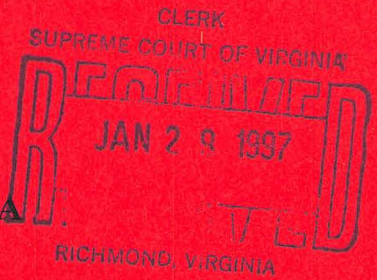


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IN THE SUPREME COURT OF VIRGINIA



Record No. 961736

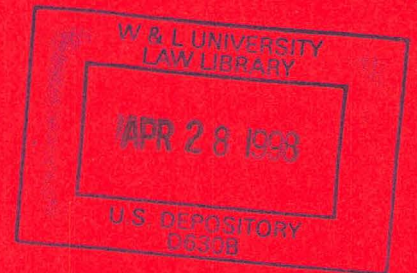
**MARGARET COLEMAN**

Appellant,

v.

**THOMAS J. HOGAN**

Appellee.



---

APPENDIX

---

Mark D. Cummings, Esquire  
Tracy L. Brandt, Esquire  
SHER & CUMMINGS  
3800 N. Fairfax Drive, Suite 7  
Arlington, VA 22203  
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Tel.: 703/525-1200

Counsel for Appellant



**IN THE SUPREME COURT OF VIRGINIA**

Record No. 961736

**MARGARET COLEMAN**  
Appellant,

v.

**THOMAS J. HOGAN**  
Appellee.

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**APPENDIX**

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Counsel for Appellant

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VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

MARGARET COLEMAN  
2008 Columbia Pike  
Arlington, Virginia, 22204,

Plaintiff,

v.

At Law Number: 124879

THOMAS J. HOGAN  
3126 Barkley Drive  
Fairfax, Virginia, 22031,

and

UNITED SERVICES AUTOMOBILE  
ASSOCIATION

Serve:

Clerk of the State Corporation  
Commission, Registered Agent for  
United Services Automobile  
Association  
1220 Bank Street  
Richmond, Virginia, 23219,

Defendants.

FILED  
93 JUL -1 AM 9:42  
CLERK, CIRCUIT COURT  
FAIRFAX, VA

MOTION FOR JUDGMENT

COMES NOW, the Plaintiff, MARGARET COLEMAN, by counsel and moves this Honorable Court for judgment against the Defendant, THOMAS HOGAN, in the total amount of SEVEN HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$750,000.00), plus costs of this proceeding due by the Defendant to the Plaintiff for damages, wrongs and injuries sustained by the Plaintiff as set forth herein.

1. The Plaintiff, MARGARET COLEMAN, is a citizen of the Commonwealth of Virginia and currently resides at 2008 Columbia Pike, Arlington, Virginia, 22204.

2. The Defendant, THOMAS HOGAN, is a citizen of the Commonwealth of Virginia whose last known address, by information and belief, is 3126 Barkley Drive, Fairfax, Virginia, 22031.

3. On or about July 9, 1991 at approximately 11:00 a.m., the Plaintiff, MARGARET COLEMAN, was operating her 1986 Mercury, Virginia license number BQU-657, southbound on Cedar Lane near Bowling Green Drive in Fairfax, Virginia.

4. Plaintiff had signaled for a left turn off of Cedar Lane into a private driveway and had stopped her vehicle to yield to northbound traffic on Cedar Lane.

5. At the same time and place, the Defendant, THOMAS HOGAN, was operating his 1983 Cadillac, Virginia License Number CUJ-124, southbound on Cedar Lane behind Plaintiff's vehicle.

6. Defendant, THOMAS HOGAN, negligently and recklessly ran his Cadillac into the rear of Plaintiff's vehicle with great force and violence.

7. Defendant, THOMAS HOGAN, was charged with Failure to Maintain Proper Control of his vehicle and on September 9, 1991 he entered a guilty plea to said charge.

8. During the above-described collision, Plaintiff, MARGARET COLEMAN, was operating her vehicle in a careful, cautious, and prudent manner and was free from any contributory negligence whatsoever.

