

sional service in the matter of division of property and preparation of separation agreement was received in evidence as Plaintiff's Exhibit No. 6.)

Q. Mr. Davis, I show you Plaintiff's Exhibit 5; will you tell the Court what the purports to be?

A. Professional services rendered by Mr. Morford in connection with tax matters involved Alice M. Davis versus T. Crawley Davis.

Q. That is a bill received by you from Mr. Morford?

A. Yes, in my office at 9016 DuPont Building.

Q. Did you pay this bill?

A. Yes.

Q. Do you recall when you paid it?

A. Part in November and part in January. I was short of cash and I had begged these people to give me—

Q. November, 1954 and January, 1955?

A. Yes.

Q. I show you Plaintiff's Exhibit No. 6. Will you state [fol. 145] what that bill is that Mr. Morford recites?

A. Morford, professional services in the matter of division of property and preparation of separation agreement between T. Crawley Davis and Alice M. Davis, \$5,000. Paid the same way.

Q. That bill was received by you from Mr. Morford?

A. Yes, 9016 DuPont Building.

Q. Was that paid by you?

A. Yes.

Q. When did you pay it?

A. November, 1954 and January, 1955.

Mr. Murdoch: Any other questions?

Mr. Donahue: I think that would be all.

The Commissioner: That is all, Mr. Davis. Now let's go off the record.

(Off the record.)

NICHOLAS J. BARTOLONE, having been sworn, was examined and testified as follows:

Direct examination.

By Mr. Donahue:

Q. Would you state your name and address, please?

A. Nicholas—my name is Nicholas J. Bartolone; I live at Lenni Mills, Pennsylvania.

Q. What is your employment?

A. I am employed as an Internal Revenue agent in the [fol. 146] Office of the District Director, Wilmington, Delaware.

Q. How long have you been so employed?

A. Approximately four years.

Q. During your work as Internal Revenue agent have you had or did you have occasion to audit the income tax return of the Plaintiff, Mr. Davis, for the calendar year ending 1955?

A. I did.

Q. As a result of your audit of that return did you determine or set up a deficiency?

A. I did.

Q. Would you state upon what grounds that deficiency was based?

A. I proposed that disallowance of certain legal expenses; in addition to that I applied—I proposed an application of capital gains tax on the appreciated value of securities over his cost basis that were transferred to Mrs. Alice M. Davis.

Mr. Donahue: Now would you mark this as Defendant's Nos. 16 and 17?

(Copy of letter and two-page statement dated September 27, 1957 from the Appellate Division of the Internal Revenue Service to Mr. Thomas Crawley Davis and Mrs. Grace Ethel Davis was marked Defendant's Exhibit 16.)

[fol. 147] (A typewritten letter size sheet with the figure 5 at the top and headed Thomas Crawley and Grace Ethel Davis Exhibit A, year ended 12/31/55 was marked Defendant's Exhibit No. 17.)

Q. I show you what has been marked for identification purposes as Defendant's Exhibit No. 17 and ask you to identify that?

A. Yes, sir, I can.

Q. What is that?

A. This is a copy of my computation of the additional income adjustment as a result of the transfer of 300 shares of the stock to Mrs. Alice M. Davis.

Q. Where, referring to Defendant's Exhibit No. 17, where did you obtain the figures as to cost?

A. Those were provided by Mr. Davis; he provided a list showing the certificate numbers, the date of acquisition, and his basis.

Q. I show you Exhibit B attached to the petition in this case and ask whether that is the schedule that you are referring to?

A. Yes it is.

Q. Now referring again to Defendant's Exhibit 17, upon what did you base the column "Selling Price?"

A. That was obtained by going to the March 22, 1955 edition of the Wall Street Journal and by getting the mean of the high and low for the day of March 21st for the DuPont [fol. 148] common stock.

Q. If you can recall, what was that mean?

A.  $164\frac{1}{2}$ .

Q. In obtaining the selling price did you just multiply the number of shares times the mean value per share?

A. Yes, sir.

Q. Would you examine the middle of the page where it says 112 shares DuPont common, and state whether that is an error on that exhibit?

A. The number of shares here is in error; the amount of—the dollars and the selling price is not in error.

Q. What should the number of shares be?

A. 162 shares.

Q. Now I show you what has been marked for identification as Defendant's Exhibit 16 and ask you to state what that is?

A. This is a 90 day letter that was issued by the Appellate Division of Philadelphia.

Q. Attached to that 90 day letter is there a report showing the adjustments which you had made in Mr. Davis' return for that year?

A. Yes sir.

Mr. Donahue: I offer both of those exhibits into evidence.

Mr. Murdoch: No objection.

