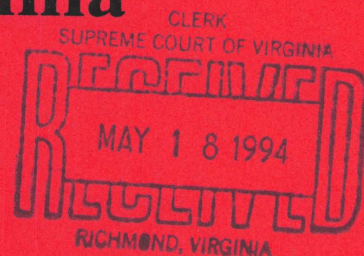


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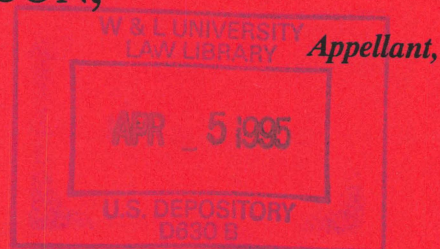
IN THE
Supreme Court of Virginia

RECORD NO. 940122



BRENDA E. ROBERTSON,

v.



**METROPOLITAN WASHINGTON AIRPORT
AUTHORITY, et al.,**

Appellees.

JOINT APPENDIX

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Marco A. Lopez
Tracey S. Brinkman
WILLIAM L. SCHMIDT
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Table of Contents

Page Number

Amended Motion for Judgment filed 12/8/92	1
Partial Transcript of Hearing heard before the Honorable Paul F. Sheridan on 7/6/93	5
Partial Transcript of Hearing heard before the Honorable Paul F. Sheridan on 7/7/93	23
Amended Notice and Motion filed 8/18/93	36
Motion filed 9/24/93	38
Brief in Opposition filed 10/8/93	41
Memorandum of Law filed 10/21/93	45
Final Judgment Order entered 10/22/93	54
Amended Statement of Facts filed 1/6/94	58
Assignment of Error	61

V I R G I N I A :

IN THE CIRCUIT COURT FOR THE COUNTY OF ARLINGTON

BRENDA E. ROBERTSON,

Plaintiff,

v.

METROPOLITAN WASHINGTON
AIRPORT AUTHORITY

and

INTERNATIONAL BUSINESS
SERVICES, INC. OF D.C.
d/b/a INTERNATIONAL BUSINESS
SERVICES, INC.
(A Subsidiary of COMARCO, Inc.)

Defendants.

LAW NO. 91-1302

FILED

91-8

DAVID A. BELL, Clerk

Circuit Court, Arlington County, Virginia

By *[Signature]*

AMENDED MOTION FOR JUDGMENT

COMES NOW your Plaintiff, BRENDA E. ROBERTSON, by counsel, and does hereby move this Honorable Court for judgment against the Defendants, jointly and severally, in the amount as hereinafter set forth, together with her costs in this action, all which she is due from the Defendants upon the grounds hereinafter set forth:

1. Plaintiff is a citizen and resident of the Commonwealth of Virginia, residing in Woodbridge, Virginia.

2. Defendant, METROPOLITAN WASHINGTON AIRPORT AUTHORITY, is a public body created by the Commonwealth of Virginia and the District of Columbia pursuant to the Metropolitan Washington Airports Act of 1986, Public Law No. 99-591, § 6009(c) and codified as amended at 49 U.S.C. Appx. §§ 2451 et seq. (1986) and pursuant to said

AMENDED MOTION FOR JUDGMENT - 1

Act is the lessee of certain real property commonly known as "Washington National Airport."

3. Pursuant to the Act indicated in paragraph 2, Defendant, METROPOLITAN WASHINGTON AIRPORT AUTHORITY, is subject to the jurisdiction of the courts of the Commonwealth of Virginia.

4. Defendant, INTERNATIONAL BUSINESS SERVICES, INC. (hereinafter referred to "IBS") was at all times relevant hereto the corporate entity which operated the parking lots at Washington National Airport and more specifically, short term parking lot "B."

5. On or about January 1, 1990, Plaintiff was a customer-invitee at said airport and more particularly at short term parking lot "B" having paid to park her car in said lot.

6. At approximately 7:45 p.m. as Plaintiff was proceeding to her car in short term parking lot "B" she stepped over a curb designating a parking spot and fell into a pothole.

7. As a direct result of her fall, Plaintiff sustained severe and irreparable bodily injury.

8. The curb and parking area on which Plaintiff fell was within the area commonly known as "Washington National Airport" which was operated by your Defendant, METROPOLITAN WASHINGTON AIRPORTS AUTHORITY, as lessee, and by its agent, Defendant IBS.


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9. The Defendants maintained, for the use of its customers/business invitees, the area in which the Plaintiff fell.

10. Defendants had a duty to maintain the parking lot in proper repair so that customers/business invitees could park their vehicles and safely walk about said area.

11. Defendants breached their duty to Plaintiff by negligently allowing a dangerous defect to exist.

12. Defendants breached their duty to the Plaintiff by negligently failing to maintain the parking lot in a proper and safe condition.

13. Defendants knew or should have known with the exercise of due diligence of the existence of said defect and that such defect was dangerous and would or could cause injury to customers and business invitees.

14. As a direct and proximate result of such negligence, Plaintiff fell and was injured as described above.

15. As a further direct and proximate result of such negligence, Plaintiff has suffered and will continue to suffer severe pain, discomfort, inconvenience, disability and disfigurement. She has incurred and will continue to incur medical, hospital and pharmaceutical expenses and other expenses in an effort to bring about her recovery.

WHEREFORE, Plaintiff demands judgment in the amount of Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00)


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against the Defendants, jointly and severally, and for such other relief as the court deems meet and just.


