No. 40

OCTOBER TERM, 1951

No. 40 (LEAVE BLANK), OCTOBER TERM, 1951

TRANSCRIPT OF RECORD

FROM THE

CIRCUIT COURT NO. 2 OF BALTIMORE CITY

IN THE CASE OF

EDITH L. JOHNSON, a Stockholder of the Afro-American Company, a body corporate, on her own behalf and on behalf of all other Stockholders of the Afro-American Company, a body corporate, and for the benefit of The Afro-American Company, a body corporate,

Appellant

VS.

CARL JAMES G. MURPHY - DAVID W. ARNETT MURPHY,

GEORGE B. MURPHY, SR., and JOHN H. MURPHY, JR.

Appellees

TO THE

COURT OF APPEALS OF MARYLAND

PAUL BERMAN — FOR APPELLANT

HARRY O. LEVIN
MARSHALL A. LEVIN — FOR APPELLEES

Filed July 2 - 1951 (LEAVE BLANK)

COURT OF APPEALS OF MARYLAND

(I N D E X)

DOCKET ENTRIES

PAUL BERMAN

EDITH L. JOHNSON, a Stockholder of The Afro-American Co., a body corporate, on her own behalf and on behalf of all other Stockholders of The Afro-American Co., a body corporate, who may come in and contribute to the expenses of this suit, and for the benefit of The Afro -American Co., a body corporate.

No. 30601-A

VS.

HARRY O. LEVIN

MARSHALL A. LEVIN

" "

CARL JAMES G. MURPHY,

DAVID W. ARNETT MURPHY ,

GEORGE B. MURPHY, SR., and

JOHN H. MURPHY, JR.

---

15 Aug. 1950 - Bill of Complaint for Discovery and Accounting and for an Injunction, etc. (1) and Plaintiff's Exhibits Nos. 1 (2) 2 (3) 3 (4) 4 (5) 5 (6) 6 (7) 7 (8) 8 (9) 9 (10) 10 (11) 11 (12) 12 (13) 13 (14) 14 (15) 15 (16) & 16 (17) fd.

15 Aug. 1950 - Subpoena issued (18 Summoned as marked)

18 Aug. 1950 - Petition of Plaintiff for Authority to apply to a Court in the District of Columbia for purposes set forth herein, and Order of Court thereon granting the same (19) fd.

18 Aug. 1950 - Notice to Take Depositions at 2 P.M. on Wednesday the 30th day of August 1950 at office of Joseph A. Cantrel, Esq., 729 Fifteenth St., N. W. Washington, D. C. (20) fd. (Copies mailed to Defendants)

18 Aug. 1950 - Subpoena Duces Tecum (21) (Copy mailed)

7 Sep. 1950 - Depositions of John Wesley Cromwell, Jr., taken at the office of Joseph A. Cantrel, Esq., 729 15th St., N. W., Washington, D. C., before Lucius V. Friedli, Notary Public (22) and Plaintiff's Exhibits 1, 2 & 3 (23) 4, 5. & 6 (24) 7 (25) 8 & 9 (26) 10 (27) 11 (28) 12 (29) 13 (30) 14 (31) 15 (32) 16 (33) 17 (34) 18 (35) 19 (36) 20 (37) 21 (38) 22 (39) and 23 (40) fd.

16 Sep. 1950 - Petition of Noah Murphy Thompson, Assent and Order Court thereon directing the Clerk of this Court deliver into possession of Charles W. Zimmerman, Esq., Clerk of the United States District Court for the District of Maryland, original of Plaintiff's Exhibits through 6, 8 through 11 and 13 through 23, attached to Transcript of Depositions of John W. Cromwell, taken August 30, 1950 (41)fd. (Delivered to Charles W. Zimmerman, Esq., Raleigh E. Stokes)

18 Sept. 1950 -Appearance of Defendants by Harry O. Levin and Marshall A. Levin and their Demurrer to the Bill of Complaint (42) fd.

20 Sept.1950 - Motion for Hearing on Demurrer (43) fd.

20 Sept.1950 - Notice as to Hearing (44) fd. (Copy served on Defendants' Solr.)

27 Sept.1950 - Petition of Afro-American Co. and Order Court thereon directing Plaintiff show cause within ten days (45) fd. Copy issued. (Served on Paul Berman, Solr.)

5 Oct. 1950 - Order Court Extending Time to Answer Petition of Defendants for a period of fifteen days after date of Show Cause Order, etc., (46) fd.

26 Oct. 1950 - Answer of Edith L. Johnson to Petition of Afro-American Co., a body corporate (47) fd.

30 Oct. 1950 - Motion for Hearing on Petition of Afro-American Co. and Answer thereto (48) fd.

30 Oct. 1950 - Notice as to Hearing (49) fd. Copy issued. (Served on Paul Berman, Solr.)

25 Jan. 1951 - Motion for Hearing on Demurrer (50) fd.

25 Jan. 1951 - Notice as to Hearing (51) fd. Copy issued. (Served on Defendants' Solr.)

5 Feb. 1951 - Petition of Afro-American Co. for leave to file an Amended Petition and Order Court thereon granting the same (52) fd.

5 Feb. 1951 - Amended Petition of Afro-American Co. and Order of Court thereon, directing Plaintiff show cause within fifteen days (53) fd. (Copy mailed to Paul Berman, Solr.)

16 Feb. 1951 - Answer of Edith L. Johnson to Amended Petition of Afro-American Co., a body corporate (54) fd.

16 Feb. 1951 - Motion for Hearing on Petition of Defendants and Answer thereto (55) fd.

16 Feb. 1951 - Notice as to Hearing (56) fd. Copy issued. (Served on Paul Berman, Solr.)

4 Apr. 1951 - Order of Court directing Plaintiff file Bond in the Penalty of $3,000.00 as security for Expenses which may be incurred in this cause by the Afro-American Co., etc., and Overruling Demurrer with leave to file an Answer within fifteen days after bond has been filed by Plaintiff (57) fd.

3 May, 1951 - Appeal of Plaintiff to the Court of Appeals of Maryland from Order of this Court dated April 4, 1951 (58) fd.

13 June 1951 - Testimony Taken in Open Court (60) fd.

BILL OF COMPLAINT
Filed 15th August, 1950

EDITH L. JOHNSON, a stockholder
of The Afro-American Company,
a body corporate, on her own
behalf and on behalf of all
other stockholders of The Afro-
American Company, a body corporate,
who may come in and contribute
to the expenses of this suit,
and for the benefit of
The Afro-American Company,
a body corporate,
1523 Druid Hill Avenue,
Baltimore, Md.

v.

CARL JAMES G. MURPHY,
DAVID W. ARNETT MURPHY,
GEORGE B. MURPHY, SR., and
JOHN H. MURPHY, JR.,
628 N. Eutaw Street,
Baltimore, Md.

IN THE
CIRCUIT COURT NO. 2
OF
BALTIMORE CITY

~~STOCKHOLDERS BILL OF COMPLAINT~~

TO THE HONORABLE, THE JUDGE OF SAID COURT:

The Bill of Complaint of Edith L. Johnson, a stockholder of The Afro-American Company, a body corporate, who brings this suit not only on her own behalf but also on behalf of all other stockholders of the said The Afro-American Company, a body corporate, who may come in and contribute to the expenses of this suit and for the benefit of The Afro-American Company, a body corporate, respectfully shows unto your Honor:

1. The object of this Bill of Complaint is to secure an accounting for wrongs committed against your oratrix as a stockholder and against all other stockholders similarly situated, in The Afro-American Company, by the defendants in their capacity as officers and directors of said company, and to secure such other and further relief as to the Court seems just.

2. The Afro-American Company is a corporation organized under the Public General Laws of Maryland, having been incorporated on August 7, 1907, a certified copy of its charter being filed herewith and prayed to be taken as part hereof, marked "Plaintiff's Exhibit

No. 1." The charter was amended February 24, 1923, the principal purpose of said amendment being to reduce the number of directors from seven to five, a certified copy of the amended charter being also filed herewith and prayed to be taken as part hereof, marked "Plaintiff's Exhibit No. 2."

3. The Afro-American Company is one of the largest publishers of a weekly and semi-weekly Negro newspaper in the United States, issuing and distributing six editions on a weekly basis, namely, New England, New York, New Jersey, Richmond, Philadelphia, and National editions, and four editions on a semi-weekly basis, namely, a Red Star, Five Star, and Seven Star edition, and the Washington Afro-American.

4. The capitalization of The Afro-American Company is $3,500.00 divided into 700 shares of the par value of $5.00 each. As of April 5, 1922, there were issued and outstanding 648 shares of capital stock, as shown by the following list of stockholders and number of shares held by each as of that date:

Name	Date of Issue	No. of Shares
John H. Murphy, Sr.	Sept. 1, 1907	400
George B. Murphy	"	20
Daniel T. H. Murphy	"	20
John H. Murphy, Jr.	"	20
W. Ashbie Hawkins	"	2
A. L. Gaines	"	2
Perry P. Clark	"	2
Charles Stewart	"	4
Lavenia Scott	"	5
George F. Bragg, Jr.	"	3
William H. Daly	"	20
Arnett Murphy	Jan. 21, 1911	20
James Ward	Jan. 31, 1911	10
Rose M. Murphy	Feb. 6, 1911	100
Carl J. G. Murphy	June 28, 1917	20
	Total	648

5. Your oratrix has been a stockholder of The Afro-American Company since June 28, 1921, by virtue of an order of the Orphans Court of Baltimore City of that date directing the administrators of the estate of William H. Daly, the father of your oratrix and one of the organizers of The Afro-American Company, to transfer to your oratrix a two-thirds interest in 20 shares of said company owned by the said William H. Daly during his lifetime, a copy of which order is filed herewith and prayed to be taken as part hereof, marked "Plaintiff's Exhibit No. 3." In the same year your oratrix through an oral agreement acquired from her mother, Mary E. Daly, title to the other one-third interest in said 20 shares, making her the owner of all of said 20 shares of stock. On April 4, 1931, your oratrix transferred 4 of her said shares of stock in said corporation to Warner T. McGuinn, and on the same date received a certificate from said company for 16 shares, 14 shares of which your oratrix sold in 1933, and the remaining 2 of which she has held ever since; that the corporation on January 19, 1934, issued to your oratrix a certificate for said 2 shares of stock which the defendants have never delivered to her and which they now have in their possession.

6. On April 5, 1922, John H. Murphy, Sr., one of the founders of the Afro-American papers, died in Baltimore, Maryland, leaving an estate which included 400 of 648 outstanding shares in The Afro-American Company. His will bequeathed his 400 shares in trust to three trustees; Daniel H. Murphy, who predeceased the testator, and defendants John H. Murphy, Jr., and David W. Arnett Murphy, sons of the testator, in trust, to the end that "the said trustees shall continue the business now conducted by the said Afro-American Company and pay over the net proceeds from said business equally between Eva S. Purdy, George B. Murphy, Harriett E. Gilbert, Martha Frances Louise Murphy, M. Rose Oliver, Daniel H. Murphy, John H. Murphy, Jr., Carl James G. Murphy, David W. Arnett Murphy, and Noah Murphy Thompson." The will further provided that the legal and equitable es-

tates in the trustees should not merge. All the aforesaid named persons other than Noah Murphy Thompson, who is the testator's grandchild, are children of the testator. A copy of the will, executed February 3, 1920, duly admitted to probate in the Orphans' Court of Baltimore City on May 1, 1922, is filed herewith and prayed to be taken as part hereof, marked "Plaintiff's Exhibit No. 4."

7. That from the time of the death of the father of the defendants on April 5, 1922 until February 25, 1947, on which date the said trust created by the will of John H. Murphy, Sr., deceased, by decree of this Honorable Court in a collusive case therein pending, filed by John H. Murphy, Jr. and David W. Arnett Murphy, two of the defendants herein, filed against themselves and the other cestuis que trust named in the aforesaid will of John H. Murphy, Sr., deceased, entitled "John H. Murphy, Jr., et al., plaintiffs, v. John H. Murphy, Jr., et al., defendants," (Docket 55-A, folio 386 (1946)) was declared terminated, the defendants by voting said stock left in trust as aforesaid gave them and made them the controlling interest in said corporation. A copy of said decree is filed herewith and prayed to be taken as part hereof, marked "Plaintiff's Exhibit No. 5." Before said trust was terminated as aforesaid the defendants, together with their wives, some of their children, and a sister, on April 1, 1946, entered into a voting trust agreement, a copy of which is filed herewith and prayed to be taken as part hereof, marked "Plaintiff's Exhibit No. 6," wherein the defendants were named as "voting trustees" and wherein they bound themselves to vote the stock mentioned in said agreement, amounting to 449 shares, as a unit for ten years from said date. The defendants at the time of the execution of said voting trust agreement had and controlled title to some of the shares of stock mentioned in said agreement, but did not obtain title to 160 shares mentioned in said agreement until after the trust was terminated as hereinbefore mentioned.

In order to further assure themselves of continued control of the corporation, the defendants and other stockholders subject to

their control on May 21, 1948, entered into an agreement providing that no stock would be sold by them to any outsider unless before such sale the shares had been offered to the company and the other stockholders. The defendant, Carl Murphy, President of The Afro-American Company, announced that the purpose of the voting trust and stock sale agreement was to keep the company within "its closed corporation." A copy of said stock sale agreement is filed herewith and prayed to be taken as part hereof, marked "Plaintiff's Exhibit No. 7."

8. That from April 5, 1922 down to the date hereof, the defendants had it within their exclusive power to dominate and control said corporation and direct it as they saw fit, and by virtue thereof did so control and direct it, and the entire management of its business has been in their hands. Filed herewith and prayed to be taken as a part hereof, marked "Plaintiff's Exhibit No. 8" is a list of the number of shares held and controlled by each of the defendants, and the dates on which they acquired said stock. Also filed herewith and prayed to be taken as part hereof, marked "Plaintiff's Exhibit No. 9" is a list of all other stockholders of the company showing their relationship to the defendants and the number of shares held by each.

In 1948 the corporation purchased 8 shares, in 1949 it purchased 8-8/9 shares, and in 1950 one share held by an employee was returned to the company, so that the total number of shares now outstanding is 682-1/9.

9. That from April 5, 1922, the date of the death of John H. Murphy, Sr., the father of the defendants, they have treated the property and income of The Afro-American Company as their own and disregarded the rights of the minority stockholders and conspired to take control of The Afro-American Company by acquiring as their personal holdings the shares of other stockholders through the expenditure of corporate funds without the payment of consideration by themselves in order to despoil the corporate assets and to freeze out the interest of your oratrix and other minority stockholders, and the defendants did, in fact, wrest the control of the corporation from your oratrix and other stockholders and pursuant to said conspiracy committed the wrongs hereinafter alleged.

8

10. On June 13, 1922, after the death of John H. Murphy, Sr., the defendant, Carl Murphy, was elected President of the corporation, George B. Murphy, Vice-President, and John H. Murphy, Jr., without being formally elected displaced the secretary, Lavinia S. Henry, who was not related to the defendants. The auditing committee of stockholders, which before the death of John H. Murphy, Sr. contained at least one shareholder not related to the Murphy family, was abolished after 1922 by order of defendant Carl Murphy, President, without formal approval by the stockholders.

From the date of the incorporation of the company until the death of John H. Murphy, Sr., except for the year 1915, the Board of Directors of The Afro-American Company consisted of eight or more persons, and at least one of the directors and one of the officers were not related to the defendants. On December 12, 1922, almost immediately after the death of John H. Murphy, Sr., a Directors' Meeting was held, which was attended only by the four defendants and at which it was resolved to amend the charter to reduce the number of directors and to provide for a Board of Directors of only five members as hereinbefore set out.

11. From 1923 to 1930, the four defendants and Mrs. Rose Oliver, a sister of the defendants, who lived in Brazil, Indiana, were elected directors. She could not and did not give to the business and affairs of the corporation the time and attention which a director should devote thereto and, in fact, never attended any meetings. After Mrs. Oliver's death in 1930, the four defendants were the sole directors until 1936, when Mrs. Eva S. Purdy, another sister of the defendants, who lived in Somerset, Pennsylvania, was added as a fifth member. Mrs. Purdy, who was not a stockholder of the corporation, was elected a director each year from 1936 to 1941, when she died. During that period she also could not and did not give to the business and affairs of the corporation the time and attention which a director should devote thereto, and, in fact, she attended only two meetings of the board, one on November 4, 1937, and the other on November 18, 1940.

From 1942 to 1946, inclusive, the four defendants were the only directors, and there was no formal election of directors for 1946.

12. At present the Board of Directors is composed of three of the defendants, Carl Murphy, D. Arnett Murphy, and John H. Murphy, Jr., a son of George B. Murphy, Sr., two daughters of Carl Murphy, two daughters of D. Arnett Murphy, two nephews of all the defendants, and William I. Gibson, the managing editor of the Afro-American newspaper, who is not a stockholder.

13. In addition to being, in effect, the only directors from 1923 to 1947, inclusive, the defendants elected themselves the only officers during that period. From 1922 to 1947, inclusive, the defendants elected themselves officers of the company as follows:

Carl Murphy,
President;

D. W. Arnett Murphy,
Treasurer from 1922 to 1931;
Secretary from 1932 to 1937;
Vice-President from 1938 to 1946;

George B. Murphy, Sr.,
Vice-President from 1922 to 1937;
Secretary from 1938 to 1947;

John H. Murphy, Jr.,
Secretary from 1922 to 1931;
Treasurer from 1932 to 1947.

At the present time and since 1948, the officers are Carl Murphy, President, D. Arnett Murphy, Vice-President and Treasurer, and a daughter of each of them act alternately, every six months, as Secretary.

14. Since 1947, and up to the present time, the defendants, Carl Murphy, D. Arnett Murphy, and John H. Murphy, Jr., constitute the Executive Committee which has the exclusive power to and does set salaries and has complete charge of the management of the business of said company.

15. The Board of Directors has always been elected, controlled, and dominated by the defendants who own a majority of the stock of said corporation, and who, as heretofore shown, have by a voting

trust agreement agreed to vote their said stock as a unit, by virtue of the voting trust agreement hereinbefore referred to.

16. Commencing in 1922 the defendants conspired to acquire as their personal holdings the shares of other stockholders and beneficiaries of the trust of John H. Murphy, Sr., and the 52 shares of stock which had been authorized by the charter of the company but had theretofore been unissued, and did so acquire a large number of said shares by the expenditure of corporate funds and without any payment of consideration by themselves. In 1924 and 1925 the defendants illegally issued one share of stock to each of four employees of the company for $5.00 per share, each of which shares was restricted as follows: "Not Transferrable. To be held only while an employee of the Afro-American and to be redeemed if for any reason he leaves service at cost price of $5."

17. On April 4, 1931, the defendants issued to and divided among themselves 48 shares of stock authorized but unissued, each of the defendants receiving 12 shares apiece. The issuance of these shares was unnecessary as a means to obtain further capital inasmuch as The Afro-American Company was fully capitalized with respect to the scale at which it then operated. Your oratrix further alleges that the books of the company show that the defendants paid no consideration for said shares. Your oratrix further alleges that the issuance of said shares to the defendants was in violation of the preemptive rights of the plaintiff and of the other minority stockholders. Said 48 shares were also issued illegally because there was no meeting of the Board of Directors regularly called for the purpose of authorizing the distribution of said stock to the defendants, and the stockholders never authorized the issuance and distribution of said stock and were never advised of same, and the fact that said stock was issued as aforesaid was concealed by the defendants from the other stockholders.

18. On April 4, 1931, forty shares were acquired by The Afro-American Company from Mrs. Eva S. Purdy. The books of the corporation show that the amounts advanced to Mrs. Purdy and her husband were charged to them as a loan and written off as a bad debt in 1945

//

after Mrs. Purdy and her husband had both died. On April 4, 1931, the said forty shares were divided equally among the four individual defendants. Upon information and belief, plaintiff alleges that the said individual defendants paid no consideration for the said shares.

19. On September 27, 1930, the defendants contend that The Afro-American Company acquired 40 shares of stock from Noah Murphy Thompson for the sum of $1,200.00. On information and belief, the plaintiff alleges that the books of the corporation show that the $1,200.00 advanced to Noah Murphy Thompson were charged to him as a loan and written off as a bad debt. On April 4, 1931, the said 40 shares were divided equally among the defendants. Upon information and belief plaintiff alleges the four defendants paid no consideration for said shares.

20. On the dates hereinbelow indicated, the defendants, without the knowledge or consent of the other stockholders, also divided among themselves, without furnishing any consideration therefor, the following listed shares which had been acquired from their previous owners by the expenditure of funds of The Afro-American Company:

(a) On June 4, 1931, ten shares were purchased from the estate of James A. Ward, at private sale by the corporation for $600.00. Eight of them were equally divided among the individual defendants. The remaining two were distributed to Clementine Knox and John H. Murphy III as a "gift...for the sum of L$ (sic) and other valuable consideration." Plaintiff alleges that the said two shares were distributed as a gift, and that Clementine Knox and John M. Murphy III, children of Daniel Murphy, deceased, a brother of the defendants, paid no consideration therefor. Plaintiff further alleges that the stock ledger of the corporation indicates that the shares were distributed as aforesaid even before the date of the minutes of the Board of Directors authorizing the distribution.

(b) January 19, 1933, two shares acquired by the corporation from A. L. Gaines.

(c) August 12, 1933, 14 shares acquired by the corporation from your oratrix for $810.00.

(d) July 5, 1934, two shares acquired by the corporation from W. Ashbie Hawkins.

(e) November 19, 1937, four shares acquired by the corporation from Warner T. McGuinn. (George B. Murphy, Sr. did not participate in the division of these shares.)

(f) March 16, 1945, ten shares were transferred by Martha Frances Louise Murphy to D. W. Arnett Murphy. In consideration of this transfer, the corporation charged off a debt of the said Martha Frances Louise Murphy to the corporation in the amount of $1,376.10, with interest for approximately ten years, thus paying the consideration for the transfer to the said D. W. Arnett Murphy personally.

(g) From May 22, 1945 to October 18, 1946, Elizabeth O. Hood transferred fifty shares to Carl Murphy and Vashti Murphy, his wife, in consideration of money advanced by the corporation.

(h) April 3, 1947, the following transfers were made in consideration of the extinguishment of a debt owed by the owners to the corporation:

> 5 shares from Genesta Gilbert, wife of deceased grandson of John H. Murphy, Sr., to Carl and Vashti Murphy;
>
> ½ share from Harry L. Gilbert, Jr., child of Genesta Gilbert, to Carl and Vashti Murphy;
>
> 1½ shares from the said Harry L. Gilbert, Jr. to D. W. Arnett Murphy and wife;
>
> 2 shares from Genesta Gilbert II, daughter of Genesta Gilbert, to D. W. Arnett Murphy and wife;
>
> 2 shares from George Gilbert, son of Genesta Gilbert, to D. W. Arnett Murphy and wife.

21. From 1922 to date, the defendants have drawn excessive salaries and bonuses. All of the said defendants (except George B. Murphy, Sr., who was assigned no duties) performed duties from time to time in the editorial, printing, and circulation departments, and in the composing room and business office. However, not only did the said defendants draw fully compensatory salaries each week for their work incident to the operation of the business, but in addition, beginning with the year 1926 they also drew unreasonably large yearly salaries and illegal bonuses for acting as officers and directors of

the corporation, which yearly salaries and bonuses were set by the defendants at the end of each year, after the defendants determined the approximate amount of the net earnings of the company and which salaries and bonuses were set at such an amount as to syphon off practically all the profits earned each year by the corporation.

22. The minutes of the stockholders' meetings show that the statements submitted to the stockholders of the profits for each year from 1922 to date did not disclose the fact that the said defendants were drawing weekly salaries as well as yearly salaries and bonuses as officers and directors. The compensation paid to the defendants was included under the general item "annual pay roll," and thereby concealed. In fact, the defendant, Carl Murphy, deliberately mislead the stockholders as to the compensation paid the defendants. At the stockholders' meeting held on February 1, 1938, the said defendant Carl Murphy stated to the stockholders:

> "We could have gotten new money by increasing our capital stock. We have preferred the conservative method of small administrative salaries and small stock dividends in order to be able to keep our assets liquid and be able at any time to meet our outstanding obligations.
>
> "There may be those among us who feel that we are making progress to slowly and that we should emulate other concerns in the payment of wages and dividends, but I believe that the majority of directors and stockholders concur that speculation is not safe and that a balanced budget is the only certain guarantee of solvency."

23. An auditor was employed on behalf of the company by the defendants in 1925 to make yearly reports of the financial condition of the company, which reports from that year to 1945, inclusive, were made on a cash basis rather than an accrual basis, and therefore did not fully reflect all of the profits of the company. Since 1946 the financial reports have been prepared on an accrual basis. After the employment of the auditor in 1925, the defendants dictated the forms of his reports and they were and still are prepared in such manner as to make it impossible to determine from them precisely what compensation the defendants were receiving from the corporation.

24. Upon information and belief, your oratrix alleges that the schedule hereto attached and prayed to be taken as part hereof, marked "Plaintiff's Exhibit No. 10" accurately shows the gross income of the corporation from 1915 to 1949, inclusive, the net income of the company for the same period, the rate of dividends paid by the company on each share from 1918 to 1949, inclusive, and the yearly salaries and bonuses (exclusive of the weekly salaries paid to them) paid to the defendants from 1926 to 1949, inclusive. The aforesaid schedule of yearly salaries and bonuses paid to the defendants does not include the weekly salaries received by them. The exorbitant salaries and bonuses paid to the defendants diminished the amount of net income available for distribution in dividends to your oratrix and other stockholders. In addition to their salaries and bonuses, the defendants received directors' fees, fees for mileage, transportation, etc., which were unreasonable and excessive. The defendant George B. Murphy performed no services for the company at all other than to attend directors' meetings, being employed full time as a principal of a high school in Baltimore, and since 1942 he has been totally incapacitated from performing any duties because of his health.

