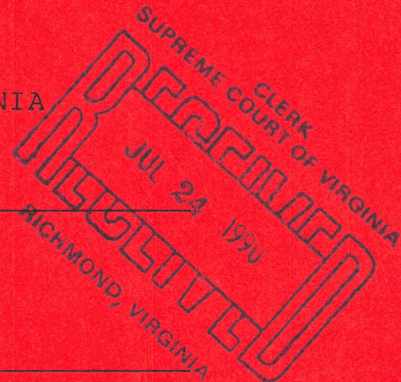


240 Va 323

IN THE
SUPREME COURT OF VIRGINIA

Record No. 900247



CYNTHIA M. RING,
Appellant.

v.

JAMES S. POELMAN

and

"JOHN DOE"

Appellees.

APPENDIX

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Patrick S. Shiel, Esquire
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Mutual Insurance Co.

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Mutual Automobile Ins. Co.

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VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF ROANOKE

CYNTHIA M. RING,

Plaintiff,

v.

JAMES S. POELMAN,

SERVE:

Donald T. Zimmerman
Registered Agent
1500 State Farm Blvd.
Charlottesville, VA 22909

and

"JOHN DOE", c/o NATIONWIDE MUTUAL
INSURANCE COMPANY

SERVE: Robert C. Wetzel
Registered Agent
Nationwide Mutual Insurance
Company
Uninsured and Underinsured
Insurance Carrier
800 Graves Mill Road
Lynchburg, Virginia 24506

Defendants.

AMENDED
MOTION FOR JUDGMENT

Law No. CL88000351-00

TO THE HONORABLE JUDGE OF THE AFORESAID COURT:

COMES NOW, the Plaintiff, Cynthia M. Ring, and moves the Court for judgment against the Defendants, James S. Poelman and "John Doe" and in support thereof, respectfully represents as follows:

1. That the allegations contained in paragraphs 1 through 11 of the original Motion for Judgment filed in this

matter are incorporated herein as if specifically set out in full.

2. That at all times herein mentioned Defendant, "John Doe", was the operator of a small, light blue automobile in the northerly most west bound lane of Hershberger Road in the City of Roanoke, Virginia, near the entrance to the intersection of Hershberger Road and Ferncliff Avenue, N.W., in the City of Roanoke, Virginia.

3. That at approximately 1:11 p.m., the Defendant, "John Doe", stopped his vehicle in the northerly most west bound lane of Hershberger Road near the Stop-In Convenience Food Mart, and motioned the Defendant, James S. Poelman, to exit onto Hershberger Road, which action was taken without the Defendant, "John Doe", observing to make sure that the way was clear for Defendant, James S. Poelman, to exit onto Hershberger Road from the parking lot of the Stop-In Convenience Food Mart.

4. As a direct and proximate result of the negligence of the Defendant, "John Doe", in motioning Defendant, James S. Poelman, to exit from the Stop-In Convenience Food Mart parking lot onto Hershberger Road when in fact the way was not clear concurred with the negligence of the Defendant, James S. Poelman, causing the collision of Defendant Poelman's vehicle with the Plaintiff's, Cynthia M. Ring, vehicle.

5. As a direct and proximate result of the negligence of Defendants, James S. Poelman and "John Doe",

Plaintiff, Cynthia M. Ring, sustained great bodily harm and has been obliged to seek and continues to seek medical attention; has suffered and will continue to suffer in the future great physical pain and discomfort; has suffer and will continue to suffer in the future great emotional pain and anguish; and has incurred and will incur in the future medical expenses in an effort to be cured of her injuries.

6. At the time of said incident, Plaintiff was covered as the principal insured under the Uninsured Motorist provision of a certain motor vehicle public liability policy issued to her by Nationwide Mutual Insurance Company pursuant to §38.2-2206 of the Code of Virginia, 1950, as amended.

WHEREFORE, the Plaintiff, Cynthia M. Ring, prays for judgment against the Defendants, James S. Poelman and "John Doe", as follows:

1. That the Defendants, jointly and severally, be required and directed to pay the sum of Two Hundred and Twenty-five Thousand Dollars (\$225,000.00) in damages to the Plaintiff.

2. That the Plaintiff be awarded her costs in this behalf expended.

3. Such other and further relief as this Court shall deem meet.

CYNTHIA M. RING

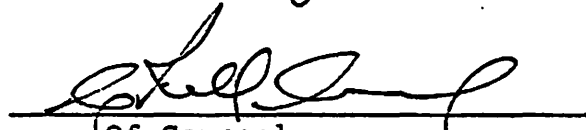
By: 

Of Counsel

C. Richard Cranwell, Esquire
Patrick S. Shiel, Esquire
CRANWELL, FLORA & MOORE
P. O. Box 11804
Roanoke, Virginia 24022-1804
(703) 344-1000

CERTIFICATE OF SERVICE

I hereby certify that I mailed a true and correct copy
of the foregoing Amended Motion for Judgment to Richard D.
Lucas, Esquire, Woods, Rogers & Hazlegrove, P. O. Box 720,
Roanoke, Virginia 24004-0720 on 21st day of June,
1989.



Of Counsel

1 instructed to you at that time.

2 MR. CRANWELL: Thank you, Your Honor, very
3 much. I call Officer Meador.

4
5 R. L. MEADOR

6 was called as a witness, duly sworn, and testified as
7 follows:

8
9 DIRECT EXAMINATION

10
11 BY MR. CRANWELL:

12 Q State your name and give us your business
13 address, work address, please, Officer.

14 A My name is R. L. Meador. I am a Police Officer
15 for the City of Roanoke.

16 Q Officer Meador, how long have you been with the
17 Roanoke City Police Department?

18 A Fifteen years.

19 Q Officer, did you have occasion to investigate
20 an automobile collision that occurred on August 5, 1987 on
21 Hershberger Road?

22 A Yes, sir, I did.

23 Q Will you tell the members of the Jury what time
24 you arrived at the scene of the accident?

25 A I do not have the specific time that I arrived.

1 According to the parties, the accident happened at 1:11 p.m..

2 Q Did you conduct an investigation when you
3 arrived?

4 A Yes, sir, I did.

5 Q Would you tell us, based upon your investigation,
6 what the weather conditions were on the day of August 5,
7 1987?

8 A Yes, sir; the weather was clear.

9 Q Was it a warm day?

10 A Yes, sir, as far as I remember, it was a pleasant
11 day.

12 Q What is the layout, the configuration of
13 Hershberger in the vicinity where the collision occurred?

14 A At that time, there were two lanes westbound on
15 Hershberger. Really, there was construction going on at that
16 time and there were barricades up in one lane. Before the
17 construction started, there was another lane, a right turn
18 lane, if you were westbound on Hershberger, where you could
19 make a right turn onto Ferncliff. That lane was no longer
20 there due to construction, and they had barricades in that
21 lane.

22 So for the vehicles to travel in, there was one
23 thru lane westbound on Hershberger, and there was one turn
24 lane where you could make a left turn onto Ferncliff.

25 Q How many eastbound lanes?

1 A Eastbound, there was one lane.

2 Q With respect to the grade of Hershberger at
3 that point?

4 A It is slightly downhill.

5 Q Were you able to ascertain where the collision
6 occurred, Officer?

7 A Just from statements taken from Mr. Poelman and
8 Mrs. Ring.

9 Q What was that point?

10 A From where they showed the accident, I estimated
11 it to be 150 feet east of Ferncliff, and Mrs. Ring was in the
12 westbound left turn lane and was struck in that lane.

13 Q What kind of vehicle was Mr. Poelman operating?

14 A It was a 1963 Ford, four-door sedan.

15 Q What kind of vehicle was Mrs. Ring operating?

16 A A 1987 Mazda, two-door hardtop.

17 Q Officer, you have done a diagram that illustrates
18 what your investigation revealed as to how the collision
19 occurred?

20 A Yes, sir; that diagram I made from using my
21 police accident report that I filled out that day. The only
22 difference between that diagram and my police accident report
23 is I have continued Hershberger on a little further than my
24 original diagram showed, and also Ferncliff.

25 Q Officer, would you tell us, based on your

1 investigation what you were able to determine as to where
2 the collision occurred.

3 A This right here indicates Hershberger Road.
4 As you can see, these black marks in the road, I drew them in
5 there to indicate the barricades that were on the pavement at
6 that time.

7 This was originally the right turn lane that I
8 said traffic normally travelled to turn onto Ferncliff. All
9 of this was construction at that time. There was a thru lane
10 on Hershberger here (indicating). This lane here indicates
11 the left turn lane, and this is the eastbound lane of
12 Hershberger.

13 This blue square here I drew to indicate the
14 vehicle being driven by Mrs. Ring. This vehicle here
15 indicates an unknown vehicle that I was advised had stopped
16 and waved Mr. Poelman out onto the roadway.

17 This blue square here I drew to indicate
18 Mr. Poelman's vehicle. This here is the Stop-In lot which is
19 on the corner of Hershberger and Ferncliff. According to
20 Mr. Poelman, that is where he was at before the accident.

21 Q Would you describe to the Jury the impact of
22 Mr. Poelman's vehicle with Mrs. Ring's vehicle?

23 A Mr. Poelman said that he had been on the Stop-In
24 lot here and was waiting to come out onto Hershberger. This
25 vehicle here stopped and left a gap in the traffic, and.

1 Mr. Poelman said that this driver waved him to come on out
2 onto the roadway.

3 Mrs. Ring was traveling in this turn lane, and
4 had no traffic control except for down here (indicating); so
5 she had the right-of-way there. This intersection is
6 controlled by traffic signals down here at the intersection.

7 Mr. Poelman said that when this driver here waved
8 him out, he looked, did not see any traffic coming, and he
9 pulled out, and Mr. Poelman and Mrs. Ring collided. The
10 damage when I arrived was on the front of Mr. Poelman's
11 vehicle, and there was damage on Mrs. Ring's vehicle on the
12 right front.

13 Q Officer, I think you mentioned that Mrs. Ring
14 had the right-of-way in this lane?

15 A Yes, sir; there is no traffic control at all in
16 this lane controlling her movement forward until you get down
17 to the intersection. These lanes here are divided by double
18 yellow lines, but the traffic signal itself is down here at
19 the intersection.

20 Q The damage to Mrs. Ring's vehicle was where?

21 A On the right front fender.

22 Q Did you estimate the damage to the Ring vehicle?

23 MR. LUCAS: I object to that; I think the Officer
24 can say whether it was light, medium, or heavy damage,
25 but as far as putting a figure on it, I know they try

1 to, but I don't think they are really qualified to do
2 that.

3 MR. CRANWELL: Your Honor, he investigates
4 accidents every day. If you want me to take him
5 through the number of automobile accidents he
6 investigates as part of the traffic division to lay
7 the foundation for it, I would be glad to.

8 THE COURT: Well, I don't have any problem
9 from the standpoint that Officer Meador is known to the
10 Court, and I know he investigates accidents on
11 a daily basis. I guess the underlying issue, though,
12 is after he estimates the damage, how many times does
13 he receive positive feedback as to what the actual
14 repair cost is so that he knows to what degree he is
15 accurately estimating the damages.

16 MR. CRANWELL: No; it is not of major importance
17 to me.

18
19 BY MR. CRANWELL:

20 Q Officer, how would you characterize the damage
21 to Mrs. Ring's vehicle based on your investigation?

22 A To Mrs. Ring, the 1987 Mazda, I would have to
23 characterize it as just average damage; there wasn't
24 extensive damage to the vehicle.

25 Q As to Mr. Poelman's vehicle?

1 A Light damage to his.

2 Q Officer, in your investigation, were there any
3 complaints of injuries?

4 A My accident report reflects that at that time
5 Mrs. Ring did make a complaint to me as feeling pain, and I
6 did note that on my accident report, that she did indicate
7 she felt pain.

8 MR. CRANWELL: Your Honor, we would move for
9 the introduction of this as Plaintiff's Exhibit One.

10 THE COURT: Any objection to that being
11 received in evidence as Plaintiff's Exhibit One?

12 MR. LUCAS: No, Your Honor.

13 THE COURT: It will be so received.

14 (Thereupon, the diagram made
15 by Officer Meador was marked and entered into
16 evidence as Plaintiff's Exhibit Number One.)
17

18 BY MR. CRANWELL:

19 Q Officer, the grade at that point you indicated
20 was a slight downgrade?

21 A I would call it slight. It is downhill; it is
22 not a real steep grade.

23 Q In a westerly direction?

24 A Yes, sir; they were going - - - In other words,
25 Mrs. Ring was going downhill.

1 Q Other than traffic, is there any obstruction
2 anywhere to the view of the motoring public on the road
3 there?

4 A No, sir, not out at the edge of the road, but
5 there are gas pumps and stuff like that on the lot at
6 Stop-In, but after you get out near the curb line, there
7 were none except for barricades on the road at that time.

8 Q Is the view pretty far back up Hershberger
9 Road toward Valley View Mall?

10 A The view from the Stop-In lot, I would say that
11 you can see - - - If you are familiar with where Ordway Drive
12 is, which is what most people use to turn into Best Products
13 and Hills parking lot, you can see back up to the top of the
14 hill there. It is a long block.

15 Q Officer Meador, from your investigation were you
16 able to ascertain who the driver of the vehicle was who
17 motioned Mr. Poelman out into the road?

18 A No, sir; my notes indicate no knowledge of that.

19 MR. CRANWELL: Those are all the questions I
20 have. You can answer any questions they have.

21
22 CROSS EXAMINATION

23
24 BY MR. LUCAS:

25 Q Just a few questions, Officer Meador. You said

1 at that time there was a lot of construction, barricades and
2 so forth there on Hershberger Road?

3 A Yes, sir.

4 Q You have indicted that by these little black
5 marks; is that correct?

6 A Yes, sir, and, like I said, my report indicated
7 that I estimated the distance of the accident from Ferncliff
8 was 150 feet. So on my diagram I have indicated barricades
9 at least back that far.

10 Q They were digging up part of the sidewalks and
11 streets and so forth along that area?

12 A Yes.

13 Q Now, Mr. Poelman at that time, I think your
14 statement you took from him said, and this was at the scene,
15 that this driver motioned him out; is that right?

16 A Yes, sir.

17 Q And that he was looking for traffic and didn't
18 see Mrs. Ring; is that correct?

19 A He told me that the other driver waved him out,
20 and that he looked and did not see any other vehicles coming,
21 and that is when he pulled out.