BRENDA E. ROBERTSON
By Counsel

PRESENTED:

WILLIAM L. SCHMIDT & ASSOCIATES, P.C.

By: 

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AMENDED MOTION FOR JUDGMENT - 4

*** PARTIAL TRANSCRIPT ***

V I R G I N I A :

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

BRENDA E. ROBERTSON,

Plaintiff,

vs.

METROPOLITAN WASHINGTON AREA
AIRPORT AUTHORITY, et al.,

Defendants.

AT LAW NO. 91-1302

Tuesday, July 6, 1993

Courtroom 702
Arlington County Courthouse
Arlington, Virginia

The above-entitled matter came on to be heard
before THE HONORABLE PAUL F. SHERIDAN, Judge, in and for
the Circuit Court of Arlington County, Virginia, beginning
at 9:58 o'clock a.m.

APPEARANCES:

On Behalf of the Plaintiff:

William L. Schmidt, Esquire
Marco A. Lopez, Esquire
WILLIAM L. SCHMIDT & ASSOCIATES, P.C.

On Behalf of the Defendants:

John D. McGavin, Esquire
LEWIS, TRICHILO,
BANCROFT & MCGAVIN, P.C.

* * * * *

P R O C E E D I N G S

(The Court Reporter was previously sworn.)

*

*

*

(Whereupon, at approximately 10:03 o'clock a.m., the prospective Jurors entered the courtroom and were seated.)

THE COURT: Members of the prospective Jury, I have a case civil in nature in this courtroom to try. We are going to call out thirteen names, strike six; end up with seven to actually try the case.

Before we start, I'll tell you, in very short form, that the Plaintiff's name is Brenda E. Robertson, R-O-B-E-R-T-S-O-N.

She sues Metropolitan Washington Area Airport Authority, International Business Services, Incorporated, of D.C., doing business as International Business Services, Incorporated, and a company called COMARCO, C-O-M-A-R-C-O, Incorporated.

The claim for money damages that the Jury will be asked to decide alleges that on or about 1 January, 1990, the Plaintiff, Brenda Robertson, was a customer

1 invitee at National Airport.

2 That she parked her car in the short term lot
3 B. The allegation is the Defendants maintained the
4 premises in a way that caused a defect in the surface.

5 She fell, hurt herself; has had medical care
6 and other damages, and seeks monetary award for that.

7 The Defendants contest liability. All of
8 those issues will be for the Jury.

9 As we call your names, you know to come on up,
10 sit where the Bailiff directs. Then we'll ask a few
11 questions, to see if you know the people, anything about
12 the event; and pick seven to actually hear the case.

13 *

14 *

15 *

1 THE COURT: Counsel are now obligated to
2 strike six of you. While they do that, let's review our
3 job functions here.

4 The lawyers are supposed to study the facts
5 and the law. They're supposed to know what witnesses to
6 call, what they're likely to say.

7 They're supposed to know the probable
8 instructions that they're going to ask the Court to give
9 at the end of the case.

10 And they try the case as both a fact and a law
11 issue at one time. It's all presented in a unified series
12 of questions, answers and delivery of information.

13 They address their legal arguments primarily
14 to the Judge. And they address their fact arguments
15 exclusively to the seven Jurors that sit.

16 I say exclusively because, although we do this
17 in one unified presentation and the Judge does have the
18 obligation to control the proceedings, the Jurors are the
19 deciders of fact.

20 Don't look to the Judge for tone of voice,
21 expression or any other message, subtle or clear, as to
22 who the Judge would favor, find for or who the Judge tends
23 to believe.

1 Judges ought to be able to do their job better
2 than that, better than conveying such information. But no
3 matter how Judges do their jobs, Jurors should always
4 remember that the great faith in the Jury system is you
5 find the facts, as you believe them to be, and not the way
6 anybody else in the room might find them.

7 You must take the law, however, from the
8 Judge, as the Judge tells you it is. I've got to take it
9 the way Legislatures, both State and Federal, and
10 Appellate Courts, both State and Federal, have decided it
11 will be.

12 I can't modify it. You can't modify it,
13 either.

14 The lawyers' obligations require them, at
15 times, to make objections or argue with the Judge. Don't
16 hold that against them.

17 It's their job. They are required to do that.
18 They are charged, later, by some Appellate Judge, with
19 having waived argument if they don't raise it with the
20 trial Judge.

21 In terms of how we proceed, the Plaintiff has
22 the burden of proof, which in a civil case is the
23 preponderance of the evidence.

1 Those of you who have sat in criminal have
2 heard the concept, 'beyond a reasonable doubt'. In civil
3 cases, it's a preponderance of the evidence.

4 The arguments will involve words like
5 negligence and, possibly, a concept called contributory
6 negligence and liability.

7 Liability is that part of the case that means,
8 'Should the Plaintiff recover?'. Some people call it
9 fault.

10 The second half of the case, if she does
11 prevail on liability, is, 'How much monetary award is
12 appropriate under the law of Virginia and in light of her
13 damages?'.
14

15 So, you have two issues, liability and
16 damages.

17 In terms of how we proceed, they put that on
18 through how the event happened and then what medical
19 treatment, what damages, what disability, wage loss.

20 So, you can hear all of it going on at the
21 same time.

22 In terms of the lawyers' preparation, by
23 talking to the potential witnesses, knowing the law issues
that ought to come up, they position themselves to give

opening statements.