25. The defendants have illegally been paid dividends on the shares of stock which they unlawfully distributed to themselves from the dates they acquired said stock as hereinbefore set forth, the payment of which dividends also diminished the amount of net income available for distribution as dividends to your oratrix and other stockholders.

26. The defendants gave illegal gifts and made disbursements of corporate funds for purposes unconnected with the corporation's business, as follows:

(a) 1935 - payment of weekly salary to Miss Frances Murphy for nursing Mrs. Eva S. Purdy during the latter's illness.

(b) January 5, 1937 - contribution of $150.00 to Republican campaign.

(c) November 17, 1939 - gift of $150.00 to Mrs. Eva S.

15

Purdy; cancellation of loan to John H. Murphy, III, son of Mrs. Sarah Neely, and grandson of John H. Murphy, Sr. The minutes of the Board of Directors relating to this latter transaction read as follows: "The president read a letter from Mrs. Sarah Neely of Philadelphia regarding loans made on behalf of her son, John III. The board instructed the secretary to write Mrs. Neely that the obligations would be cancelled and that we would be glad if she would acquaint John III with the facts, that he might catch the spirit of the Board."

(d) 1943 - forgiveness of loan of $1,700.00 together with interest for 10 years, to George B. Murphy, Sr.

(e) 1945 - gift of $1,000.00 to Carl Murphy to take a trip for his health.

(f) 1947 and 1948 - The board of directors voted on July 31, 1946, that after the retirement of George B. Murphy, Sr. and John H. Murphy, Jr., as of December 31, 1946 one half of the retirement-date salaries of the said George B. Murphy, Jr. and John H. Murphy, Jr. be paid to each of them in 1947 and again in 1948. George B. Murphy, Sr. received a total of $5,000.00 and John H. Murphy, Jr. a total of approximately $29,000.00 under this resolution.

(g) In 1949 the defendants voted to George B. Murphy, Sr., an honorarium of $1,000.00 and to Miss Frances Murphy an honorarium of $500.00.

(h) The defendants from time to time gave one, William Johnce Purdy, approximately $3,000.00 of the corporate funds for his own personal use, without any benefit or prospect of benefit to the corporation.

27. The individual defendants, in 1943, under the encouragement afforded by the passage of the wartime excess profits tax laws, established a pension trust and profit sharing agreement, copy of which is in the possession of the defendants and will be called for at the time of the trial hereof. Under the plan The Afro-American Company contributed to the trust on account of its qualified employees a percentage of the annual compensation regularly received by the said employees. The percentage, as well as the actual amount contributed by the com-

pany, increased in proportion to the amount of regular annual compensation. The principal beneficiaries under this plan were therefore defendants Carl Murphy, D. W. Arnett Murphy and John H. Murphy, Jr. (George B. Murphy, Sr. had reached retirement age before adoption of the plan.) Some fifteen children and in-laws of the individual defendants also benefited under the plan. Up to 1929 the total amount paid into the said trust aggregated approximately $210,000.00. Although the scope of the plan was curtailed in 1948, interests accrued under the original arrangement were expressly reserved to the beneficiaries. Attached herewith and prayed to be taken as part hereof are figures showing the amount paid into the pension fund on account of the defendants and others, from 1943 to 1949 (marked "Plaintiff's Exhibit No. 11"); copy of the minutes of the Board of Directors relating to the adoption of the plan (marked "Plaintiff's Exhibit No. 12"), and schedules filed with income tax returns of the company for 1946-1949 of contributions by the company on behalf of defendants and other employees (marked "Plaintiff's Exhibit No. 13").

28. On July 10, 1947, the defendants caused The Afro-American Company to transfer to Carl Murphy and Vashti Murphy, his wife, and D. W. Arnett Murphy and Sadie Murphy, his wife, the premises at 1200 Druid Hill Avenue for a grossly inadequate consideration.

29. The defendants have used corporate funds for their personal purposes to wit: More than $10,000.00 attorneys' fees have been charged to The Afro-American Company for services rendered to the defendants individually and the defendants have also charged to the corporation their household expenses and the expenses of their private automobiles used for private purposes.

30. That the yearly salaries and bonuses and other compensation paid to the defendants as officers and directors of the company, as shown by the aforesaid schedule hereto attached, and the other compensation received by them in the forms of directors' fees, fees for mileage, transportation, household expenses, etc., were grossly excessive and not justified by the business and condition of the company or by any services rendered by said defendants; that said salaries and bo-

nuses and other compensation were voted by the defendants to themselves who constituted the entire Board of Directors from 1922 to 1947, as hereinbefore pointed out, and after 1947 by a Board absolutely controlled and dominated by said defendants; that each and all of the defendants in causing or permitting such salaries and bonuses and extra compensation to be voted and paid to themselves and in committing all of the other wrongs hereinbefore set forth, were acting fraudulently and in violation of their obligation as directors of the company and in violation of the duty which they owed to the company to protect its property, assets, and money from being dissipated or turned over to persons not entitled thereto; that each and all of the defendants in causing or permitting said salaries and bonuses and the extra compensation to be voted and paid to themselves and in committing the other wrongs hereinbefore set forth, were acting fraudulently in their own interests and directly against the interests of The Afro-American Company. And the defendants, under the guise and name of salaries and bonuses and gifts did fraudulently appropriate to themselves money and other property of The Afro-American Company.

31. That each and all of the defendants had full knowledge of each and all of the fraudulent and illegal acts in this bill set forth, and acquiesced in the carrying out of said fraudulent and illegal acts, and each and all of them knew and approved of all of the said illegal acts herein set forth, and they knew that said sums paid to themselves for yearly salaries and bonuses and other compensation were grossly in excess of any fair compensation due them for their services and knew that said sums were being voted and paid to themselves in willful disregard and fraud of the rights of the other stockholders, and each and all of the defendants unlawfully and wrongfully conspired and agreed among themselves to appropriate to themselves the money of the corporation under the name and guise of salaries, bonuses and gifts, and each and all of the defendants unlawfully and wrongfully conspired together to conceal all of the fraudulent acts herein set forth from the other stockholders of the company.

32. Upon information and belief, your oratrix alleges that there are many other frauds and irregularities committed by the defendants in the management of the affairs of The Afro-American Company, which she believes that an examination of the books of that company will reveal, of which she has no personal knowledge at this time, which books are not in her possession, but are in the possession and under the control of the defendants.

33. That as a result of all the illegal, unlawful and fraudulent acts committed by the defendants, as hereinbefore set forth, the value of her stock, as well as the value of the stock of other minority stockholders in said company, has been greatly diminished and the amount of the yearlf net income available for distribution as dividends to your oratrix and other minority stockholders has also been diminished.

34. That all the wrongs and fraudulent acts committed by the defendants, and hereinbefore set forth, were never communicated to your oratrix or the other stockholders of the company at their annual meetings, or at any other time, were never acquiesced in by your oratrix or the other stockholders, and were in fact concealed by the defendants from your oratrix and the other stockholders.

35. That your oratrix was not aware of the foregoing breaches of duty, and the illegal, unlawful, and fraudulent acts committed by the defendants and hereinbefore set forth until May 2, 1950, when she learned of them for the first time as a result of appearing as a witness in a suit pending in the United States District Court for the District of Maryland wherein Noah Murphy Thompson, one of the cestuis que trust named in the will of John H. Murphy, Sr., deceased, filed suit to set aside a purported sale of stock made by him to the corporation.

36. That since the defendants have been the officers and directors of The Afro-American Company and now control and dominate its present Board of Directors, and have and do now own and control a majority of stock in said company and have themselves perpetrated the wrongs hereinbefore set forth, to their own personal profit and in conscious violation of the rights of the plaintiff as a stockholder and other minority stockholders it would be utterly vain to attempt

to obtain redress through the machinery of the corporation which was the very instrumentality by which they perpetrated said wrongs, and therefore even if the corporation did bring the suit against the defendants it could not be relied on to do justice to the minority stockholders in conducting the litigation against the defendants herein. However, in spite of this your oratrix in an effort to have the suit brought in the name of the corporation did on August 2, 1950, through her attorney, write to each member of the present Board of Directors of The Afro-American Company, requesting that the corporation undertake to redress the wrongs herein set out and advised said directors that if her attorney did not hear from them on or before August 14, 1950, she would assume that the corporation is not interested in conducting the litigation and she would file suit on her own behalf as a stockholder of said company, a copy of which letter is hereto attached and prayed to be taken as part hereof, marked "Plaintiff's Exhibit No. 14"

In response to said letter the attorney for your oratrix on August 10, 1950, received a letter from Carl Murphy, one of the defendants herein, stating that as some of the directors are absent from the city he will take up the matter set forth in your oratrix' letter sometime in the early part of September, a photostatic copy of which letter is hereto attached and prayed to be taken as part hereof marked "Plaintiff's Exhibit No. 15."

That the statement contained in said letter from the defendant, Carl Murphy, that it will be impossible to hold a meeting of the Board of Directors on or before August 14, 1950, is not made in good faith because it is not necessary that all the members of the Board be present, and he could have, if he so desired, called a meeting of the Board between August 3, 1950, and August 14, 1950, because a majority of the members of the Board, according to information and belief of your oratrix, are and were during that period available to attend such a board meeting. Further evidence of the fact that the statement of the defendant Carl Murphy contained in said letter that it is impossible to hold a meeting until the early part of September

is seen from the fact that the minutes of the Board show that for the last five years the Board has held at least one meeting in August each year. Your oratrix further alleges that the reason the defendant Carl Murphy refused to call a meeting of the Board of Directors before August 14 to consider the letter sent to the members of the Board by your oratrix on August 2, 1950, was for the purpose of delaying the bringing of the action against the defendants promptly. This is also evident from the fact that he and the other defendants absolutely control the present board of directors as hereinbefore set forth.

On August 10, 1950, your oratrix wrote to Carl Murphy advising him that his refusal to call a meeting of the Board before the early part of September, 1950, was not made in good faith, and she would therefore file suit on August 15, 1950, if the corporation did not do so, a copy of which letter is attached hereto and prayed to be taken as part hereof, marked "Plaintiff's Exhibit No. 16."

TO THE END, THEREFORE:

1. That the defendants, Carl James G. Murphy, David W. Arnett Murphy, George B. Murphy, Sr., and John H. Murphy, Jr., may answer under oath the several matters and things hereinbefore charged, as fully and particularly as if they were herein again stated, and they were thereto specially interrogated.

2. That the defendants make a full accounting of the earnings, profits, and assets of The Afro-American Company since April 5, 1922, and of the amounts thereof drawn and received by any of the defendants for themselves as well as for third persons as gifts, salaries, and bonuses since that time.

3. That judgments be severally rendered against defendants, Carl James G. Murphy, David W. Arnett Murphy, George B. Murphy, Sr., and John H. Murphy, Jr., for plaintiff's proportion of the salaries and bonuses drawn and received by them and, at their instance, by third persons, from The Afro-American Company, since April 5, 1922, which shall be adjudged to have been excessive; and that such judgment be payable to plaintiff directly or through the corporation, or that

judgment for the full amount by which said salaries and bonuses are excessive be directed to be paid over by them to the owners of the beneficial interests in the stock in the corporate defendant since that date, or to a receiver to be appointed to collect and make proper allocation and distribution of such moneys.

4. That the defendants, Carl James G. Murphy, David W. Arnett Murphy, George B. Murphy, Sr., and John H. Murphy, Jr., be required to return to the corporation all shares of stock illegally and fraudulently issued to them by themselves and also to turn over to the corporation, from the shares of stock which they own, two shares of stock which they illegally and unlawfully gave to John H. Murphy, III, and Clementine Knox;

5. That the defendants be required to reconvey title to property Number 1200 Druid Hill Avenue, Baltimore, Maryland, to The Afro-American Company.

6. That the said defendants, Carl James G. Murphy, David W. Arnett Murphy, George B. Murphy, Sr., and John H. Murphy, Jr., by injunction be restrained from selling or disposing of any of their stock in The Afro-American Company until the further order of this Court.

7. That your oratrix have such other and further relief as may be just, together with the costs and disbursements of this action.

May it please your Honor to grant unto your oratrix the writ of subpoena directed against the said Carl James G. Murphy, David W. Arnett Murphy, George B. Murphy, Sr., and John H. Murphy, Jr., residing in the City of Baltimore, State of Maryland, commanding them to be and appear in this Court at some certain day to be named therein and answer the premises under oath and abide by and perform such decree as may be passed therein.

And as in duty bound, etc.

Edith L Johnson
Complainant

Paul Berman
Solicitor for Complainant

22

STATE OF MARYLAND,

CITY OF BALTIMORE, TO WIT:

I HEREBY CERTIFY that on this 14th day of August, 1950, before me, the subscriber, a Notary Public for the State of Maryland, in and for the City of Baltimore aforesaid, personally appeared EDITH L. JOHNSON, and made oath in due form of law that the matters and facts set forth in the within complaint are true to the best of her knowledge, information, and belief.

AS WITNESS my hand and notarial seal.

(Seal)

Therse P. Oeas
Notary Public

23

"PLAINTIFF'S EXHIBIT NO. 1"
Filed 15th August, 1950

The Afro-American)KNOW ALL MEN BY THESE PRESENTS That we John
)
Company of)H Murphy Abraham L Gaines George B Murphy
)
Baltimore City)Daniel B Murphy and Perry P Clarke all of Baltimore City and State of Maryland being citizens of the United States and all of whom are citizens of the State of Maryland do hereby certify that we do under and by virtue of the General Laws of this State authorizing the formation of corporations hereby form a corporation under the name of

"THE AFRO-AMERICAN COMPANY OF BALTIMORE CITY"

2 We do further certify that the said corporation so formed is a corporation for the purpose of conducting the Afro-American a newspaper and for running a printing and publishing business in connection therewith and for buying and selling leasing and mortgaging such lands tenements or hereditaments as may be found necessary in the conduct of said business that the term of existence of the said corporation is limited to forty years and that the said corporation is formed upon the articles conditions and provisions herein expressed and subject in all particulars to the limitations relating to corporations which are contained in the General Laws of this State

3 We do further certify that the operations of the said corporation are to be carried on partly in the State of Maryland and partly beyond and that the principal office of the said corporation will be located in Baltimore City aforesaid

4 We do further certify that the aggregate of the capital stock of the said corporation is Three thousand five hundred dollars ($3,500) and that the said capital is divided into seven hundred shares of the par value of five dollars ($5) each

5 We do further certify that the said corporation will be managed by a board of seven directors and that John H Murphy Abraham L Gaines George B Murphy Daniel B Murphy Perry P Clarke John E Murphy Jr and W Ashbie Hawkins are the names of the directors who will manage the affairs of the said corporation for the first year

IN WITNESS WHEREOF we have hereunto set our hands and seals this 29" day of July in the year nineteen hundred and seven

Test

William McCawley

John H Murphy (SEAL)

Abraham L Gaines (SEAL)

George B Murphy (SEAL)

Daniel H Murphy (SEAL)

Ferry P Clark (SEAL)

STATE OF MARYLAND BALTIMORE CITY TO WIT

I hereby certify that on this 29" day of July in the year nineteen hundred and seven before me the subscriber a Justice of the Peace of the State of Maryland in and for Baltimore City personally appeared John H Murphy Abraham L Gaines George B Murphy Daniel H Murphy and Ferry P Clarke and did severally acknowledge the foregoing certificate to be their act and deed

William McCawley J P

I George M Sharp one of the Judges of the Supreme Bench of Baltimore City do hereby certify that the foregoing certificate has been submitted to me for my examination and I do further certify that the said certificate is in conformity with the provisions of the law authorizing the formation of said corporation

George M Sharp

Recd for record Aug 7th 1907 at 11.25 o'clk A M same day recorded and exd per Robt Ogle Clerk

IN THE SUPERIOR COURT OF BALTIMORE CITY

State of Maryland,

City of Baltimore, Set.

I, M. Luther Pittman, Clerk of the superior Court of Baltimore City, do hereby certify that the aforegoing is a true copy of the original Charter taken from the records of the said Superior Court of Baltimore City as recorded in Liber R O No. 47 Folio 301 &c one of the Charter Records of Baltimore City.

In Testimony Whereof, I hereto set my hand and affix the seal of said Court, this 9th day of August A.D. 1950

/S/ M. Luther Pittman
Clerk of the Superior Court
of Baltimore City.

PLAINTIFF'S EXHIBIT NO. 2
Filed 15th August, 1950

Afro American Company of Baltimore City Articles of Amendment	)	The Afro American Company of Baltimore City. Articles of Amendment

THIS IS TO CERTIFY;

First. That the Board of Directors of the Afro American Company of Baltimore a Maryland Corporation having its principal Office in Baltimore City Maryland at a meeting duly called and held on the 12th day of December 1922 adopted the following resolutions;

L Resolved That it is advisable to amend the Charter of the Corporation by striking out Sections Number Two (2) Three (3) and Five (5) of the Certificate of Incorporation and inserting in lieu thereof the following Section 2 of the amended Certificate of Incorporation to read as follows. The purposes for which it is formed and the business or objects to be carried on and promoted by it are as follows;

(a) The business of conducting the Afro American a newspaper and conducting a printing business in connection there with as well as a general publishing business.

(b) To deal generally in lands tenements and hereditaments In furtherance of said objects and purposes the said Corporation shall have in addition to its implied powers the powers herein enumerated as follows;

(1)To act as financial or business agent for domestic and foreign corporations individuals partnerships associations States or other bodies.

(2) To borrow money to issue bonds debentures notes and obligations secured and unsecured of the corporation from time to time for monies borrowed or in payment for property acquired or for any of the other objects or purposes of the corporation or for any of the objects of its business in the manner provided by law to secure the same by mortgage or mortgages or deed or deeds of trust or pledge or other lien upon any or all of the property rights contracts instalment sale

contracts privileges or franchises of the corporation wheresoever situate acquired or to be acquired.

(3) To purchase or otherwise acquire and to carry on all or any part of the property or business of any person firm or corporation possessed of property which can be used for any of the purposes of the Company or carrying on any business which the Company is authorized to conduct and as the consideration for the same to pay cash or to issue Stock debentures or obligations of the Company and in connection with any such transaction to undertake any liabilities relating to the property or business so acquired in the manner provided by law.

(4) To apply for purchase register or otherwise acquire any patents patent rights licenses trade marks trade names and copyrights and to hold use exercise or develop or grant licenses in respect of the property and rights so acquired.

(5) To conduct its business and all or any of its branches so far as permitted by law in the State of Maryland and in any other States of the United States of America and in the territories and the District of Columbia and in any and all dependencies colonies or possessions of the United States of America and Foreign Countries and for and in connection with such business to hold possess lease purchase mortgage and convey real and personal property including Stock bonds or securities of other corporations and to maintain Offices and Agencies either within or any where without the State of Maryland.

(6) In furtherance and not in limitation of the general powers conferred by the laws of the State of Maryland and of the purposes hereinbefore stated It is hereby expressly provided that the Company shall have the power to do any and all things set forth as its objects to the same extent and fully as a natural person might or could do as principal agent contractor or otherwise and to carry out all or any of the aforegoing objects as principals agents contractors or otherwise and by and through agents sub contractors or otherwise and alone or jointly with any other corporation association firm or person and to do all

28

and everything necessary or incidental for the accomplishment of any of the purposes or the attainment of any one or more of the objects herein enumerated or incidental to the powers herein named or which at any time be necessary or incidental for the protect ion or the benefit of the corporation.

2 Section (3) of the amended Certificate of Incorporation to read as follows;

The principal office of the said corporation in this State will be located at No. 628 N. Eutaw Street in the City of Baltimore and D.W. Arnett Murphy a Citizen of the State of Maryland and actually residing therein and whose Post Office address is 1421 Argyle Avenue in the City of Baltimore shall act as the resident agent of the said corporation.

3 Section (5) of the amended Certificate of Incorporat ion to read as follows;

The said Corporation shall be managed by Five Directors and that George B. Murphy John H. Murphy Jr Carl J. Murphy D W. Arnett Murphy and Rose M. Oliver shall act as such until the first annual meeting of the corporation hereafter or until their successors are duly chosen and qualified.

IN WITNESS WHEREOF The Afro American Company has/caused of Baltimore these presents to be signed in its name and by its President and its corporate seal to be hereto affixed and attested by its Sec retary on the 20 day of February 1923

Attest	(The Afro American)	The Afro American Company of
Lavinia S. Henry	(Company Incorpora)	Baltimore City
Secretary	(ted August 1907)	By Carl J. Murphy
	(of Baltimore City)	President

STATE OF MARYLAND CITY OF BALTIMORE TO WIT

THIS IS TO CERTIFY that on this 24th day of February 1923 before me the subscriber a Notary Public of the State of Maryland in and for the City of Baltimore personally appeared Carl J. Murphy President of the Afro American Company of Baltimore City a Maryland Corporation and acknowledged the aforegoing articles of amendment to be the corporate act of said corporation and at the same time personally appeared Lavinia S. Henry and made oath in due form of law that she was Secretary of the meeting of Stock

29

holders of the Corporation at which the Amendment of the Charter of the Corporation set forth in said Articles of Amendment and that the matters and facts set forth in said Articles of Amendment are true to the best of her knowledge and information and belief.

WITNESS my hand and notarial seal the day and year last above written.

(Notarial Seal) Sadie B. Carter

Notary Public

Recd for record recorded & exd Mar. 29,1923 at 10.30 O'clk A.M.

Stephen C. Little Clerk

IN THE SUPERIOR COURT OF BALTIMORE CITY

State of Maryland,

City of Baltimore, Sct.

I, M. Luther Pittman, Clerk of the Superior Court of Baltimore City, do hereby certify that the aforegoing is a true copy of the original Amendment taken from the records of the said Superior Court of Baltimore City as recorded in Liber S.C.L. No. 89 Folio 366 &c one of the Charter Records of Baltimore City.

In Testimony Whereof, I hereto set my hand and affix the seal of said Court, this 9th day of August A.D. 1950

(SEAL)

/S/ M. Luther Pittman
Clerk of the Superior Court
of Baltimore City.

PLAINTIFF'S EXHIBIT NO. 3
Filed 15th August, 1950

ESTATE OF WILLIAM H. DALY

June 28, 1921

Upon application of Mary E. Daly and George W.P. McMechen, Administrators of William H. Daly, Deceased, it is ordered by the Orphans' Court of Baltimore City that said Administrators cause to be transferred to Mary E. Daly a 1/3 interest and to Edith L. Brandon a 2/3 interest in 20 shares stock of the Afro-American Ledger.

Myer J. Block

Harry C. Gaither

William M. Dunn

PLAINTIFF'S EXHIBIT NO. 4
Filed 15th August, 1950

The Last Will and Testament of John H. Murphy

KNOW ALL MEN, by these presents, That I, John H. Murphy of Baltimore City, in the State of Maryland, being of sound and disposing mind and memory, do make, publish and declare this to be my last Will and Testament, hereby revoking all other Wills by me made.

After all my just debts and funeral expenses are paid, I give bequeath and devise all of my estate as follows:

First. I give and bequeath my four hundred shares of the capital stock of the Afro-American Company, a corporation, the said number of shares being the majority of the capital stock of said company - to Daniel H. Murphy, John H. Murphy, Jr., and David W. Arnett Murphy in trust, that the said trustees shall continue the business now conducted by the said The Afro-American Company and pay over the net proceeds from said business equally between Eva S. Purdy, George B. Murphy, Harriet E. Gilbert, Martha Frances Louise Murphy, M. Rose Oliver, Daniel H. Murphy, John H. Murphy, Jr., Carl James G. Murphy, David W. Arnett Murphy, and Noah Murphy Thompson and it is my will that the legal and equitable estate in said shares of stock bequeathed by this paragraph of this my will to Daniel H. Murphy, John H. Murphy, Jr. and David W. Arnett Murphy, trustees, as aforesaid, shall not merge in the said trustees or either of them.

Second. I give and bequeath all of my books and public papers to the Afro-American Company aforesaid and it is my will that the said books and papers shall be used in forming a library for "The Afro-American", a journal published by the said The Afro-American Company.

Third. I give and bequeath my gold watch, chain

and fob and all my masonic and other fraternal jewels to my sons and sons-in-law who shall be living at my death and who shall be members of the masonic or other fraternities of which said jewels, gold watch and fob are emblamatic, the son highest, in point of rank in said fraternities to have first choice and he shall have the power of dividing the remainder of said jewels, after his selection, as his best judgment shall dictate.

Fourth. I give and bequeath to my son, John H. Murphy, Jr., the two large portraits of myself and wife and to my grand-son, Noah Murphy Thompson, I give and bequeath all pictures or portraits of my deceased daughter, Lilly; all the remaining household effects of which I shall die possessed, including furniture, pictures, kitchen utensils, china, crockery, silverware, carpets, linen, and glassware of every description, I give and bequeath to my daughter, Martha Frances Louise Murphy, absolutely.

Fifth. It is my will that the shares of stock bequeathed in paragraph numbered one of this my will to the trustees as aforesaid, shall not be sold or disposed of to any one, unless an exigency should arise wherein the sale of said stock should become imperatively necessary or highly advantageous, in the event that the sale of said stock shall become imperatively necessary, preference shall be given to any one or more of the cestui que trust enumerated in paragraph numbered one of this my will at par value of said stock.

All the rest and residue of my estate, real personal or mixed of which I shall die seized and possessed, or to which I shall be entitled at the time of my decease, I give, devise and bequeath to the said Eva S. Purdy, George B. Murphy, Harriet E. Gilbert, Martha Frances Louise Murphy, M. Rose Oliver, Daniel H. Murphy, John H. Murphy, Jr., Carl James G. Murphy, David W. Arnett Murphy and Noah Murphy

Thompson, share and share alike.

I hereby nominate and appoint the said George B. Murphy, and Carl James G. Murphy to be the executors of this my last Will and Testament and it is my request that each and both of them may be excused from giving bond or security for the proper discharge of their duties.

In testimony whereof, I have hereunto subscribed my name and affixed my seal in Baltimore, Md. this third day of February, in the 1920, in the presence of Lavinia S. Henry and Samuel D. Hayward, whom I have requested to become attesting witnesses hereto.

