THE BRUNSWICK BEACON

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What Have We Got To Lose? $100,000!

Susan Usher

Pretend your ship's finally come in or that you've inherited $100,000. "Buy" three common stocks from the New York Stock Exchange and watch what happens.

That's what Don and I are going to do, if you'd like to join us. We're both entering the "Stock Market Challenge" game run by a major daily in the state.

It was Don's idea. One of his buddies, Roger, finished in the top 100 contestants last year and has a T-shirt to prove it. Don, being the T-shirt fanatic he is, probably wants one of his own.

That's the only thing I can figure, because watching money grow isn't one of my hobbies or Don's. But who know$? Maybe it will be after this conte$t.

When Don first brought up the idea of entering, I balked, citing a general lack of knowledge and a failure to understand the rules.

Inside a little voice was saying, "You're asking the wrong Usher girl, you know. Carol's the one who likes playing with money and the stock market. She's the accounting major."

There are only about 10 stocks I even know the listing abbreviations for. And I'm the person who waited until my money market account wasn't paying any more interest than my savings account before looking for a better place to invest. Most folks acted a little sooner, I hear.

But then I thought about it awhile and reconsidered.

In a recent bowl game poll, news partner Etta and I batted better than 60 percent and we had chosen our teams on the basis of sentiment and regional favoritism. You know how that goes, any ACC team is my favorite if it's playing a non-ACC, etc.

Maybe we could do as well on the stock market, with a little help from the public library, public TV and selected magazines. I thought about calling my sister for help, or perhaps Clay Fairley, a fellow Toastmaster and a stockbroker. Then I decided to make it a do-it-yourself project, based on research. I've since narrowed my list down to personal care products, health care and my "secret killer."

Playing the stock market challenge could be fun, you know. We'll be getting regular reports on how we're faring in comparison with fellow "investors" and we'll have an incentive to start following the exchange listings. By the time the game ends, who knows? We may become bullish over the market and invest real money.

The other night I slipped into the dime store and bought some graph paper and a fine-point pen. Don doesn't know it yet, but we're going to chart our stock groups each day—on separate sheets of paper.

By the time you read this I will have chosen my three specific stocks, mailed the list with a $1 check enclosed and crossed my fingers. Don won't know any more than you what my choices are.

Come May, with any luck, he may be in for a big surprise. Maybe my stocks will do as well as his—or even better!

In any case, what have we got to lose?

Heart Disease Needs More Research

Etta Smith

He had everything going for him. At age 52, he had raised a family, retired and was looking forward to doing a lot of fishing.

But then a killer struck—taking his life as it had his mother and brother before. It hit him suddenly and without warning, and ended what could have been a good long life.

He was my father. And now he's one of the statistics you read about, a victim of heart disease.

There will be many others who die from this disease during the year, and some of them will be people you know.

Heart disease kills more people each year than most other diseases combined. Last year over 350,000 people fell victim to it, according to Dr. Mike Bauerschmidt, president of the county Heart Association chapter.

He said 1,000 people a day die from heart-related diseases. The biggest causes of the disease, he said, are a high cholesterol diet, smoking, diabetes, high blood pressure and having a family history of the disease.

Bauerschmidt said more research is needed to study things like heart disease and hereditary and how our lifestyles are linked to it.

That's why, he said, February has been named National Heart Month—to draw attention to this killer.

During this month the local association is joining those across the country to raise money for research aimed at eliminating the disease.

This month the local chapter's annual fundraising drive volunteers will be going door-to-door asking for donations to the National Heart Foundation.

Giving a small donation is one small gesture that could make a difference in whether someone you know will become another statistic.

When a heart fund volunteer comes knocking on my door, I plan to give. It won't bring back my father and the many others who have died from this disease, but it will help further the fight against it.

It's a fight I take very seriously. And if my father were alive today, I think he would agree with me that it's a fight we can't afford to lose.

Write Us

The Beacon welcomes letters to the editor. All letters must be signed and include the writer's address. Under no circumstances will unsigned letters be printed. Letters should be legible. The Beacon reserves the right to edit libelous comments. Address letters to The Brunswick Beacon, P.O. Box 2558, Shallotte, N.C. 28459.

Newspaper Ad Copyright Decision Upheld

The U.S. Court of Appeals for the Fourth Circuit, in a precedent-setting 2-1 decision Jan. 23, ruled in favor of The Brunswick Beacon in its copyright infringement suit against The Burnswick Free Press, another Shallotte weekly newspaper.