22 Q Did you ask the parties their speed?

23 A Yes, sir, I did.

24 Q What did Mr. Poelman tell you?

25 A He estimated his speed at the time of the

1 accident as five miles-per-hour.

2 Q What did Mrs. Ring tell you?

3 A She estimated her speed at the time of the
4 accident as seven miles-per-hour.

5 Q Were there any skid marks or anything like that?

6 A None that I have indicated on my Police report
7 or notes, and I really don't remember any.

8 Q If there had been skid marks, would that be
9 something that you would normally take down?

10 A Yes, sir; I usually indicate them on the accident
11 report.

12 Q You said that Mrs. Ring was making some
13 complaints of pain. Where was she making the complaints
14 of pain?

15 A The only thing I have is my memory refreshed by
16 my accident report here, and the block I have checked is
17 listed, "No visible injury, but complaint of pain, of
18 momentary unconsciousness." In other words, if I had seen a
19 bleeding wound, I would have indicated that. So, evidently,
20 she has told me that she has had pain.

21 Q There were no visible signs of injury?

22 A I don't have any checked on my accident report;
23 just the complaint of pain.

24 Q Do you recall whether the vehicles had been
25 moved when you got there?

1 A I may have been told whether they were or not.

2 Q Do you have any recollection?

3 A No, sir.

4 MR. LUCAS: Thank you very much.

5 MR. RHODES: I have no questions.

6

7 REDIRECT EXAMINATION

8

9 BY MR. CRANWELL:

10 Q You indicated from your field notes that
11 Mr. Poelman indicated that he looked and then he pulled out?

12 A It says, "He looked, did not see any other
13 vehicles, and pulled out."

14 Q Did he indicate that he may have stopped or
15 anything when he got over in front of this other vehicle?

16 A No, sir, I don't remember him saying that. The
17 way I took it, he was on the lot, another car stopped, waved
18 for him to come out, he looks, doesn't see any traffic,
19 started out, and - - -

20 Q Pulled right straight on out?

21 A Yes.

22 MR. CRANWELL: Thank you.

23 MR. LUCAS: I would like to ask one question on
24 Recross.

25 MR. CRANWELL: Objection, Your Honor; we are

1 going to go on for - - -

2 MR. LUCAS: This is your Direct witness, and you
3 get to lead, and I would ask for an opportunity to
4 Recross.

5 THE COURT: Mr. Lucas, at some point we have
6 to have an end to this. I will permit you to ask
7 one more, and Mr. Cranwell, if you have any follow-up,
8 but then at the conclusion of that - - -

9 MR. CRANWELL: Your Honor, I won't ask any more
10 questions, no matter what Mr. Lucas asks.

11 THE COURT: One last question; remember
12 Mr. Lucas.

13
14 RECROSS EXAMINATION

15
16 BY MR. LUCAS:

17 Q The only thing you recall is what you have in
18 your notes?

19 A Yes, sir; that is correct.

20 Q Read to the Jury what you have in your notes.

21 A I have two sets of notes; one on a summons.

22 Q About the looking.

23 A On one it says, "He said other vehicle waved
24 him out; said he looked but did not see," I have Vehicle
25 Number Two, which on the report would be Mrs. Ring. Then

1 on the accident report I have, "Vehicle Number Two," which
2 was Mrs. Ring, "was travelling west on Hershberger Road and
3 had right-of-way. Vehicle Number One," which was Mr. Poelman,
4 "was on the lot of the Stop-In at 2941 Hershberger Road.
5 Vehicle Number One says another vehicle in the lane on
6 Hershberger Road waved for him to come out. Vehicle Number
7 One says he looked but did not see Vehicle Number Two coming.
8 Vehicle Number One pulled out and hit Vehicle Number Two."

9 Q And that is all you recall?

10 A Yes, sir.

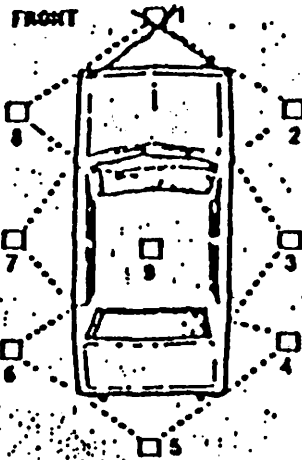
11 MR. LUCAS: Thank you.

12 THE COURT: Thank you, Officer Meador. You may
13 step down.

14 (Thereupon, the witness was excused.)
15

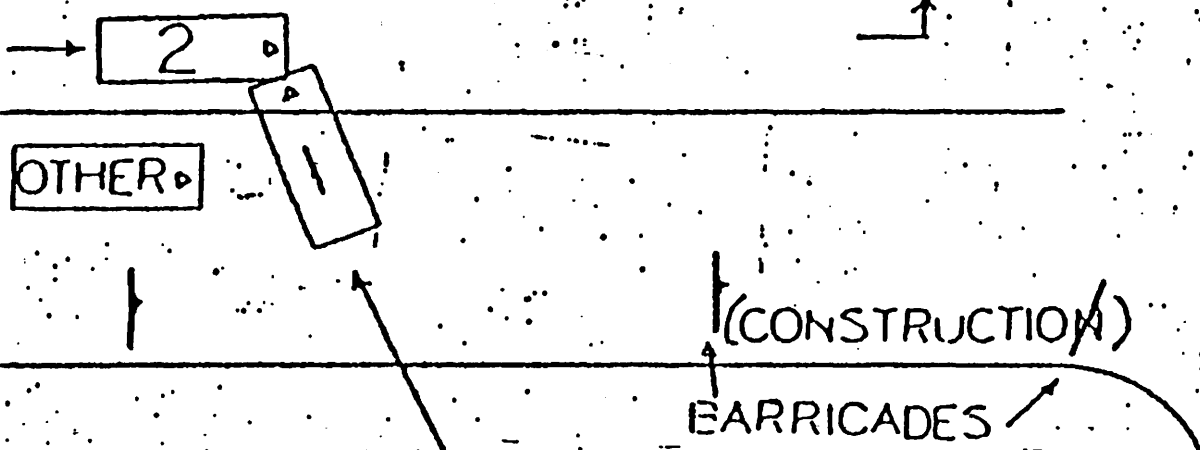
16 THE COURT: Ladies and gentlemen of the Jury, at
17 this time we are going to take our lengthy luncheon
18 recess. Again, I apologize to all of you and to the
19 parties and to the Counsel for the disruption to the
20 Proceedings this afternoon. I will ask that all of you
21 please report back here by about ten of 4:00. We want
22 to be in a position to get started no later than 4:00
23 with the doctor who will be here to testify at that
24 time. So if you all will be punctual in reporting back.
25 Come straight back to the Jury Room. The bailiff will

VEHICLE NO. 1 DAMAGE
CHECK POINTS OF IMPACT



SPEED		
BEFORE ACCIDENT	LIMIT	MAXIMUM SAFE
5	35	35

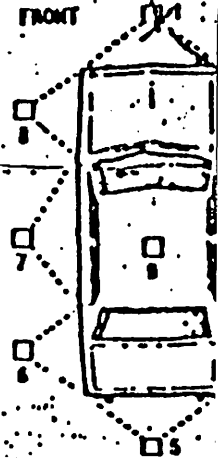
ACCIDENT DIAGRAM



LOT OF STOP IN
2941 HERSHBERGER RD.

INDICATE NORTH
BY ARROW

VEHICLE NO. 2 DAMAGE
CHECK POINTS OF IMPACT



SPEED		
BEFORE ACCIDENT	LIMIT	MAXIMUM SAFE
7	35	

1 the packaged Exhibit, is that to be made part of
2 Plaintiff's Exhibit Four?

3 MR. CRANWELL: Your Honor, I think it just
4 got separated when I was thumbing through to pull out
5 Dr. Lemmer's notes. I think it just got divided up into
6 two stacks.

7 THE COURT: So you gentlemen agree that this
8 should be made a part of the records that we are
9 admitting?

10 MR. LUCAS: Yes, Your Honor.

11

12 ANGELA MEADOR

13 was called as a witness, duly sworn, and testified as
14 follows:

15

16 DIRECT EXAMINATION

17

18 BY MR. CRANWELL:

19 Q Would you state your full name, please?

20 A Angela Renee Meador.

21 Q Where do you live, Angela?

22 A 727 Mason Road, Vinton, Virginia.

23 Q At 727 Mason Road in Vinton, who do you live
24 with?

25 A My mother; Cindy Ring.

1 Q And your stepfather?

2 A Yes; my father and sisters.

3 Q If you and I can go back to August of 1987,
4 how old were you then?

5 A Nineteen.

6 Q Were you working?

7 A At a Summer job, and going to school.

8 Q Are you nervous?

9 A Yes, sir.

10 Q Where were you working?

11 A At Universal Communications System.

12 Q That is where your mom was working?

13 A Yes, sir.

14 Q Did you all ride to work together?

15 A Every day.

16 Q Whose car did you go in?

17 A Some weeks we would go in mine and some weeks
18 we would go in her's.

19 Q What kind of car did you have?

20 A A Mazda 626.

21 Q On August 5, 1987, which vehicle did you all
22 drive to work?

23 A My car.

24 Q Did you all have occasion to go to lunch together
25 that day?

1 A Every day.

2 Q Did you go to lunch on August 8th?

3 A Yes, sir.

4 Q Do you know about what time you all got off to
5 go eat lunch?

6 A I believe it was somewhere around 12:00. I am
7 not sure of the exact time that we clocked out.

8 Q When you left to go to lunch, who was driving?

9 A My mother.

10 Q Was there a particular reason, that she was
11 driving?

12 A Yes, sir; we were going to go by Celebration
13 Station so that I could run in and exchange something.
14 It was very hot; so she sat in the car with the air-
15 conditioner running. I came back out, and that is when we
16 went to get something to eat.

17 Q Do you know what you were exchanging?

18 A I believe a pair of shoes.

19 Q Where were you all going to eat?

20 A Steve's Hot Dogs.

21 Q Where was Steve's Hot Dogs from Celebration
22 Station?

23 A I would say about a mile.

24 Q How do you get from Celebration Station to
25 Steve's Hot Dogs?

1 A You go out of the Celebration Station exit and
2 take a right onto Hershberger west, and it is just right down
3 from there.

4 Q Did you get on Hershberger Road?

5 A Yes, sir.

6 Q You were proceeding west?

7 A Yes, sir.

8 Q Which lane were you in?

9 A The left lane.

10 Q Would that be the inside lane?

11 A Yes, sir.

12 Q Why were you in that lane?

13 A It was the lane to turn. There was a lane
14 going straight and turning right, and then we were in the
15 left lane to turn left.

16 Q You were going to turn left at Ferncliff to
17 go to Steve's Hot Dogs?

18 A Yes, sir.

19 Q As you were approaching the intersection of
20 Hershberger and Ferncliff, could you tell us what happened?

21 A It was a lot of traffic. There were several
22 cars in front of us, and we were, I would say, going
23 approximately 15 miles-an-hour, and all of a sudden we were
24 just hit from the side.

25 Q Could you describe the impact for us?

1 A It was just like a train had hit us. It was a
2 hard jolt. We were both thrown.

3 Q Did you have a seat belt on?

4 A No, sir.

5 Q Did your mom have one on?

6 A Yes, sir; it just happened really fast. I
7 just looked up and the car was there. It was like it
8 was on top of us.

9 Q Did you notice any other vehicles?

10 A No, sir; they were all going around us because
11 we were blocking the road.

12 Q Did you talk to Mr. Poelman?

13 A When I first got out of the car, the only
14 thing I believe I said was, "You have hit my car," and other
15 than that, I didn't say anything else to him, and I don't
16 remember him saying anything.

17 Q How long had you had that car?

18 A About a month.

19 Q Did you talk to your mom?

20 A Yes; we were really upset. We were trying to
21 see the damage and find out if we were okay. We were really
22 upset.

23 Q Did your mother go to the hospital from the
24 scene of the accident?

25 A Yes, sir.

1 Q Do you know how she got to the hospital?

2 A A co-worker came and picked her up.

3 Q Who called that co-worker?

4 A I did.

5 Q After you called the co-worker, what did you do?

6 A Came back over to the scene of the accident.

7 Two people from work came because my car was messed up, and I
8 was scared I wouldn't be able to drive it, and then another
9 lady came to take mom to the hospital.

10 Q What did you do?

11 A When we went to the hospital?

12 Q No; before you went to the hospital.

13 A We stood there and waited on the Policeman to
14 get there, and it was awhile before he got there, a right
15 good while.

16 Q Now, after you got through with the Policeman
17 and everything, did you take your car somewhere?

18 A To the Berglund Mazda place to leave it.

19 Q After you took your car to Berglund Mazda, what
20 did you do?

21 A I went to the hospital.

22 Q Which hospital did you go to?

23 A Community.

24 Q Did you see your mom there?

25 A Yes.

1 Q How was she doing when you got to the hospital?

2 A Her neck and shoulder was very tight; she
3 couldn't hardly turn her head. We waited in the Emergency
4 Room for her to be seen for several hours.

5 Q Now, your car was repaired, was it not?

6 A Yes, sir.

7 Q What did it cost to repair your automobile?

8 A I believe it was \$1,200 to repair it, and then
9 after they got in and started working on it, it was a couple
10 hundred more.

11 MR. CRANWELL: Those are all the questions I
12 have for her.

13

14 CROSS EXAMINATION

15

16 BY MR. LUCAS:

17 Q Miss Meador, let me just ask you a few questions.
18 It wasn't necessary for you to go to the doctor after the
19 accident?

20 A No; I had a headache, and I was just really
21 shaken up.

22 Q You never received any medical treatment?

23 A No, sir.

24 Q This impact was on your side of the car; is that
25 correct?

1 A Yes, sir.

2 Q I think you have testified in Depositions that
3 you just didn't see Poelman at all before impact?

4 A No, sir,

5 Q You didn't see Mr. Poelman's car?

6 A No, sir.

7 Q There were some barricades and some construction
8 going on in that section of Hershberger?

9 A Yes, sir.

10 MR. LUCAS: That is all I have.

11

12 FURTHER CROSS EXAMINATION

13

14 BY MR. RHODES:

15 Q Angela, after the accident, you drove your
16 car to the Mazda place, didn't you?

17 A Yes, sir.

18 Q You went to work the next day?

19 A Yes, sir.

20 Q You were not hurt in the accident?

21 A No, sir.

22 MR. RHODES: Those are all the questions I have;
23 thank you.

24 THE COURT: Mr. Cranwell, anything further?

25 MR. CRANWELL: This young lady can be excused,

1 Your Honor.

2 THE COURT: Thank you very much, Miss Meador;
3 you may step down.

4 (Thereupon, the witness was excused.)