John H. Murphy (Seal)

Signed, sealed, published and declared by the above named testator John H. Murphy, as and for his last Will and Testament, in the presence of us, who, in his presence and in the presence of each other, and at his request, have hereunto subscribed our names as witnesses thereof, the day and year last above written.

Lavinia S. Henry
1108 N. Carey St.

Samuel D. Hayward
30 East 20th St.

Codicil to the Last Will and Testament
of John H. Murphy

Whereas I, John H. Murphy, on the third day of February in the year 1920, executed my Last Will and Testament and whereas, I now desire to make certain additions thereto, therefore, I do hereby make, publish and declare this to be my first Codicil to my said Last Will and Testament, in manner and form following, viz:

I do hereby give and bequeath to Lavinia S. Henry of Baltimore City the sum of three hundred dollars ($300.00) absolutely and I do authorize and direct my executors, named in my Last Will and Testament, to pay to the said Lavinia S. Henry the said sum free and clear from all or any tax or commissions. I make this bequest in recognition of the long and faithful services rendered me by said legatee in conducting the business of publishing the Afro-American.

Only as above stated in this Codicil do I desire to all to my Last Will and Testament which I hereby ratify and confirm in all particulars.

As witness my hand and seal this Seventh day of December, in the year 1921, in the presence of Nellie G. Sampson and Elenora S. Wright whom I have requested to become attesting witnesses hereto.

John H. Murphy (Seal)

Signed, sealed, published and declared by John H. Murphy, as and for a Codicil to this Last Will and Testament in our presence, who, at his request, in his presence and in the presence of each other, have hereunto subscribed our names as witnesses.

Nellie G. Sampson
1124 Etting St.

Eleanora S. Wright
926 Jenkins St.

PLAINTIFF'S EXHIBIT NO. 5
Filed 15th August, 1950

JOHN H. MURPHY, JR.,et al	:	IN THE
vs	:	CIRCUIT COURT NO. 2
JOHN H. MURPHY, JR., et al	:	OF BALTIMORE CITY

::: ::: ::: ::: :::

DECREE

This cause having been submitted on Bill of Complaint and Answer, after consideration thereof and argument of Counsel for the respective parties, it is this 25th day of February, 1947, by the Circuit Court No. 2 of Baltimore City, ORDERED, ADJUDGED and DECREED, that the trust created by the Last Will and Testament of John H. Murphy, Deceased, late of Baltimore City, has ceased and terminated, and the trustees are hereby relieved from any other or further duties or responsibilities;

And the said Trustees, and the Afro-American Company, are hereby directed to transfer and deliver to the beneficiaries named in said Will, their legal descendants or assignees, certificates of stock of the Afro-American Company, free and clear, as if the said trust had never existed.

And it is further ORDERED that the plaintiffs pay the cost of these proceedings.

Herman M. Moser

PLAINTIFF'S EXHIBIT NO. 6
Filed 15th August 1950

VOTING TRUST AGREEMENT
OF
THE AFRO-AMERICAN COMPANY

THIS AGREEMENT, made in the City of Baltimore, State of Maryland, on April 1, 1946, between the stockholders of THE AFRO-AMERICAN COMPANY, a corporation duly created, organized and existing under, and by virtue of the laws of the State of Maryland, who shall become parties to this agreement by signing the same (herein called the "Subscribers"), and CARL MURPHY, residing at 2406 Overland Avenue; D. ARNETT MURPHY, residing at 2427 Madison Avenue; GEORGE B. MURPHY, SR., residing at 1741 Druid Hill Avenue; and JOHN H. MURPHY, JR., residing at 1725 N. Carey Street, all of the City of Baltimore, State of Maryland, (herein called the "Voting Trustees"),

WITNESSETH:

WHEREAS, each Subscriber represents that he is the owner of the number of shares of stock set opposite his signature hereto in said THE AFRO-AMERICAN COMPANY (herein called "Company"); and

WHEREAS, the Subscribers deem it to be greatly to the interests of said Company, and of all the Stockholders therein, that this agreement should be made:

NOW, THEREFORE, IT IS MUTUALLY AGREED, AS FOLLOWS:

1. Each Subscriber agrees forthwith to deposit with the Voting Trustees the certificate or certificates for his said shares, together with a proper and sufficient instrument, duly executed, for the transfer thereof to the Voting Trustees, and with all necessary transfer tax stamps thereto affixed.

2. (a) Upon a deposit as aforesaid, the Voting Trustees shall deliver, or cause to be delivered, to such Subscriber, or upon his order, their voting trust certificate or certificates, for the same number of shares of common stock of said Company, as is represented by the certificate or certificates so deposited, which voting trust certificates so to be delivered upon a deposit of said stock shall be in substantially the following form:

No. _____ Shares _____

THE AFRO-AMERICAN COMPANY
VOTING TRUST CERTIFICATE

This certifies that on , 19 ,
will be entitled
to receive a certificate or certificates expressed to be fully paid and nonassessable, for shares of the common stock of THE AFRO-AMERICAN COMPANY, a corporation duly created, organized and existing under, and by virtue of, the laws of the State of Maryland, and, in the meantime

to receive payments equal to the dividends, if any, collected by the Voting Trustees hereinafter mentioned upon a like number of said shares of stock; and, until after the actual delivery of such certificates, the Voting Trustees shall, in respect of any and all such stock, possess and be entitled to exercise, except as otherwise expressly provided in the agreement hereinafter mentioned, all stockholders' rights of every kind, including the right to vote and to take part in, or to consent to, any corporate or stockholders' action, it being expressly stipulated that no right to vote or to take part in or consent to any corporate or stockholders' action passes by or under this certificate or by or under any agreement, express or implied.

This certificate is issued under and pursuant to, and the rights of the holders "are subject to and limited by the terms and conditions of a certain agreement dated the 1st day of April, , 1946, between the holders of common stock of THE AFRO-AMERICAN COMPANY and CARL MURPHY, D. ARNETT MURPHY, GEORGE B. MURPHY, SR., and JOHN H. MURPHY, JR., and successors, as Voting Trustees, copies whereof are filed with the Voting Trustees and with the said THE AFRO-AMERICAN COMPANY."

No stock certificate shall be due or deliverable hereunder before the 1st day of April, 1956.

This certificate is transferable only on the books of the Voting Trustees by the registered holder thereof in person or by attorney, according to the rules established for that purpose by the Voting Trustees, and on surrender hereof. Until so transferred, the Voting Trustees may treat the registered holder as owner hereof for all purposes whatsoever.

This certificate is not valid, unless duly signed by the Voting Trustees.

IN WITNESS WHEREOF, the Voting Trustees have caused this certificate to be signed this 1st day of April, 1946.

CARL MURPHY
D. ARNETT MURPHY
GEORGE B. MURPHY, SR.
JOHN H. MURPHY, JR.
Voting Trustees

(b) Said Voting Trust certificate shall be transferred as therein provided, and not otherwise, and transfer so made of any such certificate shall vest in the transferee all rights and interests of the transferor in and under such certificate; and, upon such transfer, the Voting Trustees will deliver, or cause to be delivered, a voting trust certificate or certificates to

the transferee for the same number of shares as the voting trust certificate so transferred. Until such transfer, the Voting Trustees may treat the registered holder of the voting trust certificate as owner thereof for all purposes whatsoever.

3. Shares of stock of said Company, certificates for which shall be deposited hereunder with the Voting Trustees, shall be vested in the Voting Trustees and shall be transferred to the name of the Voting Trustees upon the books of the said Company, and until after the actual delivery of certificates for said stock to the holders of the voting trust certificates in accordance with this agreement, the Voting Trustees shall, as to all stock so held by them, possess and be entitled to exercise all stockholders' rights of every kind, including the right to vote and to take part in, or consent to, any corporate or stockholders' action, and to receive dividends on said stock; and the holders of voting trust certificates shall not have any right, with respect to any such stock held by the Voting Trustees, to vote, or take part in or consent to, any corporate or stockholders' action of said Company.

4. The holder of each voting trust certificate shall be entitled, until distribution of stock in said Company, as hereinafter provided for, to receive, from

time to time, payments equal to the dividends, if any, collected by the Voting Trustees upon the like number of shares of stock of said Company, as is specified in such voting trust certificate.

5. On April 1st, 1956 , the Voting Trustees shall distribute the stock of said Company, held by them to the holders of the voting trust certificates upon presentation and surrender, on or after said date, of voting trust certificates, accompanied by properly executed transfers thereof to the Voting Trustees, delivering certificates of stock of said Company for the shares specified in the voting trust certificates so surrendered.

6. All questions arising among the Voting Trustees shall be determined by unanimous decision. The voting Trustees may, in all matters, act either at a meeting, or by writing with or without meeting.

7. (a) Any of the Voting Trustees may, at any time, resign, by delivering to the other Voting Trustees his resignation in writing and, in case of such resignation, the Trustee resigning shall name his successor by instrument in writing delivered to the remaining Voting Trustees. In the event of the death or total disability of any Voting Trustee, his successor shall be chosen by a majority of the adult persons who would be the distributees of the personal estate of such Trustee had he at

the time he ceased his duties died intestate owing no debts and seized and possessed of such estate domiciled in Maryland. An instrument in writing designating such successor and signed by a majority of such adult distributees shall be delivered to the remaining Voting Trustees. If there are no adult distributees, the guardians of a majority of the infant distributees shall designate the successor. Such successor shall, from the time of such appointment, be deemed a Voting Trustee hereunder, and have all the estate, title, rights and powers of a Voting Trustee hereunder; and all acts and instruments shall be done and executed, which shall be necessary or reasonably requested, for the purpose of effecting such succession, and of making the Voting Trustees, as they shall exist upon such appointment, the owners of record of the stock deposited as aforesaid with the Voting Trustees or Trustee.

(b) No Voting Trustee shall be liable for any error of judgment or mistake of law, or other mistake, or for anything, save only his own wilful misconduct or gross negligence.

8. (a) In voting upon said shares of stock, or doing any act with respect to the control or management of said Company, or its affairs, as holders of the stock

deposited hereunder, the Voting Trustees shall exercise their best judgment in the interest of said Company, and to the end that its affairs shall be properly managed.

(b) The Voting Trustees may vote on said stock in person or by such person or persons as they shall select as their proxy.

9. Any holder of any stock of said Company may, at any time, become a subscriber hereto with respect to any such stock, by subscribing this agreement and depositing the certificates of his stock as aforesaid, accompanied by duly executed transfer as above provided, and shall thereupon and thereafter be deemed and be a subscriber hereunder.

10. This agreement may be executed in several parts of like form, each of which, when executed, shall be deemed to be an original; and such parts shall together constitute one and the same instrument.

IN WITNESS WHEREOF, the several parties hereto have respectively signed and sealed this agreement, the day and year first above written.

WITNESS:

Mary Moorer	_____ (SEAL) Carl Murphy
Mary Moorer	_____ (SEAL) D. Arnett Murphy
Mary Moorer	_____ (SEAL) George B. Murphy, Sr.
Mary Moorer	_____ (SEAL) John H. Murphy, Jr.

Voting Trustees

46

SUBSCRIBERS	NO. OF SHARES
Carl and Vashti Murphy	76½ plus 53½
D. A. Murphy	54 plus 45½
John H. Murphy, Jr.	59 5/6 plus 40
Mae E. Dyson	8
Arnetta Lottier	7 5/6
Elizabeth Phillips	5 1/3
Carlita Jones	5
Ida Smith	5
Vashti Matthews	5
Frances L. Murphy	5
George B. Murphy, Sr.	38½ plus 40
Total	449

VOTING TRUST

VOTING TRUSTEES

Carl Murphy

John H. Murphy, Jr.

D. Arnett Murphy

George B. Murphy, Sr.

SHARES HELD IN VOTING TRUST

Carl and Vashti Murphy	130
John H. Murphy, Jr.	99-5/6
D. Arnett and Sadie V. Murphy	99½
George B. Murphy, Sr.	78½
Mae Dyson	8
Arnetta Lottier	7-5/6
Elizabeth Phillips	5-1/3
Carlita Jones	5
Ida Smith	5
Vashti Matthews	5
Frances Wood	5
Total	449

PLAINTIFF'S EXHIBIT NO. 7
Filed 15th August 1950

THIS AGREEMENT Made in the City of Baltimore, State of Maryland, this 21st day of May, 1948, by and between THE AFRO-AMERICAN COMPANY, a corporation of the State of Maryland (hereinafter called the "Corporation") and each of the others of the undersigned (Hereinafter called the "Stockholders");

W I T N E S S E T H:

WHEREAS the Stockholders are the owners and holders of all the issued and outstanding stock of THE AFRO-AMERICAN COMPANY.

WHEREAS the said Stockholders of the Corporation deem it to be to their best interests, both generally and severally, to enter into this Agreement.

NOW, THEREFORE, in consideration of the mutual benefits to be derived herefrom, and further in consideration of the sum of One Dollar ($1.00) paid by each of the parties hereto unto the other, the receipt whereof is hereby acknowledged, the Corporation and the Stockholders agree as follows:

ARTICLE ONE

(a) That except as hereinafter specifically provided, each stockholder shall not sell, assign, transfer, pledge, encumber or in any other way dispose of,

any or all of the shares of stock of THE AFRO-AMERICAN COMPANY which may now or hereafter be held or owned by him, nor shall any of such shares of stock be transferable until he shall have first offered for sale all of his shares of stock of THE AFRO-AMERICAN COMPANY to the Corporation. By the words, "except as hereinafter specifically provided", the parties mean that the intention of this Agreement is not to preclude any stockholder from making a gift or bequest of said stock to members of his family, or other object of his bounty, nor preclude the transfer of said stock to Voting Trustees who are to hold said stock under the terms of a Voting Trust Agreement. The intention of this Agreement is to prevent the sale, assignment, transfer, pledge or encumbrance of said stock for a consideration.

(b) That every such offer shall be in writing and shall be delivered to the Corporation at its principal office in Baltimore. Delivery to the Corporation of every such offer shall be evidenced by a receipt therefor signed by one of the officers of the Corporation.

(c) That the Corporation shall have a period of thirty (30) days from the time of delivery of said offer within which to determine whether or not to accept such offer. Acceptance shall be by notice in writing delivered to the Stockholder so offering his stock.

50

(d) That if the offer as provided in paragraph (a) of this Article, be accepted, the shares of stock so accepted by the Corporation shall be paid for at the prices hereinafter provided.

(e) That if the shares of stock of such Stockholder shall not be accepted by the Corporation within the period of time provided in paragraph (c) hereof, such shares shall be free from the restrictions of this Agreement.

ARTICLE TWO

The purchase price hereunder of the shares of stock of THE AFRO-AMERICAN COMPANY, shall be the book value of such shares of stock, as shown by the statement of the Corporation, prepared by the Corporation's Certified Public Accountant, for the fiscal year preceding the date of such offer.

ARTICLE THREE

That the shares of stock issued and delivered to the Stockholders shall have written upon the face thereof the following statement:

This stock is transferable only in accordance with the terms of an Agreement dated May 21, 1948, by and between the Stockholders and the Corporation, the original of which is now on file at the principal office of the

51

Corporation, and upon proof of compliance therewith.

ARTICLE FOUR

This agreement shall be deemed to be made under and governed by the Laws of the State of Maryland.

IN WITNESS THEREOF, the Corporation and the Stockholders have set their hands and seals, as of the day and year first above written.

ATTEST THE AFRO-AMERICAN COMPANY

Mae E. Dyson, Secretary By: Carl Murphy, President

In the Presence of	Stockholders	No. of Shares
Mary S. Moorer	Carl Murphy	100
	Vashti T. Murphy	
Dorothy Jackson	D. Arnett Murphy	99½
Dorothy Jackson	Sadie V. Murphy	
Mary S. Moorer	John H. Murphy, III	21
Mary S. Moorer	George B. Murphy	78½
Joseph B. Wallace	John H. Murphy, Jr.	99 5/6

PLAINTIFF'S EXHIBIT NO. 8"
Filed 15th August 1950
LIST OF STOCK HELD BY CARL J. G. MURPHY

Date	Cert. Nos. Old	Cert. Nos. New	Received from	Transferred To	No. of Shares	Balance
June 28 1917	None 1	15	Afro-American Original Issue John H. Murphy, Sr.		20	20
April 1931	27	30	20 Shares #27 Certificate- 12 shares original and unissued		32	52
June 4, 1931	13	36	James Ward Estate (Jan.31,1911)		2	54
Jan.19, 1933	6	41	A.L.Gaines Estate (Sept.1,1907)		½	54½
Jan.19, 193[illegible]	24	45	Edith L. Johnson (April 4,1931)		3½	58
July 5, 1934	5	49	W.Ashbie Hawkins (Sept.1,1907		½	58½
Nov.19, 1937	25	58	Warner T. McGuinn (April 4,1931)		1-1/3	59-5/6
Mar.3, 1939	45,58 &41	62		ElizabethW.Phillips	5-1/3	54½
Feb.14, 1941	30	67		Ida M. Smith	5	49½
Feb.14, 194[illegible]	30	66		Vashti M.Matthews	5	44½
March 4 1943	36, 49&30	70		Carlita M.Jones	5	39½
May 22, 1945	61 64	77	Elizabeth O.Hood		37	76½
Sept.28 1945	78	80	Elizabeth O.Hood		3	79½
Mar.18 1946	79	81	Elizabeth O.Hood		2	81½
Mar.18 1946	77	83		Frances L.Murphy II (Wood)	5	76½
June 11 1946	82	86	Elizabeth O. Hood		4	80½
July 30 1946	85	87	Elizabeth O. Hood		1	81½
Aug.26 1946	88	89	Elizabeth O. Hood		2	83½

"PLAINTIFF'S EXHIBIT NO.8"(Contd)

LIST OF STOCK HELD BY CARL J. G. MURPHY

Date	Cert.Nos. Old	Cert.Nos. New	Received from	Transferred To	No. of Shares	Balance
Oct.18 1946	90	91	Elizabeth O.Hood		1	84½
Mar.21 1947	76	92	Trustees J.H.Murphy, Sr. Estate		40	124½
Apr.3, 1947	203	207	Genesta Gilbert		5	129½
Apr.23, 1947	96	201	Frances L.Murphy		5	134½
April 3 1947	206	209	Harry L. Gilbert		½	135
Se[illegible].1 1947	215	221	George D. Gilbert		2	137
Aug. 17 1949	4	234	John H. Murphy	Carl & Vashti Murphy	5	142

"PLAINTIFF'S EXHIBIT NO.8"

LIST OF STOCK HELD BY D. ARNETT MURPHY

Date	Cert. Nos. Old	Cert. Nos. New	Received from	Transferred To	No. of Shares	Balance
Jan.21 1911	None #1	#12	Afro-American Original Issue John H. Murphy, Sr. (Sept.1, 1907)		20	20
April 4 1931	27	31	20 shares Certificate #27 12 shares Original & Unissued		32	52
June 4 1931	13	37	James Ward Estate (Jan.31,1911)		2	54
Jan.19 1933	6	40	A.L.Gaines Estate (Sept. 1,1907)		½	54½
Jan.19 1934	24	44	Edith L. Johnson (April 4,1931)		3½	58
Jul[illegible]5 1934	5	50	W. Ashbie Hawkins (Sept. 1,1907)		½	58½
Nov. 19 1937	25	57	Warner T. McGuinn (April 4,1931)		1-1/3	59-5/6
Mar. 3 1941	37,57 50,44 & 40	68		Arnetta M.Lottier	7-5/6	52
Mar.16 1944	31	73		Mae M. Dyson	8	44
Mar.16 1945	26	75	J.H.Murphy, Trustee Frances L.Murphy		10	54
Mar.21 194[illegible]	76		Trustees John H.Murphy Estate		40	94
April 3 1947	210	211	Harry L. Gilbert, Jr.		1½	95½
April 3 1947	204	212	Genesta Gilbert II		2	97½
April 3 1947	205	214	George D. Gilbert		2	99½

"PLAINTIFF'S EXHIBIT NO. 8"

LIST OF STOCK HELD BY GEORGE B. MURPHY, SR.

Date	Cert. Nos. Old	Cert. Nos. New	Received from	Transferred To	No. of Shares	Balance
Sept.12 1907	1	2	Afro Original Issue John H. Murphy Sr.,(Sept.1,1907)		20	20
Apr[illegible] 1931	27	28	20 shares #27 Certificate 12 shares original & unissued		32	52
June 4 1931	13	34	James Ward Estate		2	54
Jan. 19 1933	6	38	A. L. Gaines (Sept. 1,1907)		½	54½
Jan. 19 1934	24	42	Edith L. Johnson (April 4,1931)		3½	58
July 5, 1934	5	47	W. Ashbie Hawkins (Sept.1,1907)		½	58½
Jan. 8, 1936	28	51		Howard H. Murphy	5	53½
Jan. 8 1936	28	52		James H. Murphy	5	48½
Jan. 8, 1936	28	53		George B.Murphy, Jr.	5	43½
Jan. 8, 1936	28	54		William H. Murphy	5	38½
Mar.21 1[illegible]7	76	95	John H.Murphy,Sr. Estate		40	78½

"PLAINTIFF'S EXHIBIT NO.8"

LIST OF STOCK HELD BY JOHN H. MURPHY, JR.

Date	Cert.Nos. Old	Cert.Nos. New	Received from	Transferred To	No. of Shares	Balance
Sept.12 1907	1	4	Afro Original Issue John H. Murphy,Sr.		20	20
Apr. 4 1931	27	29	20 from Certificate 27 12 original & unissued		32	52
June 4 1931	13	35	James Ward Estate (Jan.31,1911)		2	54
Jan.19 1933	6	39	A.L.Gaines Estate (Sept.1,1907)		½	54½
Jan.19 1934	24	43	Edith L.Johnson (April 4,1931)		3½	58
July 5 19[illegible]	5	48	W. Ashbie Hawkins (Sept.1,1907)		½	58½
Nov.19 1937	25	56	Warner T.McGuinn (April 4,1931)		1-1/3	59-5/6
Mar.21 1947	76	94	Trustees of John H.Murphy Sr. Estate		40	99-5/6
Aug.17 1949	4	234		Carl & Vashti	5	94-5/6
1949	4	239		Afro-American	5	89-5/6
1949 Aug.17	4	236	John H. Murphy,Jr.	John H.Murphy,Jr.*	10	89-5/6

* These 10 shares issued in place of stock Certificate No. 4 for 20 shares

"PLAINTIFF'S EXHIBIT NO. 9"
Filed 15th August, 1950

STOCK HELD BY OTHER RELATIVES OF DEFENDANTS WHICH WAS RECEIVED BY THEM FROM THE TRUST ESTATE OF JOHN H. MURPHY, DECEASED, AND OTHER SOURCES NOTED (ALL SHARES OF STOCK LISTED HEREUNDER WERE INHERITED EITHER THROUGH THE TRUST ESTATE OR THROUGH OTHER RELATIVES, AS NOTED)

Name	Relationship to Defts.	Shares Held
Frances L. Murphy	Sister	25
Genesta Gilbert	Niece	4-1/3
George Gilbert	Nephew	1
Harry L. Gilbert	Nephew	4
Elizabeth O. Hood	Niece	20
Clementine M. Knox (13-1/3 from Trust Estate 6-2/3 from Father, Daniel Murphy, Deceased 1 share gift by The Afro-American Company)	Niece	21
Genesta Gilbert Lane	Niece	6-8/9
John H. Murphy, III (13-1/3 shares from Trust Estate 6-2/3 shares from Father, Daniel Murphy, Deceased 1 share gift by The Afro-American Company)	Nephew	21
John J. Oliver (50 shares received from estate of his mother, Rose M. Oliver (who was a sister of defendants) 20 shares received from trust estate	Nephew	70
Jean M. Randolph (13-2/3 shares from Trust Estate 6-1/3 shares from Father, Daniel Murphy, Deceased)	Niece	20
		193-1/3

"PLAINTIFF'S EXHIBIT NO. 9"

LIST OF STOCK HELD BY STOCKHOLDERS
OTHER THAN DEFENDANTS

A. STOCK HELD BY CHILDREN OF DEFENDANT CARL MURPHY:

Name	Date Issued	No. of Shares	Total
Carlita M. Jones	Mar. 4, 1943	5	
Vashti M. Matthews	Feb. 14, 1941	5	
Elizabeth M. Phillips	Mar. 3, 1939	5-1/3	
Ida M. Smith	Feb. 14, 1941	5	
Frances L. M. Wood	Mar. 18, 1946	5	25-1/3

B. STOCK HELD BY CHILDREN OF DEFENDANT D. W. ARNETT MURPHY:

Mae E. Dyson	Mar. 16, 1944	8	
Arnetta Lottier	Mar. 3, 1941	7-5/6	15-5/6

C. STOCK HELD BY CHILDREN OF DEFENDANT GEORGE B. MURPHY, SR.:

George B. Murphy, Jr.	Jan. 8, 1936	5	
Howard H. Murphy	Jan. 8, 1936	5	
James H. Murphy	Jan. 8, 1936	5	
William H. Murphy	Jan. 8, 1936	5	20
			61-1/6

"PLAINTIFF'S EXHIBIT NO. 9"

STOCK HELD BY EMPLOYEES OF THE COMPANY SUBJECT TO RESTRICTION THAT SAME CANNOT BE SOLD OR TRANSFERRED AND MUST BE RETURNED TO THE COMPANY WHEN THEY LEAVE ITS EMPLOY, AT COST PRICE OF $5.00

Date Issued	Name of Stockholder	Number of Shares
March 16, 1944	Ira Culson	1
February 14, 1941	Lulu Jones Patterson	1
December 31, 1924	Edna Groomes Rawlins	1
		3

"PLAINTIFF'S EXHIBIT NO. 9"

LIST OF MINORITY STOCKHOLDERS NOT RELATED TO DEFENDANTS

Date Issued	Name of Stockholder	Number of Shares
Sept. 12, 1907	George F. Bragg, Jr.	3
	(On Jan. 6, 1949, these 3 shares were transferred to Nellie Bragg Sorrell, a daughter of George F. Bragg, Jr., deceased)	
Sept. 1, 1907	Perry P. Clark, deceased	2
July 22, 1924	Wilbur Henry	5
	(These shares were inherited from Anna L. Henry, deceased, his mother, who obtained the 5 shares on September 1, 1907)	
July 19, 1934	Edith L. Johnson	2
	(These shares belonged to the complainant and were inherited by her from her father, William H. Daly, and consist of part of the 20 shares of stock issued to him September 1, 1907)	
Sept. 1, 1907	Charles Stewart, deceased	4
		16

PLAINTIFF'S EXHIBIT NO. 10

Filed 15th August, 1950

Year	Gross Income	Net Income	Dividends Paid Yearly on Each Share	Yearly Salaries & Bonuses Paid to Defendants (Not including weekly salaries paid them)
1915	$ 12,000.00	$ 970.73	$	$
1916	16,453.05	981.56		
1917	13,796.92	870.07	.25	
1918	27,320.42	2,566.18	.25	
1919	Not Shown	Not Shown	.30	
1920	62,719.40	3,560.37	.30	
1921	64,450.03	5,488.62	.30	
1922	70,123.00	Not Shown	3.10	
1923	84,623.00	Not Shown	None	
1924	101,578.76	- 7,900.10 (1)	.30	
1925	109,235.29	8,059.92	.30	
1926	123,460.52	13,400.59	1.00	9,500.00
1927	127,543.96	3,661.86	1.00	14,525.00
1928	141,645.79	2,415.04	1.00	9,000.00
1929	151,489.24	2,008.74	1.25	13,000.00
1930	175,640.81	2,013.31	1.25	20,000.00
1931	185,992.78	974.37	1.25	28,154.43
1932	171,337.50	- 296.64 (1)	1.00	28,171.63
1933	195,158.36	2,054.73	None	38,000.00
1934	207,738.55	1,390.94	1.00	18,525.00
1935	225,754.38	4,509.84	1.00	36,081.52
1936	279,858.01	3,868.92	2.00	40,000.00
1937	316,233.35	11,625.65	1.00	40,000.00
1938	326,261.30	- 2,790.63 (1)	1.25	40,000.00
1939	378,529.86	18,296.68	1.00	40,000.00
1940	430,221.24	18,540.09	5.00	45,000.00
1941	501,132.64	31,328.76	5.00	45,000.00
1942	636,043.21	56,769.73	7.50	50,000.00
1943	750,333.09	19,639.14	8.50	50,449.04
1944	922,612.71	6,067.34	8.72	54,779.22
1945	1,100,779.57	17,873.90	10.00	72,464.55
1946	1,285,242.13	94,373.52	15.00	72,425.78
1947	1,472,742.14	31,851.64	None	79,476.55 (2)
1948	1,466,860.70	89,220.65	10.00	72,858.70 (2)
1949	1,509,460.90	55,561.16	14.25	60,266.85 (3)

1. Indicates loss.
2. George B. Murphy received none of this salary.
3. Paid only to Defendants Carl Murphy and D. Arnett Murphy.