And on the best of preparation, the most conscientious of accuracy in opening statement, the lawyers, nonetheless, are not witnesses.

They are predictors of what the witnesses will say. And the Jurors who sit should remember that, because you decide the facts from what the witnesses say, not from what the lawyers either say in opening they are going to say, or argue in closing that they did say.

You listen to what the witnesses actually say. Small differentials in language can be very important.

But the lawyers believe they know about what they're going to say. So, they give you a road map, in the way of an opening statement.

It allows you to know what the big picture in the battle is. It also allows you to have a context in which the first witness speaks.

Don't make up your mind in this case or any other case until you've heard all the witnesses, heard the instructions at the end of the case, and given the lawyers a chance to reason with you at the end in those closing arguments.

It can help you do your job in a way that you

1 feel more comfortable.

2 There's no place in any of this process that
3 we call a system of justice for bias or prejudice or
4 sympathy.

5 We tell these people that, 'We're going to
6 decide the case on the facts you give us, and on the law
7 the Judge gives us.

8 'It's not going to be decided on any
9 preexisting bias or prejudice or tendency we have.'

10 Nor should it be decided by you being
11 investigators and going out from here on breaks and trying
12 to learn anything about the case.

13 If you do that, you're violating your oath.
14 In terms of what these people expect, they want the case
15 tried in this room, not somewhere else.

16 So, don't try to find out anything outside the
17 process, if we do carry over.

18 In terms of how we proceed, we go an hour and
19 fifteen minutes to an hour and a half, roughly. This
20 process doesn't lend itself to time tables.

21 People say things at a pace and in a way that
22 they don't really know how they're going to do it until
23 they get on the stand.

1 The formality of the process, the presence of
2 a Jury, the whole process lends itself more to people
3 being a little bit unpredictable in how the proceedings
4 go.

5 And we don't hold ourselves to exact time
6 tables. Lunch is -- we try to target lunch for between
7 1:00 and 2:00.

8 But I try and also fit it into a logical flow
9 of information and presentation.

10 In terms of the case, you can't decide it
11 until you have everything. Don't make your mind up early.

12 If you go to lunch or take a break with one or
13 two other Jurors, don't talk over the case in a way that,
14 really, amounts to starting deliberation.

15 You can't deliberate until you have
16 everything, at the end.

17 Formality of dress, you know, is not an
18 important thing in this courtroom. You can fall asleep
19 from the stuffiness, or you can freeze.

20 And I can't tell you which is coming. We've
21 tried, for years, to get it right. And we can't get it
22 right.

23 So, just don't feel obligated to look a

1 certain way in the Jury box. We want you to stay awake
2 and attentive and participate fully in the hearing.

3 In terms of Bench conferences, when they come
4 over to the side, you're not supposed to hear that. When
5 you sit with this Judge, I invite you to, on those breaks,
6 just stand up in place, talk among yourselves about the
7 weather or anything else you want.

8 Help drown us out over here. We don't want
9 you to hear what's going on.

10 There are things, at times, that you'll hear
11 and I'll tell you to disregard. And you might, in the
12 abstract, say, 'Well, how could I do that?'.

13 Well, in practice, it's not hard. Things that
14 are stricken from evidence are no longer a part of that
15 pool of information of evidence that you use as your
16 source of facts.

17 So, you couldn't consider that as a part of
18 anything factual that you decide in the case.

19 The process of note taking, we discourage
20 here. We don't want Jurors taking notes. We want you
21 paying attention.

22 If the trial, as I've told some of you on
23 other occasions, if we were to try a four to five week

1 trial, I'd give you notebooks now, and let you start
2 taking notes.

3 But we don't have trials that long. You have
4 to rely on your own memory as to what people say. We also
5 want you paying full attention.

6 Because nobody can guarantee you when very
7 important things will happen in a courtroom by way of
8 expression, pause, even body language.

9 You just don't know. So, we want you just
10 paying attention to everybody.

11 In terms of contacts outside the trial, if you
12 go out in the hall or down in the elevator, you're around
13 people who may or may not have an interest in the case.

14 And they inadvertently talk too much about
15 what the trial is about, or things outside the trial that
16 couldn't be said to you, through the process called the
17 Rules of Evidence.

18 Let them know you're a Juror and you don't
19 want to hear about that. You want to decide things on
20 what's in the courtroom and not outside the courtroom.

21 Have we done our strikes?

22 *

23 *

+

1 THE COURT: Members of the Jury, we're going
2 to take about an hour for lunch. Don't start
3 deliberating, thinking it over, trying to decide the case.

4 Wait until everybody is given a chance to
5 present whatever they want.

6 Try and be back in the Jury room at ten after
7 2:00. And we'll let you go ahead of everybody, so we try
8 and keep conversations away from you.

9 Everybody stay in place while the Jury leaves
10 for lunch.

11 (Whereupon, at approximately 1:10 o'clock
12 p.m., the Jury retired from the courtroom.)

13 * * * * *

14 (Whereupon, at approximately 1:11 o'clock
15 p.m., the hearing in the above-entitled matter was
16 recessed, to reconvene at approximately 2:10 o'clock p.m.
17 that same day.)

18 * * * * *

19

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23

A F T E R N O O N S E S S I O N

(The hearing in the above-entitled matter was reconvened at approximately 2:15 o'clock p.m.)

(Whereupon, at approximately 2:16 o'clock p.m., the Jury returned to the courtroom and resumed their seats in the Jury Box.)