[fols. 149-151] The Commissioner: Defendant's Exhibits 16 and 17 are received in evidence.

(Copy of Appellate Division of Internal Revenue Service's letter dated September 27, 1957 to Mr. Thomas Crawley Davis and Mrs. Grace Ethel Davis and two-page statement attached thereto was received in evidence as Defendant's Exhibit No. 16.)

(Letter size type written sheet with figure 5 and Thomas Crawley and Grace Ethel Davis at the top and headed Exhibit A, year ended 12/31/55 was received in evidence as Defendant's Exhibit No. 17.)

Mr. Donahue: I think that will be all.

[fol. 152] IN THE UNITED STATES COURT OF CLAIMS

Washington, D. C., Thursday, June 18, 1959  
10:00 o'clock a.m.

**Transcript of Testimony of June 18, 1959**

The above case was resumed, pursuant to notice of the Commissioner, at the time above stated, in Hearing Room No. 1, United States Court of Claims, Washington, D. C.

Present: Hon. Roald Hogenson, Commissioner.  
Converse Murdoch, Esq., Counsel for the Plaintiffs.  
Peter Donahue, Esq., Counsel for the Defendant.

(Mr. D. F. King, reporter, was sworn by the Commissioner.)

[fol. 153] JAMES A. MARFORD, a witness produced on behalf of the Plaintiffs, having been first duly sworn by said Commissioner, was examined and testified as follows:

Direct examination.

By Mr. Murdoch:

Q. Will you state for the record your name and address?

A. James R. Marford; 2311 Gap Turnpike, Wilmington, Delaware. Office address 14th Floor, Bank of Delaware Building, Wilmington.

Q. What is your profession?

A. I am an attorney-at-law.

Q. And how long have you been an attorney?

A. 37 years.

Q. During that 37 years have you been engaged in the private practice of law in Wilmington?

A. Yes.

Q. During your 37 years in the practice of law have you had experience on matters relating to marital separations, divorce practice, property divisions between husbands and wives?

A. Yes, many of them.

Q. During 1954 were you retained by Alice M. Davis [fols. 154-158] to represent her?

A. I was.

Q. Will you describe for the the Commissioner the circumstances surrounding your retention and the sort of work Mrs. Davis asked you to do for her?

A. Mrs. Davis came to see me in the week preceding June 15, 1954; related to me the marital situation and stated she wanted a property settlement, and from there I took over and negotiations ensued.

I may say that Mrs. Davis first outlined to me her primary demands with certain alternatives, which I communicated to Mr. Young, who within a few days I had been advised represented Mr. Davis.

Q. Do you recall whether Mrs. Davis' demands at that time involved the Du Pont Company stock owned by Mr. Davis?

[fol. 159] By Mr. Murdoch:

Q. Mr. Marford, in connection with your representation of Mrs. Davis did you make any demands on her before to Mr. Davis or his attorney relating to Mr. Davis' holding of the du Pont Company stock?

A. I did.

Q. Could you tell us what the nature of those demands were?

A. Only as related to the du Pont stock?

Q. For the moment, yes.

A. That Mrs. Davis received 1500 shares of the common stock of the E. I. du Pont de Nemours & Company unconditionally. I may add plus a sufficient annual sum to pay interest on an insurance loan then existing at the Farmers' Bank. I mention that because it is tied in with the 1500 [fol. 160] share proposition.

Q. Were there any other demands relating to Mr. Davis' property passing du Pont stock?

A. Yes, that she was to receive one-half of the appraised valuation of the home and the furnishings, that she was to keep a certain automobile, one of two cars, and I don't

remember how they were titled at the time, but, in any event, she was to have one of the two cars.

Q. We have in the record already the separation agreement dated November 4, 1954. I assume that between the time of your initial demands on behalf of Mrs. Davis and the execution of this agreement, there were conferences between you and Mr. Davis' attorney, and if so could you describe somewhat the negotiations between them?

A. I have detailed contemporaneous notes in longhand made with respect to each conference. Do you want me to go into each conference and tell you how the matter went from one point to another until it culminated in the agreement of November 4, 1954?

Q. I think you could summarize for us without getting into too much detail, to show what the work was you were called upon to do.

A. I communicated Mrs. Davis' initial demands to Mr. Davis' attorney on July 13, 1954. Those demands include the items to which I have just testified.

[fol. 161] The day previously I had had another talk with Mr. Young, at which time he made his suggestion on behalf of Mr. Davis that effort be made for reconciliation. After a conference with Mrs. Davis that was finally rejected on August 23, 1954.