PLAINTIFF'S EXHIBIT NO. 11
Filed 15th August 1950

AMOUNTS PAID INTO PENSION AND PROFIT SHARING TRUST BY AFRO-AMERICAN COMPANY AS SHOWN BY CERTIFIED PUBLIC ACCOUNTANT REPORT

1943	$ 39,683.29
1944	46,161.91
1945	38,509.34
1946	35,182.48
1947	13,468.19
1948	18,984.58
1949	13,919.62
TOTAL	$ 206,909.41

Report of Certified Public Accountant to Afro-American Company dated March 10, 1949 shows the total amount paid into Pension and Profit Showing Trust up to December 31, 1948 as follows:

	1948
Pension Trust	$ 3,362.07
Total Previous	96,783.58
Grand Total	$ 100,145.65
Profit Sharing	16,622.51
Total Previous	90,867.40
Grand Total	107,489.91

PLAINTIFF'S EXHIBIT NO. 12
Filed 15th August 1950

October 6, 1943

The Board met in special session at 2:30 P.M. with members present.

The object was to have Mr. John D. Wright explain the various Retirement Funds, Pension Funds, etc.

58. At the conclusion of the conference the Board voted to have Mr. Wright draw a Retirement Plan that would be acceptable to the Board; his fee will be $1,000.00.

November 29, 1944

Resolved: That the Amended Profit Sharing Trust in the form presented to the meeting be and it hereby is approved and adopted, subject to such changes in form as the President of the Company and Counsel for the Company shall approve, and the proper officers of the Company are hereby authorized to execute said amended plan on behalf of the Company, and to do all other necessary and proper acts to effectuate said amended plan as set out therein or otherwise.

SCHEDULE 2

Plaintiff's Exhibit No. 13
FILED 15TH AUGUST, 1950

PROFIT SHARING TRUST OF The Afro-American Company 1946

NAME	Officer	% of Stock	Supervisory Duties	Year of Birth	Length of Service	BASIC SALARY	OTHER DIRECT PAYMENTS	COMPENSATION PAID OTHER THAN IN CASH	TOTAL	OTHER PLAN	CONTRIBUTION	PERCENT
Carl Murphy	x	16.47	x	1889	28	22,373.08		69.54	22,442.62	yes	862.38	3.5933
John H. Murphy, Jr.	x	13.31	x	1880	27	22,373.08		165.48	22,538.56	yes	862.38	3.5933
D. Arnett Murphy, Jr.	x	12.53	x	1892	37	22,373.08		71.52	22,444.60	yes	862.38	3.5933
Howard H. Murphy		.67	x	1900	22	4,616.00	3,175.00	62.17	7,853.17	yes	265.39	1.1058
William Y. Gibson			x	1902	19	4,849.90	1,225.00	66.90	6,141.80	yes	278.83	1.1618
James H. Murphy		.67	x	1907	17	3,509.80	2,400.00	39.89	5,949.69	yes	201.78	.8408
Ray Garvin			x	1900	8	4,210.25	1,200.00	56.29	5,466.54	yes	242.05	1.0085
George R. Murphy	x	10.47	no	1870	39	5,000.00			5,000.00	no	287.48	1.1978
Ralph Matthews			x	1904	22	4,132.50	600.00	44.37	4,776.87	yes	237.58	.9899
John J. Oliver		9.33	x	1912	12	3,370.00	1,200.00	36.10	4,606.10	yes	198.73	.8280
Furman L. Templeton			x	1908	3	3,857.00	600.00		4,457.00	no	221.74	.9239
Mahlon M. Gewell			x	1909	10	3,807.00	600.00	40.45	4,447.45	yes	218.86	.9116
William P. Grayson			x	1914	10	3,611.55	500.00	42.29	4,153.89	yes	207.63	.8651
Frank Phillips			x	1915	10	3,648.00	350.00	35.79	4,033.79	yes	209.72	.8738
Elizabeth Phillips		.67	x	1917	8	3,211.66	733.00	36.91	3,981.57	yes	184.64	.7693
J. Nelson Fortune			x	1886	11	3,699.61	200.00	61.58	3,961.19	yes	212.69	.8862
Medford Reynolds			x	1910	11	3,275.00	600.00	32.82	3,907.82	yes	188.28	.7845
Elson W. Higginbotham			x	1911	11	3,528.88	300.00	36.54	3,865.42	yes	202.88	.8453
Kenneth Brickhouse			x	1896	23	3,306.00	475.00	55.24	3,836.24	yes	190.06	.7919
John Washington			x	1907	3 1275	3,275.00	450.00	47.57	3,772.57	yes	188.28	.7845
Obie McCollum			x	1903	9	3,306.00	400.00	45.82	3,751.82	yes	190.07	.7920
H. B. Carrington			x	1893	13	3,280.00	350.00	85.71	3,715.71	yes	188.57	.7857
Vincent T. Tubbs			x	1915	9	3,675.00		33.29	3,708.29	yes	211.28	.8803
Arthur James			no	1902	19	3,578.97		38.04	3,617.01	yes	205.75	.8573
William L. Lewis			no	1915	10	3,553.76		27.95	3,581.71	yes	204.31	.8513
TOTALS:						449,421.21	15,358.00	1,232.26	466,011.47		7,323.74	

1. Total compensation paid to all employees in plan: $ 465,982.17
2. Total compensation paid to all employees of employer: $ 628,214.97
3. Total contribution to plan: $ 24,000.00

1. All employees of employer: 352
2. All employees covered by the plan: 155
3. All employees excluded and reason therefor: they do not meet the requirement as to length of service. They must have been employed as full time employees for two years as at Dec. 31. Employment must be continuous.

CHEDULE 2

PROFIT SHARING TRUST OF Afro-American Co. 1947

N-A-M-E	Officer	% of Stock	Super-visory Duties	Year of Birth	Length of Service	BASIC SALARY	OTHER DIRECT PAYMENTS	COMPENSA-TION PAID OTHER THAN IN CASH	TOTAL	OTHER PLAN	CONTRI-BUTION	PER-CENT
Carl Murphy	x	16.42		1889	29	23,370.00		28.80	23,398.80	x	357.32	3.0998
D. Arnett Murphy	x	12.53		1892	38	23,370.00		38.85	23,408.85	x	357.32	3.0998
John H. Murphy, Jr.	x	13.31		1880	28	16,620.00		82.90	16,702.90	x	357.32	3.0998
Howard H. Murphy		.67	x	1900	23	8,051.00		21.28	8,072.28	x	191.78	1.6637
W. I. Gibson			x	1902	20	6,065.00		19.88	6,084.88	x	144.47	1.2533
James H. Murphy		.67	x	1907	18	5,888.70		10.92	5,899.62	x	140.27	1.2169
Roy Garvin			x	1900	9	5,561.00		17.29	5,578.29	x	132.47	1.1492
John J. Oliver		9.33	x	1912	13	4,900.16		8.82	4,908.98	x	116.73	1.0127
Cliff Mackay			x	1908	2	4,860.00		----	4,860.00	no	115.77	1.0044
Ralph Matthews			x	1904	23	4,790.00		14.21	4,804.21	x	114.10	.9897
Frank Phillips			x	1915	11	4,647.40		7.95	4,655.35	x	110.71	.9604
Furman L. Templeton			x	1908	4	4,620.40		----	4,620.40	no	110.06	.9548
Medford Reynolds			x	1910	12	4,429.60		9.72	4,439.32	x	105.52	.9154
William Lewis			no	1915	11	4,416.62		6.24	4,422.82	x	105.21	.9127
Kenneth Brickhouse			x	1896	24	4,302.01		19.60	4,321.61	x	102.48	.8891
Arthur James			no	1902	20	4,293.63		12.79	4,306.42	x	102.28	.8873
Tazewell Lewis			no	1916	4	4,284.09		-----	4,284.09	no	102.05	.8853
John W. Bond			no	1911	11	4,259.81		7.35	4,267.16	x	101.47	.8803
John Washington			x	1907	9	4,244.48		10.88	4,255.68	x	101.12	.8773
Leslie A. Bell			no	1905	5	4,214.17		12.57	4,226.74	x	100.39	.8709
William E. Bowman			no	1914	10	4,188.08		5.98	4,194.06	x	99.76	.8655
John H. Murphy, 3rd		3.00	x	1916	10	4,140.00		6.42	4,146.42	x	98.62	.8556
E. T. Robinson			no	1906	3	4,142.53		----	4,142.53	no	98.68	.8561
E. J. Coates			x	1901	17	4,120.83		14.63	4,135.51	x	98.16	.8516
J. Nelson Fortune			x	1886	12	4,101.37		24.34	4,135.71	x	97.70	.8476
TOTALS:						167,879.31	--------	381.42	168,260.73			

1. Total compensation paid to all employees in plan: $ 503,309.26
2. Total compensation paid to all employees of employer: $ 726,471.43
3. Total contribution to plan: $ 11,526.84

1. All employees of employer: ~~303~~ 310
2. All employees covered by the plan: 143
3. [illegible] employees excluded and reason therefor: All employees have not met the requirements of plan which states that they must be "full time" employees with two years of continuous service as of December 31.

SCHEDULE 2

PROFIT SHARING TRUST OF **The Afro-American Co.** 1948

NAME	Officer	% of Stock	Supervisory Duties	Year of Birth	Length of Service	BASIC SALARY	OTHER DIRECT PAYMENTS	COMPENSATION PAID OTHER THAN IN CASH	TOTAL	OTHER PLAN	CONTRIBUTION	PERCENT
Carl Murphy	Pres	17.64	yes	1889	30	30,120.00		13.00	30,133.00	yes	490.54	2.9511
D. Arnett Murphy	V.Pres-Tr	13.43	yes	1892	39	30,120.00		33.70	30,153.70	yes	490.54	2.9511
Howard H. Murphy		.71	yes	1900	24	8,900.00		21.32	8,921.32	yes	291.05	1.7509
W. I. Gibson			yes	1902	21	7,180.00		20.08	7,200.08	yes	234.80	1.4125
James H. Murphy		.71	yes	1907	19	6,980.27		10.26	6,990.53	yes	228.27	1.3733
Roy Garvin			yes	1900	10	5,561.30		17.32	5,578.62	yes	181.87	1.0941
Ralph Matthews			yes	1904	24	5,330.00		14.49	5,344.49	yes	174.30	1.0486
Samuel Snowden			yes	1898	25	5,200.00		20.91	5,220.91	yes	170.05	1.0230
Furman L. Templeton			yes	1908	5	5,020.00		12.90	5,032.90	yes	164.16	.9876
Cliff Mackay			yes	1908	3	5,000.00		----	5,000.00	No	163.51	.9836
Frank Phillips			yes	1915	12	4,999.80		8.12	5,007.92	yes	163.50	.9836
Elizabeth Phillips		.76	yes	1917	10	4,630.00		5.61	4,635.61	yes	151.41	.9109
John H. Oliver		10.	yes	1912	14	4,579.58		9.03	4,588.61	yes	149.76	.9009
Elson W. Higginbotham			yes	1911	13	4,560.50		9.82	4,570.32	yes	149.14	.8972
John Washington			yes	1907	10	4,500.60		10.26	4,510.60	yes	147.18	.8854
Medford Reynolds			yes	1910	13	4,500.20		11.83	4,512.03	yes	147.17	.8854
John H. Murphy, 3rd		3.0	yes	1916	11	4,450.00		6.63	4,456.63	yes	145.53	.8755
Mahlon Oswell			yes	1909	12	4,401.00		10.50	4,411.50	yes	143.92	.8658
Ellsworth Coates			yes	1901	18	4,370.02		14.66	4,384.68	yes	142.91	.8597
Ohie McCollum			yes	1903	11	4,290.00		12.95	4,302.95	yes	140.29	.8440
H. M. Carrington			yes	1893	15	4,260.04		22.19	4,282.23	yes	139.31	.8381
Arthur Carter			yes	1911	11	4,190.00		7.51	4,197.51	yes	137.02	.8243
Arthur Randall			no	1912	2	4,073.27		----	4,073.27	no	133.20	.8013
J. Ro Fortune			yes	1886	13	4,160.00		13.59	4,173.59	yes	136.04	.8184
Lula Patterson			no	1905	19	4,065.45		12.87	4078.32	yes	132.95	.7998
TOTALS:						175,442.03		319.55	175,761.58			

1. Total compensation paid to all employees in plan: $ 539,496.08
2. Total compensation paid to all employees of employer: $ 675,289.79
3. Total contribution to plan: $ 16,622.51

1. All employees of employer: 208
2. All employees covered by the plan: 150
3. All employees excluded and reason therefor: **All employees have not met the requirements of the plan which states that they must be "full Time" employees with two years of continuous service as of December 31.**

Schedule 2

Profit Sharing Trust of: The Afro-American Company 1949

NAME	OFFICER	% of Stock	Supervisory Duties	Yr. of Birth	Length of Serv.	Basic Salary	Other Direct Payments	Compensation Paid Other Than in Cash	Total Salary	Other Plan	Contribution	%
Carl Murphy	Pres.	19.6		1889	31	30,180.00			30,180.00	yes	~~174.72~~	~~2.639~~
D Arnett Murphy	V.P-Tres	14.6		1892	40	30,180.00		26.85	30,206.85	yes	174.72	2.639
H. H. Murphy		.71	yes	1900	25	9,000.00		23.14	9,023.14	yes	104.83	1.583
W. I. Gibson			"	1902	22	7,699.78		25.65	7,725.43	yes	89.69	1.355
James H. Murphy		.71	"	1907	20	6,820.00		10.47	6,830.47	yes	79.44	1.199
Roy Garvin			"	1900	11	6,220.00		19.18	6,239.18	yes	72.45	1.094
Ralph Matthews			"	1904	25	5,320.00		16.15	5,336.15	yes	61.97	.936
John J. Oliver		10.2	"	1912	15	5,300.00		11.68	5,311.68	yes	61.73	.932
Cliff Mackey			"	1908	4	5,250.00		--	5,250.00	no	61.15	.924
Samuel Snowden			"	1898	26	5,097.00		24.82	5,121.82	yes	59.37	.897
Furman L. Templeton			"	1908	6	5,050.00		14.26	5,064.26	yes	58.82	.888
Frank Phillips			"	1915	13	4,900.00		8.33	4,908.33	yes	57.07	.862
Elizabeth Phillips		.76	"	1917	11	4,835.00		6.39	4,841.39	yes	56.32	.851
John H. Murphy, 3rd		3.00	"	1916	12	4,732.46		--	4,732.46	yes	55.12	.833
Medford Reynolds			"	1910	14	4,700.00		12.09	4,712.09	yes	54.74	.827
John Washington			"	1907	11	4,700.00		11.61	4,711.61	yes	54.74	.827
E. J. Coates			"	1901	19	4,600.00		16.54	4,616.54	yes	53.58	.809
Mahlon Oswell			"	1909	13	4,600.00		11.75	4,611.75	yes	53.58	.809
James Beckett			no	1913	5	4,586.59		8.61	4,595.20	yes	53.42	.807
William Lewis			no	1915	14	4,527.68		7.99	4,535.67	yes	52.74	.797
Tazewell Lewis			no	1916	6	4,501.43		8.07	4,509.50	yes	52.43	.792
N. B. Carrington			yes	1893	16	4,500.00		19.14	4,519.14	yes	52.44	.792
J. N. Fortune			"	1886	14	4,462.31		.26	4,462.57	yes	52.00	.785
Floyd Moore			no	1892	20	4,388.86		13.43	4,402.29	yes	51.12	.772
L. A. Bell			no	1905	7	4,384.05		14.71	4,398.76	yes	51.05	.771
Totals						180,535.16		311.12	180,846.28		1749.25	

1. Total compensation paid to all employees in plan: $568,343.10
2. Total compensation paid to all employees of employer: 728,534.21
3. Total contribution to plan : 6,620.36

1. All employees of employer: 214
2. All employees covered by the plan: 153
3. All employees excluded and reason therefore: All employees have not met the requirements of the plan which states that they mustbe "full time" employees with two years of continuous service as of December 31.

PLAINTIFF'S EXHIBIT NO. 14
Filed 15th August, 1950

PAUL BERMAN
THEODORE B. BERMAN
SIGMUND LEVIN
JOHN THOMAS WELSH
WALTER C. HERLIHY
EARL M. FOREMAN

LAW OFFICES
PAUL BERMAN
110-112 E. LEXINGTON ST.
BALTIMORE 2, MD.

TELEPHONE
PLAZA 8888

August 2, 1950.

The Afro-American Co., Inc.
and
Carl Murphy,
D. W. Arnett Murphy,
Mae Dyson,
Howard H. Murphy,
John H. Murphy, Jr.,
John H. Murphy, III,
Elizabeth Phillips,
William I. Gibson,
Arnetta M. Lottier,
John J. Oliver,
Ida M. Smith,

628 N. Eutaw St.,
Baltimore 1, Md.

To said body corporate, and the above named Ladies and Gentlemen, constituting all the Officers, Directors, and Executive Committee of said body corporate:

As attorney for Edith L. Johnson, a stockholder of The Afro-American Co., Inc., I respectfully make demand that you forthwith take legal steps against Carl Murphy, George B. Murphy, Sr., D. W. Arnett Murphy, and John H. Murphy, Jr., to recover from them for the following wrongs committed by them against The Afro-American Co., Inc. and its stockholders in their capacity as directors and officers of said company:

1. Illegally paying to themselves exorbitant, excessive, and unreasonably large salaries and bonuses as officers, directors, and employees of said company from 1926 to date, and in addition thereto, paying to themselves directors' fees, fees for mileage, transportation, etc., which were also illegal, unreasonable, and excessive.

2. Illegally charging to the said corporation their household expenses and the expenses of their private automobile.

3. On April 4, 1931, unlawfully distributing to themselves 48 shares of stock of said company, authorized by its charter, but theretofore unissued, without paying any consideration therefor to the corporation, which stock was also issued in violation of the preemptive rights of my client and the other stockholders.

4. On the dates hereinbelow indicated unlawfully distributing to themselves without paying any consideration therefor the following listed shares, title to which had been acquired from their previous owners by the expenditure of funds of The Afro-American Co., Inc.:

a. April 4, 1931, 40 shares theretofore belonging to Mrs. Eva S. Purdy;

b. April 4, 1931, 40 shares theretofore belonging to Noah Murphy Thompson;

c. June 4, 1931, 8 shares theretofore belonging to James Ward;

d. January 19, 1933, 2 shares theretofore belonging to A. L. Gaines;

e. January 19, 1934, 14 shares theretofore belonging to Edith L. Johnson;

f. July 5, 1934, 2 shares theretofore belonging to W. Ashbie Hawkins;

g. November 19, 1937, 4 shares theretofore belonging to Warner T. McGuinn (George B. Murphy, Sr. did not participate in the division of these 4 shares);

h. March 16, 1945, 10 shares conveyed by Martha Frances Louise Murphy to D. W. Arnett Murphy, the consideration for said transfer having been paid by the said company;

i. From May 22, 1945 to October 18, 1946 Elizabeth O. Hood transferred 50 shares to Carl Murphy and Vashti Murphy, his wife, in consideration of money advanced by the corporation;

j. April 3, 1947, the following transfers were made in consideration of the extinguishment of a debt owed by the owners to the corporation;

5 shares from Genesta Gilbert, wife of deceased grandson of John H. Murphy, Sr., to Carl and Vashti Murphy;

½ share from Harry L. Gilbert, Jr., child of Genesta Gilbert, to Carl and Vashti Murphy;

1½ shares from the said Harry L. Gilbert, Jr. to D. W. Arnett Murphy and wife;

2 shares from Genesta Gilbert II, daughter of Genesta Gilbert, to D. W. Arnett Murphy and wife;

2 shares from George Gilbert, son of Genesta Gilbert, to D. W. Arnett Murphy and wife.

5. On June 4, 1931, illegally making a gift of 2 shares of stock of the company, 1 share to Clementine Knox and the other share to John H. Murphy, III, without any consideration therefor.

6. Illegally making the following gifts and disbursements of corporate funds for purposes unconnected with the corporation's business, as follows:

a. In 1935, payment of a weekly salary to Mrs. Frances Murphy for nursing Mrs. Eva S. Purdy;

b. January 5, 1937, making contribution of $150.00 to Republican Campaign Fund;

c. November 17, 1939, gift of $150.00 to Mrs. Eva S. Purdy;

d. November 17, 1939, cancellation of loan made by company to John H. Murphy, III, without any consideration therefor;

e. 1943 - cancellation of a loan of $1,700.00 with interest, made by the company to George B. Murphy, Sr.;

f. March 16, 1945, cancellation of a loan of $1,376.10 with interest, made by the company to Martha Frances Louise Murphy, without any consideration therefor;

g. 1945 - gift of $1,000.00 to Carl Murphy, to take a trip for his health;

h. 1947 and 1948 - illegally paying salaries to George B. Murphy, Sr. and John H. Murphy, Jr., after they had retired, the total amount of said illegal salaries being over $30,000.00;

i. 1949 - illegally giving to George B. Murphy, Sr., an honorarium of $1,000.00 and to Mrs. Frances Murphy an honorarium of $500.00;

j. Advancing approximately $3,000.00 of corporate funds to William Johnce Purdy, for his own personal use, without any benefit or prospect of benefit to the corporation;

k. Now and for many years past, illegally paying a pension to Sarah Neely.

7. Beginning in 1943 and continuing to date, illegally spending over $200,000.00 of corporate funds by unlawfully establishing and creating a pension trust and profit-sharing agreement, the said Carl Murphy, D. W. Arnett Murphy, John H. Murphy, Jr., George B. Murphy, Sr., and their children being the principal beneficiaries under that plan.

8. On July 10, 1947, causing the company to transfer property 1200 Druid Hill Avenue to Carl Murphy and Vashti Murphy, his wife, and D. W. Arnett Murphy and Sadie Murphy, his wife, for a grossly inadequate consideration.

9. Using corporate funds for their personal purposes, to wit: more than $10,000.00 attorneys' fees charged to the company for professional services rendered the above named individuals personally.

10. For other frauds and irregularities committed by the above four named individuals in the management of the affairs of The Afro-American Company, Inc., which my client believes an examination of the books of the company will reveal, but of which she has no personal knowledge at this time.

If the corporation does not bring suit to recover for the wrongs and irregularities hereinabove set out, then Mrs. Johnson will have no choice but to bring the suit herself on behalf of herself individually and all other stockholders of said company similarly situated.

If I do not hear from you on or before August 14, 1950, I shall assume that the corporation is not interested in conducting the litigation, and shall file suit on Mrs. Johnson's behalf, as aforesaid.

Very truly yours,

PB:EE

REGISTERED
R.R.R.

PLAINTIFF'S EXHIBIT NO. 15
Filed 15th August, 1950

ESTABLISHED 1892

MEMBERS A B C

AFRO-AMERICAN NEWSPAPERS

BALTIMORE AFRO AMERICAN · WASHINGTON AFRO AMERICAN · PHILADELPHIA AFRO AMERICAN · NEW JERSEY AFRO AMERICAN · RICHMOND AFRO AMERICAN · NATIONAL AFRO-AMERICAN

EXECUTIVE OFFICES · 628 N EUTAW STREET
BALTIMORE 1, MD

August 9, 1950

Paul Berman, Esquire
110 E. Lexington Street
Baltimore 2, Maryland

Dear Mr. Berman:

Your letter of the 2nd instant, addressed to the AFRO-AMERICAN Company and others, is at hand.