5

6 JAMES S. POELMAN

7 was called as a witness, duly sworn, and testified as
8 follows:

9

10 DIRECT EXAMINATION

11

12 BY MR. CRANWELL:

13 Q Give us your full name and your address, please.

14 A James Stewart Poelman, Sr.; I live in Wendell,
15 North Carolina.

16 Q Mr. Poelman, on August 5, 1987, were you
17 employed?

18 A Yes, sir, I was.

19 Q By whom were you employed?

20 A Lane Paint Contractors.

21 Q Who owns Lane Paint Contractors?

22 A Mr. Tom Lane.

23 Q Were you working on August 5, 1987?

24 A Yes, sir; I was painting hangers at the airport.

25 Q How long had you been working at the airport?

1 A I don't know exactly. I don't recall exactly;
2 about a month, I would suppose, three or four weeks.

3 Q You had an occasion to be driving a vehicle
4 operated by whom on that particular day?

5 THE COURT: Do you mean owned by whom?
6

7 BY MR. CRANWELL:

8 Q Owned by whom; I am sorry.

9 A It was owned by Mr. Roger Horsley.

10 Q Was there a particular reason that you were
11 driving Mr. Horsley's vehicle?

12 A Yes, sir; his vehicle was sort of a spare. I
13 think he had gotten it through some inheritance or something.
14 He wasn't using it; he already had two vehicles. I was
15 painting, and I had a fairly new car, and he offered to let
16 me drive his car carrying paint supplies and whatnot back and
17 forth. So I had been driving it for sometime.

18 Q How long had you been driving it?

19 A I don't know; a couple of weeks, I guess. It was
20 just one of those things that happened. Roger was a friend
21 of mine, and we got to talking about it one day, and he
22 offered me the car.

23 Q What time did you go to lunch on August 5, 1987?

24 A Well, sir, that was a long time ago. I don't
25 remember. What I always did, I just took a lunch break

1 whenever there was a good break in the painting. It was
2 normally sometime between 12:00 and 1:00 that I went; so
3 I don't know what time it was that particular day.

4 Q Did you pack your lunch, or did you normally
5 buy lunch?

6 A I normally bought my lunch. I packed it once
7 in awhile, but I normally went out to Hardee's and ate out
8 there.

9 Q On this particular day, had you packed a lunch
10 or did you go to Hardee's?

11 A I had been to Hardee's.

12 Q When you left Hardee's, where did you go?

13 A I went out of Hardee's and up Hershberger and
14 into the Stop-In lot there.

15 Q What did you go to the Stop-In for?

16 A I just stopped in to get a Mountain Dew to take
17 back to work with me.

18 Q After you got your Mountain Dew, it was your
19 intention to head back to the airport?

20 A Yes, sir.

21 Q What route were you going to follow to get back
22 to the airport?

23 A Just going east on Hershberger up to the airport
24 exit.

25 Q At some point in time you were attempting to

1 exit from the parking lot of the Stop-In on Hershberger?

2 A Yes, sir.

3 Q Was there traffic in the area at the time?

4 A Yes, sir, there was traffic.

5 Q Is the traffic pretty heavy on Hershberger
6 around lunchtime?

7 A Well, traffic is reasonably heavy at any point
8 in time on Hershberger.

9 Q You had been out there enough to know that there
10 was heavy traffic, didn't you?

11 A Yes, sir.

12 Q You were sitting there waiting to exit onto
13 Hershberger, weren't you?

14 A Yes, sir.

15 Q Did you wait for some period of time?

16 A I don't know how long; it was a few minutes.

17 Q Well, as you were sitting there waiting, tell
18 me what happened.

19 A Well, as I was sitting there waiting, the
20 Hershberger light at Ferncliff turned red. I don't have
21 any idea how much of a back-up, but there was a back-up in
22 the traffic there in the right-hand lane; not the extreme
23 right-hand lane, that was barricaded, but the straight-on
24 lane.

25 There was a gentleman in a car who saw that I

1 wanted to exit onto Hershberger, and he stopped well back
2 from the exit from the Stop-In there, and motioned for me
3 to come on out.

4 Q How did he motion?

5 A Like that (indicating).

6 Q Did you have eye contact with this person
7 where he could see you, and you were looking at him?

8 A Yes, sir.

9 Q And he goes (indicating)?

10 A Yes, sir.

11 Q When he did that, what did you do?

12 THE COURT: Perhaps the Record should reflect
13 that both of you are waving your hand and gesturing
14 in a come-on manner; is that an accurate description?

15

16 BY MR. CRANWELL:

17 Q That is correct, Your Honor.

18 A I believe that would be correct. At that point,
19 of course, I looked on Hershberger, saw no traffic, except
20 for the lane that was stopped there, the straight-on lane.
21 So I proceeded out of the Stop-In lot very cautiously.

22 Now, of course, there is a point at which your
23 view is totally blocked by the vehicle that you are
24 passing, particularly on a grade like that. So I was
25 proceeding very cautiously around, and, all of a sudden this

1 vehicle appeared. The appearance and the impact were at
2 about the same point.

3 Q Well, as I understand, Mr. Poelman, you had to
4 cross two lanes and then take a left on the eastbound lane of
5 Hershberger; is that correct?

6 A Yes, sir; now, at that point, of course, there
7 were no markings on the road, but there are two lanes of
8 traffic there, yes.

9 Q I have never heard you indicate that you looked
10 to see if there was any eastbound traffic on Hershberger
11 Road. Didn't you need to get across there and get in front
12 of that traffic and go back up and go east?

13 A Yes, sir, but I had to get by the other west-
14 bound lane before I worried about traffic coming in the
15 eastbound lane.

16 Q When were you going to look to see if there was
17 eastbound traffic?

18 A Before I went in the westbound lane, sir.

19 Q So you pulled out and crossed one blocked lane,
20 one clear lane, without ever looking?

21 A No, sir; that is not correct.

22 Q Were you relying on the hand signal when you
23 pulled out?

24 A No, sir; the hand signal simply indicated that
25 that driver was not going to pull out in front of me. He

1 motioned me out, and that got me in front of his car; that is
2 all that amounted to.

3 Q As far as you were concerned?

4 A Yes, sir.

5 Q Well, that is what has been troubling me, because
6 if you weren't relying on it, how come you weren't looking
7 for the eastbound traffic?

8 A Well, sir, I think I have already answered that.
9 I had to look for the westbound traffic first; that was the
10 first concern since that was the first lane that I was
11 crossing after I got past the John Doe car.

12 Q Well, were you going to pull out there, and then
13 if you had to stop, blocking two lanes of traffic, sit there
14 until the eastbound lane cleared; is that what you intended
15 to do?

16 A No, sir; when I proceeded to pull out in front
17 of John Doe, after his hand signal, there was no traffic
18 going westbound, and at the point where I pulled out, there
19 was also no eastbound traffic in the left lane. If there had
20 been, I would have ignored the hand signal, but everything
21 was wide open at that point. So I proceeded out and passed
22 the John Doe car.

23 Q And you went to a point where you say that
24 because of the John Doe car and the grade that you couldn't
25 see the traffic in the lane that Mrs. Ring was in; is that

1 correct?

2 A Yes, sir.

3 Q And yet you pulled on into that lane when you
4 couldn't see into that lane; isn't that correct?

5 A I don't know that you would say that I pulled
6 into the lane or not, sir. As I say, there weren't any
7 markings there. I was simply looking. My car was out in the
8 lane, and the Police Officer who was at the scene would have
9 to indicate whether or not I was actually in the lane.

10 Q Do you see the diagram that the Police Officer
11 drew?

12 A Yes, sir.

13 Q Do you see what lane he put you in? You
14 pulled into that lane when you couldn't see in it, didn't
15 you?

16 A I pulled out to a point where I could see; yes,
17 sir.

18 Q And you were in this lane at that point,
19 weren't you (indicating)?

20 A Very slightly; yes, sir.

21 MR. CRANWELL: That is all.
22
23
24
25

CROSS EXAMINATION

BY MR. RHODES:

Q Mr. Poelman, when you got the hand signal from John Doe sitting there, and he was stopped, which way did you look before coming out?

A Well, I looked both ways. I looked both ways.

Q Did you see any traffic coming westbound in the direction of travel of Mrs. Ring?

A No, sir, I did not.

Q You looked in that direction before you pulled out?

A Yes, sir.

Q You said that John Doe waved you, that he was stopping to wave you, and he was going to give you the right of way in his lane?

A Yes, sir.

Q You looked back to see if anything was coming in Mrs. Ring's lane before you pulled out?

A Yes, sir.

Q Did John Doe wave to you anymore; did you get any other signals from John Doe as you pulled out, or after you pulled out?

A No, sir.

Q What did John Doe do as you were pulling out?

1 Did he sit there, or did he move?

2 A He didn't move; he just stayed right where he
3 was.

4 Q Stayed right where he was?

5 A Yes, sir.

6 Q I guess I could best ask you the question using
7 the diagram. Look at the diagram, Mr. Poelman. When you
8 came out, did you continually come out, or did you hesitate
9 after getting here looking back in the direction of
10 Mrs. Ring?

11 A Well, I hesitated at that point. I was
12 travelling very slowly. I really don't know how fast it
13 was, but I know it was very, very slowly, five miles or
14 under, and I did hesitate at that point to look for traffic.

15 Q What do you mean by "look for traffic"?

16 A To look around the John Doe car.

17 Q You didn't get any indications from John Doe
18 at that time, did you?

19 A No, sir, no more indications.

20 Q After you got out on the road, did you rely in
21 any manner on John Doe to go forward into Mrs. Ring's lane?

22 A No, sir.

23 MR. RHODES: Those are all the questions I have.
24
25

FURTHER CROSS EXAMINATION

BY MR. LUCAS:

Q Mr. Poelman, let me ask you a few questions.

Was the pavement marked on Hershberger at that time?

A No, sir, not at that time.

Q Was there any type of construction going on?

A Yes, sir; there were barricades in the right-hand lane, and there was a lot of construction, curb type construction at that time on Hershberger and Ferncliff, both.

Q Was there anything to prevent you from pulling out of the Stop-In where you did, any type of barricades at that point to prevent you from pulling out?

A Where I pulled out?

Q Yes, sir.

A No, sir.

Q There was not a median strip at that time?

A No, there was not.

Q Just lines on the road, double yellow lines in the center of the road, separating the east and the westbound lanes?

A I really couldn't say whether there were or not. I never got to that point. I don't remember any lines at all on the road at that point.

Q Take this pointer, Mr. Poelman. If you would,

1 stand up next to the diagram, stand over to the side so you
2 won't be blocking the Jury, and indicate where you came out
3 of the Stop-In lot.

4 A Right at this point, there is an exit right there
5 (indicating). There is a solid curb here and here, but there
6 is an exit on either side of that. So it was right here
7 (indicating).

8 Q Before you left the lot, where, if anywhere, did
9 you look, before you left the lot?

10 A Before I left the lot?

11 Q Yes, sir.

12 A Well, I had a general view of the traffic. When
13 John Doe motioned for me to come on out, I looked down this
14 way, and the light was red; no one was coming this way, and
15 no one was in this lane coming down this way (indicating).

16 Q You pulled out in front of the John Doe vehicle?

17 A Yes, sir.

18 Q Did you look again before entering or attempting
19 to enter this other westbound lane where Mrs. Ring was?

20 A Yes, sir, I did.

21 Q Point to where that would have been when you
22 were looking.

23 A It would have been about here (indicating).

24 Q Were you still looking at the time of
25 impact?

1 A Yes, I was.

2 Q Where were you looking?

3 A Looking into the left-hand lane.

4 Q Thank you, Mr. Poelman; you can have a seat.

5 After the accident, did you speak with either Mrs. Ring or
6 her daughter?

7 A Yes, sir, just briefly.

8 Q What was the substance of that conversation?

9 A Well, Mrs. Ring and her daughter were upset, of
10 course, and her daughter said, you know, "What do you think
11 you are doing? Look what you have done to my new car"; you
12 know, that kind of thing, just kind of an emotional outburst.

13 The only thing I said; that I recall, just to ask
14 if they were all right. We did look at the damage together.

15 Q What was their response when you asked them were
16 they all right?

17 A I believe it was something like, "I think so."

18 Q Now, you had a 1963 Ford - - -

19 A Yes, sir.

20 Q - - - that you were driving?

21 A Yes, sir.

22 Q What type of Ford was it, what model?

23 A It was a Falcon, a little Falcon.

24 Q I am not sure I know exactly what a 1963 Falcon
25 looks like. How big a car is that; compact, standard?

1 A That was the original Ford compact, the Falcon;
2 yes, sir.

3 Q In comparison to the Mazda that was the other
4 vehicle that was involved, would it have been smaller, the
5 same size, or larger?

6 A Approximately the same size.

7 Q Now, Mr. Poelman, you said at the time of the
8 accident you were working at the airport painting. Was that
9 your normal job, or was that in-between jobs?

10 A No, sir; that was a temporary job. That was
11 just in-between.

12 Q Did you live in Roanoke for a long period of
13 time?

14 A Yes, sir; about seven years.

15 Q What years were those?

16 A 1980 to 1987.

17 Q When you were in Roanoke from 1980 to 1987, what
18 type of work were you doing?

19 A I was an associate pastor of a church here in
20 Roanoke for several years, and then I worked at the City
21 Rescue Mission for a couple of years. I had been in ministry
22 the whole time I was here in Roanoke.

23 Q Do you currently live in Roanoke?

24 A No, sir; I live in Wendell, North Carolina now.

25 Q What is your job in Wendell, North Carolina?

1 A I am a school teacher in a private Christian
2 school that is part of the church. I am also a music
3 director in the church there.

4 Q Do you still have any family that is in
5 Roanoke?

6 A My oldest son lives in Roanoke; yes, sir.

7 Q Do you have any other family in the area?

8 A I have a daughter in Lynchburg, but nobody else
9 in Roanoke; no, sir.

10 MR. LUCAS: Those are all the questions I
11 have; thank you.

12

13 REDIRECT EXAMINATION

14

15 BY MR. CRANWELL:

16 Q Mr. Poelman, I want to come back. Mr. Rhodes
17 and Mr. Lucas took you through some questions, and I want to
18 see if I followed it all correctly. You were here in this
19 parking lot (indicating)?