*

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THE COURT: Motions are to be taken up outside the hearing of the Jury. What I'm going to do, members of the Jury, is I'm going to take a brief recess.

I want to see -- what we have to do is go over a body of law and reduce them to instructions. I read the instructions to you, and then the lawyers get to argue.

And the question is how late we're going to do this, how long they want to argue. And the choice we have to make is to break for today, or to go ahead and finish this.

This Court doesn't have hours. I've been here with Juries until midnight. I don't order you to do that, though.

We'll find out where, you know, how much you

1 can really pay attention to your Jury service versus
2 things at home, commitments elsewhere, travel and
3 everything else.

4 And I don't want you distracted or going
5 through a hardship to do this public service as Jurors.

6 Let's take a brief recess. Take a decision
7 among yourselves as to how willing -- how late you'd be
8 willing to stay here this evening.

9 Don't let the words midnight bother you. I'm
10 thinking 6:00 o'clock, to get the case to you for
11 deliberation, to get the instructions ready, to get the
12 arguments over and then give you everything.

13 We give you the exhibits, the instructions,
14 and we say, 'You go out and select a foreperson, and
15 decide how you want to proceed.'

16 If you want to break and come back in the
17 morning, that's fine. If you want to try to deliberate
18 today, to see if you can reach a unanimous verdict, that's
19 fine.

20 But my choice, right now, is how to most
21 fairly to everybody concerned get this to you. The
22 lawyers are working very hard.

23 What we see is the tip of the iceberg.

1 They're managing witnesses. They're making choices.

2 They're going through lots of paper.

3 And they're trying to put it on in a smooth,
4 flowing way. And, sometimes, it isn't fair to them to
5 pressure them too much to do it too fast.

6 The choice we're going to make is, do we do
7 the business of instructions and closing arguments today,
8 get it all to you and let you decide how late you stay?

9 Or do we break for the day, bring you back
10 here in 9:30 in the morning to do the instructions and
11 closing arguments?

12 I'll listen to your opinion on that. But I
13 have to, sort of, in the long run, make the call.
14 Hopefully, I agree with you

15 Though, I'll make the call, in the long run.
16 Take a break. We'll get back to you promptly.

17 Everybody stay in place while the Jury leaves.

18 (Whereupon, at approximately 4:20 o'clock
19 p.m., the Jury retired from the courtroom.)

20 *

21 *

22 *

1 (Whereupon, at approximately 4:42 o'clock
2 p.m., the Jury returned to the courtroom.)

3 THE COURT: I'm not going to ask you your vote
4 on what you wanted to do, because I've made your decision
5 for you.

6 And I hope I don't offend, if all seven of you
7 wanted to do it a certain way.

8 I've decided, because of what has to be done
9 yet with counsel here, this may drag on. And I'm not
10 going to have you sitting back there, wondering what we're
11 doing.

12 I'm going to break you for today. Can
13 everybody be back here at 9:30?

14 THE JURY: (No negative response.)

15 THE COURT: Please report back -- we can't
16 perform without all of us present. So, I need all seven
17 of you back in this Jury room by 9:30 in the morning.

18 At that point, we'll read you the instructions
19 and let the lawyers argue with you. And, at last, give
20 you the case, to function as a Jury.

21 Tonight, you know, whoever is going to ask
22 you, 'What did you do today? What do you think? What's
23 it like? What do they say?', all of that usual

1 conversation we share with those close to us in life, you,
2 really, can't do that.

3 Because you're going to deliberate when you do
4 that. Find some way to isolate your thoughts to this case
5 until we come back tomorrow and share the law and let
6 these lawyers argue the case to you.

7 And at that point, tomorrow night, you can
8 tell them everything you thought.

9 Thanks for your patience today. We'll see you
10 at 9:30 in the morning. The Jury is free to go.

11 (Whereupon, at approximately 4:44 o'clock
12 p.m., the Jury retired from the courtroom.)

13 *

14 *

15 *

16
17 * * * * *

18 (Whereupon, at approximately 4:45 o'clock
19 p.m., the hearing in the above-entitled matter was
20 concluded.)

21 * * * * *

V I R G I N I A

IN THE CIRCUIT COURT OF ARLINGTON COUNTY

BRENDA E. ROBERTSON,

Plaintiff,

-VS-

METROPOLITAN WASHINGTON AREA
AIRPORT AUTHORITY, et al.,

Defendants.

LAW NO. 91-1302

Circuit Courtroom 702
Arlington County Circuit Court
Arlington, Virginia

Wednesday, July 7, 1993

The above-entitled matter came on to be heard,
with a Jury, before the HONORABLE PAUL F. SHERIDAN, Judge,
in and for the Circuit Court of Arlington County, in the
Courthouse, 1400 N. Courthouse Road, Arlington, Virginia,
beginning at approximately 9:45 o'clock a.m.

APPEARANCES:

On Behalf of the Plaintiff:

WILLIAM L. SCHMIDT, ESQUIRE
MARCO A. LOPEZ, ESQUIRE

On Behalf of the Defendant:

JOHN D. MCGAVIN, ESQUIRE

P R O C E E D I N G S

THE COURT: Let me read to you a note from the jury that tells me clearly the jury disregarded the instruction to not deliberate.

"Some of the members of the jury are grappling with the central issue of liability, did the plaintiff suffer an unfortunate accident through no fault of the defendant, or was there in fact a hole in the parking lot which should have been filled?