The lawsuit was filed April 13, 1984 by the Beacon. It was first heard on Aug. 30 in the U.S. District Court in Wilmington by federal Magistrate Charles K. McCotter Jr., whose ruling in favor of the Beacon was appealed by the Free Press.

McCotter's findings were upheld by Judge Earl W. Britt, who in June, 1985, found the Free Press guilty of copying ads and permanently enjoined the Free Press from publishing further copyrighted material from the Beacon. The Beacon was awarded damages of $6,000, plus "reasonable attorneys fees."

The Free Press appealed all findings of the lower court and was granted a stay of execution of the civil judgment pending a decision by the appeals court.

The appeals court heard arguments in the case Jan. 7, 1986 in Richmond, Va. by W. Thad Adams III of Charlotte, attorney for the Beacon, and Larry L. Coats of Raleigh, attorney for the Free Press.

The case was heard by Senior Circuit Judge Clement Haynsworth and Circuit Judges Phillips and Hall. Judge Hall did not agree with the majority decision to uphold the lower court in all respects. Senior Judge Haynsworth wrote the decision for the majority view, while Judge Hall wrote his dissenting opinion.

Following is the complete text of the opinions of the appeals court, with the exception of legal references.

—Editor's note

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HAYNSWORTH, Senior Circuit Judge:

The contestants in this action are two small, competing, weekly newspapers in the town of Shallotte in eastern North Carolina. The defendants, publishers of **The Brunswick Free Press**, copied and ran ads that previously appeared in **The Brunswick Beacon**, published by the plaintiffs. They did so with the consent of the advertisers, but at much lower rates than those charged by the **Beacon**. The copying continued after fruitless protests and an unfulfilled promise that the defendants would inform advertisers of the **Beacon's** copyright claim and would run copies of ads for which the **Beacon** claimed to be the copyright owner.

This action sought redress for statutory infringement of the copyright on three ads run by the **Beacon**. The heart of the controversy is whether the **Beacon**, whose employees designed the ads and prepared the layouts, had the right, as author, to copyright the ads or whether, under the "work made for hire" doctrine, as defined in the 1976 Act, the right to claim a copyright belonged solely to the advertisers.

The district court held that under the statute, as amended in 1976, the newspaper that developed the layouts, not the advertisers, was entitled to claim the copyright. It assessed the statutory penalty for each of the three infringing ads and awarded attorneys' fees, as yet undetermined, upon a finding of willfulness in the violations.

We affirm in all respects.

I.

The **Beacon** employs persons capable of developing advertising layouts and supplying artistic, pictorial and graphic material. The **Free Press** has no such capability. When an advertiser wishes to run an advertisement in the **Beacon** and he does not already possess a layout, employees of the **Beacon** will develop a layout meeting the advertiser's requirements. In those instances, the **Beacon** claims the copyright. It included notice of its copyright claim upon each of the advertisements involved in this litigation, as well as its general copyright notice of the contents of the newspaper.

The **Free Press** reproduced the three advertisements, deleting the **Beacon's** copyright notice, but otherwise making no change in two of them and slight change in the third.

II.

Under the 1909 Act, the "work made for hire" doctrine flourished. Of course, employers were regarded as the authors, or creators, of works prepared by their employees in the course of their employment, but the doctrine extended far afield to reach works created or prepared on commission. While the stated endeavor was to ascertain and enforce the intention of the parties, the usual presumption was that the commissioner held a copyright upon any work created by another at the instance of the commissioner, at the commissioner's expense, and for his benefit. Before 1978, it mattered little, if at all, that the commissioner neither possessed nor exercised the right to direct the manner in which the work was done.

When such rules prevailed, there was little surprise in the holding that the copyright belonged to the advertiser, even though his advertisement was designed and prepared by the employees of the newspaper. It was thought inequitable to small businessmen, who probably knew nothing of copyright law, to hold that the newspaper could copyright advertisements prepared by the newspaper and prevent the advertisers' subsequent use of it elsewhere. In that case, it appeared that the advertisers had never been informed of the newspaper's claim of the right to copyright the advertisements.