9. Immediately prior to the aforesaid collision, the Defendant, THOMAS HOGAN, had a duty to exercise reasonable care under the circumstances in the operation of said vehicle; to stop his vehicle in time to avoid colliding with other vehicles; to otherwise obey all traffic laws and ordinances then and there in effect; and to take such other precautions as might be necessary in the exercise of due care to avoid colliding with the vehicle driven by the Plaintiff.

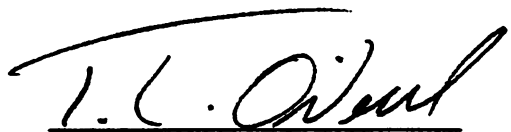
10. Notwithstanding the aforementioned duties, the Defendant, THOMAS HOGAN, operated said 1983 Cadillac in a negligent, careless and reckless manner in that he failed to keep said vehicle under proper control; he failed to keep a proper distance between his vehicle and the vehicle operated by the Plaintiff; he failed to apply the brakes of his vehicle to avoid colliding with the Plaintiff's vehicle; he failed to obey the traffic laws and ordinances then and there in effect; and in other ways negligently operated his vehicle; proximately causing a collision with the vehicle operated by the Plaintiff.

11. The collision, referenced herein, directly and proximately resulted from the Defendant's gross negligence, recklessness, carelessness and his breach of the duties described in paragraphs 9 and 10.

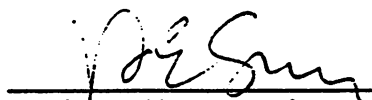
12. As a direct and proximate result of the collision caused by the grossly negligent, careless, and reckless conduct of the Defendant, THOMAS HOGAN, as described above, the Plaintiff, MARGARET COLEMAN, sustained serious, severe, and permanent personal injuries, including but not limited to, injuries to her head, neck, shoulders, arms, back, pelvis, and legs; she has in the past and will in the future incur expenses for medical treatment as a result of the aforesaid injuries; she has in the past and will in the future suffer excruciating physical pain and mental anguish; she has in the past and will in the future suffer from the loss of her sense of smell; she has in the past and will in the future incur expenses for medical treatment as a result of the aforesaid injuries; she has in the past and will in the future lose time from employment with the loss of earnings therefrom; she has in the past and will in the future lose time from the enjoyment of the normal pursuits of life; all of the above to the damage of the Plaintiff in the sum of SEVEN HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$750,000.00).

WHEREFORE, your Plaintiff, MARGARET COLEMAN, moves this Honorable Court to enter judgment against the Defendant, THOMAS HOGAN, in the total amount of SEVEN HUNDRED FIFTY THOUSAND AND NO/100 DOLLARS (\$750,000.00), together with the costs of this proceeding and interest from the date of injury.

MARGARET COLEMAN  
By Counsel



Thomas L. O'Neill  
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3800 N. Fairfax Drive  
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Arlington, Virginia 22203  
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PARTIAL TRANSCRIPT

1

VOLUME I

1

VIRGINIA

2

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

3

- - - - - X

4

MARGARET COLEMAN,

5

Plaintiff,

6

-VS-

AT LAW NO. 142011

7

THOMAS J. HOGAN,

8

Defendant.

9

- - - - - X

10

Circuit Courtroom 5D  
Fairfax County Judicial Center  
Fairfax, Virginia

11

12

Wednesday, May 22, 1996

13

14

The above-entitled matter came on to be heard, with  
a jury, before the HONORABLE M. LANGHORNE KEITH, Judge, in  
and for the Circuit Court of Fairfax County, Virginia,  
beginning at 10:12 o'clock a.m.

15

16

17

APPEARANCES:

18

On Behalf of Plaintiff:

19

MARK D. CUMMINGS, ESQUIRE

20

THOMAS L. O'NEILL, ESQUIRE

21

JANET G. FRAKER, ESQUIRE

22

On Behalf of Defendant:

23

FRANCIS J. PRIOR, JR., ESQUIRE

## EXTRACT OF PROCEEDINGS

\*

\*

\*

\*

\*

MR. CUMMINGS: Your Honor, I have a matter that needs to be raised at the bench as soon as counsel's finished with his last strike.