20 A Yes, sir.

21 Q John Doe waved you to come out, right?

22 A Yes, sir.

23 Q When you started your vehicle out of the parking
24 lot, you were relying on that signal from him, weren't you?

25 A No, sir.

1 Q You are just going to pull out in the road then?

2 A The only reliance on his hand signal was that
3 he was going to allow me into his lane of traffic; that is
4 all.

5 Q Mr. Poelman, I asked you if you were relying on
6 it. You were relying on it to get at least past his lane,
7 weren't you?

8 A Into his lane; yes, sir.

9 Q Or into his lane, okay. Now, when you got out
10 there, you said you went down in this grade or place to where
11 you lost visual contact with this other lane; is that
12 right?

13 A Yes, sir; that is correct.

14 Q But you continued on, right?

15 A Yes, sir.

16 Q You were relying on his hand motion and him
17 sitting there when you continued on, weren't you?

18 A No, sir.

19 Q You weren't relying on him sitting still there
20 when you continued on?

21 A No, sir; I paid no more attention to John Doe
22 once I got in front of him. My concern was with the other
23 two lanes of traffic.

24 Q But you continued to proceed on with no visual
25 contact of this lane (indicating)?

1 A Yes, sir, to a point where I could have visual
2 contact.

3 Q And that point, you and I have already agreed,
4 was slightly in this lane (indicating)?

5 A I really don't know, sir, because of the lack
6 of lines on the road and so forth. I proceeded to a point
7 where I could pass the John Doe vehicle, very slightly, but
8 I could see around him.

9 Q How much time elapsed, would you say, between
10 the time you were traveling across those lanes when you
11 had no ability at all to see into this traffic in this
12 other lane?

13 A I wouldn't venture a guess; that would be
14 speculation on my part.

15 Q A thousand one, a thousand two, a thousand three,
16 a thousand four?

17 A Well, sir, as you know, time is relative,
18 depending on what kind of activity you are involved in.
19 It is impossible to say.

20 Q Let me put the question to you this way then:
21 If John Doe hadn't stopped and waved you out, you would have
22 sat there until you could see that both of these lanes were
23 clear, wouldn't you?

24 A Yes, sir.

25 Q And that might have been a little time, mightn't

1 it, this time of day?

2 A It might have been.

3 Q And you wanted to get back to work, didn't you?

4 A Not particularly.

5 Q You don't get paid by the hour?

6 A Yes, sir.

7 Q And you wanted to get back and clock in so
8 you could get those hours, didn't you? You are not a person
9 that would skip their work, are you?

10 A No, sir.

11 Q So it is fair for me to say that without the
12 motion from John Doe, you wouldn't have moved at this
13 particular point in time, would you?

14 A No, sir; I had no right of way to drive in front
15 of an oncoming vehicle.

16 Q And we would have sat there until it was clear
17 where we could see that it was clear to go, wouldn't we?

18 A I could already see that it was clear to go,
19 sir; that is the only reason I proceeded.

20 Q When you got out there, you got to a point to
21 where you couldn't see, didn't you?

22 A Yes, sir; I have already stated that.

23 Q And you still proceeded, didn't you?

24 MR. LUCAS: Your Honor, he has answered that
25 a-half dozen times, that he was creeping out in the

1 road so he could see around the John Doe vehicle.

2 MR. CRANWELL: You don't need to argue your
3 case now, Mr. Lucas. Remember, you make your - - -

4 MR. LUCAS: I am not, but he has answered it
5 a-half dozen times.

6 THE COURT: Gentlemen, I think we have
7 sufficiently covered this. I think the ladies and
8 gentlemen of the Jury have heard adequately from
9 Mr. Poelman as to how he came to enter Mrs. Ring's
10 lane of traffic.

11 MR. CRANWELL: That is all I have for him,
12 gentlemen.

13 THE COURT: Thank you, Mr. Poelman; you may
14 step down now.

15 (Thereupon, the witness stepped aside.)
16

17 THE COURT: At this time, ladies and gentlemen
18 of the Jury, we will take our morning recess.

19 (Thereupon, a recess was taken; following the
20 recess, the following Proceedings were had outside
21 the presence of the Jury:)
22

23 THE COURT: Gentlemen, are there any matters
24 we need to take up before the Jury returns?

25 MR. RHODES: Your Honor, if Mr. Cranwell will

1 tell us who his next witness is, it may be or it may
2 not be.

3 MR. CRANWELL: I am going to call Cindy Ring.

4 MR. RHODES: We don't have anything.

5

6 (Thereupon, the Jury returned to the Courtroom,
7 and the following Proceedings were had:)

8

9 THE COURT: Mr. Cranwell, you may call your
10 next witness.

11 MR. CRANWELL: I call Cindy Ring.

12

13 CYNTHIA MEADOR RING

14 was called as a witness, duly sworn, and testified as
15 follows:

16

17 DIRECT EXAMINATION

18

19 BY MR. CRANWELL:

20 Q State your name and give us your address,
21 please.

22 A My name is Cynthia Meador Ring. I live at
23 727 Mason Road, Vinton, Virginia.

24 Q Who lives with you at that address, Mrs. Ring?

25 A My husband, Bruce, my oldest daughter, Angela,

1 Q In August of 1987?

2 A Yes; I took the Spring quarter class prior to
3 August, 1987.

4 Q Did you have a degree, or did you get some
5 education in cosmetology, in fixing hair?

6 A Yes; while my husband was overseas, I lived
7 with my mother.

8 Q This was your first husband?

9 A Yes, and I went to American Beauty School
10 located in Roanoke and took a year's class in cosmetology
11 and received my state board.

12 Q Now, what was your initial job at Bell South?

13 A My initial job?

14 Q Yes.

15 A It was gathering information for the credit
16 analyst, and receiving money on cash contracts.

17 Q Now, do you recall what your starting salary
18 was?

19 A Well, it had been so long since I had been out
20 in the work force that it was only \$5.00 an hour. I was
21 being given a chance because it had been so long since I
22 had worked.

23 Q Now, let's you and I go to August 5, 1987.

24 A Yes, sir.

25 Q Did you work that day?

1 A Yes, sir.

2 Q How did you get to work?

3 A My daughter and I drove her car to work.

4 Q Did you all go to lunch together?

5 A Yes, sir.

6 Q When you left going to lunch, who was driving?

7 A I was.

8 Q Why were you driving?

9 A We were going to Celebration Station. Angela
10 had to run in and exchange a pair of shoes. I remembered
11 it was very hot and I didn't even get in a parking place.
12 I just sat out front with the air-conditioner going and the
13 car running.

14 Q Now, from Celebration Station, you all were going
15 to Steve's Hot Dogs?

16 A Yes, sir.

17 Q You came out of Celebration Station, and you
18 took a right going west on Hershberger?

19 A Yes, sir.

20 Q Now, where was Steve's Hot Dogs in relationship
21 to the intersection of Hershberger and Ferncliff down where
22 the Stop-In is?

23 A It was probably 50 to 75 yards prior to the
24 stoplight at Ferncliff.

25 Q Where was Steve's Hot Dogs; was it on

1 Hershberger?

2 A It was on Hershberger, yes, sir; right in that
3 area.

4 Q Could you mark on Plaintiff's Exhibit One the
5 general location of Steve's Hot Dogs?

6 A Yes, sir.

7 MR. CRANWELL: Your Honor, we would note for the
8 Record that she has put a blue dot almost between the
9 H and B on Hershberger Road to designate where Steve's
10 Hot Dogs was.

11
12 BY MR. CRANWELL:

13 Q Did you all eat at Steve's Hot Dogs frequently?

14 A Yes, sir; it was a good place to eat and it had
15 a drive-in window that you could go through if you needed to
16 go through it.

17 Q How was the traffic on Hershberger as you were
18 heading east?

19 A Heavy.

20 Q Were there vehicles in the lane to your right?

21 A Yes, sir.

22 Q That would be this lane (indicating)?

23 A Yes, sir; there was traffic backed all the way
24 up.

25 Q Were there some vehicles in front of you?

1 A Probably down closer to the stoplight; I would
2 say within two to four car lengths in front of me, traffic
3 was there.

4 Q Now, as you were approaching that area, tell the
5 members of the Jury what you were doing.

6 A Well, there was a little hill that you come over,
7 and I was getting ready to slow down. I knew that I was
8 going to be turning left. You used to could turn directly
9 into Steve's Hot Dogs. After the construction started, it
10 was barricaded along through there. So you actually had to
11 go down to Ferncliff and make a left turn and go up into that
12 block, turn around in someone's driveway, and come back out
13 and come up.

14 I was starting to slow down. I was in the left-
15 hand turn and proceeding straight to go down and take a left-
16 hand turn onto Ferncliff.

17 Q The Police Officer indicated that you told him at
18 the time that you were going about seven miles-per-hour.

19 A Well, just like Mr. Lucas had expressed earlier
20 yesterday, I have no judgment of speed. Angela and I this
21 morning, in coming in to the trial, got into her car and
22 tried going six to eight miles-an-hour. In a straight drive
23 car, especially going down a decline, a grade sort of, there
24 is no way that hardly you could slow a floor shift car and go
25 eight miles-an-hour if you are in first gear.

1 Q How fast; do you have any estimate?

2 A I would say about 15 to 25 miles-an-hour; six
3 to eight miles-an-hour is very, very slow.

4 Q Now, as you were proceeding to slow down for the
5 traffic in front of you, tell the members of the Jury what
6 happened.

7 A All of a sudden, the car was there in front of
8 us, and we just crashed into each other. That is all there
9 was to it. I did not see the car. There was no way that
10 you could see the car coming out.]*

11 Q Now, can you describe the impact for us?

12 A Well, I have never been in an accident. It is
13 hard to explain. It would be like being in the top of a
14 tree, a 40 or 50 foot tree, and falling out of it. It
15 was a very hard hit. We just stopped suddenly.

16 Q What happened to you when the impact occurred?

17 A (Witness indicates.) I had my seat belt on. I
18 always wear my seat belt.

19 Q You made a motion like this (indicating).

20 A I had my seat belt hooked over here (indicating).

21 Q Let's stop right there. The seat belt went
22 from which side of your body to which side?

23 A It went from my left upper body, across my right
24 waist, and hooked down by my right side.

25 Q Was it a shoulder harness seat belt that comes

1 from up - - -

2 A Yes, sir.

3 Q Was there a belt that went across your lap,
4 also?

5 A Yes, sir.

6 Q Describe to the Jury your motion when the impact
7 occurred.

8 A Well, we were hit from the right front, and
9 everything went up and over very suddenly, and snapped me
10 back.

11 Q Up and over to what direction?

12 A Up and over to the left, my body, and the seat
13 belt caught me and pushed me back real fast, or snapped me
14 back real fast. It prevented me from going through the
15 windshield.

16 Q After the impact, can you tell us what you did?

17 A I was quite shook up. I had never been in an
18 accident in my life. I have driven a school bus for five
19 years. I know the laws of the road. I know that you are
20 not to leave the accident until the Policeman - - - You are
21 not to move the car until the Policeman comes. I sent
22 Angela to call the Police. We were both shook up. I did
23 not get out of the car immediately.

24 Q Did you sit in the car for awhile?

25 A Yes, sir.

1 Q Did you have any problem?

2 A I was extremely upset. I took the seat belt off.
3 Angela had not gotten out yet. I asked her if she was okay
4 because she did not have her seat belt on; she said yes. We
5 were both very frantic. There was some tightness that came
6 into the shoulder and into the neck.

7 Q Which shoulder?

8 A My right shoulder and up the neck. I proceeded
9 to get out of the car. The Policeman came to the accident
10 and asked me to move the vehicle. I got back into Angela's
11 vehicle and moved it, after he had checked everything out,
12 moved it back out into the convenience store where
13 Mr. Poelman was at. Mr. Poelman backed his car up into
14 there, too.

15 Q Did you go from the scene of the collision to
16 the hospital?

17 A Yes, sir.

18 Q How did you get to the hospital?

19 A Debbie Cochran, a friend of mine at Universal
20 Communication Systems, heard Angela's call when she called
21 in the office to tell them that we had been in an accident
22 and were going to be late coming back from lunch.

23 They didn't understand which Steve's Hot Dog
24 stand we were at. Mr. Chafin, my boss, went to one, and
25 Ms. Cochran came to the other one, along with the credit

CROSS EXAMINATION

BY MR. LUCAS:

Q Mrs. Ring, I will try not to be as long as we have been so far this morning. Let me ask you a little bit about the accident. As I understand it, you never saw Mr. Poelman's vehicle prior to the impact?

A No, sir, I did not.

Q And you were driving?

A Yes, sir.

Q There was construction going on there at Hershberger?

A Yes, sir, there was.

Q It was your daughter's side that was hit?

A Yes; the front part of the vehicle, the right side.

Q I think you have testified in Depositions already that the car was not displaced. It looks like it just came to a stop when the two cars hit?

A Yes; the fender was rubbing the tire, and the hood was a little out of line, whatever you call that front part.

Q The fender.

A Okay.

Q But it just stopped the two vehicles; there was

1 no displacement of the vehicles?

2 A No, sir.

3 Q As I understand it, also, you didn't hit your
4 right shoulder on any part of the interior of the car?

5 A I had my shoulder - - - I mean the seat belt on;
6 nothing, I don't think, was hit.

7 Q Your shoulder didn't hit the door or the dash
8 or anything like that?

9 A I may have been thrown up against the door; as
10 far as anything being hit, I - - -

11 Q You don't recall?

12 A No, sir.

13 Q Now, you don't deny that you told the Police
14 Officer that you were going seven miles-per-hour?

15 A Yes, sir; I don't. I was so shook up that I
16 didn't know how fast I was going, to be honest with you.

17 Q You said you and Angela, either last night or
18 this morning, got in the car and - - -

19 A Coming to Court this morning we went six or
20 eight miles-an-hour. Coming out of our neighborhood there is
21 a little incline. I have no idea how fast I was going.