Due to the absence from the city of several of the addressees, it will be impossible to hold a meeting on or before August 14th, the date stated in your letter; but I am calling a meeting for early in September at which I hope all will be able to be present.

The charges which your most recent client has mentioned seem to have been disposed of by Federal Judge William C. Coleman, in the case of Thompson against the AFRO, etc., although, not being an attorney, there may be some things which I do not understand about his opinion.

However, the Board of Directors of the AFRO-AMERICAN Company, as always, will be fully informed of the matters alleged in your letter of the 2nd instant, and whatever its decision, you may rest assured it will be preceded by serious consideration and you will be notified of the outcome by our attorneys.

Very truly yours,

Carl Murphy

Carl Murphy
President

cm/w

PLAINTIFF'S EXHIBIT NO.16
Filed 15th August, 1950

LAW OFFICES OF
PAUL BERMAN
110-112 E. LEXINGTON ST.
BALTIMORE 2, MD.

PAUL BERMAN
THEODORE B. BERMAN
SIGMUND LEVIN
JOHN T. WELSH

TELEPHONE
PLAZA 8888

August 10, 1950.

Mr. Carl Murphy, President,
The Afro-American Company,
628 N. Eutaw Street,
Baltimore 1, Md.

Dear Mr. Murphy:

I have your letter of August 9, 1950, in response to my letter of August 2, requesting The Afro-American Company to bring suit against you and your brothers for the wrongs committed against the said company, as set out in that letter, and note that you state that you will call a meeting some time in the early part of September to consider the request in said letter because some of the directors are absent from the City. You do not state that a majority of the members of the Board are not available, and on information and belief my client contends that they are now available.

The records of your company show that during the last five years, the Board of Directors has met at least once during the month of August each year, and you could, if you so desired, discuss the contents of my letter of August 2 at the Board meeting to be held this month.

As you and your three brothers, who committed the wrongs for which my client desires the corporation to bring suit, absolutely control the present Board of Directors, you know very well what action it will take in response to my letter of August 2, and could, if you so desired, have sent a categorical answer to my letter rather than the evasive one which you did send.

My client therefore feels that your statement that you cannot call a meeting of the Board of Directors before the early part of September is not made in good faith and is made only for the purpose of delaying the bringing of the action set out in my letter of August 2 against yourself and your three brothers. You are obviously attempting to employ the same delaying tactics which you so effectively used in the case of Noah Murphy Thompson v. yourself and your three brothers in the District Court of the United States for the District of Maryland, which you mention in your letter of August 9, which took almost three years to get to trial.

For these reasons my client will proceed to file suit against you and your brothers on August 15, 1950, unless the corporation advises me before that date that it will file the suit against you and your three brothers, as requested in my letter of August 2.

It is necessary that my client take prompt action against you and your brothers for the wrongs committed by you as set out in my letter of August 2, for a number of reasons, the most important being so that you will be summoned for the September Term and the case can be tried in that Term, and also before some more books and records of the company are lost.

Very truly yours,

PB:KE

75

DEMURRER

Filed 18th September 1950

EDITH L. JOHNSON, A stockholder of the Afro-American Company, a body corporate, on her own behalf and on behalf of all other stockholders of The Afro-American Company, a body corporate, who may come in and contribute to the expenses of this suit, and for the benefit of The Afro-American Company, a body corporate 1523 Druid Hill Avenue Baltimore, Maryland	*	IN THE CIRCUIT COURT NO. 2 OF BALTIMORE CITY
V	*	
CARL JAMES G. MURPHY, DAVID W. ARNETT MURPHY, GEORGE B. MURPHY, SR., and JOHN H. MURPHY, JR. 628 N. Eutaw Street, Baltimore, Maryland	*	

*** **** ********** **** ***

The defendants and each of them demur to the whole Bill of Complaint and each and every paragrpah thereof, because the said bill and each paragraph is bad in substance and insufficient in law, because.

(a) The Bill of Complaint does not state such a case as entitles the plaintiff to any relief in Equity.

(b) The Bill of Complaint does not state such a case as entitles the plaintiff to the relief prayed for.

(c) That the Complaint contains no allegation that The Afro-American Company refused to institute suit against respondents.

(d) That it appears from the allegations of the Bill of Complaint that the plaintiff is barred from any relief because of laches on her part.

(e) That the allegations of alleged fraud on the part of respondents are too vague general and indefinite to be enforceable in a Court of Equity.

(f) That while the bill makes allegations of fraud the facts recited in the bill do not constitute any acts of fraud, such as to entitled plaintiff to recover in equity.

(g) The bill does not allege sufficient acts of fraud, illegality, or ultra vires which would entitle plaintiff, as a minority stockholder, to maintain this action.

(h) There is no allegation that the acts complained of were at any time disaffirmed by a majority of the stockholders of the corporation.

And for other reasons to be assigned at the hearing of this Demurrer.

Harry O. Levin

Marshall A. Levin
Solicitors for Respondents

STATE OF MARYLAND

CITY OF BALTIMORE, TO WIT: ss

I hereby certify that on this 14th day of September, before me, the subscriber, a Notary Public, in and for the State of Maryland, City of Baltimore, aforesaid, personally appeared Carl J. M. Murphy, one of the Respondents and on his own behalf and on behalf of all respondents, made oath in due form of law that the said Demurrer was not filed for purposes of delay.

(Seal)

Frances I. Beasley
Notarpy Public

I hereby certify that on this day of September, 1950, a copy of this Demurrer was mailed to Paul Berman, 110 E. Lexington Street, Baltimore, Maryland, Solicitor for Plaintiff.

Harry O. Levin
Of counsel for Respondents

PETITION AND ORDER
Filed 27th September, 1950

EDITH L. JOHNSON, Astockholder of the Afro-American Company, a body corporate, on her own behalf and on behalf of all other stockholders of the Afro-American Company, a body corporate, who may come in and contribute to the expenses of this suit, and for the benefit of The Afro-American Company, a body corporate 1523 Druid Hill Avenue Baltimore, Maryland	*	IN THE CIRCUIT COURT NO. 2 of BALTIMORE CITY
VS	*	
CARL JAMES G. MURPHY, DAVID W. ARNETT MURHPHY, GOERGE B. MURPHY, SR., and JOHN H. MURPHY, JR. 628 N. Eutaw Street, Baltimore, Maryland	*	

**** **** **** **** ****

TO THE HONORABLE THE JUDGE OF SAID COURT:

The Petition of the Afro-American Company, respectfully show:

1. This is an action brought on behalf of the Afro-American Company, a corporation, by the plaintiff, the holder of less than 5% of the outstanding shares of the stock of the Afro-American Company, against the defendants.

2. That under and by virtue of Act of 1945, Ch. 989, Article 16, Sec. 195, Code of Public General Laws, applying to suits of this nature, the petitioner is entitled to require the plaintiff to give security for the reasonable expenses, excluding attorney's fees, which may be incurred by it in connection with such action, or which may be incurred by the defendants in connection therewith for which petitioner may in anywise become legally liable, for which petitioner may have recourse, upon the termination of this action.

WHEREFORE, Petitioner prays that an order be passed accordingly.

AND AS IN DUTY BOUND, etc.

Harry O. Levin
Marshall A. Levin
Solicitor for Afro-American Co.

EDITH L. JOHNSON, a stockholder of the Afro-American Company, a body corporate, on her own behalf and on behalf of all other stockholders of the Afro-American Company, a body corporate, who may come in and contribute to the expenses of this suit, and for the benefit of The Afro-American Company, a body corporate 1523 Druid Hill Avenue Baltimore, Maryland	*	IN THE CIRCUIT COURT NO. 2 OF BALTIMORE CITY
vs	*	
CARL JAMES G. MURPHY, DAVID W. ARNETT MURPHY, GEORGE B. MURPHY, SR., and JOHN H. MURPHY, JR. 628 N. Eutaw Street, Baltimore, Maryland	*	

* * * * * * * * * * * * * * * * * *

O R D E R

Ordered this 27 day of September, 1950, by the Circuit Court No. 2 of Baltimore City, that the plaintiff show cause within ten days from this date why the relief prayed in the proposed Order should not be granted, PROVIDED a copy of the proposed Order together with a copy of this Order be served on Plaintiff or her Solicitors of record, on or before ~~September~~ October 2, 1950.

/s/ Emory H. Niles
Judge

ANSWER OF COMPLAINANT
TO PETITION OF
THE AFRO-AMERICAN COMPANY
Filed 26th October, 1950

EDITH L. JOHNSON, A stockholder of the Afro-American Company, a body corporate, on her own behalf and on behalf of all other stockholders of the Afro-American Company, a body corporate, who may come in and contribute to the expenses of this suit, and for the benefit of The Afro-American Company, a body corporate,	:	IN THE CIRCUIT COURT NO. 2 OF BALTIMORE CITY
v.,	:	
CARL JAMES G. MURPHY, DAVID W. ARNETT MURPHY, GEORGE B. MURPHY, SR., and JOHN H. MURPHY, JR.	:	

~~ANSWER OF COMPLAINANT TO PETITION OF THE AFRO-AMERICAN COMPANY~~

TO THE HONORABLE, THE JUDGE OF SAID COURT:

Edith L. Johnson, complainant in this cause, for answer to the petition of The Afro-American Company, a body corporate, and by way of showing cause as required of her by the Order of this Court dated September 27, 1950, annexed to said petition, respectfully shows:

1. The complainant admits that, as appears from her bill of complaint, this action was brought by her as a stockholder of The Afro-American Company, on her own behalf and on behalf of all other of its stockholders who may intervene herein, and on behalf of the Company, and that she is the holder of less than 5% of its outstanding stock.

2. The complainant denies that Article 16, Section 195, Code of P.G.L. of Md., invoked by the Company in its petition has any application to this cause or to the complainant who, as appears from these proceedings, was, at the time of the filing of her bill of complaint, and still remains, a resident of Maryland.

3. The Company fails to show in its petition any sufficient ground or reason why the statute invoked by it should be applied to

this cause or to this complainant as the Company attempts to have done by its petition.

4. That the statute invoked, as sought by the Company to be applied to this cause and this complainant, would violate the law of the land and would be unconstitutional, illegal and void in that it would deprive her of property without due process of law and deny to her the equal protection of the laws, which rights are guaranteed to her by the 23rd Article of the Declaration of Rights of Maryland.

5. That the statute invoked, as sought by the Company to be applied to this cause and this complainant, would deprive her of property without due process of law and would deny to her the equal protection of the laws in contravention of the provisions of the Fourteenth Amendment of the Constitution of the United States.

6. That there are other and further reasons why the statute invoked by the Company may not validly be applied to this cause or to this complainant.

Having fully answered the petition of The Afro-American Company, a body corporate, and shown cause as required by the aforesaid Order of this Court of September 27, 1950, the complainant prays that said petition be hence denied.

AND, she will ever pray, etc.

Paul Berman
Solicitor for Complainant

I hereby certify that on October 26, 1950, a carbon copy of the foregoing answer was mailed to Harry O. Levin, Esq., Mathieson Building, Baltimore 2, Maryland, solicitor for The Afro-American Company.

Paul Berman
Solicitor for Complainant

PETITION AND ORDER

Filed 5th February, 1951

EDITH L. JOHNSON, a Stockholder of the Afro-American Company, a body corporate, on her own behalf and on behalf of all other Stockholders of the Afro-American Company, a body corporate, who may come in and contribute to the expenses of this suit, and for the benefit of The Afro-American Company, a body corporate, 1523 Druid Hill Avenue, Baltimore, Maryland	IN THE CIRCUIT COURT NO. 2 OF BALTIMORE CITY
Vs.	
CARL JAMES G. MURPHY, DAVID W. ARNETT MURPHY, GEORGE B. MURPHY, SR., and JOHN H. MURPHY, JR., 628 N. Eutaw Street, Baltimore, Maryland.	

* * * * * * * * * *

TO THE HONORABLE, THE JUDGE OF SAID COURT:

The petition of the Afro-American Company respectfully shows Your Honor:

1. That on September 27, 1950, your petitioner filed a Petition to require plaintiff Edith L. Johnson, to give security for certain reasonable expenses under Article 16, Section 195, Maryland Annotated Code (1947).

2. That your petitioner desires to amend said Petition to set out the amount of said expenses and to make a certain allegation as required by said section.

WHEREFORE, petitioners pray that an order be passed accordingly.

AND AS IN DUTY BOUND, etc.

HARRY O. LEVIN
Harry O. Levin

MARSHALL A. LEVIN
Marshall A. Levin
Solicitors for the Afro-American Company

O R D E R

EDITH L. JOHNSON, a Stockholder of the Afro-American Company, a body corporate, on her own behalf and on behalf of all other stockholders of the Afro-American Company, a body corporate, who may come in and contribute to the expenses of this suit, and for the benefit of The Afro-American Company, a body corporate, 1523 Druid Hill Avenue, Baltimore, Maryland,	:	IN THE
	:	CIRCUIT COURT NO. 2
	:	OF
Vs.	:	
CARL JAMES G. MURPHY, DAVID W. ARNETT MURPHY, GEORGE H. MURPHY, SR., and JOHN H. MURPHY, JR., 628 N. Eutaw St., Baltimore, Maryland.	:	BALTIMORE CITY

* * * * * * * * * * * * * *

Upon the foregoing Petition, it is this 5th day of Feb., 1951, O R D E R E D by the Circuit Court No. 2 of Baltimore City, that leave to file an amended petition be and it is hereby granted.

JOHN T. TUCKER

Judge

AMENDED PETITION
Filed 5th February, 1951

EDITH L. JOHNSON	*	IN THE
Vs.	*	CIRCUIT COURT NO. 2
CARL MURPHY, etal	*	OF
	*	BALTIMORE CITY

* * * * * * * * * * * * *

XXXXXXXXXXXXXXXX

TO THE HONORABLE, THE JUDGE OF SAID COURT:

The Amended Petition of the Afro-American Company, respectfully shows unto your Honor:

1. This action is brought in the right of the Afro-American Company, a domestic corporation,by the plaintiff, Edith L. Johnson, the holder of two (2) shares of stock in said corporation, said two shares representing a holding of less than five (5) per cent of the outstanding shares of the common stock in said corporation, which common stock is the only class of stock in said corporation.

2. The market value of plaintiff's said two shares is below twenty five thousand ($25,000.00) dollars.

3. Under Article 16, Section 195 of the Maryland Annotated Code (1947 edition), it is provided that "in any action instituted . . . in the right of any . . . domestic corporation by the holder . . . of less than five per centum of the outstanding shares of any class of such corporation's stock . . . unless the shares . . . have a market value in excess of twenty five thousand ($25,000.00) dollars, the corporation in whose right such action is brought shall be entitled at any stage of the proceedings before final judgment to require plaintiff ... to give security for the reasonable expenses, excluding attorney's fees, which may be incurred by it in connection with such action, <u>and which may be incurred by the other parties defendant</u> in connection therewith for which it may be in anywise become legally liable . . ."

4. Under the aforesaid section, the Afro-American Company is entitled to the aforesaid reasonable expenses, excluding attorney's fees, which have been or may be incurred by it, in connection with this action, and said corporation is also entitled to the aforesaid reasonable expenses, excluding attorney's fees, which have been or may be incurred by the instant parties defendant, (all of whom are directors and officers of said corporation) in connection with this action because said corporation is, and will be, legally liable to defendants for the said reasonable expenses, in the event that plaintiff, Johnson's suit against them is dismissed.

5. That it will be necessary for instant parties defendant (a) to employ an auditor to examine and audit all of the records, books, statements, and other documents of said corporation, from 1922 to date, inasmuch as plaintiff, Johnson, has charged the said parties defendant with acts of fraud, conspiracy and spoliation from 1922 to date, (b) that as some of the basic acts of fraud about which plaintiff, Johnson, complains are the alleged fraudulent and illegal acquisitions of stock of said corporation by said defendants and the alleged deceitful statements as to the value of said stock, it will be necessary to obtain the services of an expert to testify as to the actual value of said stock, it will be necessary to obtain the services of an expert to testify as to the actual value of said stock, (c) defendant's have already incurred expense in costs of deposition and said defendants may require further depositions in order to successfully demonstrate the falsity of plaintiff, (Johnson's) claims (d) there will be other expenses, such as the photostating of many records of said corporation from 1922 to date, the Court costs, the costs incurred in producing witnesses, some of whom will be out-of-state witnesses, and the expenses involved by reason of the loss of time, in the conduct of the corporate business, by the instant parties defendant, (all of whom are directors and officers of said corporation)

necessitated because of the time spent by them on the preparation of defense of such action.

6. Instant defendants have been put to considerable expense in defending a suit brought against them on behalf of another plaintiff, by the same solicitors as those involved in instant case. Said suit, namely, Thompson v. Carl Murphy, et al, filed in the United States District Court, on July 22, 1947, alleged substantially the same frauds and conspiracies as are alleged in instant case, but said suit was finally dismissed by the said District Court on May 5, 1950. Subsequently the same solicitors as represent plaintiff, Johnson, in instant case, filed an appeal to the United States Court of Appeals, (4th Circuit), but said Court of Appeals unanimously affirmed the said dismissal on December 6, 1950 (Daily Record, December 20, 1950). The same solicitors as represent plaintiff, Johnson, in instant case filed a motion for reargument and other relief before the said Court of Appeals, on December 5, 1950, but on January 24, 1951, the said Court of Appeals unanimously denied said motion.

In addition to filing suit on behalf of the plaintiff in the said case of Thompson v. Carl Murphy, et al, the same solicitors ~~are~~ who represented Thompson filed instant suit on August 14, 1950 against instant parties defendant alleging substantially the same frauds and conspiracies as were found to be unwarranted in the said Thompson case.

In addition, the same solicitors as those who represented the plaintiffin the Thompson case, and who now represent plaintiff, in instant case have filed yet another suit against instant defendants in the Superior Court of Baltimore City on June 26, 1950, alleging deceit on the part of instant defendants.

The expense to which instant defendants have already been put and the expense to which they will be put, in the future, in order to successfully demonstrate the falsity of the allegations mentioned in the various suits filed against them, by the same

solicitors, have been and will be considerable, and defendants aver that all of the aforementioned suits are part of a plan to harass them and demonstrate the very reason for the enactment of the aforesaid statutory provision.

7. Said reasonable expenses will be considerable, and since said corporation is legally liable therefor to the parties defendant, your petitioner prays that an Order be passed to require plaintiff, Edith L. Johnson, to give security therefor in the sum of not less than $7500.00.

8. Your petitioner further prays that further proceedings in this case be stayed until there is final disposition concerning the matter of the aforesaid security prayed by said corporation, to be furnished by plaintiff, Edith L. Johnson.

AND AS IN DUTY BOUND, etc.

/s/ Harry O. Levin
Harry O. Levin

/s/ Marshall A. Levin
Marshall A. Levin
Solicitors for the Afro-American Co

I Hereby Certify that on this day of February, 1951, a copy of the within Amended Petition and Order was mailed to Paul Berman, Esq., 110E. Lexington Street, Baltimore, Maryland, Solicitor for Plaintiff.

/s/ Harry O. Levin
Harry O. Levin

EDITH L. JOHNSON	*	IN THE
Vs.	*	CIRCUIT COURT NO. 2
CARL MURPHY, et al	*	OF
	*	BALTIMORE CITY

* * * * * * * * * * * * *

ORDER

Upon the foregoing petition it is this day of February, 1951, O R D E R E D by the Circuit Court No. 2 of Baltimore City that further proceedings in this case are hereby stayed until final disposition of above petition, unless cause to the contrary is shown on or before the day of February, 1951, provided a copy of the above petition and Order is served on the plaintiff, Edith L. Johnson, or her solicitors of record.

Judge

Ordered this 5 day of Feby, 1951 by the Circuit Court No. 2 of Baltimore City, that the defendant show cause within 15 days from this date why the relief prayed in the proposed order should not be granted, PROVIDED a copy of the proposed order together with a copy of this order, be served on defendant or his Solicitor of record, on or before Feby 10, 1951.

/s/ John T. Tucker
Judge.

TRUE COPY TEST,

/s/ John S. Clarke
CLERK.

SL:DS 2/16/51

ANSWER OF COMPLAINANT
TO AMENDED PETITION
OF THE AFRO-AMERICAN COMPANY

Filed 16th February, 1951

EDITH L. JOHNSON, A stockholder of the Afro-American Company, a body corporate, on her own behalf and on behalf of all other stockholders of the Afro-American Company, a body corporate, who may come in and contribute to the expenses of this suit, and for the benefit of The Afro-American Company, a body corporate,	:	IN THE CIRCUIT COURT NO. 2 OF BALTIMORE CITY
v.,	:	
CARL JAMES G. MURPHY, DAVID W. ARNETT MURPHY, GEORGE B. MURPHY, SR., and JOHN H. MURPHY, JR.	:	

~~ANSWER OF COMPLAINANT~~
~~TO AMENDED PETITION~~
~~OF THE AFRO-AMERICAN COMPANY~~

TO THE HONORABLE, THE JUDGE OF SAID COURT:

Edith L. Johnson, complainant in this cause, for answer to the amended petition of The Afro-American Company, a body corporate, and by way of showing cause as required of her by the Order of this Court dated February 5, 1951, annexed to the said amended petition, respectfully shows:

1. Answering the first paragraph of the amended petition the complainant admits that, as appears from her bill of complaint, this action was brought by her as a stockholder of the Afro-American Company, on her own behalf and on behalf of all other of its stockholders who may intervene herein, and on behalf of the Company; and she admits that she is the holder of two shares of the capital stock of the Company and that her shares represent a holding of less than 5% of the outstanding shares of its common stock, and that its common stock is the only class of stock issued by the Company.

2. Answering the second paragraph of the amended petition the complainant avers that she has been advised and believes that the value of her two shares is less than $25,000.00.

3. Answering the third paragraph of the amended petition the complainant respectfully refers the attention of this Court to the Code of Public General Laws of Maryland for the complete and accurate text of the statute in question, Article 16, Section 195.

4. Answering the fourth and fifth paragraphs of the amended petition the complainant denies that the petitioner is, or therein shows itself to be, legally liable for any expenses, other than properly taxable court costs, in connection with this action; and the complainant avers that the alleged expenses specified in the fifth paragraph of the amended petition would be expenses of the defendants in this action and not expenses for which the petitioner is or could be legally liable.

5. Answering the sixth paragraph of the amended petition the complainant denies that the cause of Thompson v. Murphy, et al., therein referred to, has any connection with or relation to the instant proceeding; the complainant admits the pendency of the suit of herself against the herein defendants in the Superior Court of Baltimore City, but she avers that that case is a separate and entirely distinct action from that at bar, and she denies the existence of any plan, as said paragraph alleges, to harass the defendants; further answering the said paragraph the complainant shows that its very allegations that "Instant defendants have been put to considerable expense" and that "The expense to which instant defendants have already been put and the expense to which they will be put, in the future" establish that any expenses in connection with this action, other than properly taxable

court costs, are expenses of the herein defendants, and for which they, and they alone, are liable, and are not expenses of the petitioner.

6. Answering the seventh paragraph of the amended petition the complainant denies that the petitioner is, or therein shows itself to be, legally liable for any expenses in connection with this action, other than properly taxable court costs, and she avers that it would be inequitable and unjust and beyond the scope and intendment of the statute in question to require her to give security for such alleged expenses.

7. Answering the eighth paragraph of the amended petition the complainant avers that it would be inequitable and unjust and beyond the scope and intendment of the statute in question to stay further proceedings in this cause by virtue of the filing of the said amended petition, or of anything therein alleged, or until its final disposition, and that such proposed stay would effectively deprive the complainant of her day in court.

8. Further answering the said amended petition, and by way of showing cause as required by the order nisi annexed thereto, the complainant respectfully shows:

(a) The complainant denies that Article 16, Section 195, Code of P. G. L. of Maryland, invoked by the petitioner in its amended petition, has any application to this cause or to the complainant who is and was, at the time of the filing of her bill of complaint, a resident of Maryland.

(b) The petitioning Company fails to state in its amended petition any sufficient ground or reason why the statute invoked by it should be applied to this cause or to this complainant as the petitioner attempts to have done by its amended petition.

(c) The statute invoked, as sought by the petitioner to be applied to this cause and to this complainant, would

violate the law of the land and would be unconstitutional, illegal and void in that it would deprive her of property without due process of law and deny to her the equal protection of the laws, which rights are guaranteed to her by the 23rd Article of the Declaration of Rights of Maryland.

(d) The statute invoked, as sought by the petitioner to be applied to this cause and to this complainant, would deprive her of property without due process of law and would deny to her the equal protection of the laws in contravention of the provisions of the Fourteenth Amendment of the Constitution of the United States.

(e) There are other and further reasons why the statute invoked by the petitioning Company may not validly be applied to this cause or to the complainant.

Having fully answered the amended petition of The Afro-American Company, a body corporate, and shown cause as required by the aforesaid Order of this Court of February 5, 1951, the complainant prays that said amended petition be hence dismissed and the relief prayed therein denied.

AND, she will ever pray, etc.

Paul Berman

Paul Berman,
110 E. Lexington Street,
Baltimore 2, Maryland,
Solicitor for Complainant.

Service of copy of the foregoing answer admitted this 16th day of February, 1951.

Harry O. Levin

Solicitor for Petitioner,
The Afro-American Company,

C 102-2 n
L 13 L 51

STENOGRAPHIC RECORD

IN THE CIRCUIT COURT NO. 2 OF BALTIMORE CITY

Docket A-256, 1950

IN THE MATTER OF

EDITH L. JOHNSON

vs.

CARL J. G. MURPHY, et al.

Before TUCKER, J.