THE COURT: All right.

(Pause.)

THE COURT: All right.

## BENCH CONFERENCE

MR. CUMMINGS: I regret having to raise this issue. As Your Honor is aware, the Plaintiff in this case is black. Most of her -- her family's black, most of her witnesses are black. There was one black on the panel, Nayamka Thomas, that was stricken by defense counsel. And I think I'm entitled to ask him the reasoning for striking the lone black on the panel.

THE COURT: There's no question about it. All right?

MR. PRIOR: Sure. Basically, Your Honor,



1 there were four individuals on the jury, I wanted to  
2 strike the three students and Mr. Kofkin who has a twenty-  
3 five or thirty year back pain. He was the one I wanted to  
4 strike first, but I thought the Plaintiff might strike him  
5 so I -- I made him my third strike, hoping that they would  
6 do the work for me and I'd be able to strike the -- all  
7 the students.

8 The reasons for striking Ms. Thomas and Ms.  
9 Pollack were their youth, relative inexperience. The  
10 reason I chose those two out of -- I had to choose two out  
11 of three between them and Mr. Morelock. There's three  
12 students on the jury, those two, and Mr. Morelock was the  
13 third one.

14 I wanted to get rid of all of them, I could  
15 only chose two. I chose the two women, or female  
16 students, basically on the supposition that they may be  
17 more sympathetic to the female plaintiff. That's how I  
18 chose between those three.

19 THE COURT: Well -- I mean, I think you've got  
20 a problem -- using the gender as the basis to strike them  
21 under --

22 MR. PRIOR: I think gender --

23 THE COURT: -- extension of Batson.

1 MR. PRIOR: I think gender's a problem, but it  
2 hasn't been raised in this case. And again, if that is  
3 the basis -- that's the basis. I think under the  
4 extension of Batson, I'm not sure that's settled yet, that  
5 gender is -- it may very well be, I haven't --

6 MR. CUMMINGS: It's a suspect category.

7 MR. PRIOR: But, any ways, that's the basis.

8 MR. CUMMINGS: I think the way you can resolve  
9 it, if you took the other student -- it'd be easy to  
10 resolve. There's another student left. He could strike  
11 that student.

12 THE COURT: Well, I'm going to require you to  
13 make your strikes on a different basis than gender. And  
14 students is a valid basis for striking, but -- well,  
15 you've got to strike one of them, but I don't think you  
16 can strike both of them, so -- I'm going to require you to  
17 either put Ms. Pollack or Ms. Thomas back on the panel,  
18 and I guess your other strike would be Mr. Morelock?

19 MR. PRIOR: Sure.

20 MR. CUMMINGS: Well, based on what I've heard,  
21 it's not race, it's gender. I think --

22 THE COURT: No, it's all students. But he  
23 said the basis he selected those two students was gender,

1 so I'm going to say he can't strike both of them, but I  
2 think he can pick either one based on the student --

3 MR. CUMMINGS: We've got this racial problem.  
4 I think his only option is to put Thomas back on and  
5 strike either of the --

6 THE COURT: He's not required to keep somebody  
7 of a certain race. It's got to have a racially-neutral  
8 reason. And he stated that they're students. He doesn't  
9 want students on the panel, and that's not -- that's  
10 permissible.

11 MR. CUMMINGS: But he still has students on  
12 the panel.

13 THE COURT: Well, he can't get rid --

14 MR. CUMMINGS: He can't get rid of all of  
15 them.

16 THE COURT: Can't get rid of all of them.

17 MR. PRIOR: Give me another strike and I'll  
18 get rid of all of them. That's fine.

19 THE COURT: I'm going to take your strikes one  
20 and two away from you and you can have two strikes left.  
21 And you can strike any of the students, but you can't  
22 strike both of the women based on the fact that they're  
23 women. So I don't care which woman you strike, but you're

1 going to have strike Morelock as your other student, if  
2 that's what you want to do.

3 MR. PRIOR: That is probably what I want to  
4 do.

5 (Mr. Prior examining document.)