22 Q You went to the Emergency Room and were released?

23 A Yes, sir.

24 Q Dr. Jones treated you for awhile for the spasms
25 you were having, and then referred you to an orthopaedist,

1 Dr. Garnett?

2 A Yes, sir.

3 Q You saw Dr. Garnett for many, many months?

4 A Yes, sir.

5 Q Up until March of 1988?

6 A Yes.

7 Q You never expressed to him any dissatisfaction
8 with the type of treatment he was giving you?

9 A I really didn't have a lot to say to him.

10 Q You didn't ask to change physicians or anything
11 like that?

12 A No.

13 Q Now, the only time you have been hospitalized
14 as a result of this accident was when they put you in the
15 hospital to run some tests?

16 A Yes, sir.

17 Q That was Garnett and Crickenberger's group;
18 they work together in the same office?

19 A Yes, sir.

20 Q You were in the hospital for several days for
21 tests?

22 A Yes, sir.

23 Q They revealed nothing?

24 A No, sir.

25 Q Now, in October you were released to return to

1 work, October of 1987?

2 A Yes, sir. I went back not full-time; it was just
3 a couple of days a week. That is actually how I started
4 back.

5 Q The accident was in August and you were released
6 to return back to work in October?

7 A Yes; I think I just worked two or three days a
8 week for the first two or three weeks or something.

9 Q And then back to full-time?

10 A Yes, sir.

11 Q Then in March of 1988 you went back and asked
12 Dr. Garnett to release you to full activity, and he did so?

13 A I don't know if it was to full activity, but
14 I didn't see any sense in coming in and seeing him anymore
15 because all he was doing was giving me prescriptions.

16 Q Do you remember him releasing you to full
17 activity in March?

18 A Yes, sir.

19 Q Then the next orthopaedist you saw was when we
20 asked you to go see Dr. Mull?

21 A Yes, sir.

22 Q And that was in January of this year?

23 A Yes, sir.

24 Q Then you started going to see Dr. Lemmer sometime
25 about in April of this year?

1 A Yes, sir.

2 Q Since seeing Dr. Lemmer, you haven't been back
3 to any orthopaedists?

4 A No, sir; there is nothing broken, and they say
5 there is nothing that can be done.

6 Q Now, I want to talk to you a little bit about
7 your job at UCS. After you went back to work, you were
8 performing your job satisfactorily?

9 A Yes, sir; I was trying to, yes, sir.

10 Q None of your bosses ever complained to you that
11 you weren't doing a good job?

12 A No; I did my best.

13 Q You did your best, and that was good enough?

14 A Yes, sir.

15 Q In January of 1988, a couple of months after
16 you had returned, you received a promotion?

17 A Yes, sir, I believe I did.

18 Q That promotion, I think, bumped you up from
19 \$5.25 an hour to \$6.00 an hour?

20 A Yes, sir.

21 Q That promotion that you had was a more stressful
22 job, wasn't it? Tell the Jury what the promotion was.

23 A The promotion was to do nothing but cash contract
24 sales. The job was more stressful, but, yet, they took away
25 the contract analyst or credit analyst position. I was

1 totally on cash contract collection then, which still
2 entailed talking on the telephone. So even though I got a
3 promotion, the original job of assistant to the credit
4 analyst was dropped.

5 Q Basically, your job then was one of collections?

6 A Yes, sir.

7 Q That would be a higher stress job?

8 A Yes, sir.

9 Q Now, you did that job in January and February,
10 and you testified in Depositions that along around July of
11 1988 you and your husband had a talk and just said no more.

12 A That is right.

13 Q In July of 1988, you decided that it was time to
14 stop at UCS?

15 A Yes, sir; I have explained what went on.

16 Q Now, in March of 1988, you applied for the bus
17 driver job; is that correct?

18 A Yes, sir; this was actually a phone call to
19 a Mr. Hillary Pollard about driving the bus the following
20 Fall. The date on it only meant that the application was
21 filled out. They didn't have any openings at the time.

22 All the contracts had to come back in at the
23 end of August before I could be told whether I got a job or
24 not.

25 Q So in March of 1988 you were thinking about

1 leaving UCS?

2 A Things were just like I mentioned to
3 Mr. Cranwell; yes, sir.

4 Q That is your signature at the bottom?

5 A Yes, sir.

6 Q The question about the fourth line down, it
7 says, "Physical defects; explain," and you answered that
8 question, "None."

9 A I am sorry; I don't see where you are talking
10 about.

11 Q It says, "Physical defects; explain," and you
12 answered "None," meaning no physical defects.

13 A No, sir.

14 Q Is that correct?

15 A Yes, sir.

16 MR. LUCAS: We ask that that be marked.

17 MR. CRANWELL: We don't object.

18 THE COURT: This will be Defendant's Exhibit
19 One.

20 (Thereupon, the application for
21 a school bus driver was marked and entered into
22 evidence as Defendant's Exhibit Number One.)
23

24 BY MR. LUCAS:

25 Q Now, you had driven a school bus, I think, for

1 five or six years before going to work for UCS?

2 A Yes, sir.

3 Q I think the explanation you have given in
4 Depositions was that that provided a good job for you with
5 your children in school, to spend a lot of time with them,
6 not taking away the time?

7 A While they were small, that was the best for
8 me.

9 Q You said in, I think, March or April of this
10 year was the problems you had with your middle daughter?

11 A Yes, sir.

12 Q It was determined at that time, in your mind
13 at least, that you needed to spend more time with her?

14 A I was experiencing so much pain with my neck
15 and shoulder that I did not have the time to spend with
16 my children as they needed.

17 Q Well, you were working a 40-hour a week
18 job compared to three or four that you had had before
19 driving a school bus?

20 A Yes, sir.

21 Q It was decided at that time, you say you and
22 your husband sometime around there decided that, "Well, we
23 may have to forego some money, but we want you to spend more
24 time to try to straighten out this thing at home. Let's
25 put the application in back for the school bus."

1 A It wasn't only with Robin. I know that that is
2 what you think. Everything contributed; it was my husband,
3 as well as my children.

4 Q You needed more time for them; they wanted more
5 time from you?

6 A Yes, sir.

7 Q Now, Mr. Cranwell has already admitted, I
8 think it is his last Exhibit, and I apologize for not
9 knowing the number, the actual application that you complete
10 in August of each year when you go to driving a bus.

11 MR. CRANWELL: So we can keep the Record
12 straight, why don't you let her use the marked
13 Exhibit.

14

15 BY MR. LUCAS:

16 Q Exhibit Number Eight, let me show that to you.
17 If you would go to the third page; this is the application,
18 Mrs. Ring, that was completed in August of 1988.

19 A Yes, sir.

20 Q That is your signature on the front?

21 A Yes, sir; it is the same documentation
22 Mr. Cranwell just showed me.

23 Q This application is what is the standard part
24 of the procedure of getting a school bus job. I guess you
25 have to apply for it and fill out an application?

1 A Yes, sir.

2 Q In August of 1988, there are a couple of
3 questions, and I apologize if you feel that it is repetitive,
4 but it has a place where you would check if you have a
5 history of any of the following, and it has a place for back
6 injury, and you did not check that?

7 A Yes, sir, and I did not check shoulder injury.

8 Q And you did not check shoulder injury. It also
9 has a place on there where it says, "Are you taking any
10 type of prescribed medication?" Were you taking medication
11 at that time?

12 A Flexeril at bedtime.

13 Q Did you check yes or no?

14 A I checked no.

15 Q Down in the same part of the Exhibit, in the
16 print at the bottom, 2B, it says, "A person is physically
17 qualified to drive a school bus if he has no impairment of
18 the use of a foot, a leg, a hand, finger or an arm, and no
19 other structural defect or limitation likely to interfere
20 with the ability to control and safely drive a school bus."

21 Your explanation for not checking the shoulder
22 or back is that you were afraid that you were not going to
23 get the job?

24 A Yes, sir.

25 Q You, also, as part of that application, went to

1 see Dr. Yost?

2 A Yes, sir.

3 Q Dr. Yost is a doctor that you have seen from time
4 to time, both before the accident and after the accident?

5 A Yes, sir.

6 Q Dr. Yost gave you this physical?

7 A Yes, sir; he gives all of the Roanoke County
8 physicals.

9 Q You made no complaint to Dr. Yost of pain?

10 A No, sir; he asked me to move my neck and I moved
11 my neck. He checked my eyes, ears, and did a physical on me.

12 Q When you were doing the range of motion, you did
13 that successfully?

14 A My range of motion now, I can look from side to
15 side.

16 Q You didn't make any indication to him that you
17 were having any problems?

18 A No, sir; again, I have told you why.

19 Q In August of 1989, some three months ago, it
20 was time to have another physical?

21 A Yes, sir.

22 Q I believe that is the front page?

23 A Yes, sir.

24 Q Just briefly going through the same thing, you
25 didn't check that you had any back problems?

1 A No, sir.

2 Q You didn't check that you had any shoulder
3 problems?

4 A No, sir.

5 Q Were you taking medication?

6 A Yes, sir; Flexeril at bedtime.

7 Q When it asked you if you were taking any
8 medication on there, what did you answer?

9 A No, sir, again.

10 Q You also went again to see Dr. Yost?

11 A Yes, sir.

12 Q He did the same range of motion test on your
13 neck?

14 A Yes, sir.

15 Q And you made no complaints to him?

16 A No, sir.

17 MR. LUCAS: Did you make the separation
18 notice an Exhibit?

19 MR. CRANWELL: No, I don't think so; I just
20 took her through it. I have a copy of it if you want
21 it.

22 MR. LUCAS: I have a copy; I just didn't
23 know whether you made it an Exhibit.
24
25

1 BY MR. LUCAS:

2 Q Bruce Chafin was your boss at UCS?

3 A Yes, sir.

4 Q Around in July a decision was made for you to
5 leave?

6 A Yes, sir.

7 Q That was your decision?

8 A Yes, sir, and my family's decision.

9 Q And your family's decision; what I am getting
10 at, no one asked you to leave?

11 A No, sir.

12 Q No one told you that they were dissatisfied with
13 you?

14 A No, sir.

15 Q Mr. Chafin has written down the reason for
16 separation is, "Resigned to be with family."

17 A Yes, sir.

18 Q Is that what you told him?

19 A In a round-about way, just like I have told
20 Mr. Cranwell.

21 MR. LUCAS: I would mark that as an Exhibit.

22 MR. CRANWELL: No objection.

23 THE COURT: It will be received as Defendant's
24 Exhibit Two.

25 (Thereupon, the separation

1 notice from UCS was marked and entered into
2 evidence as Defendant's Exhibit Number Two.)
3

4 BY MR. LUCAS:

5 Q You were still getting good performance reviews?

6 A Yes, sir.

7 MR. LUCAS: This is a January 4, 1988 Employment
8 Performance Review. I would ask that be made a part of
9 the Record.

10 MR. CRANWELL: I thought we agreed that we were
11 going to put all of those records in. It doesn't make
12 any difference to me.

13 MR. LUCAS: If you want to put them in as a
14 package - - -

15 MR. CRANWELL: I have a whole package of them;
16 do you want the whole package?

17 MR. LUCAS: We will just mark that; that is
18 about all I am going to put in. I don't have any
19 problem with you putting in as many as you want to
20 put in.

21 THE COURT: It will be received as Defendant's
22 Exhibit Three.

23 (Thereupon, the January 4, 1988
24 Employment Performance Review was marked and
25 entered into the Record as Defendant's Exhibit

1 Number Three.)

2

3 BY MR. LUCAS:

4 Q Now, your attendance in driving a school bus,
5 as we have talked about in Depositions, you haven't missed
6 any time from driving a school bus for illness, have you?

7 A No, sir; I am only gone for 45 minutes. I try to
8 handle that.

9 Q This bus that you drive is a stick shift?

10 A Yes, sir; it is a new bus. Most all of them
11 down there have automatics. I probably won't be getting one
12 for about two years.

13 Q The bus that you have been driving is not an
14 automatic?

15 A No, sir.

16 Q And I guess you have to open the door?

17 A Yes, sir.

18 Q No time has been missed from this job?

19 A No, sir.

20 MR. LUCAS: I thank you, Mrs. Ring; those are
21 all the questions I have.

22

23

24

25

FURTHER CROSS EXAMINATION

BY MR. RHODES:

Q At the time that Mr. Poelman's car hit your car, you were going at a speed where it just completely stopped your car?

A It just bammed; stopped.

Q I believe you told me when we took your Deposition that it just stopped your car?

A Yes, sir.

Q It did not move your car to the side, and it did not move it back, but it just stopped it?

MR. CRANWELL: Your Honor, wait a second; stop. These are repetitious now. She has testified at least three times that it just stopped her car when they came together.

THE COURT: I agree. Mr. Rhodes, if you are going to question her, please let's get into something different than what we have already heard. We have had her on the Stand for an awfully long time.

BY MR. RHODES:

Q What I was getting at, Mrs. Ring, is that the car wasn't knocked out of the lane of traffic you were in?

1 A I didn't really look at it; I don't know. Not
2 to my knowledge; I don't know.

3 Q You didn't have any conversation with Mr. Poelman
4 after the accident?

5 A Mr. Poelman; no, sir.

6 Q I am a little bit confused, Mrs. Ring. You quit
7 your job at UCS in July of 1988?

8 A Yes, sir.

9 Q You applied for your job in Roanoke County to
10 drive a school bus in March of 1988?

11 A Yes, sir; a couple of months before - - I had to
12 get my name into the pot if I wanted to get an opening in the
13 Fall.

14 Q At the time, though, that you quit you told your
15 supervisor it was because you were having family problems.

16 A Yes, sir; I have explained what was going on.

17 Q But you had planned since March of stopping your
18 employment at UCS, hadn't you?

19 A We had been having problems. I had been having
20 problems. I was coming home, like I just told him, two or
21 three nights a week - - - Me quitting my job was not
22 something that was decided overnight. I loved my job. I did
23 not want to leave my full-time job.

24 Q But you had applied for this job at Roanoke
25 County in March, and you didn't quit until July; is that

1 your testimony?

2 A Yes, sir.

3 MR. RHODES: Those are all the questions I have.

4 Thank you, Mrs. Ring.

5

6

REDIRECT EXAMINATION

7

8 BY MR. CRANWELL:

9 Q Mrs. Ring, let's follow up on that. In relation-
10 ship to your daughter's hospitalization, when did you and
11 your husband have a conversation about your working at Bell
12 South?

13 A Robin was hospitalized for the month of February
14 or March; I am not sure.

15 Q Well, in relation to that hospitalization, when
16 did you all have your conversation about your employment
17 at Bell South?