February 23, 1951

(INDEX INSIDE)

Court of Appeals

TRANSCRIPT FROM NOTES OF

CLARENCE P. GOETZ

Official Court Reporter

EQUITABLE BUILDING
BALTIMORE, MD.

OFFICE AND HOME
TELEPHONES

TESTIMONY TAKEN IN OPEN COURT

Filed 13th June, 1951

IN THE CIRCUIT COURT NO. 2 OF BALTIMORE CITY

Docket A-256, 1950

EDITH L. JOHNSON	:	
	:	
vs.	:	Before TUCKER, J.
	:	
CARL J. G. MURPHY,	:	
	:	
Et Al.	:	

February 23, 1951.

The above-entitled cause came on for hearing before his Honor Judge John T. Tucker, on Friday, February 23,1951, at 1:30 P.M.

APPEARANCES:

Harry O. Levin, Esq. and Marshall A. Levin,Esq., solicitors for petitioner The Afro-American Company.

Paul Berman, Esq., and Sigmund Levin, Esq., solicitors for the respondents.

MR. MARSHALL LEVIN: If your Honor please, I have prepared a short memorandum which I have presented to Mr.

Berman. If your Honor please, I understand the practice in other states, New York and New Jersey, in which this has become a rather routine matter, the attorney states in his opinion certain expenses will be necessary for depositions, costs, and so forth, and I understand that the judge makes up his mind on the basis of that. However, your Honor has indicated you would prefer to hear testimony, and, in addition, I believe this is the first time that this matter has presented itself in Maryland, so we are prepared to go ahead with the testimony.

Rather than make any statements before your Honor now, I believe it would be proper to have the testimony of various witnesses we expect to put on, prefaced by the testimony of the attorney himself regarding the expenses of examining witnesses or whatever expenses he thinks will be necessary.

MR. BERMAN: Your Honor, I believe in the original complaint, they did not state it was less than $25,000. Your Honor stated you thought it might be necessary to take testimony on that point. On their Amended Complaint, we have conceded that the stock is not worth $25,000, so I do

not think that there is any testimony your Honor requires that is admissible at this time.

THE COURT: The testimony to be produced, of course, depends upon the nature of expenses incurred by the corporation directly and/or expenses of other defendants for which the corporation would be liable, or might be liable, as intended by the statute.

MR. BERMAN: Legally liable.

THE COURT: But, it seems to me, the practical thing to do is for me to hear evidence. I would not be satisfied, as Mr. Levin indicated courts in other jurisdictions are satisfied, to make rulings without evidence. I do not see how any court, with any degree of intelligence, can make a ruling without evidence. I would certainly not do it. So that if the Maryland statute covers reasonable expenses for which the corporation may be liable to the defendants, in the event that the Bill of Complaint is dismissed, that is, the defendants win the case, a decree is made in their favor, then I would want to hear evidence, as I said, on that point, on what would probably be the necessary expenses incurred.

The first question is, from a legal standpoint, if the defendants themselves actually incurred expenses and won the case, is the corporation liable to those defendants for the reasonable expenses that they had incurred? That is the primary legal question. If they are not, then I would not consider any evidence, of course, whether I heard it or not along that line.

On the other hand, if they are entitled, if they would be entitled to recover reasonable expenses from the corporation, meaning by "they" the defendants, then such evidence as would be produced as to the probability of amount of expenses would be certainly relevant and the basis of the court's decision as to what bond would be required.

I am willing to do this, if Mr. Berman wants it that way, I will accept the evidence subject to exception.

MR. BERMAN: Yes, your Honor.

THE COURT: Then, if I am not able to decide the legal point today, make a ruling on motion to strike out, you can make amotion to strike out at the end of the hearing, and then if I cannot decide this legal point immediately, I

will rule on that and also on your motion at the same time. That, I think, probably would be the reasonable way to proceed.

MR. BERMAN: Yes, sir.

MR. MARSHALL LEVIN: If your Honor please, that is the only reason for this memorandum.

THE COURT: Yes, that is what I understand. You see, I have not had a chance to study it. I may want a little time to study the memorandum.

MR. HARRY LEVIN: Yes, sir, take all the time you want.

THE COURT: Let Mr. Marshall Levin be sworn.

Thereupon---

MARSHALL A.LEVIN,

produced on behalf of the petitioner, having been first duly sworn according to law, was examined and testified as follows:

THE BAILIFF: Give your name.

THE WITNESS: Mr. Marshall A. Levin, 1145 Mathieson Building.

THE COURT: Before going into that, let me get

the record straight, if I can, so that we will all understand each other. It is my understanding that Mr. Berman wishes to interpose an objection to all questions for the purpose of eliciting evidence as to the amount of expenses that the corporation may incur in connection with this litigation,or expenses of the defendants that may be incurred for which the corporation may be liable; it being his contention that the corporation would not be liable for such expenses within the meaning of the Maryland statute. As stated by the court, it seems to me that in view of the Court's unpreparedness at this time to decide what the scope of the Maryland statute is in regard to the expenses which I have mentioned, the practical way to handle the matter is for the Court to admit the evidence subject to exception, then for the record Mr. Berman may make his motion to strike out the testimony, and if I am still not prepared to rule on this legal point, I will hold both of the questions under consideration, that is, the meaning of the Maryland statute and Mr. Berman's motion to strike out. I may want to hold both matters sub curia and decide them all at the same time. In the meantime, of course, every-

body wants to be protected on the procedure.

DIRECT EXAMINATION

By Mr. Harry O. Levin:

Q Your occupation?

A I am an attorney.

Q Attorney at law?

A Attorney at law.

Q You are one of counsel for the defendants in this case?

A I am counsel, I am one of counsel for Carl Murphy, David Arnett Murphy, George Murphy, Sr., John Murphy, Jr., who are defendants in a suit filed on behalf of Edith L. Johnson, on August 15, 1950, in this Court. I am also one of counsel for the Afro-American Company, which has been made a party plaintiff in this suit just mentioned. However, after careful examination of the Bill of Complaint which is referred to, it is my opinion, as well as that of other counsel for the Afro, that the Afro is more properly a party defendant, and steps are being taken at this time to move the Court that the Afro be made a party defendant.

MR. BERMAN: If your Honor please, I move specif-

ically that his opinion, and opinion of other counsel, be stricken out.

THE COURT: I grant the motion. Strike out all that testimony given as Mr. Levin's opinion as to the position of the corporation.

MR. HARRY LEVIN: All of it is opinion evidence, as I interpret it.

THE COURT: The opinion as to the expenses that are likely to be incurred. The testimony that Mr. Berman moved to strike out did not relate to that subject at all. That is the reason I grant the motion.

By Mr. Harry Levin:

Q Mr. Levin, you have examined the Bill of Complaint filed in this case?

A I have.

Q In your opinion, what expenses would probably be incurred by the defendants in order for you and your associate to properly defend this suit?

(Question objected to.)

MR. HARRY LEVIN: Wait a minute, it is all objected to, I understand.

Q And if you mention these probable expenses, tell why you think they would be incurred.

MR. BERMAN: If your Honor please, I would like to call the Court's attention to this fact. That the statute does not say anything about expenses to which the defendants may be put, it is the expenses to which the corporation may be put, or the expenses to which the defendants may be put for which the corporation would be legally liable. Now, what expenses the defendants will go to to defend this suit is not the issue here, as I understand it. Here is the statute.

MR.HARRY LEVIN: If you look at it, you will see that the corporation in whose right such action is brought shall be entitled, at any stage of the proceeding, before final judgment, to require the plaintiff or plaintiffs to give security for reasonable expenses, excluding attorneys' fees which may be incurred by it, the corporation, in connection with such action, and which may be incurred by the other party defendants, that is, the four defendants here, in connection therewith for which it, the corporation, may in any wise become legally liable.

THE COURT: The question is one that I referred to in the preliminary statement that I made for the record, and is one that I say I have to decide, but which I am not at this time prepared to decide. The testimony or the evidence will be admitted subject to exception, as I stated at the beginning. I think, however, that the question should be clarified to this extent: I am not certain whether the question refers to amounts or the nature of the work that had to be done. It seems to me Mr. Levin may testify as to what, in his opinion, what work, in his opinion, would have to be done by persons who would have to be employed for the purpose of preparation for trial of the case. There has been no foundation laid for this testimony as to amounts. If you are talking about the work that has to be done, in his opinion, to prepare the defense, then I will admit the evidence subject to exception. Is that the purpose?

THE WITNESS: Yes, sir.

MR. HARRY LEVIN: Will you read the question?

THE WITNESS: I understand the question. In answer to that question, that statement, the amount which in

my opinion, after having carefully examined the Bill of Complaint, that will be necessary for the four defendants in this case to expend in order to be properly defended in this case, will amount to at least $15,000, and not the $7500 as mentioned in the Amended Bill of Complaint.

THE COURT: Now, there is a point right there. I have said you cannot testify as to amounts because there has been no foundation laid for such testimony, so strike out the amount.

THE WITNESS: The expenses, forgetting any amount, that will be necessary to incur, will be those involving a detailed audit of the Afro-American Company's books, records, statements, minutes, reports, and all other documents, from at least 1922 to date, and more probably from 1907 to date, inasmuch as the Bill of Complaint specifically refers to them and charges these defendants with frauds, conspiracies, milking of stock, unlawful dividends, illegal stock transactions, stock manipulations, and so forth.

From 1922 to date, the Bill of Complaint charges that these four defendants, in effect had the cor-

poration used as a tool to acquire other people's stock, then they forced the corporation, because of their alleged dominion, to transfer the stock from the corporation to themselves for nothing, for inadequate sums, and it is also charged that the four defendants paid themselves illegal and improper dividends, bonuses, salaries, and the like, and that they distorted the financial picture of the company to such an extent that the facts and figures that the Afro then permitted the shareholders to see, are not reliable and, in my opinion, it will be necessary to have an auditor make a comprehensive, detailed audit of the books, etc., of the Afro, in order to determine exactly what is the true financial picture of the Afro in each year in which the Bill of Complaint alleges this fraud, wrongdoing, conspiracy, and the like.

It will also be necessary to use the services of an expert on stock valuation in order to determine the value of the stock of the Afro-American Company in the various years in which the Bill of Complaint claims that there were improper transactions, insufficient value, no value at all, manipulation, rigging of the Afro-American

stock by these defendants, and in a suit entitled Thompson against the Afro, these very same four defendants filed in the United States District Court on July 22, 1947, it became necessary in that case to obtain the services of an expert on values, and Mr. Adolph Hamburger, in order to testify as to these very things which I now feel are necessary, and one of the things demanded in the Thompson case, in which the Bill of Complaint was exactly as is now being determined before your Honor, in that case it was necessary to obtain the services of Mr. Hamburger, who charged the Afro-American $1,000 and was paid that amount, and, in my opinion, it is going to be necessary to obtain his services for the defendants, on behalf of the Afro, to use the testimony to present to the Court, in order to present the truth to this Court, and that the years in question, which will be more particularly testified to by Mr. Hamburger today, will involve much more than the amount mentioned in the Thompson suit.

In addition to the audit, to the expert on valuation, there are going to be extended deposition costs, there having been already, there has already been a deposi-

tion taken of the plaintiff, the complainant in this case, which had a certain cost. There have been depositions taken of the four defendants in this case -- I am not sure whether it is this case or another case, but as to the depositions having already been taken, it would be required for us to have a copy of those depositions. We feel it will be necessary to have their depositions taken, there are going to be depositions of out-of-city witnesses, some of whom are in the Deep South, some of whom are in Washington, D.C., and those depositions, if they are anything like the Thompson case previously referred to, will involve a great deal of expense, every one of which will be necessary.

In addition to the depositions, there will be --

THE COURT: How many depositions do you anticipate?

THE WITNESS: At least four or five, if your Honor pleases. Mr. Cromwell, who resides in Washington, D.C., who was the accountant and auditor for the Afro, for example, in 1930, his services will be required. He was a witness, incidentally, in the Thompson case. There have already been depositions taken in the various cases involving this stock of the Afro previously.

It will be necessary, perhaps, to have Miss Elizabeth O. Hood, who is out of the State, to testify, to bring her back in the State, and many others whom I cannot exactly give the names of at this time,at this stage of the proceedings, because I don't know what the ultimate disposition is going to be, particularly on demurrer which your Honor has heard.

THE COURT: What would be the nature of the testimony, would it involve a lot of figures or not, or do you know?

THE WITNESS: I am not certain, your Honor, no, sir. But it will have to do with the subjectmatter of this suit because it is alleged in the Bill of Complaint that the various people were defrauded out of their stock, and the various stock values were lowered by the manipulations, and therefore it will be necessary to prove that that is not true.

In addition to that, there will be photostat costs, which were extremely expensive in the Thompson case referred to. The appellant in that case, one who filed suit against these same defendants, had an appendix of

over 300 pages and a hundred-page brief, involving voluminous photostating before said appendix was prepared, including financial statements, president's annual reports, stock books, ledgers, stock certificate books, minutes, and the like, as their going back to 1907 might do, in order to defend this case, which goes back to1907 and charges fraud.

In addition to photostating, there will be costs incurred in producing out-of-State witnesses, Mr. Cromwell as an example, and Miss Hood, who, I believe, is in Texas at this time, or some state in the Deep South; someone, perhaps, in Philadelphia, a sister of the defendants,and various other witnesses who will absolutely be required if the Thompson, which I think is exactly similar, is in any way a guide.

If I am permitted to mention now, not a breakdown of the expenses that might be incurred, but the total figure which will be testified in court in detail by the following witnesses. I believe that the Amended Complaint does not set forth enough details ---

Q Have you considered the event if an appeal is

necessary?

A In the event of an appeal, there will be great additional costs, the preparation of a brief, the appendix, the costs on an appeal.

I am not including at all attorneys' fees because the statute does not allow them, and while I am speaking about expenses, there will be expenses incurred directly by the divided time of the company's executives. These four defendants, to my personal knowledge, run and supervise the Afro-American and because of the voluminous Bill of Complaint, 19 pages, filed in this case, I feel that it would be necessary -- I have been told it would be necessary for the defendants here, who are president, and so forth, of the Afro, to spend a great deal of time hunting records, testifying in court, being present on the various occasions necessary, and that takes them away from their supervision of the business, from the obtaining of new business, and will greatly hamper their efforts, in addition which money will be lost by the Afro as a direct result of this case.

I might add that this is not the first time that

this will happen, it happened before in the Thompson case. There might be other expenses. There probably will be other expenses I cannot, at the moment, think of, in evaluating these expenses I have mentioned, which I think are necessary or reasonable, and will probably be incurred in order successfully to defend the suit.

CROSS-EXAMINATION

By Mr. Berman:

Q Mr. Levin ---

THE COURT: By the way, I think the record should show that by cross-examining the witness you are not waiving any rights to move to strike out.

MR. BERMAN: Thank you.

THE COURT: I think that was made plain by my preliminary statement.

MR. BERMAN: I understood that, your Honor. That is plainly in the record now.

Q Mr. Levin, only two of the defendants are executives of the corporation now, aren't they?

A I think that is so, yes.

Q Do you think the fact they will not be able to

attend to their duties as executives of the corporation and will have to come into here to defend this suit, that that loss to the corporation is a legally taxable loss?

A You have stated my answer differently from the way in which I gave it. The way I said it, not only would they have to be in court to testify for many days, if the Thompson case is any example, but they would have to waste ---

Q That case only took two days, didn't it?

A No, I think more than two days. A great deal of time was spent on depositions. There were many depositions in the Thompson case. There was a great deal of time absolutely wasted in looking up records, looking up facts which happened forty or fifty years ago, twenty years ago, ten years ago, and there are many other items which constituted a dreadful waste of time. With that answer, yes, I do think there is a definite loss to the company, which is not a normal hazard of a corporation, and these two executives which you are referring to did not assume the office of director and officer with the inten-

///

tion of being charged with all of these terrible things they are now being charged with. But they are ready to defend this suit, and yet, I feel, in order to determine this, they must not do a lackadaisical job or be slipshod about it. They are very greatly obstructed in their business, and I think that holds over into this suit. If that is so, I think the company is going to lose money.

Q You mentioned in the event of an appeal there will be great additional costs. Do you know which side is going to have to take an appeal?

A No, I haven't the faintest idea.

Q Doesn't the statute provide for the protection of the corporation, when the case is decided on appeal to be taken, to require sufficient bond to protect the corporation?

A No, I feel that the same costs I have been mentioning will run right through the appeal. We found in the Thompson case, in which Mr. Harry O. Levin and myself represented these defendants as well as the Afro, that on appeal it was particularly important to have the

company's executives, as well as the other two defendants, at our beck and call to help us in preparing the brief, to prepare pages for the appendix, and the time that is very valuable is lost thereto.

Q What out-of-State witnesses will you have to produce?

A I mentioned two, Mr. Cromwell ---

Q Mr. Cromwell?

A Yes.

Q Hasn't his deposition been taken?

A There will be further depositions required.

Q Didn't I take his deposition in Washington?

A Not in this case.

Q In this very case and which was filed in this very case.

A In this case or the Thompson case?

Q In this very case filed in this Court.

A Was it in this case?

Q Mr. Levin, you are testifying under oath. Don't you know your cases?

A Yes, I know my case. You have filed so many, I

am not sure which one it is.

MR. BERMAN: If your Honor please, may we get the docket and the papers?

THE WITNESS: If you will say it, I can agree to it.

MR. HARRY LEVIN: It was taken by agreement with Mr. Berman in this other case.

MR. BERMAN: And it was agreed it could be used in any case.

THE WITNESS: If the Court please, I was not present at the taking of that deposition.

Q You know that deposition was paid for?

A Yes, I do.

Q So the depositions that had to be taken into consideration have already been taken?

A Yes, it has to be takeniinto consideration.

Q The deposition is already taken, isn't it?

A Just in the Thompson case, when we had Thompson testify three times. It may probably be necessary to have Mr. Cromwell testify.

Q How much did you pay for photostats in trying

the case? How much did the Afro spend for photostats taken?

A His Honor does not want me to mention figures.

THE COURT: This is cross-examination, you may answer.

A In the Thompson case?

Q Yes.

A In the Thompson case, I would say there was at least$150 worth of photostatic costs.

Q To the Afro?

A I am not sure whether it was the Afro or not, I havenot examined the books.

Q Oh. If the plaintiff has them made, she assumes liability to the photostat company, doesn't she?

A Yes, but the ones who defend the suit also have to get copies of the photostats.

Q Don't you have the original records?

A Yes, but I am only one person, and there are four defendants or four other people,and they have to answer for themselves.

Q Why do you have to have photostats of the

original records? You have the original records to produce in court, haven't you?

A That is right, and office records are used in the ordinary conduct of the business, and if it is necessary for us to have conferences, then we need the records themselves, and the Afro needs the records.

Q You don't need records from 1925 to 1949, in the conduct of your business, do you?

A Yes, we need records for every year in which you have charged the defendants with fraud and conspiracy and so forth.

Q Couldn't you spare them in court for a few days, without having them photostated?

A I don't believe so.

Q Every entry in the record isn't important, is it?

A I believe so, in order properly to defend the case. I, for one, would not like to see entries skipped over or documents kept in the Afro's office, when I need them to use for affidavits or the company's executives need them for affidavits, for motions for summary judgment.

There were various motions and petitions in the other case, and this case looks the same way.

Q To what extent depositions, besides the Cromwell deposition, whose deposition is already taken, would you have to take? Name them.

A Carl Murphy, Arnett Murphy, George Murphy, John Murphy, Elizabeth Hood.

Q They are thefour defendants?

A That is right.

Q Why did you have to take depositions?

A We have to have copies, if you take them.

Q How much could that amount to at the most? If there were 1000 pages, it would not run much over $100, would it, at 10 cents a page?

A Perhaps I can answer your question most directly in this manner; that in the Thompson case, it became quite apparent that the depositions were a costly time-consuming procedure. We feel that because of that, and we are being faced with the same kind of charges in this case, the same kind of defense that was successful in that case will have to be presented to his Honor in this

case.

Q Mr. Levin, you are beating around the bush. I am asking you specifically what is the most it would cost you, if I took the four defendants' depositions; they could not talk as much as 1000 pages, could they?

A I feel that way about it, without beating around the bush, as you phrase it,which I never intended to do, and which I am not doing. I remember you stating in one of the depositions in the Thompson case you did not care how much time they were going to take, and we had to stay there, and these other defendants in this case had to pay I forget how much it was a page for their copies for your talking, and we feel it is not going to end here. There was a question of who was going to be appointed a judge in the United States District Court, if Mr. Dewey won the Presidential election, which was certainly not part of the depositions.

THE COURT: Now, now,don't let us go into that. I am not saying we should not have a little laugh here occasionally, but don't let us go into that.

Q Who are all of these witnesses you have to bring

from without the State?

A Elizabeth Hood I mentioned, Cromwell I mentioned.

Q Cromwell lives in Washington?

A Yes, and out of the State.

Q And Mrs. Hood, where does she live?

A I am not certain. In the Deep South some place far away.

Q Who else?

A There is a sister, whose name I don't remember, of the defendants that lived in Philadelphia, I believe. If she is well enough, I think we might be required to have her here, because she was a stockholder.

Q That isn't far, is it, Philadelphia?

A I am not certain how many miles it is, but it isn't too far, no.

Q Let us see how much evidence we would have to have. Take paragraph 17 ---

A Is this of your Bill of Complaint?

Q Yes. There I allege that on April 4, 1931, the four dependants issued to themselves and divided among

themselves 48 shares of stock that had been authorized but unissued, each of the defendants receiving 12 shares apiece, and I say that that was done in violation of the pre-emptive rights of the other stockholders, and it was illegally issued to them without any consideration. Would it take much to sustain that allegation?

A Most definitely. In fact that is where Mrs. Neely, the lady in Philadelphia, would come in. Mrs. Sarah Neely, a stockholder of the Afro, is evidently one of the stockholders to whom you are referring when you say "preemptive rights of the other stockholders".

Q I am referring to my client.

A Yes, but you say that the preemptive rights of the other stockholders were violated in this transaction.

Q That is right.

A One of the other stockholders is Mrs. Neely, in Philadelphia, and we are prepared to show through her, if she is well enough to be brought here, we are prepared to show that her preemptive right was not violated, because she was definitely consulted about this transaction, about which you claim there was fraud, and she said, "I don't

want the stock."

Q You have brought in the Thompson case thoroughly. Didn't your clients all testify and admit that the other stockholders, other than the family, were never notified about the issuance of these 48 shares of stock and were not given an opportunity to purchase?

A Well,I think the testimony there ought to speak for itself. You have the record of the testimony.

Q Well, you were at the trial.

A I think direct and primary sources are best. Let me ask you this: Do you mean did the Murphys here, defendants in this case, answer in the Thompson case that members of the family had or had not been consulted?

Q They said members of the family were consulted about these 48 shares, but no outside stockholders had been consulted; isn't that true?

A That I don't know. I would have to consult the records. I would not trust my memory on that.

Q Now, tell me, if I prove that fact, or if I fail to prove that fact, how would the corporation be harmed and how would it cost the corporation any money?

A Because you are claiming that the defendants control and dominate in a wrongful sense, the Afro-American Company, and you claim --- the Bill of Complaint alleges that the Afro does only what these four defendants make it do, by virtue of their ownership of majority stock, their being on the Board of Directors and being officers, and the like,therefore when you charge that these defendants have done great wrongs and have been fraudulent and illegal conspirators, and so forth, you are in effect making the Afro-American party to that charge, too, because you say the Afro is nothing but a tool of the Murphy boys.

Q Mr.Levin, you have filed a petition on behalf of the corporation, and you testified that it is going to cost the corporation money to defend this suit, because if the suit prevailed, the corporation is going to be harmed; is that correct?

A No, that is not correct. I have testified that the defendants who are being charged with fraud, conspiracy, et cetera, in order successfully to demonstrate that those charges are groundless, will be required reason-

ably to actually spend certain money for certain reasonable expenses.

Q They will?

A Yes, they will, in order to defend themselves, but that the Afro-American corporation company is liable to these directors and officers for what they reasonably expend, excluding attorneys' fees if they happen to be successful in this case and prove that the charges brought against them for the second time are groundless.

Q Mr. Levin, I have asked you about paragraph 17. If I sustain that allegation, the corporation will get back 48 shares of stock of these individual defendants plus dividends that were paid on those shares of stock since 1931; is that correct?

A Yes, sir, that is what you allege.

Q That would benefit the corporation, wouldn't it?

A According to your premise, giving it every implication of the evidence, and assuming everything you say is correct, yes, it would.

Q If I fail to prove it, how would it harm the corporation?

A It would harm it in this way: This isn't the first time that this charge has been hurled against these defendants. We believe the instant defendants here, believe that this charge was shown to be false in the Thompson case. We are now forced to answer this charge. Although we think it is forced, we have to prove it to the satisfaction of his Honor. In so assuming to prove it, we have to have an audit made of the Afro's books, records and all its other documents, related or unrelated, perhaps in 1931, to show what the net worth of the company was, how much was paid in dividends, what the company was earning, so that we might determine whether the stock was issued properly or improperly. To do that, it will be necessary for an auditor to look at the minutes to see whether there was an authorization. If there was no authorization in the minutes or resolutions, or any other form, then it will be necessary to have certain proof to prove before his Honor that this charge in 1931 is groundless.

Q You know very well there was no authorization in the minutes regarding this in 1931, or any other year. You have brought in the Thompson case, which has no more

relation to this case than cheese has to chalk, and in the Thompson case this was brought out; that Thompson was held not to be a stockholder, he had sold his stock. But, be that as it may, you know very well you conceded in the Thompson case there was never any minute authorizing the issuance of this stock, and Judge Coleman would not permit us to introduce evidence that it never was paid for.

A I will be glad to answer that, although there is more than one question in that question. This case is directly and squarely in line with the Thompson case, because in the Thompson case, on point 3 of the Bill of Complaint that you wrote up, in which Thompson sues as a stockholder, the complaints as alleged, are substantially the same as alleged in the Bill of Complaint, and the suit was filed against the same defendants as in this suit, and the bill was dismissed. Therefore, I feel, in direct answer to your question, that the Thompson case is certainly res judicata as far as this case is concerned.