"The police officer's testimony suggests the absence of an incriminating hole, but rather it suggests it was a small, one-quarter-inch-deep depression behind the left rear tire of the plaintiff's vehicle and her truck was parked nose to the curb.

"We do not dispute the injury at all. The photographs of the hole appear to be a puddle, the depth of which we are unable to judge. Furthermore, the photos were taken eighteen months after the accident.

"The question is, is there some definitive piece of evidence to prove the presence of the hole on the day of the accident?

"The maintenance worker's testimony was confusing and incoherent. Is there a maintenance-held log

1 which we may see to indicate the absence or presence of a
2 hole? Can you help us?"

3 Does either side want a mistrial? That is
4 absolutely, deliberately violating the instruction to not
5 deliberate. Does either side want a mistrial?

6 MR. SCHMIDT: Yes, Your Honor.

7 THE COURT: Do you want a mistrial?

8 MR. MCGAVIN: No, I don't, Judge. I just -- I
9 hate to try it again, but I mean -- so, I think that the
10 jury can listen to the Court's instructions, follow your
11 instructions and the argument that will be given.

12 THE COURT: I think it indicates they've
13 deliberated, and it violates the Court's order.

14 Bring the jury in.

15 THE BAILIFF: Yes, sir.

16 (Whereupon, at approximately 9:47 o'clock
17 a.m., the jury entered the courtroom and took their place
18 in the jury box.)

19 THE COURT: The question sent to me by the
20 jury tells me the jury has been deliberating. That
21 analysis is deliberation, which you were told not to do.
22 There's pending now a motion to declare a mistrial, throw
23 it out and start over with another jury.

1 That's deliberation. You're not finders of
2 discovery, you're not discoverers of information and
3 seekers of fact, and you aren't supposed to function
4 outside the role of receiving information, even if it's
5 unsatisfactory or incomplete.

6 And it causes a problem. I told you we were
7 going to do instructions and closing argument and don't
8 individually make up your mind, don't choose attorneys or
9 anything else, try to decide the case, until you have
10 everything.

11 You never get everything. You never get
12 everything you want to know. You never get everything
13 that completely, one hundred percent clarifies it.

14 That's why trials are hard to call. That's
15 why they're hard to predict. You don't know what pieces
16 of information sway what jurors. But the lawyers and
17 their arguments are supposed to address issues.

18 What I'm going to do now is take up with
19 counsel whether we're going to go forward to verdict or
20 I'm going to declare a mistrial and start this over,
21 because your thought processes are really deliberation.

22 I'm going to talk it over with the lawyers.
23 If we go forward, I'm going to bring you back in and give

1 you the instructions and let the lawyers argue it. They
2 know the content of the questions.

3 But one of the problems is, the time and cost
4 they put into this trial yesterday would be wasted if I
5 declare a mistrial now. But it may be necessary -- let me
6 see.

7 I'll bring you back in shortly. We'll either
8 give you closing arguments and instructions and let you
9 decide the case, or I'm going to declare a mistrial and
10 pick another jury and start over.

11 I'll see you again shortly.

12 (Whereupon, the jury retired from the
13 courtroom.)

14 THE COURT: Any further argument or comment on
15 mistrial?

16 MR. MCGAVIN: Your Honor, just this. That
17 with the day we spent -- and now we're back here again. I
18 know what the Court's calendar is like. We're looking at
19 a substantial delay if the Court --

20 THE COURT: It would be six months. If I
21 declare a mistrial, your trial is in January of '94.

22 MR. MCGAVIN: And I know that I personally
23 have seven or eight cases set in January of '94, so we're

1 looking at probably March.

2 And I know for both sides a substantial delay
3 is prejudice. I know that the right thing to do is to
4 have the case tried fairly, and I believe, notwithstanding
5 any delay and additional expense, that the Court can
6 instruct the jury and have them follow the instructions.

7 So, therefore, I would be opposed to a
8 mistrial for those reasons. Thank you.

9 MR. SCHMIDT: Your Honor, obviously, we've
10 gone to great expense. We're the ones that had the expert
11 here, and we have paid him already for his time.

12 But, in view of what the jury has already
13 done, I don't think that the Court in any instructions
14 that it can give to the jury at this point can detract
15 from the thought process and discussions that apparently
16 have already been conducted -- or, at least, the thought
17 process by the person who wrote the letter.

18 And for that reason I believe that the rights
19 of the Plaintiff, in view of the violation of your
20 instruction, have been prejudiced.

21 She's gone to great expense; I understand
22 that. But I believe that a mistrial is appropriate, and
23 we're prepared to accept the Court's ruling with respect

1 to that.

2 THE COURT: Well, if I could give you a trial
3 tomorrow, I would declare a mistrial. The words "We do
4 not dispute the injury" means they've talked it over. Of
5 course, nobody in their right mind who listened to the
6 testimony could dispute the injury. There isn't an ounce
7 of dispute about it.

8 The comments and the analysis pick up certain
9 words that people trying a case listen to. The content of
10 the note is not surprising in any way. It sets out the
11 various sides of the argument of liability, it takes parts
12 of the testimony, it finds that the maintenance man's
13 testimony was confusing, which is exactly what it was.

14 Therefore, we're going to go to verdict. I
15 think Ms. Robertson is better off with a verdict here
16 today than six months more of waiting and paying the
17 doctor to come back again. I think the jury, having heard
18 my displeasure of what they've done, is going to work at
19 doing it right.