In 1969, Judge Friendly wondered whether Congress could possibly have intended this expansive application of the work made for hire doctrine. Under Article I, Sub-section 8 of the Constitution, Congress is authorized to enact legislation securing to authors the exclusive right to their work, but the work made for hire doctrine protected employers of authors and those who commissioned others to write, paint, sculpt or compose for them. Judge Friendly recognized that the extension of such protection, to some extent, was essential, but he thought that such extension should be limited to situations in which the court could fairly imply an intention on the part of the actual author to assign the copyright.

In 1976, Congress substantially rewrote the Copyright Act and made the new statute effective on January 1, 1978. For the first time it included a statutory definition of "work made for hire," which reads in pertinent part:

(1) a work prepared by an employee within the scope of his or her employment; and

(2) a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire . . .

The second part of the definition has no application to this case. Even if the newspaper is a collective work or a compilation, there was no agreement signed by the newspaper and advertiser designating these advertisements as works for hire. This part of the definition is permissive only and is effective only if both parties execute a written agreement that the work is for hire. Part one, of course, preserves the old rule that a work prepared by an employee within the scope of his employment is a work made for hire. As Professor Nimmer observes, however, the Copyright Act contains no definition of the term "employee" or "scope of employment." The meaning of those terms is to be derived from the general law of agency.

Those who prepared these advertisements for publication were employees of the **Beacon**, and the work for hire doctrine vests the right to copyright in the newspaper publisher. In the circumstances of this case, nothing suggests that **Beacon's** employees who prepared the advertisements were employees of the advertisers working in the scope of their employment by the advertisers. The result of **Brattleboro Publishing Co.** was not based upon an assumption of any such employment. It was based upon the old doctrine of commissioned work, which is inapplicable here under the current statute because of the absence of a signed, written agreement.

In some circumstances, temporary and transitory situations exist in which an employee of one may be regarded as an employee of another. An example was presented in **Aldon Accessories Ltd. vs. Spiegel, Inc.** In that case, an official of the plaintiff conceived an idea of developing and marketing statuettes of a unicorn and of a Pegasus. He submitted sketches of his mythological horselike creatures, rearing with forefeet extended and their full tails resting on the base, to a Japanese firm producing porcelain statuettes and to a Taiwanese firm producing brass statuettes. While he was not an artist or a sculptor, in each instance he spent days working closely with Japanese or Taiwanese artists and artisans to produce a clay model that satisfied his expectations. In each instance, a clay model was prepared after which Ginsberg, Aldon's official, directed alterations and adjustments in the shapes, attitudes and proportions. In great detail he directed such things as a movement of a leg and alterations of the attitude of the head, or the flow of the mane. All of the work producing the clay models was done in his presence and under his immediate direction. There was abundant basis for the court's conclusion that Ginsberg had exercised the right to direct the manner in which the work was performed. He had much more than the right of approval or rejection while he was directing the artists and artisans in every step of the process of creating a model that was satisfactory to him. The court concluded that the Japanese and Taiwanese artists and artisans, under those circumstances, were temporary employees of Aldon's, acting in the scope of their employment in producing the clay models. The court concluded that Aldon had the right to copyright the porcelain and brass figurines. They bore a copyright notice.

There are no comparable circumstances here. Without doubt the advertisers told the **Beacon** what they wanted, but there is no suggestion that they supervised **Beacon** employees as they developed the advertisements or directed the manner of the work's completion.

In a case involving facts similar to this case, a district court in Louisiana held that the copyright belong-

(Continued On Following Page)

LETTERS TO THE EDITOR

Join Together To Present Positive Image Of Welcome

To the editor:

Regarding Holden Beach annexation of causeway area.

Causeway businessmen, come let us look at another side of the coin.

Our business to a large degree is dependent on tourists coming to Holden Beach. Therefore, we need the good will and cooperation of the island residents to encourage visitors to keep coming.

Present town officials are working to identify and establish access and parking, including a picnic area with restrooms and boat launching ramp under the new bridge. They are to be commended for their efforts to welcome and accommodate visitors.

We recently faced the nightmare of lost business and drastically-reduced property values due to the threat of the bridge being relocated. Let us not risk loss again by creating hostility between the beach community and causeway business district.

I can well understand the town's reluctance to tax themselves to provide service for tourists while the business district has a free ride. Let us join together that we might present a positive image of welcome to our visitors so they will want to return again and again.

Carvin Robinson
Robinson's Variety

Gray Gull Motel
Holden Beach Causeway

Keep It Coming

To the editor:

Enjoy your paper very much; please renew our subscription for another year. Don't want to miss any papers.

Robert C. Monroe Sr.
Aberdeen