18 A Around that time.

19 Q Is that when you made application to Roanoke
20 County?

21 A It was in April, I believe, or March.

22 Q Did you and your husband sit down and talk about
23 this?

24 A Yes, sir, we did; my whole family did. We all
25 did.

1 Q This application was a result of that family
2 conversation, wasn't it?

3 A Yes, sir.

4 Q Mrs. Ring, when you went back to work in October
5 of 1987, up through July of 1988, were you able to keep your
6 work up?

7 A I had to work through my lunch hour and through
8 my breaks.

9 Q Did you ever have to work through your lunch hour
10 and your breaks prior to this injury?

11 A No, sir.

12 Q Now, Mr. Lucas asked you if you ever complained
13 to Dr. Garnett about his treatment.

14 A Yes, sir.

15 Q Did you ever get to have much conversation with
16 Dr. Garnett?

17 A No, sir; I had mentioned to Dr. Garnett about me
18 talking on the telephone and it aggravating my neck. He
19 made no response to it.

20 MR. CRANWELL: That is all.

21 THE COURT: Thank you, Mrs. Ring; you may step
22 down.

23 (Thereupon, the witness stepped aside.)

24

25 THE COURT: Ladies and gentlemen of the Jury,

1 I believe this would be a good time for us to take
2 our luncheon recess. I ask that you all report back
3 promptly at 1:30, please. If you will go with the
4 Deputy at this time.

5 (Thereupon, the Jury was excused, and the
6 following Proceedings were had outside the presence
7 of the Jury:)

8
9 THE COURT: Mr. Cranwell, how many witnesses
10 do we have left?

11 MR. CRANWELL: Your Honor, because of some of
12 the debate that has been going on about the foundation
13 for certain testimony, I am going to go ahead and put
14 Mr. Chafin on at 1:30, and right after him I will do
15 Clare Metz. After Clare Metz, I will do Shinnick, and
16 after Shinnick, I will do Carol Levkoff, and then
17 Mr. Ring.

18 THE COURT: Who is Carol Levkoff?

19 MR. CRANWELL: She is a neighbor.

20 THE COURT: We have Dr. Mull coming at 3:30.
21 I don't know how we will get through all of these
22 people.

23 MR. LUCAS: Shinnick is going to be a long
24 witness.

25 MR. CRANWELL: I don't mind if you want to - - -

1 I can do Bruce Chafin and Clare Metz, and then if you
2 want, I can go to Carol Levkoff, and then we can run
3 Curtiss Mull in, and then I will go back to Shinnick.

4 THE COURT: How do you gentlemen feel about
5 that; is that agreeable?

6 MR. LUCAS: Well, there is going to be a lot
7 of debate about - - -

8 THE COURT: We are going to have to hear
9 Mr. Shinnick in limine, first of all. So I think it
10 probably would be desirable to go ahead and hear from
11 Dr. Mull before we get into all of that.

12 MR. CRANWELL: I don't quite understand what
13 you mean when you say we are going to hear it in limine.

14 THE COURT: Well, because I certainly am not
15 going to allow him to testify as to her limitations
16 physically.

17 MR. CRANWELL: Your Honor, he doesn't intend
18 to testify - - -

19 THE COURT: Well, that is fine, but the motion
20 in limine suggests that they think that he is.

21 MR. CRANWELL: Your Honor, what he is going to
22 testify to will be the limitations that Dr. Lemmer
23 said and the limitations that Dr. Jones said. Dr. Jones
24 says the lady is never going to be able to go back to
25 full-time work. That is what he testified to here this

1 morning.

2 THE COURT: I think we are probably going to have
3 to have a proffer just to make sure that we don't
4 tread in areas that the Court would exclude from the
5 Jury's consideration. Let's go with Mr. Chafin,
6 Ms. Metz, and Ms. Levkoff, and then we will go ahead
7 at that time, if Dr. Mull is here, and hear from him,
8 and conclude the Plaintiff's case thereafter, if that
9 is agreeable with everyone. We stand in recess.
10

11 (Thereupon, the lunch recess was taken; following
12 the lunch recess, the Proceedings continued as follows
13 outside the presence of the Jury:)
14

15 THE COURT: Are we ready for the Jury, gentlemen?

16 MR. LUCAS: Your Honor, I thought one thing
17 we were going to do, we were going to have Chafin and
18 Metz here. I thought the Court's ruling was that we
19 wanted to see if it was necessary to Voir Dire him to
20 ask about this promotion. Was I wrong on that?

21 THE COURT: That is fine.
22

23 WILLIAM BRUCE CHAFIN

24 was called as a witness, duly sworn, and testified as
25 follows:

1 THE COURT: Ladies and gentlemen of the Jury, at
2 this time I am going to let you say farewell for the
3 evening. We will try to dispose of as many matters
4 while you are gone this evening as we possibly can so
5 that in the morning we can get involved with our
6 testimony.

7 I would ask, again, that you report about 8:45
8 tomorrow morning so that we can get started promptly
9 at 9:00. Again, this evening, please do not discuss the
10 case with anyone, nor remain within hearing of anyone
11 who might be discussing the case. I hope you all have a
12 very pleasant evening. Thank you for your attention
13 today.

14 (Thereupon, the Jury was excused, and the
15 following Proceedings were had outside the presence
16 of the Jury:)

17
18 THE COURT: Mr. Lucas, any motions?

19 MR. LUCAS: One moment, please, Your Honor.
20 You caught me off guard there.

21 THE COURT: Mr. Rhodes, are you on guard?

22 MR. RHODES: I am on guard.

23 THE COURT: All right, if you will go forward.

24 MR. RHODES: Your Honor, we filed a memo with
25 the Court on behalf of John Doe at the beginning of

1 the case. We ask at this time that the evidence as
2 to John Doe be struck because there has been no showing
3 that John Doe was negligent or caused this accident.

4 There is a case in Virginia of Nolde versus Wray
5 that seems to deal with this. We have the problem with
6 the John Doe who signals another vehicle to proceed.

7 Now, the testimony has been that John Doe waved
8 Mr. Poelman onto the road. Mr. Cranwell is going to say
9 that when you gratuitously do something that you are
10 responsible for all the consequences of it. That is
11 where it ends here.

12 The reason I am saying this, Your Honor, is that
13 the Court must rule whether there is enough evidence
14 here according to Nolde versus Wray, and according to
15 the other questions, whether there is enough evidence
16 here that John Doe caused this accident. I think
17 "caused the accident" is what we are dealing with here.

18 Now, in this case at the present time, the
19 testimony has been that John Doe waved Mr. Poelman onto
20 the road. Mr. Poelman stated that, yes, he was sitting
21 in the Stop-In lot looking back toward the direction of
22 travel of Mrs. Ring, and that when he waved him on, that
23 took to mean to Mr. Poelman that, "I am going to yield
24 the right-of-way to you," and that right-of-way was
25 yielded to him, and he came out into the road.

1 He stated on Mr. Cranwell's question that he did
2 not rely on that motion to mean that the left lane in
3 which Mrs. Ring would have been in was clear, and that
4 before he pulled out, he looked and saw that it was
5 clear. We have the same position in that regard,
6 Your Honor, as if John Doe had stopped and made no
7 motion. It is simply that John Doe had stopped.
8 Mr. Poelman then had to make the determination of,
9 one, whether any cars were coming, whether he could
10 proceed, and that is the same position that Mr. Poelman
11 said he did.

12 He did not take John Doe's signal to mean that
13 the lanes were clear. He said that he was looking back.

14 Now, Your Honor, he said at the time of the
15 accident he was trying to look around the John Doe
16 vehicle to see what was coming, to see if there were any
17 vehicles coming. On examination by Mr. Cranwell he also
18 stated that he had to look in the other lane to see what
19 was going in the opposite direction, and he did that
20 before he came out, and he was aware of it, the same
21 situation is if John Doe wasn't there.

22 Did John Doe, by waving him on, create any cause
23 of action there? We contend that he didn't. It is the
24 same as John Doe stopping.

25 If Mr. Poelman had relied upon John Doe when he

1 came out either in, one, that the lanes were clear,
2 come on, or two, that there was nothing coming from
3 Mrs. Ring's lane, come on, and that is what I mean by
4 the actionable consequences, what could those
5 consequences mean.

6 But Mr. Poelman didn't testify to that.
7 Mr. Poelman stated that when he was waved on, that he
8 simply took that to mean that he had the right-of-way,
9 and, further, that he had already looked, and he was
10 looking after he was waved on, that he looked back
11 beyond John Doe to see if there was any traffic
12 coming.

13 To Mr. Cranwell's question, Mr. Cranwell asked
14 him, "Did you come out here," or, "Did you know there
15 was nothing back here," and he said, "I looked to
16 determine if there was anything back here before
17 I came out."

18 So with that, Your Honor, he was not relying
19 upon John Doe's signal whatsoever. We believe that the
20 evidence should be struck as to John Doe. The waving
21 doesn't present a question going to the Jury. John
22 Doe would not, by his waving, have caused, or have
23 been any cause, of the accident, because Mr. Poelman
24 didn't rely on him in any way, and he has testified
25 to that.

1 So, consequently, we believe that the Court
2 should rule that it should not go to the Jury for
3 that reason.

4 THE COURT: Thank you, Mr. Rhodes. Mr. Cranwell?

5 MR. CRANWELL: Your Honor, I know I don't need
6 to do this, but I always, out of an abundance of
7 caution: On a motion to strike, the evidence is
8 construed most favorably for the Plaintiff and all
9 reasonable inferences therefrom.

10 Now, I am not going to dwell a whole lot on
11 this because Mr. Poelman testified on Cross Examination
12 that but for the motion, but for the motioning, he would
13 have stayed put until he could, himself, through his
14 observation powers, determine that the road was clear,
15 that the right-of-way was clear for him to cross.

16 Now, there is no question that when Mr. Poelman
17 put his car in motion, that resulted in this accident,
18 that he was relying upon that motion, because that is
19 his uncontradicted testimony.

20 Now, Mr. Rhodes would indicate that this
21 motioning has no effect if Mr. Poelman doesn't assume
22 that it indicates to him that the way is clear. That
23 is not what the duties of the law imposes.

24 The Arnold Court says, "While the Defendant
25 driver is under no obligation to give the Plaintiff

1 any signal at all," now, listen to this, "when he
2 undertook to do so, a duty devolved upon him to exercise
3 ordinary care to see that the way was clear."

4 Now, the reason for that, quite simply, is
5 best exemplified in this case. That driver, regardless
6 of what motion he was giving, and regardless of what he
7 may assume Mr. Poelman thought about it, knew that he
8 was putting a vehicle in motion that was going to cross
9 a very heavily travelled roadway, that the traffic was
10 very heavy at the time.

11 Now, it was his duty to make sure when he
12 undertook to give that obligation, to make sure that the
13 way was clear.

14 Now, I think the Jury can reasonably infer in
15 this case that had John Doe looked in his rearview
16 mirror, he would have obviously seen what we all know is
17 there, what a reasonable person would do, and when
18 John Doe undertakes to give that motion, he has to
19 exercise a reasonable lookout, and the law in this case
20 tells you that reasonable lookout says you look and see
21 what a person would have seen under the circumstances.
22 I don't think there is anybody here who could deny that
23 Mrs. Ring's vehicle was there and should have been quite
24 obvious, visible to John Doe in either his rearview
25 mirror on the inside of the car or either the one on

1 the outside.

2 But beyond that, beyond that, there is no
3 question, absolutely none, that this man put his vehicle
4 in motion because of the gesture.

5 Mr. Rhodes suggests that the gesture was nothing
6 more than as if John Doe had of stopped and just been
7 sitting there. Well, that is not what Mr. Poelman
8 said.

9 Mr. Poelman said, "If I had not got that motion,
10 I would have stayed put until I could see myself that
11 it was clear." I think that is the exact situation that
12 Justice Cardoso was speaking to when he said that there
13 may be no duty to act, but once you undertake the act,
14 you have to act with reasonable care.

15 Now, in this case, the act of reasonable care,
16 there was a duty for that person to exercise reasonable
17 care to keep a proper lookout if he was going to give
18 instructions that were going to put vehicles in motion
19 crossing two lanes of heavily traveled highway into a
20 third lane. Mr. Poelman indicates that he never, ever
21 stopped after he started.

22 I would suggest to you that in the light
23 construed most favorable to the Plaintiff with all the
24 reasonable inferences thereto, this Jury can find that
25 John Doe undertook a duty of putting Mr. Poelman's

1 vehicle in motion, and when he did, he did not exercise
2 reasonable care to make sure that the way was clear,
3 because there is no evidence that John Doe even looked
4 when he motioned Mr. Poelman out.

5 We know that, but for that action, that
6 Mr. Poelman would have stayed put.

7 THE COURT: Thank you, Mr. Cranwell. This
8 Court likes the reasoning of the Georgia Court in the
9 Arnold case. However, I think that the law of the
10 Commonwealth is not consistent with the Georgia Court's
11 rulings.

12 I have read the Nolde Brothers case several
13 times, and the case clearly seems to state that in the
14 Commonwealth of Virginia, nevertheless, a Jury question
15 concerning a driver's negligence in giving such a signal
16 is not presented where the signal could not reasonably
17 have been interpreted as a signal to proceed across
18 lanes of oncoming traffic.

19 The factual situation, as I understand it,
20 in Nolde Brothers is very analogous to the factual
21 situation here. Mr. Wray in the Nolde Brothers case
22 could have also looked in his rearview mirror to
23 ascertain the oncoming vehicle before he gestured, and,
24 yet, the Court seemed to give no regard to that.

25 The Court seems to say that the emphasis has

1 to be placed on what is going through the mind of the
2 driver who is receiving the signal, whether or not that
3 person could reasonably rely.

4 Now, in this situation, obviously, I am governed
5 by my ruling in viewing the evidence in the light most
6 favorable to the Plaintiff and all reasonable
7 inferences that arise therefrom, and this Court has
8 never before taken a case from the Jury. However, the
9 evidence that Mr. Poelman presented as part of the
10 Plaintiff's case-in-chief is unequivocal. On five
11 occasions he stated that he was not relying on that
12 hand signal to indicate that he could enter into
13 Mrs. Ring's lane of traffic; that the signal simply
14 indicated to him that John Doe was going to yield the
15 right-of-way to him.