After receiving Mrs. Davis' initial proposition Mr. Young, on Mr. Davis' behalf, made a counterproposal on August 24, 1954, which embodied a number of items, but generally, and to summarize, I would say that his proposition called for the payment of what may be termed alimony on a periodic payment basis of over ten years or more in lieu of a division of property. That I would not accept because of the—this was on the 24th of August—because of the provisions of the 1954 code, No. 71, and similar provisions of the 1939 code, 22-k.

Then I advised Mr. Young on August 25th that that would not be satisfactory and I advised him specifically that Mrs. Davis takes the position that this should be a property settlement and not alimony, and in making that statement I am reading from my note made in longhand at that time.

I had another conference with Mr. Young on August

26th, and I can detail the many conferences we had but I have in mind the changes in the picture that took place up to the time the agreement was executed.

[fol. 162] We finally reached a point where there was agreement on Mrs. Davis' part to take 1,000 shares instead of 1,500 shares of du Pont stock. At that time Mr. Davis' stockholdings had been disclosed and my recollection is they were 3,200 and some shares. I have a note in my file.

Mr. Davis' first proposition with respect to the 1,000 shares, which was some time in October, was to pay that or to turn over the thousand shares in this fashion: 500 shares immediately by gift, 250 shares in 1955, 250 shares in 1956.

On Mrs. Davis' behalf I turned that down unless Mr. Davis would agree to a clause in the contract by which he would agree by way of further gift to pay the amount of any tax that would be applicable to the 500 gift shares in the event of their subsequent sale by Mrs. Davis.

After receiving that proposition, which was written out in the form of a draft in a letter, he then came back with the proposition that we finally agreed, which was, after all, a compromise between our initial viewpoints, and Mr. Davis to transfer to Mrs. Davis 1,000 shares, 500 in 1954 and 500 in 1956, and to make certain monetary payments to her for a limited period of time which would not make them taxable to Mrs. Davis and deductible by Mr. Davis under the provision of the tax law, and that is what was carried out, as I recall, in the agreement.

[fol. 163] Q. Mr. Marford, during the course of this work did you take any steps on behalf of Mrs. Davis in the way of starting action for divorce?

A. I did not.

Q. You alluded to tax problems which were involved in these negotiations. Could you elaborate on that a little more and tell us what tax problems you encountered?

A. Well, so far as Mrs. Davis was concerned, I was, of course, vitally concerned with the alimony provisions of the tax law, 22-K of the 1939 Code, and No. 71 of the 1954 Code, because any payments that were made to her I wanted to avoid them being taxable to her if I could, and then when the time came when Mr. Davis made the proposition



of 500 shares by way of gift then I was concerned. May I look at my notes, Your Honor?

Commissioner Hogenson: Yes, you may.

The Witness: What I am trying to find is my note as to the section of the Code applicable to taxable gains. I have it here.

Commissioner Hogenson: Take your time, Mr. Marford.

The Witness: And it was stated concisely in the letter to Mr. Young—in any event, in a letter I wrote to Mr. Young, Mr. Davis' attorney, on November 28, 1954, I commented quite at length about the tax situation in which Mrs. Davis would be involved if she received the 500 shares [fol. 164] by way of gift and later sold those shares, and it was in that letter that I suggested the provision for a further gift by way of cash to pay any capital gains tax on those shares, but some research was done in my office, either by me or one of my associates, on the applicable section and decisions under that section.

So, I may say on behalf of Mrs. Davis I was concerned taxwise with Section 71 and 215 of the 1954 Code, 22 K of the 1939 Code, and the provision relating to capital gains, and that was the section number that I was looking for. I can't seem to pick up for the moment and I have forgotten it.

Q. Mr. Marford, at the previous hearing there were adduced in evidence bills from you dated December 16, 1954. These were Plaintiffs' Exhibits Nos. 5 and 6. Can you identify those as your bills?

A. I can. They are my bills.

Q. Do you recall whether Mr. Davis paid those bills to you?

A. He did.

Q. Throughout the controversy between Mr. and Mrs. Davis you represented only Mrs. Davis; is that correct?

A. That is correct. And, of course, through Mrs. Davis the interests of the son whose custody was conceded her from the beginning.

[fol. 165] Q. Nevertheless, your bill for services at that time was submitted to Mr. Davis?

A. That is correct.

Q. Would you explain to the Commissioner why that was?

A. Yes. In the first place that is customary in property settlements, in the settlement of marital difficulties in Delaware, and in the second place it is justified by law and Court decisions in Delaware. I assume you don't want me to tell you what the law is.

Commissioner Hogenson: That has been your experience in handling cases throughout your career, I take it?

The Witness: That has been my experience, sir, and I have been in cases where the Court has so decided and I know the statutory provisions that are involved.

Commissioner Hogenson: They can be cited, Mr. Murdoch.