20 Now, let me address this question. I've
21 struggled with how to tell them that if -- well, the
22 maintenance man's testimony in regard to the signs and
23 cones is to be disregarded. Other than that his testimony

1 stands.

2 With that, I'm going to bring them in, do the
3 instructions, then the closing argument. I must say, I
4 don't know how to say it any more clearly than I say it,
5 over and over again, "Don't decide the case. Don't do it
6 at home, don't do it in the hall, don't do it at lunch."
7 I don't know how to do it any more than that.

8 But --

9 MR. MCGAVIN: Your Honor, Instruction H --

10 THE COURT: -- I think psychologically --
11 and whatever it means financially to everybody,
12 psychologically it's a better idea to give people a
13 verdict.

14 Yes, sir?

15 MR. MCGAVIN: Your Honor, Instruction H, which
16 was tendered yesterday and granted by the Court -- I
17 reviewed it early this morning and discovered that it is
18 not a correct statement of the law, and I have tendered a
19 substitute instruction H, which I have given to Mr.
20 Schmidt and we have discussed briefly.

21 But I would ask that you look at it. It is
22 the finding instruction. I don't know how it got in our
23 computer. It must have been done by an associate, because

1 second sentence.

2 Anything else?

3 MR. MCGAVIN: No. Thank you, sir.

4 THE COURT: The note from the jury will be
5 made a part of the record. Let's bring the jury in and
6 hear closing argument.

7 MR. MCGAVIN: Yes, sir.

8 MR. SCHMIDT: Yes, Your Honor.

9 THE COURT: How long do you need?

10 MR. SCHMIDT: About twenty minutes, Your
11 Honor.

12 THE COURT: All right.

13 (Whereupon, at approximately 10:00 o'clock
14 a.m., the jury returned to the courtroom and resumed their
15 place in the jury box.)

16 THE COURT: If I declared a mistrial, these
17 parties couldn't get back in trial for six or seven
18 months, and the communication isn't such that you've in
19 any way told us that you're not going to follow the
20 instructions on the law or let these people try to share
21 thoughts with you.

22 They have to be given a chance to reason with
23 you what the facts mean before you can start deliberating.

1 That's why, when you tell me certain fact-findings you're
2 making, you're doing it ahead of the argument.

3 You may, in the long run, be exactly where you
4 were, but the promise you make to these people is you'll
5 let them finish completely all their effort of persuasion,
6 all their effort to make you see it their way, factually
7 and legally.

8 And so, what I'm going to do is, we're going
9 to go ahead and get a verdict here today. I think that
10 closure of this dispute is as important as anything else
11 to these people.

12 Whether they like our verdict or not, we'll
13 have given them a form of a decision, and no decision is a
14 worse choice than that.

15 So, what I'm going to do is go forward. I'm
16 going to read you the law that governs. Then the lawyers
17 get to argue. The Plaintiff gets two arguments, the first
18 argument and a rebuttal argument. They have the primary
19 burden of proof. When I say primary -- you'll see there
20 is a burden of proof on what's called contributory
21 negligence.

22 Then we'll give you a form. The Defendant
23 we're going to call Comarco, C-o-m-a-r-c-o. The rulings

1 as to who the defendants are among the corporate
2 structure, don't concern yourselves with that. We'll just
3 talk about the defendant as Comarco.

4 Your choices for your eventual verdict -- and
5 you know that verdict has to be unanimous -- should be
6 written in on this form (indicating) by your foreperson.

7 And the top choice is, you "find in favor of
8 the plaintiff, Brenda Robertson, and assess damages in the
9 amount of...." You fill in a dollar amount -- if that's
10 your verdict, remembering it has to be unanimous.

11 If you find on the issue of liability in favor
12 of the defendant, Comarco -- that's your bottom choice --
13 you just write that in. The foreperson -- date it and
14 sign it.

15 If you have questions during deliberation,
16 have your foreperson write them out, knock on the door and
17 send them to me. I may or may not be able to answer, but
18 don't let that inhibit you from asking questions once you
19 are deliberating.

20 When I read the law to you, you'll notice I
21 don't look at you and talk to you. I look at the page and
22 read it, to be correct. It's not good enough to get
23 close.

1 And it's not your choice to sort of modify
2 this, either. You have to follow the law as it's given to
3 you, just as I have to follow it the way others have given
4 it to me.

5 The maintenance man, it is agreed, left the
6 employ of Comarco in 1990, not 1989. When he testified to
7 you that he left there on December 29, '89 -- the parties
8 agree that he was wrong.

9 Therefore, anything he said about signs or
10 cones or putting up barricades, disregard, because if it
11 happened in the month before he left, it happened in
12 December of '90, it's inadmissible. You shouldn't even
13 have heard about it. It's after the event.

14 You can consider his testimony as to what he
15 said the surface was like -- the trash, the leaves, the
16 cleanups.

17 But he was wrong. Both sides gave him a
18 chance, "What was your last day?" and "When did you
19 leave?" "When did you last work?" The lawyers have
20 agreed, after you left last night. They both tried, and
21 he's wrong.

22 If I had heard that from the witness stand, I
23 would never have let him mention anything about what

1 happened in December of '90. It has nothing to do with
2 this case.

3 So, disregard the things he said about signs
4 or cones or any marker, except as you want to accept it.
5 I mean, you decide the facts. You decide whatever it is
6 he offered that makes sense and is helpful to you, that
7 tells you what the area was like.