6 MR. PRIOR: I have no objection to putting Ms.  
7 Morgan on this jury -- she's juror number 15, in  
8 substitution or something of that nature and taking the  
9 student off.

10 THE COURT: Well, this is the panel.

11 MR. PRIOR: Okay. That's fine.

12 THE COURT: You've got to make your strikes --

13 MR. PRIOR: Let me talk to my client and I'll  
14 be back and we'll -- and I understand it's two out of  
15 three students?

16 THE COURT: Well, if that's what you decide to  
17 do.

18 MR. PRIOR: Right. That's --

19 (Mr. Prior conferring with his client.)

20 (Mr. Prior handed a document to the Court.)

21 MR. PRIOR: Your Honor, I talked to my client.  
22 We'll put Ms. Pollack back on and strike Mr. Morelock, the  
23 basis being that she was extremely soft-spoken and meek

1 and we don't think she'll have -- between the two women,  
2 we think she'll have less of an affect on the jury.

3 THE COURT: Well, again, women isn't the  
4 basis, but student --

5 MR. PRIOR: No.

6 THE COURT: You've got to pick which students  
7 you're going to strike, so you're striking --

8 MR. PRIOR: I picked the two -- Thomas and  
9 Morelock.

10 THE COURT: And so this strike is -- and  
11 you're still striking Ms. Thomas based on the fact that  
12 she's a student --

13 MR. PRIOR: Right.

14 THE COURT: -- Mr. Morelock based on the fact  
15 that he's a student.

16 MR. PRIOR: And Ms. Pollack is on the jury.

17 MR. CUMMINGS: Let me just put my exception on  
18 the record.

19 THE COURT: All right.

20 MR. CUMMINGS: What counsel has done is -- had  
21 struck Ms. Thomas who is black. He's decided to take away  
22 a strike on Ms. Pollack and strike Mr. Morelock.

23 He has stricken the only black on the panel.



1 Although he claimed it's on the basis of student, when  
2 he's gone back and reconsidered, he still struck the only  
3 black on the panel, and I would except to this panel. I  
4 move for a mistrial.

5 THE COURT: All right. That motion is denied.

6 I find that the Defendant has given a  
7 racially-neutral reason for striking the students. I  
8 would not allow him to pick the two women because I think  
9 on the extension of Batson that's a suspect  
10 classification, so I required him to pick between the two  
11 women students that he wanted and to strike the other  
12 student, which he did. So, I find that he has a racially-  
13 neutral reason for striking Juror Number 3. And I deny  
14 the motion for a mistrial.

15 MR. CUMMINGS: Just so the record is clear,  
16 you, Mr. Prior and I are all in agreement there is only  
17 one black on the panel and that was Ms. Thomas?

18 THE COURT: I don't know what Ms. Thomas' race  
19 is, she appears to be black.

20 MR. CUMMINGS: But we all agree she appears to  
21 be --

22 THE COURT: And I don't think the law is that  
23 you have to leave a black person -- you have to have a

1 racially-neutral reason to strike. I find that that  
2 reason has been given.

3 I found that the reason for striking the two  
4 women was not appropriate and that he would have to -- if  
5 he wanted to strike students, then he'd have to strike the  
6 male student and pick between the two women. So that's  
7 what he did.

8 I deny the motion.

9 MR. CUMMINGS: Thank you, Your Honor.

10 MR. PRIOR: Thank you.

11 OPEN COURT

12 \*

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14 \*

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17 E N D O F E X T R A C T

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\* \* \* \* \*

## CERTIFICATE OF COURT REPORTER

I, Ellen D. Yeatman, a Verbatim Reporter, do hereby certify that I took the stenographic notes of the foregoing proceedings and thereafter reduced the same to typewriting; that the foregoing is a true record of the testimony given by said witnesses to the best of my knowledge and ability; that I am neither related to nor employed by any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of the action.

  
ELLEN D. YEATMAN, Court Reporter

VIRGINIA

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

margaret Coleman  
Plaintiff(s),

L NO. 142011

VERSUS

Thomas J. Hogan  
Defendant(s).