16 He, furthermore, stated that he looked to see
17 whether or not there was a car coming, saw no car
18 coming, that he would have disregarded John Doe's signal
19 had he seen a car coming, that he yielded further at the
20 time before entering Mrs. Ring's lane of traffic, and
21 that John Doe at that time was making no signals to
22 indicate that he should proceed onto Mrs. Ring's lane of
23 traffic. Even on Cross when he acknowledged that the
24 signal from John Doe was what set his car in motion,
25 he went on to state that, of course, he would not

1 have pulled out in front of John Doe's moving vehicle.

2 So, while the signal was what precipitated his
3 moving forward, it only precipitated him moving forward
4 as far as John Doe's lane of traffic, and did not
5 precipitate any movement into Mrs. Ring's lane.

6 There is no way, and if anyone wishes to re-
7 listen, I even wrote down the different numbers from the
8 tape recorder at the time, and I can give you the four
9 cites and we can go back and listen to them, but they
10 were unequivocal, that in no way did he rely in any way,
11 shape, or form on John Doe's signal to enter the lane
12 that was occupied by Mrs. Ring's vehicle.

13 Therefore, under the decision of the Virginia
14 Supreme Court in Nolde, I do not think this question can
15 go to the Jury, and I grant the motion to strike.

16 MR. LUCAS: Your Honor, may I say something?

17 THE COURT: You certainly may.

18 MR. LUCAS: That is going to pose a problem
19 now tomorrow in terms of what we are going to tell
20 the Jury so as not to prejudice Mr. Poelman.

21 THE COURT: I intend to tell them simply as
22 follows: After they were dismissed last evening, we had
23 rulings by the Court as to matters of law, and that,
24 pursuant to a decision of the Virginia Supreme Court in
25 the case of Nolde Brothers versus Wray, the Court

1 ruled that the case could not go forward as to John
2 Doe, and, therefore, Mr. Rhodes is not present today.
3 I don't think that in any way prejudices Mr. Poelman
4 in any way, shape, or form. If you think it does,
5 you can advise me as to how it does.

6 MR. LUCAS: Well, it does, I think. I don't
7 have a solution for the Judge, but I think it does
8 in the event that you are telling them that we had
9 two parties over here, and the Court has determined
10 that John Doe is not negligent. What are they supposed
11 to conclude from that?

12 THE COURT: Well, this is the situation you
13 always have when you have multiple party Defendants and
14 a motion to strike is sustained. They should not draw
15 any inferences from that, and perhaps something can be
16 addressed in the instructions of law, but I think
17 simply stating that the Court has ruled pursuant to
18 the Virginia Supreme Court that the case could not go
19 forward as to John Doe, I am not saying that I have
20 found John Doe not negligent in their presence, not
21 giving them any explanation, other than the fact that
22 the case would not permit the matter to go forward.

23 MR. LUCAS: Can the Judge inform the Jury, as
24 she just indicated, that they should draw no inferences
25 one way or the other as to the remaining Defendant?

1 THE COURT: I think I probably can, but I
2 will need to sleep on that tonight.

3 MR. CRANWELL: I want to be careful here because
4 I don't want there to be anything said that would
5 suggest that there is no negligence on the part of
6 Mr. Poelman.

7 THE COURT: I am concerned about that, too. I
8 am going to think about that this evening and look into
9 it a little bit, and I am not binding myself to make
10 any comments one way or the other with regard to
11 inferences.

12 At this point all the Court is saying that is
13 going to be informed to the Jury is simply that pursuant
14 to the Supreme Court case of Nolde Brothers versus
15 Wray it was determined that the matter could not go
16 forward as to John Doe.

17 MR. CRANWELL: Your Honor, again, I will note
18 my exception, and I think the Virginia case is a little
19 bit different because it does talk about reasonable
20 reliance. I really think the important thing is not
21 what was in Mr. Poelman's mind at the time, but what was
22 in John Doe's mind, whether he thought that someone
23 would reasonably rely upon his signal to put their car
24 in motion to create the hazard that was created here.

25 THE COURT: I will note your objection for

1 the Record. Mr. Lucas, did you have any motions?

2 MR. LUCAS: For the Record, preserving for the
3 Record, we would move to strike the evidence as to
4 Mr. Poelman. Of course, we anticipate that the Judge
5 is going to instruct the Jury that the mere happening of
6 an accident is not proof of negligence.

7 The uncontradicted testimony of Mr. Poelman is
8 that he pulled out. The lanes were unmarked. He
9 proceeded cautiously. Despite what Mr. Cranwell said,
10 my recollection of Mr. Poelman's testimony is that
11 he looked, he was looking out. He was moving out
12 slowing so he could get a glimpse around the John
13 Doe vehicle. There was a blind spot there, and the
14 impact occurred.

15 To that extent, there is no evidence that
16 Mr. Poelman acted in any way other than what a
17 reasonable man would have acted. He looked; he came
18 up and stopped. He looked; he pulled out. He had to
19 look around the John Doe vehicle, and the only way to do
20 so would be to inch forward until you could get a clear
21 view, and, boom, that is when the impact took place.

22 There are no presumptions about traveling in
23 lanes of traffic. All of this is unmarked, and whether
24 or not, if it had a yellow line somewhere, whose lane
25 of traffic it would have been in is completely

1 speculation.

2 We would ask that the case against Mr. Poelman
3 be dismissed as well.

4 THE COURT: I am going to overrule your
5 objection. I think that the Plaintiff has clearly
6 made out a prima facie case, and, therefore, the motion
7 is overruled, and I will ask that you go forward
8 tomorrow with your evidence on behalf of Mr. Poelman.
9

10 (Thereupon, Court was adjourned until
11 November 3, 1989 at 9:00 a.m.)
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1 have fixed. You may take your instructions back with you
2 to the jury room. We will send the exhibits along
3 immediately after you are back there. If you should have
4 any questions during the course of your deliberations,
5 please write them down on a piece of paper, knock on the
6 door, and the bailiff will deliver them to me. Do any of
7 you have any questions prior to adjourning for your
8 deliberations? All right, then, if you'll please go with
9 the bailiff.

10 (THEREUPON THE JURY RETIRED TO THEIR ROOM TO CONSIDER OF
11 THEIR VERDICT AT 12:35 P.M.)

12 THE COURT: Gentlemen, yesterday we agreed that all of the
13 exhibits would go to the jury room. However, I indicated
14 at that time that I did not think it would be appropriate
15 for Plaintiff's Exhibit Number 3 to go back to the jury
16 room. So that to the jury will have a complete set of
17 all the medical records, I did not feel that it was
18 appropriate to single out one record for special treat-
19 ment, as set forth on the enlargements, so we will send
20 back all other exhibits except for Plaintiff's Exhibit
21 Number 3. And we also have the matter of the instruc-
22 tions which we need to take up. Take the verdict form
23 to the jury form, along with the other exhibits. All
24 right, gentlemen, if you would look at Instructions
25 Numbers 1 through 4 -- I'll take these in groups of four

1 -- are there any objections on the part of the plaintiff
2 as to Instructions Number 1 through 4, Mr. Cranwell?

3 MR. CRANWELL: No, Your Honor, no objections.

4 THE COURT: Any objections on behalf of the defendant, Mr.
5 Lucas?

6 MR. LUCAS: No objections.

7 THE COURT: Mr. Cranwell, I direct your attention to Instruc-
8 tions 5 through 8. Are there any objections to any of
9 these instructions?

10 MR. CRANWELL: Your Honor, I do not object to Number 8. I do
11 think that if the Court was going to give Number 8, it
12 should have given the instruction that we tendered that
13 would have instructed the jury that by looking straight
14 ahead one was keeping a proper lookout. I think it was
15 necessary because this one calls for looking from side to
16 side, and it -- I believe that's the one -- yeah.

17 THE COURT: All right, Mr. Lucas, first I'll ask that you
18 respond to Instruction A that Mr. Cranwell has proffered
19 to the Court with regard to looking straight ahead as the
20 plaintiff's position as to whether or not that should
21 be --

22 MR. LUCAS: Our problem with the Instruction Number A that
23 was refused was that it states, "the driver was looking
24 straight ahead, was keeping a proper lookout, and he had
25 a clear view of the way over which he was traveling by

1 looking ahead." That leaves out the part of the jury
2 instruction that deals with (inaudible) circumstances,
3 and so forth, that leads the jury to believe that one is
4 not negligent if he has a fixed gaze ahead, and that is
5 not the law as I understand it to be in Virginia, and I
6 think it would be inappropriate.

7 THE COURT: I sustain the defendant's objection to Instruction
8 A. I do not feel that it fully and completely states the
9 law of the Commonwealth of Virginia in that it does not
10 advise the jury that they have a duty to look in all
11 directions for vehicles, persons and conditions that
12 would affect their driving. Therefore, that Instruction
13 will be refused. On behalf of the defendant, Mr. Lucas,
14 do you have any objections to Instructions 5 through 8?

15 MR. LUCAS: We had objected to Instruction Number 5, it being
16 the Double's instruction instead of the Model Jury
17 Instruction. The Model Jury Instruction talks about --
18 focuses on the circumstances of the particular situation.
19 This makes it more of a clear duty. We think it mis-
20 states the law, in that it says "shall stop immediately
21 before entering such highway." We think there are
22 circumstances, and we think this case provides such
23 circumstances, where extraneous factors need to be
24 considered, and we think this reading of the law is not
25 appropriate in this case, and that the Model Jury

1 Instruction was the instruction that should have been
2 given.

3 THE COURT: The Court is going to overrule your objection to
4 Instruction 5, having reviewed the recent 1988 decision
5 of the Supreme Court in Van Buren vs. Simmons. The Court
6 finds that the Supreme Court has clearly stated the
7 driver must stop immediately before entering a highway,
8 and yield the right-of-way to vehicles approaching the
9 highway, and, therefore, I feel that Instruction Number
10 5 accurately states the law set forth by the Supreme
11 Court, and I will give that instruction. Any other
12 objections to 5 through 8?

13 MR. LUCAS: No, ma'am. And we have no more objections to any
14 of the others.

15 THE COURT: All right. Then, Mr. Cranwell, Instructions 9
16 through 17, any objections that you wish to state on any
17 of those?

18 MR. CRANWELL: Your Honor, on number -- Your Honor, I think
19 that to give Instructions Number 16 and Number 14, both,
20 unduly emphasize and probably will heighten in the jury's
21 mind the burden of some kind of reasonable specificity of
22 damages that we know are not required with specificity,
23 and that is the pain and suffering, mental anguish.
24 Those are all things that the jury has to use its best
25 efforts at, and either one of those instructions would be

1 all right, but to give both of them, we think over
2 emphasizes that and probably would lead the jury to
3 believe that the plaintiff is not entitled to recover for
4 pain and suffering when they don't itemized with some
5 specificity the damages, for example.

6 THE COURT: Mr. Lucas.

7 MR. LUCAS: That objection, I would say, is one that's a new
8 objection --

9 THE COURT: I have not heard it before this moment.

10 MR. LUCAS: -- one that may be waived.

11 MR. CRANWELL: Well, as I said, when I looked at them, I
12 didn't go back through the instructions, but I was
13 surprised when I heard the Court read both of those.

14 MR. LUCAS: We only emphasized one of them, obviously, in
15 closing. I think they -- what the Double's instruction
16 offers is that it is really a toss up. You don't know
17 whether it's caused or not and that does add something
18 new to the equation and you have to find your verdict in
19 favor of the defendant.

20 THE COURT: I do not believe this objection was stated prior
21 to giving these instructions to the jury, and we agreed
22 that we would restate the objections that were raised in
23 chambers on the record following it. Be that as it may,
24 I will consider the objection even though I'm not sure
25 it's timely raised, Mr. Cranwell. The Court is not of

1 the belief that this -- the giving of both instructions,
2 Number 14 and 16, unduly emphasizes the burden that is
3 placed on the plaintiff. I think that each of these
4 instructions sets forth slightly different considerations
5 for the jury in determining the weight of the evidence on
6 each of the items of damage, and, therefore, I do not
7 sustain your objection.

8 MR. CRANWELL: Your Honor, I apologize if I misled the Court,
9 because when we got them back there, I did not go back
10 through them after we -- somebody just handed me the
11 numbered sequence and I did not go through them and I
12 thought we were going to state our objections for the
13 record. I didn't want to get up to raise the point while
14 you were reading the instructions to the jury. Maybe I
15 should have done it at that point in time, but --

16 THE COURT: All right, any other objections to Numbers 10
17 through 17?

18 MR. CRANWELL: No objection.

19 THE COURT: All right. And, as a final ruling, we had the
20 matter of the issue of contributory negligence which the
21 Court took under advisement. Mr. Lucas, I did not give
22 you an opportunity to respond to Mr. Cranwell's motion
23 before. If you would like to do so at this time for the
24 record, you may.

25 MR. LUCAS: Yeah, the contributory negligence, and the Court

1 has instructed the jury on that, is based upon proper
2 lookout, and as the diagram indicates and as we argued in
3 closing, that we think someone has a duty, whether it be
4 Mr. Poelman or Mrs. Ring or any driver of a vehicle to
5 keep a proper lookout to see things that reasonable
6 people should see. We believe that the facts of this
7 case would be, the circumstances of Hershberger Road
8 being as they were, the break in the traffic, that Mrs.
9 Ring had an opportunity to see Mr. Poelman. In fact, the
10 diagram would seem to indicate that she had the oppor-
11 tunity to see him before he could see her, and we think a
12 proper lookout instruction, contributory negligence, in
13 this case is certainly a matter for the jury to be able
14 to act upon.

15 THE COURT: Mr. Cranwell, obviously, the Court has ruled
16 against your motion to strike with regard to the issue of
17 contributory negligence and I have, in fact, instructed
18 the jury on the issue of contributory negligence. The
19 basis for the Court's ruling is that the Court does find
20 that there is sufficient evidence before the Court upon
21 which reasonable men could differ and, therefore, that
22 issue is being submitted for the jury's consideration.