8 With that, let me read you some law.

9 *

10 *

11 *

12 (End of Extract)

13 *

14 *

15 *

16 (Whereupon, at approximately 12:28 o'clock
17 p.m., the hearing in the above-entitled matter was
18 concluded.)
19
20
21
22
23

V I R G I N I A:

IN THE CIRCUIT COURT FOR THE COUNTY OF ARLINGTON

BRENDA E. ROBERTSON

Plaintiff,

v.

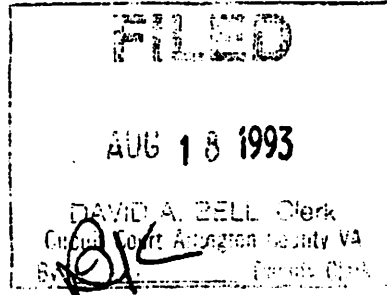
AT LAW NO. 91-1302

METROPOLITAN WASHINGTON
AIRPORTS AUTHORITY

and

INTERNATIONAL BUSINESS
SERVICES, INC., OF D.C.
d/b/a/ INTERNATIONAL
BUSINESS SERVICES, INC.
a Subsidiary of COMARCO, INC.

Defendants.



AMENDED

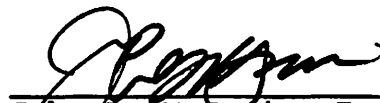
NOTICE AND MOTION FOR ENTRY OF FINAL JUDGMENT ORDER

Please take notice that on **Friday, October 22, 1993**, at 10:00 a.m., or as soon thereafter as counsel may be heard, the defendants, Metropolitan Washington Airports Authority and International Business Services, Inc., of D.C., will move this Court for entry of the Final Judgment Order in this case reflecting the jury verdict of July 7, 1993.

This matter should be heard by the Honorable Paul F. Sheridan.

METROPOLITAN WASHINGTON AIRPORTS AUTHORITY
INTERNATIONAL BUSINESS SERVICES OF D.C.
By Counsel

LEWIS, TRICHILO, BANCROFT, MCGAVIN, & HORVATH, P.C.
Fairfax Bank and Trust Building
4117 Chain Bridge Road, Suite 400
Post Office Box 22
Fairfax, Virginia 22030-0022



John D. McGavin, Esquire
Virginia State Bar 21794
Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing NOTICE AND MOTION was mailed to Clerk of Court and faxed and mailed postage pre-paid this 17th day of August, 1993, to, William L. Schmidt, Esquire, Counsel for Plaintiff, 6225 Brandon Avenue, Suite 275. Springfield, Virginia 22150.



John D. McGavin

V I R G I N I A :

IN THE CIRCUIT COURT FOR THE COUNTY OF ARLINGTON

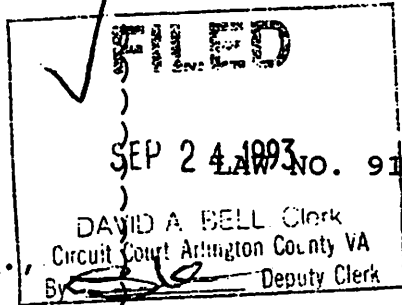
BRENDA E. ROBERTSON,

Plaintiff,

v.

METROPOLITAN WASHINGTON
AIRPORT AUTHORITY, et al.,

Defendants.



MOTION TO RECONSIDER

PLEASE TAKE NOTICE that on the 22nd day of October, 1993, at 10:00 a.m., or as soon thereafter as counsel may be heard, BRENDA E. ROBERTSON, by counsel, will respectfully move this Honorable Court to reconsider its ruling on her Motion for a Mistrial and for the entry of an Order granting a mistrial; setting aside the jury verdict rendered in this cause on July 7, 1993; and awarding your Plaintiff a new trial, and in support thereof respectfully states as follows:

1. This matter was tried before this Honorable Court on July 6 and 7, 1993.

2. Prior to the Plaintiff's opening statement on July 6, 1993, and again prior to suspending trial proceedings for the evening of July 6, 1993, the court orally instructed members of the jury that they were not to discuss the evidence or any of the incidents of trial among themselves, or with any other parties, until they retired to the jury room to render a verdict.


WILLIAM L.
SCHMIDT
& ASSOCIATES, P.C.
ATTORNEYS AND COUNSELORS AT LAW

225 Brandon Avenue
Suite 275
Springfield, Virginia 22150
(703) 866-2343

NOTICE AND MOTION - 1

3. Prior to the commencement of the second day of trial proceedings on the morning of July 7, 1993, the jury caused a written statement, the contents of which are reflected in the record, to be presented to the court.

4. The substance of the written statement indicates that some or all of the members of the jury had discussed the evidence presented in this matter at some point prior to the time at which they submitted the written statement.

5. Your Plaintiff submits that by discussing the evidence and the incidents of trial among themselves prior to being charged to render a verdict the jury violated the instructions issued to them by this court.


6. Though your Plaintiff moved this court, at trial, to grant a mistrial based on the aforesaid jury misconduct, said Motion was denied.

7. Your Plaintiff respectfully submits that she has been denied a fair and proper trial due to the misconduct of the jury in this cause.

WHEREFORE, your Plaintiff respectfully prays that this Honorable Court reconsider its prior ruling on her Motion for a Mistrial and enter an Order declaring a mistrial in the proceedings conducted before it on the 6th and 7th day of July, 1993; setting aside the jury verdict rendered in this cause on July 7, 1993, and granting your Plaintiff, BRENDA E. ROBERTSON, a new trial.