Mr. Murdoch: Those are the only questions I have of Mr. Marford at this time.

#### Cross-examination.

By Mr. Donahue:

Q. Mr. Marford, in this particular case did not the Court require the payment of your fee by Mr. Davis?

A. No.

Q. You mentioned two particular tax consequences, that is, in regard to the question of alimony and in regard to possible gain upon a gift. Are these the only two tax [fol. 166] situations which you considered in handling Mrs. Davis' affairs?

A. I considered also whether the payments that were to be made for the support of the son would be taxable to Mrs. Davis.

Q. Did you consider at any time the tax consequences of this transaction, what they would be to Mr. Davis?

A. No, only in a general way. I was in a negotiating situation and, naturally, I had to try and anticipate what the other side was thinking about, and in that way I tried to think ahead and evaluate in my own mind what was being sought by the other side.

Q. Would you say, though, that your only concern was the protection of your client's interest?

A. That is entirely correct. For instance, I could see

immediately on the first counterproposition where instead of a property settlement Mr. Davis wanted to pay alimony over a ten-year basis, that he was trying to set up a basis under Section 71 that would be applicable where he could deduct the payments and Mrs. Davis would have to pay, so there I could see exactly what was being sought on the other side and I tried to counter it.

Q. Now, when did Mrs. Davis first contact you to represent her, approximately?

A. Well, my notes indicate that it was the Thursday [fol. 167] prior to June 15, 1954.

Q. And you testified, I believe, that she stated at that time primary demands and certain alternatives.

A. Yes.

Q. Would you say what those were?

A. May I preface my answer by saying Mrs. Davis, demands were not formulated at the time of her first interview. My notes indicate that her demands were formulated in a conference with me which was held on July 12, 1954, and those were the demands that were first communicated to Mr. Young the following day, July 13th.

Mrs. Davis' propositions were given to me after we had talked them over and, of course, they were given to me for the purpose of communicating to the other side.

No. 1, she was to leave the home. They were—living under the same roof at the time.

No. 2, she was to receive one-half the appraised value of the home and its furnishings.

No. 3, she was to keep her own car, that is, the car she was using, which was an Oldsmobile, or if Mr. Davis preferred she would take the Chevrolet. She left that up to him.

No. 4, Mrs. Davis to receive 1,500 shares of du Pont common stock unconditionally plus a sufficient annual amount to pay the interest on an insurance loan existing [fol. 168] at the Farmers' Bank in Wilmington.

No. 5, she to have the custody of the son, Steve, but would agree to reasonable visitation.

No. 6, Mr. Davis to pay \$400 monthly plus tuition, school and camp for Steve.

Now, as one alternative which she authorized me to communicate and which I did communicate, in lieu of the 1,500 shares of du Pont stock unconditionally, she said that she would take—and I told Mr. Young that she would take—\$1,000 a month for life and she would support Steve but he would have to pay for school and camp, and to that there must be added the periodic payment to cover the cost of the insurance loan.

As a second alternative authorized and communicated was \$1,000 a month until his retirement from the du Pont Company and then in lieu of support she would take 1500 shares of du Pont stock outright, also with enough money to pay the interest on the insurance loan. That was the original offer and the two alternatives that were attached to it.

Q. What was Mr. Davis' reaction to the original offer, and the alternatives?

A. Mr. Davis' reaction was in the form of a counter-offer communicated to me by his attorney, Mr. Young, on August 24th, as follows: —do you want it?

Q. Yes, please, if you will.

[fol. 169] A. First he offered to give the car to Mrs. Davis, or one of the cars.

Second, he would pay her \$24,000 as the figure to represent one-half the note value of the home and contents.

Third, or (a) under 3, he would pay off a loan of \$18,587.99 on Dominion Insurance Company of Canada insurance policy with a face value of \$5,000 but which carried an annual premium of \$2,096.50, which she would then assume and pay as her property but he would pay the loan off.

(b) under 3, the two New England Insurance Company policies aggregating \$20,000, of which he was the owner and beneficiary, with an aggregate of \$1,006.20 annual payments, he would assign to Mrs. Davis and she would assume the annual premium payment.

3, a Great Western Insurance policy and a Pan-American policy of \$50,000 each he insisted upon keeping, and there was a loan against those policies at the Farmers' Bank in Wilmington in a sum in excess of \$47,000.

4, during the first quarter of 1955 he would enter into an irrevocable trust—I think this must be an error in my

notes. My notes say during the first quarter of 1955—yes—at Equitable Trust Company, now the Bank of Delaware, for Steven, and he would pay \$700 quarterly into [fol. 170] that irrevocable trust for a period of 40 quarters thereby creating a corpus of \$28,000. At the age of 18, which would be February 28, 1964, the trust would be disbursed at the discretion of the trustee for the maintenance, support and education of Steven, and should Steven die prior to that date his contributions would cease and the balance of the corpus and accumulated income then on hand would be divided one-half to Mrs. Davis and one-half to him.

