLBERG: THAT SUITS ME.

13 MR. SHAPIRO: OKAY. RON, THANK YOU FOR

14 YOUR TIME, AND THAT'S IT.

is WITNESS: OKAY, GOODBYE.

1^6 MR. MILLB^ERG: THANK YOU, MR. MOONEY.

17 (THEREUPON, THE WITNESS WAS DISMISSED AT

18 10:15 A.M.)

19

20 READING AND SIGNING WAIVED.

21

22 MR. SHAPIRO: BEFORE WE CLOSE THE

23 DEPOSITION, I JUST WANT TO STATE FOR THE RECORD

24 THAT THE PLAINTIFF AGREED TO THE DEPOSITION AT

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MR. MOONEY PAGE 16

^1 THE REQUEST OF DEFENDANT, AND THE DEFENDANT'S
2 RESERVING ALL RIGHTS TO ANY ADMISSIBILITY OR
3 REFERENCE TO THE STATEMENT TAKEN BY MR. MOONEY
4 DEPENDENT UPON THE APPROPRIATE RULES OF
^5 EVIDENCE AT TRIAL.

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STATE OF NORTH CAROLINA
COUNTY OF WILSON

C ^E ^R ^T I ^F I C A ^T ^E

I, MARTHA JEAN ROBBINS, NOTARY P^UBLIC/REPORTER, DO
HEREBY CERTIFY THAT RONALD D. MOONEY WAS DULY SWORN BY ME
PRIOR TO THE TAKING OF THE FOREGOING DEPOSITION; AND THAT
SAID DEPOSITION WAS TAKEN AND TRANSCRIBED UNDER MY
SUPERVISION; AND THAT THE FOREGOING 16 PAGES CONSTITUTE A
TRUE AND ACCURATE TRANSCRIPT OF THE TESTIMONY OF THE
WITNESS.

I DO FURTHER CERTIFY THAT THE PERSONS WERE PRESENT
AS STATED IN THE CAPTION.

I DO FURTHER CERTIFY THAT I AM NOT OF COUNSEL FOR,
OR IN THE EMPLOYMENT OF, EITHER OF THE PARTIES TO THIS
ACTION, NOR AM I INTERESTED IN THE RESULTS OF THIS
ACTION.

IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED MY
NAME THIS 29TH DAY OF JANUARY, 1997.

^M^RTHA JEAN ^ROFBINS, ' ^NOTARY@1 ^UBL
^@@o ^18n

MY COMMISSION EXPIRES:
JULY 8, 1998. ^k

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