FINAL ORDER

(JURY TRIAL)

THIS CAUSE came on for trial upon the pleadings filed by the parties herein and

UPON CONSIDERATION of the evidence presented, the argument of counsel, the rulings of the Court and the verdict of the jury, it is,

ADJUDGED, and ORDERED that judgment be and is hereby entered in favor of the Plaintiff(s) margaret Coleman, against the Defendant(s) Thomas J. Hogan in the sum of \$ 64,476.00 plus interest at the rate of Virginia Rate. and the Plaintiff's costs expended herein.

AND THIS CAUSE IS ENDED

Entered this 24 day of MAY 1996.

ms. Stephen Kohn  
JUDGE

~~I ask for this:~~ seen to

T. L. O'Neil  
Counsel for Plaintiff(s)

Seen and AGREED:

[Signature]  
Counsel for Defendant(s)

A COPY TESTE:  
JOHN T. FREY, CLERK

BY: James Z. Brown  
Deputy Clerk

Date: 11/17/97  
Original retained in the office of the Clerk of the Circuit Court of Fairfax County, Virginia

Coleman v. Hogan

Virginia Supreme Court No. 961736

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V I R G I N I A

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

-----X

MARGARET COLEMAN, :

Plaintiff, :

versus, : AT LAW NO. 142011

THOMAS J. HOGAN, :

Defendant. :

-----X

Fairfax, Virginia

Friday, June 7, 1996

The above-entitled action came on to be  
heard before the Honorable M. Langhorne Keith, a Judge in  
and for the Circuit Court of Fairfax County, in Courtroom  
5D, Judicial Center, 4110 Chain Bridge Road, Fairfax,  
Virginia 22030, beginning at approximately 10:26 o'clock  
a.m., when there were present on behalf of the respective  
parties:

LMK-106-96



## 1 APPEARANCES:

2 For the Plaintiff:

3 MARK D. CUMMINGS, ESQUIRE

4 Sher and Cummings

5 Tower Villas

6 3800 N. Fairfax Drive

7 Suite 7

8 Arlington, Virginia 22203

9 For the Defendant:

10 FRANCIS J. PRIOR, JR, ESQUIRE

11 Siciliano, Ellis, Dyer, and Boccarosse

12 10521 Judicial Drive, Suite 300

13 Fairfax, Virginia 22030  
14  
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P R O C E E D I N G S

(The Court Reporter was sworn by the Court.)

THE COURT: All right, Mr. Cummings.

MR. CUMMINGS: Yes, Your Honor. I'm going to be very short and try to give Mr. Prior more than two and a half minutes to respond.

I submitted a memorandum yesterday and discussed, I think, the salient issues. I won't gloss over it, while there is an important point I want to make.

On page 4 of the partial transcript, which is attached to the memorandum, Mr. Prior, quite candidly and honestly states the gender was a basis. I don't think at the time he appreciated that gender was a suspect category on an equal level of a racial based strike.

And when you look at the wisdom of Judge Annunziata in that Riley decision, she acknowledges that age, old age, young age, in this case it was students, younger, that's a legitimate reason to strike somebody. But when it's coupled with gender, like in that case it was older women were struck, in this case it was younger

1 women who were students, when it's coupled with that,  
2 that reason, that age reason, which is ordinarily  
3 permissible is overshadowed by the gender issue, in which  
4 case all of the older women that were struck should have  
5 been put back on the jury.

6 I submit in this case the two women that  
7 were struck should have been put back on the jury when Mr.  
8 Prior admitted that gender was the basis. Student  
9 becomes a pretext based on the wisdom of the Riley case.

10 Then if you look at the J.E.B. case -- and  
11 this is one thing, I just couldn't let it go, it just  
12 struck in my craw and you should recall I raised it  
13 again. We got this overlapping issue of gender and race.  
14 We got gender being used as a reason to strike somebody  
15 who was black. And that may not be his intent, but  
16 that's what happened.