Should Steven die after his 18th birthday there would be the same provision.

Should Steven be living and receive a degree or undergraduate work, certified to receive the undistributed corpus forthwith.

Should Davis be forced to retire prior to 65 because of physical disability, his contributions to this trust would be \$400 a quarter instead of \$700 a quarter.

5, he offered by this counteroffer to pay to Mrs. Davis on a calendar quarterly basis on the first day of the third month, monthly payments but made quarterly, the way I have it, and is the way it was communicated to me, in two categories: 1, if she remained unmarried, secondly, if she were married, beginning with \$1,500 or \$6,000 a quarter in 1954 and then decreasing to \$700 a month, or \$2,800 a quarter in 1964 and to end in April 1964. No stock.

Then if he should be retired for physical disability there [fol. 171] were to be reductions on a sliding scale over the years of 45 per cent in the first period, declining to 30 per cent at the end.

6, that they were to sign and file a joint Federal income tax return for 1954 but not thereafter.

Custody and visitation rights with respect to Steven were agreed to, and, last, he agreed at that time that he would pay my reasonable fee, the amount of which was not discussed.

Q. Now, you mentioned, Mr. Marford, as the first condition the primary offer that Mrs. Davis leave home. Can you state the reasons behind this request, if you know?

A. Well, when Mrs. Davis first came to see me they were living under the same roof. Some time later she left and

went to live in a property that she had owned for some period of time in Wilmington.

I am quite sure that I told her at the time of our conference that in my opinion a separation agreement with her husband would not be valid if they were living under the same roof at the time, that the separation had to be an accomplished fact prior to the date of the separation agreement, so it was understood between us if we were to work out an agreement there would have to be a separation in fact, and there was somewhere along the line but I can't tell you when.

[fol. 172] Q. You stated Mrs. Davis first contacted you some time prior to June 15th. Can you state what took place at that initial meeting?

A. No, I made no notes of that. I know, however, we just discussed the situation generally.

Q. Well, would you describe what the situation in general was at that time?

A. There I get myself into a position, Mr. Donahue, where I think my professional duty would be to raise, myself, the question of privilege. While I don't hesitate to testify to facts and demands that were communicated to me and agreed to by my client for the purpose of being communicated to the other side, I don't feel that I am free to testify to facts given to me by my client which related to the subject of her marital rights with her husband and what grounds, if any, for divorce or other legal action there, did or did not exist.

[fols. 173-176] By Mr. Donahue:

Q. Mr. Marford, you stated that at one of the early meetings Mr. Young contacted you with regard to the possibility of a reconciliation, that upon contacting Mrs. Davis you determined the reconciliation was not possible. What was your reason for such a determination in so informing Mr. Young?

A. I informed Mr. Young as to that as a result of being so informed by Mrs. Davis, with authority to communicate her answer to Mr. Young.



Q. What reasons did Mrs. Davis state, if any?

A. I don't remember. I have no recollection and I have no notes on that. If I had a recollection it would probably be privileged.

Q. Can you state whether your legal work for Mrs. Davis stemmed out of a disagreement between Mr. and Mrs. Davis?

A. Well, it stemmed out of marital unhappiness of two people who were married to one another, living under the same roof. I don't know about the word "disagreement."

[fol. 177]. By Mr. Donahue:

Q. Mr. Marford, during your work for Mrs. Davis were you attempting to conserve Mr. Davis' property in any way?

A. No, indeed.

Q. Were you attempting to protect Mr. Davis' property in any way?

A. No. My only interest was in Mrs. Davis and obtaining for her a fair settlement, I thought. What she was satisfied with was a fair settlement.

Q. Did you during your employment for Mrs. Davis give her any advice at all with regard to the grounds for divorce, the divorce itself or the jurisdiction which it might be obtained?

A. Yes.

[fol. 178] Q. Can you estimate what amount or what percentage of your work involved those matters?

A. I would venture to say that that subject was not discussed over fifteen minutes in all of our many conferences in the period of these negotiations.

Q. Now, when Mrs. Davis first came to you was she interested in obtaining a divorce?

A. She did not so indicate to me.

Q. When did she first so indicate, if you can recall?

A. She never so indicated.

Q. When was it decided she was to obtain a divorce, if you know?

A. It was decided between counsel at or about the time that we had reached a gentlemen's agreement prior to the

drafting of the definitive agreement, that these parties should be divorced and what was the easiest way to handle it, and that just naturally fell into the picture as part of it, but so far as I presently know it was not one of the desires or demands of either party.