Q Did the Court hold that he was not a stockholder?

A The Court dismissed the Bill of Complaint.

Q Didn't the Court hold he was a stockholder, he had sold his stock.

A Which judge?

Q Any judge you want.

A Well, Judge Coleman, as I remember it, dismissed the bill and said it never should have been brought in the first place, if an honest effort had been made to look at the facts.

Q That is right. One of the facts alleged was on the April 4, 1931, transaction. I am not going to argue the Thompson case, I don't think it is in point here.

A All right, sir.

Q In the second paragraph I allege that on April 4, 1931, the company acquired forty shares from Mrs. Purdy and that the books of the corporation show that the money advanced to Mrs. Purdy and her husband was charged to them as a loan and written off as a bad debt in 1945, that is, twenty-four years later; that on April 4, 1931, the same date, the stock was transferred

by Mrs. Purdy to the corporation, these four defendants divided that stock among themselves. Now, if I prove that, would that benefit the corporation or harm the corporation?

A I will give the same answer as I gave before; assuming the truth of everything you say, and assuming in the improbable event you prove it is true; yes.

In further answer to your question, that transaction is alleged by your client in this case on the basis of the books of the corporation showing certain things, and it is my opinion, as an attorney, that one of the very difficult things that these defendants have to do, to properly defend themselves, is to first go back twenty years and to say that the books show or do now show what happened, and who said what, and what the structure of the company was, did it violate preemptive rights, that is the very thing that requires these defendants to go ahead and get some help in the form of an audit.

Q Mr. Levin, isn't it true that all of the allegations of wrong-doing start in 1925?

A No, I believe the purport of your bill of complaint is that from 1922 to date these defendants started to perpetuate all kinds of frauds, conspiracies, breaches of trust,illegal things.

Q Doesn't the corporation have a complete audit of its books for each year from 1925 down to date?

A For the purposes of this case, no. For the purposes of the Thompson case, no. It was necessary to present certain facts to Judge Coleman in the Thompson case, and it would be necessary to present certain facts to show to your satisfaction that your claims are false, not on the basis of an audit. In effect, the Fourth Circuit Court of Appeals said, in its affirmance of Judge Coleman, it is true that certain records are missing, but it said that due to the passage of time, it is very difficult to find out what happened twenty years ago.

Q Now, then, I state that 40 shares were obtained from Thompson for $1200, which I state were charged off as a loan, and those 40 shares were transferred to the four defendants without any consideration. That would not hurt the corporation, if we proved that, would it?

A Mr. Berman, I am afraid I can only answer your question this way, to give you really what you are after I will have to answer it this way: I honestly think that that allegation in paragraph 19 is 100 per cent precluded by the decision in the Thompson case. However, that does not mean that these defendants are not forced to sit down and testify again to say what you are claiming isn't so, and the only way I can compare it, is that if A hits B on the nose and B sues him, and A defends himself, that is one thing; and if B, having the next day filed suit for the same hitting on the nose, A has to defend himself again, even if there is no merit to B's case at all, and that is the position of these defendants.

Q Of what advantage would it be to the corporation to hire Mr. Hamburger at $1,000 to tell the court the value of the stock? How would that help the corporation?

A I will answer. First, I think it would be a great deal more than $1,000, because you have claimed so many frauds, manipulations, in so many years, I think he would probably charge more, although I will let him testify. How would it help the corporation?

Q Yes.

A These defendants occupy a unique place in the colored and white community of the City, as well as Philadelphia, New York, and other places where the paper is distributed. These directors have been pillars of the community in every sense of the word. They have never had one word said against them by any one as to integrity, honesty, and decency, until these suits were filed. They were completely vindicated in the Thompson case. They were vindicated by the Fourth Circuit Court of Appeals, and on motion for reargument, they were vindicated again. They are being charged with all sorts of crimes again filed by your client in a court of law. I believe it will be of immense benefit to the public to know that the people who run the Afro and control it and supervise its policies are men of honor and strict accountability, and in order to give that to the public and to pin that in the public's mind, I think that these charges will have to be beaten. We are willing to have them beaten. It will be of immense benefit to the corporation and its shareholders to know that the corporation is being run

honestly.

Q Do you think a ruling on a plea of laches is a complete vindication?

A Are you asking that as a question?

Q Yes, they were vindicated on laches, weren't they?

A I don't think so. If I may read from the opinion of the Fourth Circuit Court of Appeals --

MR. BERMAN: If the Court pleases, are we going to retry the Thompson case?

THE COURT: I think we are going into a lot of things a great many of which are immaterial.

MR. BERMAN: Yes, sir; particularly on this great pillar of society.

THE COURT: It was responsive to your question. I will say that for Mr. Levin. Your question opens a very broad field, and I think he can answer it any way he wants to and it will still be responsive. You can ask your questions in a way that does not open up this field.

MR. BERMAN: Your Honor, I have nothing to hide.

THE COURT: Yes, you do. You asked him if it would be a benefit to the corporation, and he answered it.

Q What financial interest ---

A I would like to answer your other question.

THE COURT: No, just answer this question.

Q Just a minute, I have heard enough on that subject. Of what financial interest would it be to the corporation, of what financial interest would it be to the stockholders for the corporation to spend $1,000 or more to prove the value of the stock against the corporation's interest, on behalf of the four individual defendants? How would that financially help the corporation?

A There are many things can help a corporation in addition to dollars and cents. The strong charge made against these defendants isn't a dollar-and-cents charge, because if they thought they were wrong, they would pay back dollars and cents. It is what they bitterly regard as being called crooks.

THE COURT: Let us get down to something material. It does not make any difference whether they resent it or not. The point is whether the corporation is liable for

the expenses, unless there is a law which brings this other point into it or causes it to have some relevancy.

A May I answer his question, if your Honor please?

THE COURT: You have already answered it. Any other questions, Mr. Berman?

MR. BERMAN: You are counsel for the four defendants, you are one of counsel?

A Yes, sir.

Q And you are also counsel for the corporation?

A Well, if his Honor will permit me to ---

Q Is that correct?

A I can't answer unless his Honor allows me to.

Q You have stated that.

THE COURT: You can answer that.

A I am one of counsel for the Afro-American Company by my filing of this suit. When this suit was filed, I still retained the same status as counsel for the Afro, and am to this day, but in my opinion, the Afro is more properly a party defendant, therefore I did not feel as if I were violating any ethics.

Q Nobody has charged you with violating any ethics,

Mr. Levin. You are here on a retainer with your father for the Afro-American Company, is that right?

A I don't see where that is relevant.

THE COURT: If Mr. Harry Levin wants to interpose an objection, all right.

MR. LEVIN: We object.

THE COURT: Overrule the objection.

A Yes, we do receive an annual retainer.

THE COURT: I do not think the amount is material.

MR. BERMAN: No, I have not asked him that.

Q As attorneys for the Afro-American Company, you filed this petition to prohibit the plaintiff from proceeding with this Bill of Complaint until they put up $7500 security; isn't that correct?

A No. That was prepared by myself and my father in order to have a compliance with the statute. The statute gives us that right, and we feel we have a right to assert it.

MR. BERMAN: That is all.

(Testimony of the witness concluded.)

Thereupon---

JOSEPH ROCKLIN,

a witness of lawful age, produced on behalf of the petitioner, having been first duly sworn according to law, was examined and testified as follows:

THE BAILIFF: Give your name and address.

THE WITNESS: Joseph Rocklin, 3504 West Garrison Avenue.

DIRECT EXAMINATION

By Mr. Marshall Levin:

Q Mr. Rocklin, what is your occupation?

A I am a certified public accountant.

Q How long have you been so certified?

A Since 1939.

Q What schools have you gone to?

A In Baltimore, Baltimore City College, Baltimore College of Commerce. In New York, N.Y.U.

Q Do you have any connection with Afro-American Company?

A I have been the auditor for The Afro-American Company for about four years.

Q In the course of your duties, Mr.Rocklin, in connection with Afro-American, have you made any audits, and if so, for what years?

A I have performed an annual audit for the years 1946 through 1950, inclusive.

Q What is the audit?

A Well, as an auditor, we review independently ---

MR. BERMAN: If your Honor please, I think your Honor knows what an auditor is.

THE COURT: Yes. I know what a complete audit is and what an incomplete audit is, as far as that part is concerned. It is all right to put it in the record. You are leading up, I suppose, to the more direct question of what expense would have to be incurred in defending the suit.

MR. MARSHALL LEVIN: Yes, sir.

Q Mr. Rocklin, let me ask you this question: Have you read the Bill of Complaint in this case?

A Yes, I have.

Q Tell his Honor if, in your opinion, or in the opinion of one of the defendants, it will become necessary

to audit for any years the Afro's books, records, or other documents, what would you charge the person or persons who retained you?

(Question objected to.)

THE COURT: I sustain the objection until he states what work he would do. I think you have stated what you think would be necessary. I do not think the witness is qualified to read the Bill of Complaint and give an opinion as an expert as to what auditing work or other work should be done, in order to present a defense of this action.

MR. MARSHALL LEVIN: That is why I asked him if he was hired by some one else ---

THE COURT: If he is qualified to state what his charge would probably be for doing the work, doing certain work, I will admit it.

Q Mr. Rocklin, what will your charge, if you are retained or hired by any party involved in this suit to perform anauditing job, what would your charges be, and what would you do and how much would it cost?

MR. BERMAN: We object aside from the general

objection, your Honor.

THE COURT: I sustain the objection. That is too general.

Q If you made an audit of the Afro-American's books in the past, as you made for the last four years or so, what would you do?

A From the interpretation I have placed on the Bill of Complaint, it would require making a rather broad analysis and audit of many records, since the Bill of Complaint mentions transactions going back to 1922, and perhaps earlier; it would require reviewing books of account, supplementary data, perhaps, minute books, various documents.

Q Do you feel that would be necessary and proper in order to complete such an audit?

A To squarely meet some of the allegations made in the Bill of Complaint, I think it probably would be necessary to do that.

Q And if, after you had examined the books and documents to which you refer, you had to testify in court, that would take up more of your time, would it not?

A A considerable amount of time, conference time, preparation of,perhaps, memoranda explaining certain items. It would involve a considerable amount of work. I cannot be specific about it, but I do know it would be a rather substantial undertaking.

Q Do you have any one who works with you or under you in your work?

A Yes. I have a staff of assistants, senior and junior accountants, who work with me in developing financial information for various clients.

Q Have you ever made an audit of the Afro's books before 1946?

A No.

Q So that if you were required to, it would be a question of new figures and new facts as far as you are concerned?

A Yes, it would be to a certain extent unexplored territory,going back and finding records I have to work with,identifying items, and attempting to trace the proper interpretation on those items and drawing conclusions, so that some reliance could be placed on what I

had done.

Q Would you feel that would be necessary despite the fact that Mr. Cromwell, for example, had made some examination of the books in the past?

A I think it would probably be necessary. Accountants and auditors frequently approach their work with a limited scope, and since certain attention has been focused on specific items, it may be necessary to go far beyond anything that has been done in the past.

Q Assuming that you were called upon to make an audit, a detailed, broad audit, we will say, from 1922 to date, what amount in dollars and cents would you charge the person for whom you made that audit?

A I think a conservative estimate to cover the indicated scope of work for all of those years would certainly require a fee of at least $5,000.

Q Am I to understand that if there were to be an audit of fewer years than the years encompassed between 1922 and to date, your charge would be less?

A Yes, it certainly would. My observation at this time is, in order to get the information suggested by

the Bill of Complaint covering the minimum number of years set out in that document, I would say it would be about $3,000.

MR. MARSHALL LEVIN: Your witness.

CROSS-EXAMINATION

By Mr. Berman:

Q For what years does the company have books and records, do you know?

A No, I do not.

Q You are assuming they have books and records from 1925 to date, aren't you?

A Well, they probably have some records, yes.

Q Suppose I tell you they said under oath they have no record beyond 1934, would your fee still be $5,000?

MR. MARSHALL LEVIN: We object.

THE COURT: I sustain the objection.

MR. BERMAN: I am assuming that as hypothetical facts.

THE COURT: You can ask him a hypothetical question.

Q Assuming it to be true there are no books and

records except the auditor's reports, beyond 1934, would your fee still be $5,000?

(Question objected to.)

THE COURT: When you say "beyond", do you mean subsequently?

MR. BERMAN: No, no, I mean prior. Make it prior.

Q If they have no books or records before 1934?

(Question objected to.)

THE COURT: I will overrule your objection. This is cross-examination.

Q Assuming that to be true, except auditors reports and perhaps an income tax return, but no other books, that would abolish a good bit of your accounting work, wouldn't it?

A It would more definitely influence it to some extent, but as to how much, is very difficult to estimate.

Q Suppose they had a complete audit by a certified public accountant, Mr. Cromwell, from 1934 to the year you took it over, 1945, inclusive, wouldn't you accept that audit, or would you have to recheck his audit?

A I don't think it could be accepted in its entirety. Some reliance would be placed on prior work; yes.

Q Let us take paragraph 17, for instance. There is a statement that on April 4, 1931, defendants divided among themselves 48 shares of stock authorized but theretofore unissued, in violation of the preemptive rights of the stockholders, you would not be able to state from your audit whether that was a violation of the preemptive rights or not, would you?

A Mr. Berman, I could not answer that now. Perhaps I could get the information.

Q And that those shares were issued free to the four defendants. How long would it take you to find out whether they paid the corporation anything for those shares or not?

A I could not determine that now.

Q There ought to be an entry, if they issued 48 shares on April 4, 1931, there ought to be an entry showing payment somewhere, oughtn't it?

A It may be a simple thing at times to give the answer to a question; on the other hand, it may be very

difficult. It may take extensive research and extensive analyses to bring out a true answer to your question. I could not give you a direct answer.

Q Paragraph 18 charges that they bought40 shares from Mrs.Purdy in 1931, and in 1945 the moneys paid Mrs. Purdy had been charged off by the corporation as a bad debt, and the defendants gave themselves this stock in 1931, although they were paying Mrs. Purdy up to 1945, it would not take you long to look at the 1945 entries to see whether that was charged off as a bad debt or not, would it?

MR. MARSHALL LEVIN: If your Honor please, I object. I think he has answered the question twice.

THE COURT: Overruled.

A It may be possible to get a quick answer to a question like that. On the other hand, it is something you would have to determine at the time. Beforehand, it is extremely difficult to estimate time or degree of experience or ability. It takes time.

Q Let us take paragraph 26. In Item (d), on page 13, we allege: "1943 - forgiveness of a loan of $1700,

together with interest for ten years, to George B. Murphy, Sr." You would not have to make a complete audit to determine whether they did make that loan or consummate that loan or not, would you?

A There may be other transactions which influenced it. It may not be simply that one item. There may be related items which have to be evaluated and interpreted.

Q Take Item (g): "In 1949 the defendants voted to George B. Murphy, Sr., an honorarium of $1,000, and to Miss Frances Murphy an honorarium of $500." I will tell you now that that came from the income tax return. It would not take long to determine the truth of that, would it?

(Question objected to.)

THE COURT: I sustain the objection, because of the form of the question.

Q By your making an audit, you would make it for whom?

A For the client that retained me.

Q Have you been talked to about being retained in

this matter, in this suit?

A Not definitely.

Q Well, you have read the complaint?

A Yes.

Q Who do you expect to retain you in this matter, the corporation or the four defendants?

MR. MARSHALL LEVIN: We object, your Honor.

THE COURT: I do not think it makes a lot of difference, but the statute does cover direct expenses and also indirect expenses. I think on cross-examination that would be a proper inquiry. However, I think the witness has answered that he expects the person to pay him is the person who retains him.

Q If I retained you for the plaintiff, you would look to me or my client for payment, would you not?

A Yes, if you were my client.

Q If I retained you, you would look to me for payment to get it from my client?

A Yes.

Q And I presume if you are retained by someone else, you would look to them to pay you, is that right?

A Well, I suppose counsel would have to determine who retained me.

THE COURT: Anything else?

MR. BERMAN: I don't think so.

THE COURT: When you say "audit" -- this question was asked once before and I said it was all right for you to explain what you mean by audit -- when you say that it would cost probably $5,000 to make audits -- as I understood your answer, that is what it was to make audits -- what do you mean?

THE WITNESS: Your Honor, the word "audit" is frequently loosely used. I contemplate a review of many records.

THE COURT: Well, what records?

THE WITNESS: Books of account, journals, ledgers, cash books, et cetera, in whatever form they may be, for as many years as they are available. Supplementary documents, there may be invoices, contracts, perhaps even correspondence, oral discussion with people, to get proper explanations of items. Covering minute books, for example, covering an extensive array of written material,

accounting records, corporate records, tax returns, previous accountants' reports, plus a great deal of conference time, which I think would certainly be a very formidable undertaking, requiring a considerable number of days. Also requiring a high degree of experience in accounting work. This is not something you could trust to a beginner. I feel, by all reasonable standards in the profession, it would justify a fee of at least that much.

THE COURT: For how many years did you mean would be covered?

THE WITNESS: Well, maybe 20 or 25 years would be within the scope of such a review.

THE COURT: Twenty or twenty-five years?

THE WITNESS: You could not reduce it to say ---

THE COURT: Well, that answers the question, twenty or twenty-five years. What, in detail, do you anticipate you would be required to do?

MR. MARSHALL LEVIN: If your Honor please, I might object to that. He does not know yet.

THE COURT: That is what I want to find out. Now, answer the question, if you will. Read the question,

Mr. Goetz.

(Question read by the reporter.)

A Well, my interpretation of the scope of the job, your Honor, would be along these lines: The defendants have been accused of certain acts, excessive compensation, for example, excessive bonuses which are alleged to have been improper payments. First we would have to determine what the compensation was for a period of years; and, secondly, to use the available information and outside evidence to substantiate the reasonableness of that compensation. That is something I could not get from the books but would have to get from outside sources. That would be necessary to directly meet one of the objections set out in the Bill of Complaint. That is one item.

Another question would be evidence. Third, would be travel allowances, improper loans, which cover a considerable span of time. Then, also very important, these numerous stock transactions, which would require a detailed examination of records for a great period of time.

THE COURT: That is the point I want to cover.

What years? Do you mean you anticipate making an audit for twenty cr twenty-five years, every year for twenty or twenty-five years?

THE WITNESS: Your Honor, that would not necessarily mean a complete review of every transaction for every year. That probably would not be necessary. But in order to draw accurate and intelligent conclusions from records and supplementary information, it would be necessary to review, first, the records themselves, whatever available supplementary information is available to use, outside material wherever necessary and a standard of comparison and, finally, to prepare it in such form with proper interpretation and conclusions that could be used by counsel in handling this case.

THE COURT: I am looking here at paragraph 16 of the Bill of Complaint. That is where the plaintiff alleges specifically that in 1924 and 1925, the defendants illegally issued one share of stock to each of four employees of the company, for $5 per share, which share was restricted as follows: Not transferrable, to be held only while an employee of the Afro-American, and to be

redeemed if, for any reason, he leaves the service, at cost price of $5. Those facts which I just read are alleged in conjunction with the plaintiff's contention that the defendants conspired to acquire shares of stock in the corporation without any payment or consideration by themselves. What, if any, audit would be necessary in order to determine that question? I am talking about an audit now, and nothing else.

THE WITNESS: With respect to that one point, your Honor, probably not a great deal of financial information is involved It would not require too much from the auditor or from the accounting phase of this undertaking. I think that this question of whether or not consideration was paid probably would have a bearing on the work I would do, say that part.

THE COURT: Well, you would not have to examine all the books of the company to find out whether they show that a consideration had been paid, because it might have been paid without being shown on the books.

THE WITNESS: Briefly, I think, your Honor, that we could not definitely determine the answer without first

making an inspection of the books.

THE COURT: What would you inspect?

THE WITNESS: Oh, maybe cash books showing receipts of funds; I think maybe general ledger accounts showing credits to a certain account; or it may be outside of the formal accounting records.

THE COURT: Wouldn't you go to the defendants themselves and ask them whether they had paid or whether they had not paid?

THE WITNESS: As a preliminary step I would, your Honor.

THE COURT: If they told you they did pay and paid in a certain year, couldn't you go more directly to the matter than examining a whole lot of books of the company?

THE WITNESS: I assure you I would approach the matter with the usual preliminary work and apply the most reasonablemanner of doing the work I can conceive of. I would not necessarily examine five years' records to find the answer to something that is obvious at the very beginning. I would leave that to my judgment and discre-

tion of where it must necessarily be.

THE COURT: Paragraph 17 alleges that on April 4, 1931, the defendants issued to and divided among themselves 48 shares of stock which had been authorized, but then were unissued, and that the 48 shares were divided four ways, making 12 shares to each defendant. It is alleged that the defendants paid no consideration for those shares. What would you have to do besides making an examination of the books is concerned, in order to meet that allegation?

THE WITNESS: Well, the procedure would probably be along these lines, your Honor. First, determining that the shares were to whom actually issued, getting approximate dates , talking to the individuals involved wherever possible, and attempting, if the records are available, to identify various items, if they can be obtained from the available records. It would require considerable preliminary discussion, access to various records, and, perhaps, to related material other than formal accounting records.

THE COURT: Well, it would not require an audit of the books for 1931, would it?

THE WITNESS: It could. I mean at this time I don't think I could accurately state whether it would or would not.

THE COURT: When you say an audit of the books from 1931, what would you do in making an audit of the books for 1931? You said that it might require an audit of the books in 1931, what, in greater detail, would you do in making that audit?

THE WITNESS: Well, probably the thing to do would be to review any prior financial statements, tax returns for that period, then referring to records that are available covering that year of the transactions.

THE COURT: What would you find as the result of examination of tax records or tax returns?

THE WITNESS: Some basic information, your Honor. Merely it would show what the surplus of the company was, probable dividend payments, income and expenses for the year. It would be the preliminary source of information.

THE COURT: Wouldn't you find out from the defendants themselves what had occurred?

THE WITNESS: Yes, I certainly would. I would

definitely do that, discuss these various matters with the defendants, determine from conversations with them, what their recollection is on these transactions. After all, they did occur twenty or more years ago, and any specific instances and information I could obtain from these defendants, I would then outline a procedure which I believe would produce, if not completely, partially the answers to the questions.

THE COURT: You are now saying these things without knowing what explanation there is of the defendants.

THE WITNESS: I have participated in some discussions and conversations, and I have a general idea of what many of these transactions had involved.

THE COURT: I suppose you wouldsay about the same thing regarding paragraph 18, where it is alleged that 40 shares were acquired by the corporation from Mrs. Purdy.

THE WITNESS: The answer would be approximately the same, your Honor. Of course, in each case the scope of the information would determine or the availability of information would determine just how much information or how

much of the answer to these questions can be obtained from the accounting or related records.

THE COURT: Now, then, paragraph 21 is much broader. It alleges, "that from 1922 to date, the defendants have drawn excessive salaries and bonuses, all of the said defendants except George B. Murphy, Sr., who was assigned no duties, performed duties from time to time in the editorial, printing, and circulation departments", et cetera. Then it goes on to say that the defendants drew their regular weekly salaries, and also beginning the year 1926, drew unreasonably large yearly salaries and illegal bonuses. From your answer before, that, I suppose, would entail work covering all of those intervening years.

THE WITNESS: It would, your Honor, cover a very broad period of time, and also require an analytical phase of the jobs which would beyond any accounting records. The reasonableness of salaries can best be determined by comparisons, and that would go beyond the company's immediate accounting records.

REDIRECT EXAMINATION

By Mr.Harry Levin:

Q You mean by that you would have to compare salaries of executives of businesses comparable to the Afro-American?

A Yes.

Q You would have to go out first and talk to other people before making a comparison?

A That would be one phase of it. Also, it would require a review of the contribution the defendants have made to the success of the company, their personal qualifications, what they have contributed through the years in ability and in energy, among other things, to justify the compensation that they earned.

Q And by that, you would have to take into consideration the factor of circulation, say, of 1922, with the circulation of the paper in succeeding years, down to date.

A Yes.

Q And the larger the circulation, the more money the company makes, in relation to the salaries and bonuses, would have a bearing on that, is that right?

A Yes. As the company grew through the years, to

a large degree, due to the efforts of these men, their salaries should have adjusted themselves accordingly.

THE COURT: Paragraph 29 alleges that more than $10,000 attorneys' fees have been charged to the company for services rendered the defendants individually, and the defendants have also charged to the corporation household expenses and expenses of private automobiles, used for private purposes. No item is mentioned there. Would you have to go through the books for a great many years to find out whether there was anything to substantiate that allegation?

THE WITNESS: I think it would be the reasonable thing to do, your Honor, to determine how much was charged, and I also feel it is probably a matter of opinion as to whether or not they should have been charged to the Company or should not have been charged. That would require considerable discussion of the item and, perhaps, further interpretation before any conclusions could be drawn.

THE COURT: Of course, the burden is on the plaintiff to substantiate the allegations of the Bill of Complaint that your theory is, as I understand it, in order to be pre-

pared to meet the evidence that might be produced to substantiate these allegations, you would have to examine the records of the company fully.

THE WITNESS: I think it would be necessary, your Honor.

THE COURT: Any other questions?

RECROSS-EXAMINATION

By Mr. Berman:

Q In answer to his Honor's questions, you understand that in all of these allegations the burden of proof is on the plaintiff to prove, do you not, and you want to make this audit for the purpose of disproving these various allegations?

A It is not that I want to. My client, whoever it may turn out to be, probably feels in order to be in a position to present their case properly and to defend this case properly, they should have that information.

Q Yes, That is, to disprove these allegations in the Bill of Complaint?

A I would say that is the reason.

THE COURT: You said something about the cost possibly would

not be more than $3,000. I did not understand your testimony in that regard. What was that? Do you remember it?

THE WITNESS: Yes, I do, your Honor. I think the question was in the event that it is unnecessary to cover all the years, how much work detail would be involved to meet the basic questions.

THE COURT: Oh, I see. I did not understand.