17 In the J.E.B. -- the Supreme Court in  
18 J.E.B. says when this happens the Judge has really got to  
19 give a heightened scrutiny because what we don't want to  
20 happen is have gender being used to camouflage a racial-  
21 based strike. So the Court has really got to look under  
22 that even harder.

23 So I submit to Your Honor the remedy would

1 have been to put of the women back on or start over with  
2 a new panel. And I think those two cases that I cited,  
3 J.E.B., which I quoted from, and the Riley case are  
4 pretty clear indications that the way this was handled  
5 was improper.

6 THE COURT: All right.

7 MR. CUMMINGS: And I submit on the matters  
8 in the brief.

9 THE COURT: All right.

10 MR. PRIOR: I'll be equally brief, Your  
11 Honor. I obviously didn't have time to submit a written  
12 opposition, but I'll just try.

13 Clearly, Your Honor, on the -- I found a  
14 nonracially based reason in the initial discussion where  
15 the issue was raised. And, in all candor, I told the  
16 Court and Mr. Cummings there were three students. I had  
17 to get -- I wanted to get rid of all three. I got rid of  
18 two of them. And just a shorthand basis, that was  
19 impermissible. The Court said start over again. And I  
20 then went back up to the Court and explained to the Court  
21 the one juror who was left on and the basis for it.

22 As Your Honor may recall, that was the  
23 student in the front row who had responded --

1 THE COURT: Ms. Pollack.

2 MR. PRIOR: Excuse me.

3 THE COURT: Ms. Pollack.

4 MR. PRIOR: Yes, that was her name.

5 But there was a student in the front row  
6 who was extremely soft-spoken in responding to one of the  
7 voir dire questions. I think the question that she  
8 responded to was what was her major and she was barely  
9 audible in responding, at least that was my recollection.  
10 And that was the basis for the strike.

11 As far as the three students went, there  
12 was not much to distinguish any of them apart. And that  
13 was pretty much the only distinction that I was able to  
14 ascertain, to make, that had a basis on the selection. I  
15 think Your Honor had discretion and handled it  
16 appropriately.

17 As to the inadequacy of the verdict,  
18 again, I won't bore Your Honor with the law on that,  
19 however, in this case, virtually every medical issue was  
20 hotly contested. Counsel, in his papers, indicates that  
21 we did not contest the smell and taste. I disagree with  
22 that. But I disagree with it significantly based on both  
23 Dr. Citrin's testimony and the overriding testimony in



1 the case that that MRI was the only objective evidence of  
2 that injury within the entire case, and that was hotly  
3 contested. Absent that, it's a completely subjective  
4 complaint.

5 But even more importantly, if you were to  
6 assume that we didn't contest the smell and taste loss in  
7 this case, there was, based upon this evidence, the jury  
8 could have awarded the plaintiff next to nothing for  
9 myofascial pain syndrome. That issue was hotly  
10 contested. There was testimony that the effects of it  
11 would last only a few weeks. I forget what the time  
12 frame was, but something in the neighborhood of six  
13 weeks. And the jury, on this evidence, could have given  
14 this plaintiff a couple thousand dollars for the  
15 myofascial pain and awarded the rest of the verdict based  
16 on the smell and taste. That is an equally logical  
17 rendition of the verdict.

18 So what I would basically say as to that  
19 issue is the jury heard the evidence, was appropriately  
20 instructed, and there's no contest on the instructions,  
21 and made a determination that is in concert with that  
22 evidence and must be upheld by this Court. Thank you.

23 THE COURT: Well, the jury issue, the

1 striking issue, I think was discussed at some length and  
2 considered at some length by the Court and I found that  
3 the basis for leaving Ms. Pollack on the jury, when  
4 striking the other two students, when the defendant  
5 wanted to get all students off the jury but couldn't  
6 because they had one strike of a person who had had a  
7 back injury in an automobile accident and that was their  
8 number one strike, so they had two strikes to get three  
9 students off. And I found that the reason for leaving  
10 Ms. Pollack on and striking the other students was  
11 racially neutral. And the Court also noticed the extreme  
12 diffidence and soft-spokenness and meekness of Ms. Pollack  
13 and I don't find that that was a racially based strike,  
14 but there was a racially neutral basis therefore for  
15 leaving her on.