Q. Now, refer, if you will, please, Mr. Marford, to Plaintiffs' Exhibit No. 6 which purportedly is a bill for professional services. Would you state the work which you performed for Mrs. Davis which is encompassed in this bill, just in a general way, if you will, sir?

A. I wonder if the Commissioner would permit me to [fol. 179] answer it in this way: I first demanded a fee payable by Mr. Davis of \$12,500, and up until the last minute I stood by that.

One day just before the formalizing of the agreement, the execution of it on November 4, 1954, Mr. Davis, with Mr. Young's permission, came to my office to see me and I talked with him, having gotten Mr. Young's permission first to do so. Mr. Davis had two requests: First, that I reduce my fee to \$10,000, and, second, would I please split up that \$10,000. In a manner I did split it up and I submitted my bill to him in the way he asked me to submit it, and so far as I am concerned I cannot possibly segregate my fee in those two categories and justify one in one amount as against another. I can only tell you what I did in the aggregate.

Q. Would you say, then, with reference particularly to Plaintiff's Exhibit Nos. 5 and 6, that one-half of your services was devoted to tax matters on behalf of Mrs. Davis?

A. It is very hard to say that one-half of my services in point of hours or time were devoted to tax matters. A tax situation was involved here throughout and underlay the whole relationship of the parties, his desire to minimize taxes, her desire to minimize her subsequent taxes.

I had to be aware of that every moment of the time. I had to be aware of it when he made this gift proposition, [fols. 180-181] which, by the way, involved Section 1015 of the 1954 Code mentioned in a letter. I wouldn't attempt except by a general opinion to evaluate it. However, I would say, taking the total bill the way it was segregated



at his request, appears to me to be entirely reasonable. I can't say any more than that.

Q. Mr. Marford, would you say that in most of the legal work which you performed for your clients that you must consider tax consequences of one sort or another?

A. In my experience there is hardly a legal problem that come across my desk that doesn't involve some matter of state and/or federal taxes.

Q. Just one other question. You mentioned that you had a great many conferences and much negotiation. Is the result of those conferences and that negotiation embodied in the settlement agreement?

A. Yes.

Mr. Donahue: I think that is all I have, Your Honor.

Commissioner Hogenson: Any other questions, Mr. Murdoch?

Mr. Murdoch: I have no further questions.

Commissioner Hogenson: I take it, then, you are through examining this witness and the witness may be excused.

Mr. Murdoch: Yes, sir.

(Witness excused.)

[fol. 182] [File endorsement omitted]

**EXHIBIT "B" TO STIPULATION OF FACTS—Filed May 19, 1959**

This Agreement made this 4th day of November, A. D. 1954, between T. Crawley Davis (hereinafter sometimes called "husband") and Alice M. Davis (hereinafter sometimes called "wife") both of the County of New Castle and State of Delaware.

**Witnesseth**

Whereas, the parties hereto were married in due form of law on the first day of March, A. D. 1941, at Baltimore, Maryland, and thereafter lived and cohabited together as man and wife until November 3, 1954; and

Whereas, there is lawful issue of the marriage between

the parties, namely Stephen Alan Davis who was born February 28, 1946; and

Whereas, various disputes and differences have arisen between the husband and the wife, the said parties having separated are presently living separate and apart and intend so to continue to live apart from one another during the remainder of their respective lives; and

Whereas the parties hereto intend by this agreement to settle their respective rights and obligations against and to one another by (1) making a division of their property; (2) providing in lieu of alimony in the event of a decree of divorce for the support and maintenance of the wife; (3) making an arrangement and provision for the support and maintenance of Stephen; and (4) defining the rights of custody, maintenance, support and education of their minor child.

Now, Therefore, in consideration of the premises and of their mutual promises and undertakings herein contained, the parties mutually covenant and agree, each with the other, as follows:

1. The parties may and shall at all times hereafter live and continue to live separate and apart. Each shall be free from interference, authority and control, direct or indirect, by the other as fully as if he or she were single and unmarried. Each may reside at such place or places as he or she may select. Each may, for his or her support, use and benefit, conduct, carry on and engage in any business, profession or employment which to him or her may seem advisable.

2. The parties shall not molest or interfere with each other, nor shall either of them compel or attempt to compel the other to cohabit or dwell with him or her, by any means whatsoever.

3. The parties do hereby make the following division in settlement of their property:

a. The real property where the parties heretofore have made their home and lived together, located on the Kennett Pike near Centreville, New Castle County, State of Delaware, [fol. 184] together with all the furniture, furnishings and other personal property remaining thereon, shall be

and hereafter remain the sole and separate property of the husband, subject however to the following express terms and conditions:

(1) The husband shall pay to the wife the sum of Thirty Thousand Dollars (\$30,000.00) contemporaneously with the execution of this agreement.