By Mr. Berman:

Q There are really only ten, approximately ten stock transactions set out, isn't that true?

A Yes, just about that.

Q It certainly would not cost $100 to determine the truth or falsity of those allegations regarding each stock transaction, would it?

MR. HARRY LEVIN: Your Honor, that was all gone through on cross-examination before.

MR. BERMAN: No, it wasnot.

MR. HARRY LEVIN: We object.

THE COURT: In view of the fact I asked the questions I did, I will have to be pretty liberal.

MR. BERMAN: I think your Honor has covered it pretty well.

(Testimony of the witness concluded.)

Thereupon---

ADOLPH HAMBURGER,

a witness of lawful age, produced on behalf of the petitioner, having been first duly sworn according to law, was examined and testified as follows:

THE BAILIFF: Give your name and address.

THE WITNESS: Adolph Hamburger, 3412 Falstaff Road.

DIRECT EXAMINATION

By Mr. Marshall Levin:

Q What is your occupation?

A Investment adviser.

Q Where is your office located?

A In the Munsey Building.

Q Is there any name to your business?

A Market Trends.

Q What is the nature of that business?

A The nature of the business is advising people on their investments.

Q What in your background would qualify you to so advise?

MR. BERMAN: I admit his qualifications.

MR. HARRY LEVIN: We want it for the record.

A Besides my educational background ---

THE COURT: If the qualifications are admitted, I don't want any evidence regarding it.

MR. MARSHALL LEVIN: All right, sir.

Q Have you had occasion to testify ---

MR. HARRY LEVIN: The nature of his qualifications, your Honor, I think ought to be in the record, his education and experience. I think it has a bearing on this case, even though it is admitted. We would like to have it in the record so your Honor would have the advantage of knowing this gentleman's background.

THE COURT: I will assume, when his qualifications are admitted, that he is perfectly qualified to answer the questions.

MR. HARRY LEVIN: If you ask a witness if he is a

medical physician, everybody knows. If you ask a man whether he is an attorney at law ---

THE COURT: The only relevancy of that question is his qualifications. That is the only relevancy.

MR. HARRY LEVIN: Qualifications as to what?

THE COURT: To testify to what your son, Mr. Levin, is going to ask him. If Mr. Berman objects on the ground of qualification, then he will be permitted to put everything in. The only relevancy of experience and that sort of thing, in a case is qualifications to testify as an expert. There is no use to encumber the record for that purpose because, when it is admitted, that is all there is to it.

MR. MARSHALL LEVIN: If your Honor please, I understand that point and I acquiesce in it. The only reason I think perhaps your Honor might want to hear it is that it might have some effect on your Honor's views as to the fairness of what this gentleman might charge for his services, and I think that the Afro certainly was interested in his qualifications before they retained him, and I think your Honor perhaps might want to hear what type of man he is.

THE COURT: Do you object, after your admission, Mr. Berman?

MR. BERMAN: Your Honor, he is the highest type man, he is a man of exceptionally fine character, and he is one of the most learned men in his profession. He is extremely honorable. He is entitled to about five dollars a minute to testify.

MR. HARRY LEVIN: What is his specialty?

MR. BERMAN: Whatever specialty he would testify to.

THE COURT: With that admission, I am not going to hear any further testimony on that point.

By Mr. Marshall Levin:

Q Mr. Hamburger, have you had occasion to evaluate the stock of The Afro-American Company in the past?

A Yes.

Q On what occasion?

A On the occasion -- I forget the name of it -- on the occasion of the Thomas case.

Q Thompson case?

A Thompson case.

Q For what year did you testify as to the stock value of Afro-American?

A I believe it was1930, September, 1930.

Q Did you do any work before you arrived at your conclusions concerning the value of that stock?

A Considerable.

Q And you also testified as to its value in court?

A Yes.

Q What did you charge for your services in total?

(Question objected to; objection overruled.)

A $1,000.

Q Did you receive $1,000?

A Yes.

Q Concerning this present case, assuming that there are ten stock transactions in which it is alleged that the defendants in some way were fraudulent and of a conspiratorial nature in obtaining stock for themselves, either as the result of the company getting it and they getting it from the company for nothing, and you were required to make an evaluation of The Afro-American Company stock for those ten transactions, would you take it if you were called upon to do

so?

A Yes.

Q How much would you charge for those services?

A Well, I might say this: The first part of the question about the conspiracy would have nothing to do with my part of the work, that would be the auditor's work. I would charge on evaluing the stock, and that is where I would stop.

Q Is one of the elements upon which you base an evaluation of stock the earnings per year of a company or corporation?

A Certainly.

Q Is that one of the methods to be considered?

A Yes.

Q And one of the things that would affect your consideration along that line would be reasonableness and fairness of compensation drawn by the employees, isn't that true?

A I would say this -- I don't want to try to value the stock sitting here -- but a stock of a corporation that is fraudulently run is not as good as the stock of a corpora-

tion that is honestly run.

Q Would you place a higher valuation on stock which is arrived at, or the value of which is arrived at after payment of fair salaries or reasonable salaries, or stock of a company in which the salaries are excessive, exorbitant and fraudulent?

A In a corporation where salaries are fair.

Q Therefore, the relevancy of salaries, bonuses and dividends, for example ---

A Oh, that would have definitely an effect. There have been many cases involving that very point, where they charged that the officers of the corporation were receiving too much and on stocks where they are publicly held, the stocks have gone down as the result of it. The last such case that I would happen to remember was in the Sparks-Orthington Company, a small radio company, where they changed the management because they charged fraud, and so on.

Q So, in your opinion, you feel that salaries, for example, do have an effect on the value of stock?

A Certainly.

Q What would be your fee for examining the stock

of The Afro-American Company as to value in any one year, for example?

A $500.

Q If you were called upon to make ten examinations of The Afro-American Company stock, the value thereof, what would your fee be?

A As there would be some similarity from year to year, there would be some similarity from year to year, the maximum fee would be $3,000.

MR. MARSHALL LEVIN: Your witness.

CROSS-EXAMINATION

By Mr. Berman:

Q Mr. Hamburger, have you read this Bill of Complaint?

A No, sir.

Q In the Thompson case, there was a question of these four defendants purchasing stock from their cestuis que trust at so much per share, and that is where you valued the stock, is that correct?

A You know, I have kind of forgotten about the Thompson case, so don't hold me to it.

Q Would it be necessary for you to value the stock to prove or disprove this statement in paragraph 16: "That in 1924 and 1925, the defendants illegally issued one share of stock to each of four employees of the company for $5 per share, each of which shares were restricted as follows: Restricted - not transferable," and so forth. You heard his Honor read the restrictions. What would the value of the stock have to do with proving that allegation?

A You know, I am not a lawyer, Mr. Berman ---

Q I know you are not.

A I don't know whether I can answer your question, but I would have to know the value of the stock, for the extent of the damages would depend on the value of the stock.

Q What damages?

A You said something that certain stockholders were not given their preemptive rights.

Q Yes.

A The value, the amount of the value of the damages that they were entitled to, though, would depend on the

value of the stock. For instance ---

Q You are interpreting what is going to happen if the Court finds the next paragraph to be true that ---

A I am not interpreting anything.

Q If their preemptive rights, as stockholders, were violated, that then the Court can only give them damages based on the value of the stock, is that it?

A I was not attempting to interpret anything.

Q That is exactly what you started to say.

A You asked me why the stock would have to be valued if it was illegally issued. I told you I wasn't a lawyer, but I was trying to make a guess.

Q Why would it be necessary for you to value forty-eight shares of stock, as alleged in paragraph 17,---

A Mr. Berman, I don't know what ---

THE COURT: Let him finish his question.

Q (Continuing) --- which was issued on April 4, 1931, and we say that these shares were issued in violation of preemptive rights of the other stockholders, and that they were issued to the four defendants without defendants paying anything for them. What has an evaluation

got to do with whether they issued them to this group in violation of the preemptive rights of the other stockholders? How does the question of value come in there?

A I would still value the stock if I am asked to do it. I don't have to know what use the people are going to make of my testimony.

Q We will take paragraph 18: On the same date, on April 4, 1931, 40 shares of the stock were acquired by the Afro-American Company from Eva Purdy, and that the company paid for the stock and that the defendants gave themselves this stock and paid nothing for it. What has the value of the stock got to do with that, whether they gave this stock free or not?

A You are asking me the question as if I were a lawyer. I don't know and I don't care. If they ask me to value the stock, I will do it.

Q Whether it is relevant or not, if they will ask you to value the stock, you will value it and send them a bill. If I ask you to value the stock, you will value it and send me a bill?

A That is right, that is my position. I advise

people whether to buy stock or not and I send them a bill.

THE COURT: The value of the stock would certainly be relevant in relation to preemptive rights.

MR. BERMAN: No, your Honor.

THE COURT: Why not?

MR. BERMAN: It is not a question of value on pre-emptive rights. The Court of Appeals has gone into that very thoroughly and very recently in the Charles Ross Transport Company. That is a right that cannot be bought and must be given to them, and if the stockholders sell out, they have their rights; but they cannot deprive them of their preemptive rights and say, We will pay you the proportionate shares.

THE COURT: And damages? If you sue a corporation or individual or whoever may be responsible because you, as a stockholder, were not given a preemptive right, would not the value of the stock -- well, do not let us take too much time on that.

MR. BERMAN: Your Honor, this isn't a suit for damages.

THE COURT: I am not going to decide that ques-

tion now.

MR. BERMAN: Your Honor, this isn't a suit for damages, this is a suit by a stockholder for wrongs committed against them, to put them back in status quo.

THE COURT: That is right, and unless you were damaged, you certainly would not complain about it.

MR. BERMAN: But the purpose of this suit is to put the corporation in status quo, and the value of the stock hasn't an earthly thing to do with it.

THE COURT: Yes, I see your point there. It is a derivative suit.

MR. BERMAN: That is right. You can lose sight of the point very easily.

THE COURT: I see the point. There is no use for you, Mr. Levin, to walk all of these steps, and whatnot.

MR. BERMAN: That is all, Mr. Hamburger.

(Testimony of the witness concluded.)

Thereupon---

CARL J. G. MURPHY,

one of the petitioners, produced in that behalf, having been

first duly sworn according to law, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Marshall Levin:

Q Mr. Murphy, what position do you occupy in The Afro-American Company?

A President of the corporation.

Q Since when have you been president?

A 1922.

Q Before that time, what was your official position, if any, with the Afro, before 1922?

A Vice-president and editor of the newspaper; member of the Board of Directors.

Q What position does Mr. Arnett Murphy occupy at the present time?

A Vice-president and treasurer.

Q How about Mr. John Murphy, if any?

A Member of the Board.

Q How about Mr. George Murphy?

A He is retired now.

Q How old is Mr. George Murphy, do you know?

A In excess of eighty.

Q You are familiar with the case of Thompson against the Afro, et al?

A Oh, yes.

Q You testified in that case?

A Yes.

Q Do you recall offhand how many times you attended depositions, hearings, and testified in this case?

THE COURT: When I made the statement in the beginning as to admitting evidence subject to exception, it led us into an admission of evidence which, to my mind, now, regardless of my decision on this legal point, is irrelevant, and if you are undertaking to prove that Mr. Murphy will lose a lot of time in attending hearings, trials, and so on, I will certainly assume that he will. But, to my mind, that isn't a recoverable expense.

MR. MARSHALL LEVIN: All right, sir.

THE COURT: I think it has no place in the record for that reason. Mr. Murphy, of course, is a valuable man on the paper. I know that. But if you go back to your law, which I don't have to refer you to, and which you know

better than I, you just cannot recover such things.

MR. MARSHALL LEVIN: Your Honor specifically refers, I imagine, to the time spent away from the business.

THE COURT: Certainly. Even in a suit for damages, you cannot make recovery on that.

By Mr. Marshall Levin:

Q Let me ask you this question: Forgetting whether you are going to lose any time from your supervisor capacity as far as the Afro-American is concerned, if there are depositions taken and you are required to pay your proportionate share of the depositions and the photostatic costs, cost of stock evaluation, and any other costs reasonably incurred, are you going to look to the Afro-American Company for reimbursement, if you win this case?

(Question objected to; objection overruled.)

A Yes, if we win the case, we will certainly look to the company.

Q Why?

(Question objected to; objection overruled.)

A We are representing not only ourselves in this action, but we are representing the corporation. We have

been accused of everything under the sun, falsification, fraud, and people in this community would certainly want to know whether a newspaper that has been the organ or mouthpiece of the community for over forty years has been conducted in that way or has not been.

Q Aside from the question of public opinion ---

MR. BERMAN: I move the answer be stricken out, if your Honor please. I think that is very remote.

THE COURT: I think, perhaps, I will grant that motion. Isn't it a legal question, more than anything else? The reason I overruled Mr. Berman's objection to your first question was this; there might be some question as to whether the defendants now, we will say, expect to have reimbursement from the corporation in the event that they win the suit, even though the law would permit them to do it. So that is why I felt that your questions were proper to get his answer as to what he would do. But as to why, I think Mr. Berman can ask that if he wants to.

MR. MARSHALL LEVIN: All right, sir.

Q Aside from the matter just discussed -- I don't know if I have your Honor's permission to ask this question.

I am just trying to give your Honor the benefit of an answer which I had expected.

THE COURT: Do you want to prove that the individual defendants would have a right to recover from the corporation in the event the bill is dismissed? Is that what you want to do?

MR. MARSHALL LEVIN: In a sense, sir, the legal question to which your Honor refers I have attempted to answer in the memorandum. However, I prefer to show through Mr. Murphy that the reason he expects, he and the other defendants expect to be reimbursed, is that when he conducts the business of the Afro as director and officer, he expects to conduct the business, not to be charged with fraud and other things like that, and hence, if he defends the suit as best he knows how, and he is completely vindicated on the merits of the case, then the money he expends should properly be chargeable to the corporation.

THE COURT: Isn't that the basis upon which these decisions in your memorandum are based?

MR. MARSHALL LEVIN: Some of them, yes, sir. Others go on the benefit theory to the corporation, that the

Court will then allow the defendants to be indemnified.

THE COURT: I do not think there are going to be any substantial costs to the corporation in this case. If the corporation is entitled to security, I think it is under the costs which may be incurred by other parties defendant for which the corporation may otherwise become legally liable.

MR. MARSHALL LEVIN: I acquiesce in your Honor's ruling.

THE COURT: I do not think we ought to go into the trial of another case. I am not sure you are not entitled to show why the corporation would be liable to these defendants, if they made claim against the corporation for the expenses which they incurred in the case. It certainly would not be on the ground that it is for the benefit of the corporation to have this suit dismissed. I think it would be for the benefit of the corporation, as such, to have the relief prayed for granted. That is why I say I think the only ground upon which security would be required, would be for the reasons I just stated. I am speaking without having reviewed these cases that you have noted in your

memorandum, because I have not had a chance yet, of course, to read the memorandum.

MR. MARSHALL LEVIN: Yes, sir.

THE COURT: Picking up where I left off, on the ground that if the individuals not had been directors of the corporation, they would not have been sued, in the first place, and would not have incurred the expenses.

MR. MARSHALL LEVIN: Exactly, yes, sir. That is substantially our position.

THE COURT: It seems to me that is a legal question. The Court can certainly take judicial notice of the fact that if they had not been directors they would not be in this suit.

MR. MARSHALL LEVIN: Yes, sir.

THE COURT: That does not need proof.

MR. MARSHALL LEVIN: If an executor or testamentary trustee is accused of fraud, negligence, and so forth, and he successfully defends himself without question of benefit, he gets reimbursed from the estate.

THE COURT: Yes.

MR. MARSHALL LEVIN: In view of your Honor's dis-

position, I have no further questions to ask Mr. Murphy.

THE COURT: Do you have any questions, Mr. Berman?

MR. BERMAN: No.

(Testimony of the witness concluded.)

MR. MARSHALL LEVIN: We had intended to have Mr. Arnett Murphy testify, but in view of your Honor's position, I don't think we will.

THE COURT: You can ask him the same question you asked Mr. Murphy.

MR. BERMAN: I will stipulate that his answer will be the same, if your Honor please, and then I will move it be stricken out.

THE COURT: All right, then. It is stipulated that Mr. Arnett Murphy's testimony will be the same as Mr. Carl Murphy's, namely, that if he prevails in this suit, he would look to the corporation to reimburse him for his expenses, and Mr. Berman renews his objection, the Court overrules the objection.

MR. MARSHALL LEVIN: If your Honor pleases, there is just one brief thing I would like to mention. That is, in yesterday's Daily Record, or Wednesday's Daily Record --

this is on the point of demurrer, on which your Honor has reserved decision --- there is a case of Dorsey against Stone, on the question of demurrer as to laches. I believe it substantially holds what we would urge upon your Honor.

THE COURT: What is the case?

MR. MARSHALL LEVIN: Dorsey vs. Stone, opinion of the Court of Appeals on February 9 of this year. It is in the Daily Record.

THE COURT: Yes. I read that. I thought of your case when I read it.

MR. BERMAN: May I make a motion, if your Honor please? I move that the testimony of Mr. Marshall Levin relating to what would be necessary for these defendants' alleged expenses, alleged expenses that would be necessary for these defendants to go to, be stricken out as absolutely irrelevant to the inquiry.

I move that the testimony of Mr. Rocklin be stricken out, because what he testified he would do as a matter of preparing a defense before they see whether the case is proven or not. If the case is proven, they can

hardly prepare a defense. Mr. Hamburger is in a different position. Mr. Hamburger's testimony would be absolutely useless. There would be no sense in having the value of the stock for this whole set-up. It has no relation to any of the questions involved and would not help the Court.

If your Honor please, this isn't a suit where officers are accused of using bad judgment, or even being guilty of conspiracy for the benefit of a third person, as most of the cases are, where they hire a president and give him rights to subscribe to stock, and give him so many years to pay off that stock, and the minority stockholders object to it.

(Argument followed, and decision held sub curia.)

Letter of Judge Tucker - Dated March 29, 1951

SUPREME BENCH
OF
BALTIMORE CITY

John T. Tucker
Judge

Baltimore 2, Maryland

March 29, 1951

Messrs. Harry O. and Marshall A. Levin
1145 Mathieson Building
Baltimore 2, Maryland
and
Paul Berman, Esq.
110 E. Lexington Street
Baltimore 2, Maryland

Re: Johnson vs. Murphy.

Dear Sirs:

I have considered the defendants' demurrer to the bill of complaint, and also the questions raised by the amended petition of the corporation, the Afro-American Company, and answer of the plaintiff thereto, relating to the giving of security by the plaintiff for certain expenses for which the corporation may become liable.

In my opinion the demurrer should be overruled, and leave granted the defendants to answer the bill of complaint in 15 days after the filing of a bond, which is hereinafter mentioned.

It is also my opinion that in pursuance of the provisions of Article 16, section 195, of the Maryland Code (1947 Supp.), the plaintiff should be required to give a bond with proper surety, in the amount of $3000.00, as security to the corporation for the reasonable expenses, excluding attorney's fees, which may be incurred in the case by the defendants and for which the corporation may become liable as may be determined by the court upon termination of the action.

I will sign an appropriate order or orders when presented.

Yours very truly,

/s/ Jno. T. Tucker

/t/ John T. Tucker

JTT/1

ORDER OF COURT
Filed 4th April 1951

EDITH L. JOHNSON	*	IN THE
Vs.	*	CIRCUIT COURT No. 2
THE AFRO AMERICAN COMPANY, Et Al	*	OF BALTIMORE CITY 30601-A

****

XXXXX

The defendants' demurrer to the bill of complaint, and the amended petition of the defendants to require plaintiff to file security for certain expenses, exclusive of attorneys fees, under and by virtue of the provisions of Article 16, Section 193, Anno, Code of Maryland (1947 Supplement), and the answer of plaintiff, having been read and considered, and after argument by counsel for the respective parties, it is this 4th day of April, 1951, O R D E R E D by the Circuit Court No. 2 of Baltimore City, that the plaintiff is hereby directed to file a bond with the clerk of this court with proper surety in the amount of $3,000.00, as security to the Afro American Company for the reasonable expenses, excluding attorneys fees, which may be incurred in this case by the defendants and for which The Afro-American Company may become liable, as may be determined by the Court upon termination of the action.

And it is further O R D E R E D that the said demurrer to the bill of complaint be and it is hereby over-ruled, with leave to the defendants to file an answer to the said bill of complaint within fifteen (15) days after the bond required by this order is filed by the plaintiff with the Clerk of this court.

/s/ John T. Tucker
Judge.

SL:DS 5/1/51

58

COMPLAINANT'S APPEAL
Filed 3rd May 1951

EDITH L. JOHNSON, A stockholder of the Afro-American Company, a body corporate, on her own behalf and on behalf of all other stockholders of the Afro-American Company, a body corporate, and for the benefit of The Afro-American Company, a body corporate,	:	IN THE CIRCUIT COURT NO. 2 OF BALTIMORE CITY
v.,	:	
CARL JAMES G. MURPHY, DAVID W. ARNETT MURPHY, GEORGE B. MURPHY, SR., and JOHN H. MURPHY, JR.	:	

~~COMPLAINANT'S APPEAL~~
~~FILED~~
~~COMPLAINANT'S APPEAL OF MARYLAND~~

Mr. Clerk:

Please enter an appeal to the Court of Appeals of Maryland in behalf of the complainant herein, Edith L. Johnson, on her own behalf and on behalf of all other stockholders of the Afro-American Company, a body corporate, and for the benefit of The Afro-American Company, a body corporate, from the Order of this Court in this cause, dated and entered April 4, 1951, and particularly from that portion of the said Order directing the complainant to file a bond with the Clerk of this Court in the amount of $3,000, as security to the Afro-American Company for the reasonable expenses, excluding attorneys' fees, which may be incurred in this case by the defendants and for which the Afro-American Company may become liable, and that portion of said Order granting leave to the defendants to defer the filing of their answer to the bill of complaint until after the

bond required by the aforesaid Order is filed by the complainant with the Clerk of this Court.

Paul Berman
Paul Berman,
110 E. Lexington Street,
Baltimore 2, Maryland;

Sigmund Levin
Sigmund Levin,
110 E. Lexington Street,
Baltimore 2, Maryland,
Attorneys for Complainant.

I hereby certify that on May 3, 1951, a carbon copy of the foregoing notice of appeal was mailed to Levin and Levin, Esqs., Mathieson Building, Baltimore 2, Maryland, attorneys for the defendants in this action.

Paul Berman
Paul Berman,
Attorney for Complainant.

SL:DS 5/15/51

COMPLAINANT'S DESIGNATION
OF RECORD ON APPEAL
Filed 15th May, 1951

EDITH L. JOHNSON, a stockholder of the Afro-American Company, a body corporate, on her own behalf and on behalf of all other stockholders of the Afro-American Company, a body corporate, and for the benefit of The Afro-American Company, a body corporate,	:	IN THE CIRCUIT COURT NO. 2 OF BALTIMORE CITY
v.,	:	
CARL JAMES G. MURPHY, DAVID W. ARNETT MURPHY, GEORGE B. MURPHY, SR., and JOHN H. MURPHY, JR.	:	

Mr. Clerk:

Pursuant to the provisions of Rule 18 of the Rules and Regulations of the Court of Appeals of Maryland respecting appeals, the complainant and appellant in this case, Edith L. Johnson, on her own behalf and on behalf of all other stockholders of The Afro-American Company, a body corporate, and for the benefit of The Afro-American Company, a body corporate, hereby designates the following as the portions of the record, proceedings and evidence in this case to be contained in the record on appeal to the Court of Appeals:

1. Docket entries.

2. Bill of Complaint and exhibits, filed August 15, 1950.

3. Demurrer to bill of complaint, filed September 18, 1950.

4. Petition of The Afro-American Company to require security, and order of Court thereon, filed September 27, 1950.

5. Complainant's answer to petition of September 27, 1950, filed October 26, 1950.

6. Petition of The Afro-American Company for leave to file amended petition, and order of Court thereon, filed February 5, 1951.

7. Amended petition of The Afro-American Company to require

security, and order of Court thereon, filed February 5, 1951.

8. Complainant's answer to amended petition of February 5, 1951, filed February 16, 1951.

9. Transcript of testimony and proceedings in open Court on February 23, 1951.

10. Letter of his Honor, Judge John T. Tucker, to the solicitors for the respective parties, dated March 29, 1951.

11. Order of Court dated and entered April 4, 1951.

12. Complainant's appeal to the Court of Appeals, filed May 3, 1951.

13. This designation.

Paul Berman
Paul Berman,
110 E. Lexington Street,
Baltimore 2, Maryland;

Sigmund Levin
Sigmund Levin
110 E. Lexington Street,
Baltimore 2, Maryland;

Theodore B. Berman
Theodore B. Berman,
110 E. Lexington Street,
Baltimore 2, Maryland,
Solicitors for Complainant.

I hereby certify that on May 15, 1951, a carbon copy of the foregoing designation was mailed to Levin & Levin, Esqs., 10 Light Street, Baltimore 2, Maryland, solicitors for the defendants in this action.

Sigmund Levin
Sigmund Levin,
Solicitor for Complainant.

Which Appeal, being by the Court also granted, it is thereupon Ordered by the Court here that a transcript of the Record of Proceedings in the case aforesaid, be transmitted to the Court of Appeals of Maryland under the rules thereof, and the same is transmitted accordingly.

TEST: John S Clarke

Clerk of the Circuit Court
No. 2 of Baltimore City.

In Testimony whereof that the aforegoing is a full and true transcript of the aforegoing papers taken from the Record of Proceedings in the Circuit Court No. 2 of Baltimore City in the cause therein mentioned.

Paul Berman
Sigmund Sherr
Sol's for complainant.

Marshall A. Levin
Of Solicitors for defendants

I HERETO set my hand and affix the Seal of the Said Circuit Court No. 2 of Baltimore City, this 29 day of June in the year of Our Lord, Nineteen hundred and Fifty-one.

TEST: John S Clarke

Clerk of the Circuit Court
No. 2 of Baltimore City.