16 As for the inadequacy of the verdict, I  
17 believe that that verdict was adequate and, in fact, was  
18 one of the larger rear-end -- walk-way rear-end  
19 collisions that I've seen in about the 20 rear-ender  
20 cases that I've tried.

21 So the motion for a new trial is denied.

22 MR. PRIOR: Thank you, Your Honor.

23 MR. CUMMINGS: Just for the record, I

1 would like to state, so it's clear, our perspective on  
2 this issue of meekness. I feel that the responses that  
3 Ms. Thomas gave also indicated she was meek and soft  
4 spoken which came much earlier when she was questioned  
5 initially. I thought she was equally meek as Ms.  
6 Pollack. I didn't make that point in the brief. I  
7 wanted to make sure it didn't get lost in the record.

8 THE COURT: All right.

9 MR. CUMMINGS: And note our exception,  
10 Your Honor.

11 THE COURT: Yes, sir, I will.

12 MR. CUMMINGS: Are you going to enter an  
13 order? Is Mr. Prior going to draft an order?

14 MR. PRIOR: Do you want me to draft it or  
15 do you want us to handwrite one?

16 THE COURT: Why don't you handwrite on a  
17 form here and hand it up before you leave so we'll have  
18 it.

19 MR. CUMMINGS: Thank you, Judge.

20 THE COURT: Thank you, Mr. Cummings.

21 (Whereupon, at approximately 10:35 o'clock  
22 a.m., the above-entitled hearing was concluded.)  
23

## 1 CERTIFICATE OF REPORTER

2 I, Linda M. Kia, the Stenomask Reporter  
3 who was duly sworn to well and truly report the foregoing  
4 proceedings, do hereby certify that they are true and  
5 correct to the best of my knowledge and ability; and that  
6 I have no interest in said proceedings, financial or  
7 otherwise, nor through relationship with any of the  
8 parties in interest or their counsel.

9 IN WITNESS WHEREOF, I have hereunto set my  
10 hand this \_\_\_\_\_ day of \_\_\_\_\_, 1996.

11  
12 \_\_\_\_\_  
13 Linda M. Kia  
14 Certified Verbatim Reporter  
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VIRGINIA:  
IN THE CIRCUIT COURT OF FAIRFAX COUNTY

✓ C MARGAROT COLEMAN  
Plaintiff,

vs.

THOMAS HOGAN  
Defendant.

At Law No. 142011

ORDER

This case came to be heard on the 7 day of JUNE, 1996 on  
the Plaintiff/Defendant's motion for A NEW TRIAL.

Upon the matters presented to the Court at the hearing it is

ADJUDGED, ORDERED, and DECREED as follows: THE MOTION

IS DENIED

ENTERED, this JUNE 7, 1996

Mr. Langhorne Keith  
Circuit Court Judge

SEEN AND OBJECTED TO:

WE ASK FOR THIS

Mark D. Cummings  
Counsel for Plaintiff(s)

Lawrence J. ...  
Counsel for Defendant(s)

0145

Coleman v. Hogan

Virginia Supreme Court No. 961736



## VIRGINIA:

**IN THE CIRCUIT COURT OF FAIRFAX COUNTY**

**MARGARET COLEMAN**

**Plaintiff**

**V.**

**THOMAS HOGAN**

**Defendant:**

**AT LAW NO. 142011**

**WRITTEN STATEMENT OF FACTS, TESTIMONY AND OTHER INCIDENTS OF  
THE CASE**

1. This personal injury action arose from a rear-end automobile collision which occurred between the parties on July 9, 1991 in Fairfax County, Virginia.
2. Plaintiff/Appellant is an African-American female.
3. Defendant/Appellee is a Caucasian female.
4. A jury trial in the captioned matter was held on May 22-24, 1996 in Fairfax County Circuit Court, with the Honorable M. Langhorne Keith presiding.
5. During *voir dire* of the venire panel, defense counsel struck the only African-American from the panel, Ms. Nayamka Thomas. At the bench the Plaintiff asked why the Defendant struck Ms. Thomas pursuant to the doctrine of *Batson v. Kentucky*, 476 U.S. 79, 90 L.E.2d 69, 106 S.Ct. 1712 (1986). Defense counsel responded that he wanted to strike the college students from the panel and he struck the two female college students due to their gender. (See attached partial transcript of bench conference).
6. The trial judge replaced the female students on the panel and instructed the Defendant/Appellee to strike two members of the panel but that he could not strike the students based on their gender. Defendant/Appellee struck Ms. Thomas again. (See attached partial transcript of bench conference).