(2) The wife shall be entitled as her sole and separate property to the automobile and other items of furniture and furnishings listed in Exhibit A attached hereto and by this reference made part of this agreement.

b. On April 1, 1955 and on April 1, 1956, husband shall become obligated to assign, transfer, set over and deliver to the wife as her sole and separate property, a total of One Thousand (1,000) shares of the common, capital stock of E. I. duPont deNemours & Company, free of all liens [fol. 185] and encumbrances and shall cause the certificates representing said shares to be transferred to the wife's name at his own cost and expense (including the expense of Federal documentary stamps incident to the transfer of corporate stock) as follows:

500 shares on April 1, 1955

500 shares on April 1, 1956

c. On January 15, 1955, husband shall become obligated to deliver to wife as soon as practicable, but not later than February 28, 1955, as her sole and separate property, free and clear of any right of claim thereto or control thereof by the husband, and free and clear of all liens and encumbrances, the following policies of insurance on the life of the husband, in each of which she shall be or is presently named as owner-beneficiary:

Policy No. 296483 of Dominion Life Assurance Company in the principal sum of Fifty Thousand Dollars (\$50,000.00) as a paid-up policy with no further premium payments hereafter due thereon.

Policy No. 1255587 of New England Mutual Life Insurance Company in the principal sum of Ten Thousand Dollars (\$10,000.00) with premiums fully paid thereon to September 20, 1955.

Policy No. 1253395 of New England Mutual Life Insurance Company in the principal sum of Ten Thousand

Dollars (\$10,000.00) with premiums fully paid thereon to September 20, 1955.

4. The wife shall, upon the request of the husband, release and relinquish or otherwise assign and set over as husband may direct, any and all right or interest which she has or may have in and to any policy of insurance on the life of the husband not mentioned in paragraph 3e of this agreement.

5. The husband does hereby further covenant and agree to pay to his wife for her maintenance and support the sum of \$2,500 on December 15, 1954, and in addition, the sum of Five Hundred Fifty Dollars (\$550.00) each and every month, the first payment to begin on the first day of November, 1954, and similar such payments on the first of each and every month thereafter for a period of ten (10) years, the final payment to be made on the first day of October, A. D. 1964, at which time the husband's obligation for any further payment for the maintenance and support of the wife shall cease and terminate, which payments together with the payments provided for in paragraph 6 herein the wife hereby expressly covenants and agrees to accept in lieu of all claims against the husband [fol. 187] for maintenance and support, past, present and future.

6. The husband in addition does further covenant and agree to pay to his wife for her maintenance and support within ten (10) days after each payment of dividends by E. I. duPont deNemours & Company to the holders of its common stock a sum of money equivalent to the per share dividend declared and paid by E. I. duPont deNemours & Company to the holders of its common stock multiplied by the number of shares of such common stock, not exceeding one thousand (1,000) shares, which shall not have been transferred to wife's name as of the date of any such dividend payment, but which husband obligates himself thereafter so to do by this agreement; said payments to commence on and after January 10, 1955.

7. The wife accepts the division of property as herein provided in full settlement and satisfaction of any and all claims and rights against the husband whatsoever (including but not by way of limitation, dower and all rights under the laws of testacy and intestacy), which she ever

had, now has, or might ever have against the husband by reason of their relationship as husband and wife or otherwise. The wife hereby releases and acquits the husband and his estate of and from any and all claims, liabilities and obligations whatsoever except only such as are specifically imposed upon the husband hereunder.

8. The husband obligates himself to enter into an irrevocable trust agreement during the month of January, 1955, [fol. 188] with Equitable Security Company, Wilmington, Delaware, as trustee in the form shown by Exhibit B attached to and by this reference made a part of this agreement, said proposed trust being intended to provide for the support, maintenance and education of the said Stephen Alan Davis. The husband shall pay into said trust to become part of the corpus or principal thereof forty quarter annual payments of Seven Hundred Dollars (\$700.00) each, beginning with the quarter annual period commencing January 1, 1955. The parties hereto covenant and agree that the payments so made to the trust by the husband and the terms and conditions of said trust agreement with respect to disbursement and distribution of principal and income shall constitute and be deemed part of this separation agreement between husband and wife more fully to provide for the support, maintenance and education of their minor child. The husband undertakes and agrees to keep, maintain and keep in force at all times during the continuance of the trust one or more policies of insurance on his life in a principal amount not less than Ten Thousand Dollars (\$10,000.00) with the trustee of said trust as beneficiary thereof and with any and all proceeds from such insurance payable into said trust as part of the corpus thereof and subject to its terms in like manner as the payments covenanted by the husband to be made thereto. At no time shall the proceeds of said insurance policy or policies be utilized to an extent which would cause aggregate payments into the trust estate to exceed the sum of Twenty-eight Thousand Dollars (\$28,000.00). [fol. 189]

9. The wife shall have the sole care, custody and parental control of Stephen Alan Davis, the minor child of the parties hereto, subject however to reasonable rights of visitation on the part of the husband. The wife undertakes and agrees to maintain and support said minor child in addition

to the provision made for him under the terms of the afore-said trust.