23 MR. CRANWELL: Your Honor, just in light of what Mr. Lucas
24 said and just so the record is clear, the issue is not
25 whether Mrs. Ring could see Mr. Poelman before he saw

1 her. The issue in this case -- the law says that a
2 person proceeding on a public highway has the right-of-
3 way, and that Mr. Poelman has to yield. And, also, the
4 Court says that in order for Mrs. Ring to violate her
5 duty on lookout, there must have been a reasonable
6 opportunity for her to look and see, and the testimony
7 of Mr. Poelman in this case, there is nothing for the
8 jury to infer that Mrs. Ring could have seen Mr. Poelman
9 until he was in her lane. At that point there is
10 absolutely not one scintilla of evidence in this case
11 that Mrs. Ring had an opportunity to avoid the accident,
12 and if the jury thinks that she was contributorily
13 negligent in not doing that, then, as this Court pointed
14 out, the jury is then running amuck and just making
15 assumptions when there are no factual basis for those
16 inferences, and that's the problem I see with Mr. Lucas'
17 argument, because he has never at one time indicated to
18 you that if Mrs. Ring would have been exercising a proper
19 duty on lookout, that she would have seen and would seen
20 Mr. Poelman in time to have taken some evasive action,
21 i.e. as the cases say, if I see you coming toward the
22 highway, I can assume that you're going to start. Now I
23 don't forfeit my right-of-way. It's not until the point
24 in time that I realize that you're not going to stop,
25 then that I would be negligent for not exercising the

1 proper lookout. At that point, I would have to have a
2 reasonable opportunity to avoid the accident.

3 THE COURT: Mr. Cranwell, by way of addressing your concern,
4 the Court has asked her secretary to type up Instruction
5 Number 7 which states that the fact that the defendant's
6 vehicle was in the plaintiff's lane of travel at the time
7 of impact allows you to find that the defendant was
8 negligent. Beyond that, I think the issue of con-
9 tributory negligence is clearly a matter upon which
10 reasonable men could differ and, therefore, is appro-
11 priate for jury consideration. So I overrule your
12 motion. Are there any other matters that we need to take
13 up pending return of the jury?

14 MR. LUCAS: No, Your Honor.

15 THE COURT: I would like to compliment both counsel on the
16 fine manner in which they presented this case to the
17 jury, and I would particularly like to thank both of you
18 for the professional manner in which you've interacted
19 with the Court and with each other. It was a pleasure to
20 have you appearing before the Court.

21 MR. LUCAS: Thank you, Your Honor.

22 MR. CRANWELL: I don't think I need to do it, but just note my
23 exception to the Court's last ruling.

24 THE COURT: It is noted. We stand in recess to await the
25 return of the jury.

1 (THEREUPON THE COURT RECONVENED IN THE PRESENCE OF THE
2 JURY TO RESPOND TO A QUESTION POSED BY THE JURY.)

3 THE COURT: Ladies and gentlemen of the jury, I have received
4 the question that you wrote on the yellow pad, and my
5 response to you is that you all will have to do the best
6 to rely on your memories and recollection as to what the
7 evidence was from each of the witnesses at the trial in
8 order to answer that question. If you'll go back and
9 resume your deliberations, please.

10 (THEREUPON THE JURY RETIRED TO THEIR ROOM TO CONTINUE TO
11 CONSIDER THEIR VERDICT AT 2:00 P.M.)

12 MR. CRANWELL: Your Honor, don't you think they should be
13 told that they can rely on what the witnesses said and on
14 the exhibits?

15 THE COURT: You didn't say that when we agreed on the answer
16 back in chambers, Mr. Cranwell. It's a little bit late
17 now.

18 MR. CRANWELL: Okay. All right.

19 THE COURT: If you had asked back there, I would have told
20 them that, but I think bringing them back in now is just
21 going to underscore one aspect of the evidence, perhaps,
22 unfairly. All right, we stand in recess.

23 (THEREUPON AT 2:10 P.M., THE JURY RETURNED TO OPEN COURT
24 WITH THEIR VERDICT.)

25 THE COURT: Ladies and gentlemen of the jury, have you reached

1 a verdict?

2 JURY: Yes.

3 THE COURT: All right, I'll ask the Court Reporter to read the
4 verdict.

5 COURT REPORTER: "We, the jury, on the issues joined, un-
6 animously find our verdict in favor of the defendant.
7 Charles H. Davis, Foreperson." Ladies and gentlemen of
8 the jury, is this your verdict and so say you all?

9 JURY: Yes.

10 THE COURT: Mr. Cranwell, would you like the jury polled?

11 MR. CRANWELL: Yes, Your Honor, please.

12 (THEREUPON THE COURT CONDUCTED A POLL OF THE JURY
13 REGARDING THEIR VERDICT.)

14 THE COURT: Ladies and gentlemen, I would like to, at this
15 time, thank you very much for the conscientious service
16 that you have rendered to this Court for the last three
17 days. The service that you have performed here is an
18 indispensable part of our system of justice, and without
19 participation such as yours, we could not function to
20 provide fair trials to all parties that come before this
21 tribunal. This concludes your term of serving for the
22 Twenty-third Judicial Circuit. We should not be calling
23 upon you again for a period of two years. If you do
24 receive a notice from us in the next two years, be sure
25 and indicate that you have served within the past two

1 years when you send it back to us. We do thank you very
2 much for your service in this case and for all the other
3 times that you may have served or reported to serve
4 during the course of this term of Court. At this time I
5 will dismiss you and thank you again. If you'll go with
6 the bailiff.

7 (THEREUPON THE JURY WAS EXCUSED FROM THE PRESENCE OF THE
8 COURT.)

9 THE COURT: Mr. Cranwell, motions?

10 MR. CRANWELL: Your Honor, I would ask the Court at this time
11 to set aside the jury verdict, and I think it's clearly
12 contrary to the evidence in this case. I think the
13 instruction that the plaintiff was concerned about and
14 the argument that Mr. Lucas made exemplifies the problem
15 that we were concerned about. I think the jury was led
16 to believe that if Mrs. Ring had an opportunity to see
17 Mr. Poelman first, that she was somehow, somehow, could
18 have been guilty of contributory negligence. There's no
19 question that the police officer testified that the
20 accident occurred in Mrs. Ring's lane, that she had the
21 right-of-way, and clearly under the law that was the
22 case. I think this was a jury that was allowed to
23 speculate and I think they were allowed to speculate on
24 the basis of what Mr. Lucas argued, and that was that
25 Mrs. Ring could have seen him first. There's absolutely

1 not one shred of evidence and the record supports that.
2 There's not one shred of evidence that had Mrs. Ring been
3 able to see Mr. Poelman it would have been in time to do
4 anything that would require her to give up her right-of-
5 way. She was operating well within the speed limit.
6 There's no evidence that she was going in an excessive
7 speed and that she did not have her vehicle under
8 control. I mean, I really do, in all honesty and
9 sincerity, if I've ever seen a jury verdict that was
10 contrary to the evidence in the case, it's this one,
11 because there is absolutely no evidence that would
12 expunge Mr. Poelman of his negligence.

13 THE COURT: Would you like to address whether or not the jury
14 had to find that he was negligent?

15 MR. CRANWELL: Well, Your Honor, I don't think there's any
16 question that as a matter of law he was negligent, given
17 the facts that were before this case. I don't think
18 reasonable men could differ on that, and I don't --

19 THE COURT: But you did not move for a directed verdict as to
20 that point.

21 MR. CRANWELL: Yes, I did, Your Honor. I asked the Court --
22 if the Court will recall, I asked the Court to direct a
23 verdict on the question of contributory negligence.

24 THE COURT: That's correct, but what I'm saying is, you did
25 not move the Court to direct a verdict for the plaintiff

1 finding negligence on the part of the defendant and
2 submit it to the jury only on the issue of damages.

3 MR. CRANWELL: That makes no difference. I think the Court
4 is entitled, at least when reasonable people cannot
5 differ, to set aside the verdict. That's where we're at
6 now. And as I said, Your Honor, I do think that the
7 instructions on contributory negligence are the (in-
8 audible) in this case, really, in all due respect, if
9 I've ever seen a case that constitutes a miscarriage of
10 justice, is this particular case. It's clear from Mr.
11 Poelman's own testimony that he couldn't see and he
12 pulled into the lane of other traffic when he could not
13 see, and that's his own testimony. I just think that the
14 jury, really, was misled to think that if Mrs. Ring could
15 have seen him first, then they were back there in a
16 contest of whether or not she could have seen. There's
17 no evidence that even if she had seen him, it would have
18 been timely enough to do anything, and the law in
19 Virginia is very clear. For example, if I'm driving
20 down the road and I see you pulling out, out of a
21 driveway, I have the right to assume that you're going to
22 stop, and it's not until I know that you're going to
23 enter the highway that a burden shifts to me to do
24 something. In this particular case, as I said, there's
25 no evidence to support it.

1 THE COURT: Thank you. Mr. Lucas?

2 MR. LUCAS: There's two reasons, of course, that the jury
3 could have come back with a defense verdict. The first
4 is one of negligence. As we argued in our closing
5 argument, there were no surprises, I don't think. This
6 Hershberger Road was a mess at the time. Mr. Poelman
7 testified unequivocally that the lines were not on the
8 road, they were not painted. He told the Court what he
9 did. Obviously, sometimes people using ordinary care
10 can get into accidents. That's why we have the mere
11 happening of an accident is not proof of negligence. He
12 looked. He didn't see anything coming. He was inching
13 out past the John Doe vehicle. Mr. Cranwell now asks
14 that the verdict be set aside as to negligence. At no
15 time was a motion to strike our evidence as to negligence
16 -- was that made. In fact, Mr. Cranwell offered the
17 negligence instruction. There was no motion to strike
18 our primary negligence, and the jury may well have
19 determined that we were not negligent and never got to
20 the contributory negligence defense. On the contributory
21 negligence defense, I think it is very proper to argue
22 that she had a lookout. The diagram shows that she could
23 see, if it happened as the police officer has indicated
24 he thought it did, that she could see the hood of his car
25 before he could see her, or at least that's what we

1 argued. That's the inference, or that's what the jury
2 could have decided. We think, on the negligence issues,
3 is the jury could have found for the defendant on the
4 negligence issue since there was never any argument prior
5 to this this time about striking the plaintiff's evidence
6 or moving for a directed verdict as to liability and,
7 moving on to damages, that the Court -- we would submit
8 to the Court that there are facts which the jury could
9 have found the defendant's verdict on, but even if they
10 were not, it's too late now to make that argument.

11 THE COURT: Thank you. Mr. Cranwell, did you wish to respond?

12 MR. CRANWELL: Your Honor, I think, on a motion to set aside
13 the verdict, as I said, I come back and say to you that
14 this is a very clear case. I think it's clear that Mr.
15 Poelman was negligent. I think it's very clear that the
16 jury bought in on the defendant's argument that there was
17 somehow, somehow, contributory negligence that made an
18 interplay into this case. I think it's clearly an
19 injustice in this case and I think it's a case that needs
20 to be set aside.

21 THE COURT: Thank you. I deny your motion to set aside the
22 verdict. I do find that the evidence that was before the
23 Court and before the triers of fact was such that the
24 jury could have found that Mr. Poelman, under all of the
25 circumstances of this case, did exercise ordinary care in

1 the manner in which he proceeded out onto Hershberger
2 Road on the date of this accident, considering all the
3 conditions of the road and his testimony as to how he
4 proceeded. Furthermore, even if they were to have found
5 he did not exercise ordinary care, as I have previously
6 ruled, I do feel that there was sufficient evidence to
7 submit it to the trier of fact. I do feel that it was a
8 matter upon which reasonably minded individuals could
9 differ as to whether or not there was any contributory
10 negligence on the part of the plaintiff, and, therefore,
11 the jury verdict will stand. Are there any other
12 motions, Mr. Cranwell?

13 MR. CRANWELL: None at this time, Your Honor.

14 MR. LUCAS: Thank you, Your Honor.

15 THE COURT: All right, Mr. Lucas, I'll ask that you draft an
16 order embodying the Court's rulings, please.

17 (End of Proceedings for
18 November 3, 1989.)
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On November 1, 1989, came the plaintiff, Cynthia M. Ring, in person and by counsel, and came also defendant James S. Poelman, in person and by counsel, and defendant John Doe, by counsel, and all parties announced that they were ready for trial upon the pleadings heretofore filed.

WHEREUPON, came a jury of thirteen (13) persons, and each side having struck three (3) of said jurors, the remaining seven (7) to wit: Florence Covey, Verlene Dillion, Lester Nolen, James Taylor, Mary Weaver, Charles Davis and Dorothy Cates, with Jack E. Trent serving as an alternate, were sworn to well and truly try the issues joined and a true verdict render according to the law and the evidence.

WHEREUPON, the plaintiff presented her evidence on the issue of liability and damages. John Doe, by counsel, then moved the court to strike the plaintiff's evidence as to him and

to enter summary judgment in his favor on the grounds appearing in the record. Said motion was granted, over objection by counsel for plaintiff, and John Doe was dismissed from the case. James S. Poelman, by counsel, then moved the court to strike the plaintiff's evidence as to him and to enter summary judgment in his favor on the grounds appearing in the record. Said motion was denied, over objection from counsel for James S. Poelman.

WHEREUPON, the defendant, James S. Poelman, presented his evidence on the issue of liability and damages and rested his case in chief. Counsel for defendant, James S. Poelman, renewed his motion to strike plaintiff's evidence and enter summary judgment in his favor on grounds appearing in the record. After hearing argument of counsel, the court again overruled the motion, over objection.

WHEREUPON, the jury, having received the instructions of the court and heard argument of counsel, retired to consider its verdict. After some time, the jury returned with the following verdict.

"We, the jury, upon the issues joined, find our verdict in favor of the defendant."

/s/ Charles H. Davis
Foreman

WHEREUPON, the plaintiff, by counsel, moved the court to set aside the verdict. The court overruled the motion to set

aside the verdict, over the objection of counsel for plaintiff,
and entered judgment on the verdict.

WHEREFORE, the court doth ADJUDGE and ORDER that the
plaintiff take nothing from these defendants and that they do
have and recover their costs from the plaintiff in this action.


And this action is removed from the docket.

Enter: November 27, 1989




Judge Diane McQ. Strickland

Seen *alright* -




Richard C. Cranwell
Counsel for Plaintiff

Seen:



Richard D. Lucas
Counsel for James S. Poelman

Seen:



Ralph B. Rhodes
Counsel for John Doe

A COPY, TESTE: PATSY TESTERMAN CLERK
By  Deputy Clerk

ASSIGNMENTS OF ERROR

- I. The trial court erred in refusing to strike Mr. Poelman's unsubstantiated claim of contributory negligence, in instructing the Jury accordingly, and in refusing to set aside the Jury's verdict as no evidence could support a finding for Mr. Poelman.
- II. The trial court erred in refusing Mrs. Ring's Instruction A as it is an accurate statement of Virginia's law which, in light of the Court's previous errors, was relevant to the Jury's deliberations.
- III. The trial court erred in striking Mrs. Ring's evidence of the negligence of John Doe.