7. Plaintiff's counsel objected to this procedure and moved for a mistrial. This motion was denied, as the Court found that the Defendant/Appellee gave a non-pretexual-racially-neutral basis for leaving Ms. Pollack on the jury in that she appeared to be more diffident and would have less influence on the jury (the court agreed that Ms. Pollack appeared to be shy and self-effacing).

8. At the end of Plaintiff's evidence and the trial itself, Plaintiff's counsel again moved for a mistrial based on the gender and racial bias of Defendant's strikes of Ms. Nayamka Thomas. This motion was denied.

9. At trial Plaintiff/Appellant presented evidence that as a direct and proximate result of the accident of July 9, 1991 she suffered with neck and low back injuries, as well as the permanent loss of the senses of smell and taste from a blow to the head suffered in the collision.

10. At trial Plaintiff/Appellant presented evidence of medical specials in the amount of \$27,612.07 and lost wages in the total amount of \$73,780.53. Additionally, Dr. Robert Henkin, who is currently treating Plaintiff/Appellant for her loss of smell and taste, testified she would incur medical expenses in the future of approximately \$1,000.00 per year.

11. The defense contested liability and the proximate cause of Plaintiff's injuries. However, the court denied the Defendant's jury instruction as to contributory negligence, assumption of the risk and sudden emergency.

12. Over Plaintiff's objection, the Court permitted the Defendant to call Dr. Smoller, a psychiatrist, to testify. He provided a psychiatric opinion that the Plaintiff was a "somatizing patient". This psychiatric opinion was not based on complete diagnostic criteria as Plaintiff/Appellant did not consent to take the written psychological test which Dr. Smoller requested at his examination. (See attached partial transcript of Dr. Smoller's *voir dire*).

13. At trial Defendant/Appellee contested not only liability, but the nature and extent of the damages claimed by the Plaintiff and the proximate cause of plaintiff's alleged injuries.

14. During *voir dire* of Dr. Smoller, the trial court and counsel had available Dr. Smoller's report of January 9, 1995, which is attached to this supplementation for the Court's convenience. The original document is contained in the discovery materials produced in this action. The defendant directs the court's attention to the partial transcript of Dr. Smoller's *voir*

*dire* attached to Plaintiff/Appellant's Written Statement of Facts and to this report for an accurate rendition of Dr. Smoller's opinions and the Trial Court's ruling on this issue. (Dr. Smoller's report was not an exhibit in the trial nor was it made available to the jury).

15. The original *venire* panel in this case consisted of seven males and six females. One male was stricken by the Trial Court for cause and replaced by a female resulting in a panel of six males and seven females. (This is more accurately reflected in the jury selection list contained in the record of this case, but it is capsulized in this statement for the court's convenience).

16. The plaintiff preemptory strikes were Martha Wallis, Louise Walker, and Mary Irvin.

17. A transcript of the hearing on June 7, 1996, in which the plaintiff moved to set aside the verdict and order a new trial is attached to this statement. In the course of that hearing, the Court made a factual finding of the extreme diffidence and soft-spokenness and meekness of juror Pollack.

18. On May 24, 1996 the jury returned a verdict in the amount of \$64,476.00.

19. On June 7, 1996 Plaintiff/Appellant moved to set aside the verdict and order a new trial. Following oral argument, the Court denied this motion.

20. On June 18, 1996 Plaintiff/Appellant filed her Notice of Appeal.

ENTER: AUGUST 7, 1996

  
M. LANGHORNE KEITH, JUDGE