10. The wife shall sign with the husband a joint federal income tax return for the taxable year 1954. Upon the signing of such joint income tax return for the taxable year 1954 the husband covenants and agrees to exonerate and save the wife harmless from any liability on her part for any federal income taxes payable by or assessed against husband and wife for the taxable year 1954.

11. Except as herein to the contrary provided, the parties shall and do hereby mutually remise, release, and forever discharge each other from any and all actions, suits, debts, claims, demands and obligations whatsoever, both in law and in equity, which either of them ever had, now has, or may hereafter have against the other upon or by reason of any matter, cause, or thing up to the date of the execution of this agreement, it being the intention of the parties that henceforth there shall be, as between them, only such rights and obligations as are specifically provided in this [fol. 190] agreement.

12. Each party shall, at the request and expense of the other party at any time and from time to time hereafter, execute and deliver to the other party any and all instruments and assurances that the other party may reasonably require for the purpose of giving full force and effect to the provisions of this agreement.

13. The parties hereto and each of them covenant that this agreement is and shall be a complete and final settlement of all claims of every nature and kind between them. Upon performance of husband's covenants and undertakings under this agreement, the wife hereby waives, releases and relinquishes unto the husband all rights that she might otherwise have to any of the property of the husband and to any claim for support or maintenance for herself and their minor child, and that she will not incur or contract any debt or obligation on the husband's credit and that she will keep the husband and his estate indemnified against and from all debts and liabilities to be contracted or incurred by her with all actions, proceedings, claims and demands, costs, damages and expenses whatsoever in respect to such liabilities or any of them.

14. Said parties mutually covenant and agree each with

the other that each may freely sell or otherwise dispose of his or her own property by gift, deed, will or otherwise, [fol. 191] without the incumbrance of any claim of right or interest by the other, that each be, and he and she respectively are, hereby barred from any and all rights and claims by way of dower, curtesy, inheritance, descent, distribution, or any rights that might otherwise inure to either in any property of the other, will execute, acknowledge and deliver such deeds, instruments of release or conveyance, assurances or other instruments of writing as may be necessary to effectuate the complete and absolute release and relinquishment of any right or interest of any kind or character and howsoever arising of either party in any property of any character now belonging to the other party, and in any property which said other party may hereafter acquire, and in order to enable such other party to sell, convey or otherwise dispose of his or her own real or personal property free from any apparent right or interest therein on the part of the other.

15. Nothing herein contained shall constitute any condonation or release of any right of action which either of the parties may have to obtain a divorce from the other; and in the event that a final decree of divorce shall be granted by any court, dissolving the bonds of matrimony between the parties, such decree shall in no way effect the obligations of either of the parties hereunder. In the event a decree of divorce shall be granted, the provisions of the agreement may, but need not be, incorporated into such [fol. 192] decree, subject to the approval of the court granting such divorce.

In Witness Whereof, the parties hereto after consultation with their respective counsel relative to the matters herein set forth and agreed upon and having been advised fully and fairly as to all the facts and circumstances therein set forth and the legal effect of the provisions thereof, have hereunto set their hands and seals the day and year aforesaid.

In the presence of: /s/ H. Albert Young. /s/ James R. Morford.

/s/ T. Crawley Davis, (Seal). /s/ Alice M. Davis, (Seal).

[fol. 193] EXHIBIT "A" TO AGREEMENT

- \*Chaise and matching chair in master bedroom
- Bedroom suite in blue bedroom
- Bedroom suite in Steve's room
- One-half the table linens
- One-half the flat silver
- Silver service
- Two chairs in hall
- One table in guest bedroom
- Dropleaf table on sun porch
- Small side table on sun porch
- Serving cart on sun porch
- One fireplace screen in dining room
- One set of Lenox China
- Two radios
- One phonograph
- Two serpentine chests in dining room
- Two fans
- Two card tables and chairs
- Two folding utility tables
- Tables and benches on rear terrace
- Two chairs on front terrace
- Ash trays, pictures, misc. small figurines and china birds

\* These are replaced by matching chairs more suitable for a man's bedroom.