BRENDA E. ROBERTSON
By Counsel

NOTICE AND MOTION - 2


WILLIAM L.
SCHMIDT
& ASSOCIATES P.C.
ATTORNEYS AND COUNSELORS AT LAW
6225 Brandon Avenue
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Springfield, Virginia 22150
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PRESENTED:

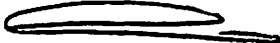
WILLIAM L. SCHMIDT & ASSOCIATES, P.C.

By: 

MARCO A. LOPEZ
Virginia Bar No. 31408
6225 Brandon Avenue
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Springfield, VA 22150
(703) 866-2343
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Notice and Motion has been mailed, first class postage prepaid to John D. McGavin, Esquire, Lewis, Trichilo, Bancroft & McGavin, P.C., 4117 Chain Bridge Road, Suite 400, P.O. Box 22, Fairfax, Virginia 22030-0022 this 23rd day of September, 1993.


MARCO A. LOPEZ


WILLIAM L.
SCHMIDT
& ASSOCIATES P.C.
ATTORNEYS AND COUNSELORS AT LAW

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(703) 866-2343

NOTICE AND MOTION - 3

V I R G I N I A:

IN THE CIRCUIT COURT FOR THE COUNTY OF ARLINGTON

BRENDA E. ROBERTSON

Plaintiff,

v.

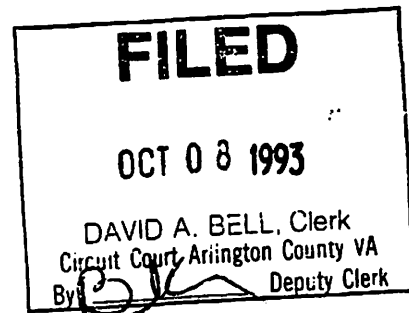
AT LAW NO. 91-1302

METROPOLITAN WASHINGTON
AIRPORTS AUTHORITY

and

INTERNATIONAL BUSINESS
SERVICES, INC., OF D.C.
d/b/a/ INTERNATIONAL
BUSINESS SERVICES, INC.
a Subsidiary of COMARCO, INC.

Defendants.



BRIEF IN OPPOSITION
TO THE PLAINTIFF'S MOTION TO RECONSIDER

Comes now the defendants, Metropolitan Washington Airport Authority and COMARCO, Inc., by counsel, and for their Brief in Opposition to the Plaintiff's Motion to Reconsider and Motion for Mis-Trial, state as follows:

I. FACTS

This case went to trial on July 6-7, 1993, before the Honorable Paul F. Sheridan sitting with jury. On July 7, 1993, prior to the instructions of the Court being delivered, the jury submitted a note indicating they were having some difficulty reconciling inconsistent facts and the credibility of the witnesses. The plaintiff moved the Court to grant a mis-trial on the grounds that the jury was violating an Order of the Court. The

defendants opposed the motion on the grounds that the jury had not reached any decision and the Court could by curative instruction remind the jury and instruct the jury that they must follow the instructions of the Court and render a unanimous verdict.

The Court denied the motion for mis-trial and instructed the jury to follow the instructions and not to deliberate until closing argument had been made and the instructions of the Court provided.

The jury heard the closing argument of counsel and heard the Court's instructions. The jury retired at 10:55 a.m. on July 7, 1993. At approximately 12:05 p.m. the jury returned into open Court and rendered a unanimous verdict for the defendant.

The jury deliberated for in excess of one hour and ten minutes.

The case now comes before the Court on the plaintiff's motion to reconsider, motion for mis-trial, and to grant a new trial in this case.

II. DISCUSSION OF THE LAW

The Court should deny the plaintiff's motion for mistrial. The Court has authority under Virginia Code Section 8.01-361, to grant a mis-trial but only under limited circumstances. Virginia Code Section 8.01-361 provides as follows:

"If a juror, after he is sworn be unable for any cause to perform his duty, the Court may in its discretion, cause another qualified juror to be sworn in his place, and in any case, the Court may discharge the jury when it appears that they cannot agree on a verdict or that there is a manifest necessity for such discharge."

The Court is granted broad discretion in analyzing this statutory authority. The Court's decision to deny a motion for mis-trial will only be overturned on appeal when there is evidence that the Court abused its discretion. See, Thomas v. Windgold, 206 Va. 967 (1966) In this case there was no manifest necessity for discharge of the jury.

The Court in strong and certain terms instructed the jury prior to deliberations to listen carefully to the Court's instructions, consider the evidence presented, and to follow the instructions before reaching any verdict.

There is no evidence in this case that the jury failed to follow the Court's instructions. The jury deliberated for in excess of an hour after receiving the Court's instructions and the closing statement of counsel.


The actions of the jury in attempting to reconcile inconsistent facts did not in the least demonstrate that the jury had already decided this case. To the contrary, no indication was given in this matter concerning the final decision of the jury until they returned with their verdict.

III. CONCLUSION

On these facts and given the statutory standard, this Court should deny the plaintiff's renewed motion for a mis-trial and enter the defendant's final judgment order.

METROPOLITAN WASHINGTON AIRPORTS AUTHORITY
COMARCO
By Counsel


LEWIS, TRICHILO, BANCROFT, MCGAVIN, & HORVATH, P.C.
Fairfax Bank and Trust Building
4117 Chain Bridge Road, Suite 400
Post Office Box 22
Fairfax, Virginia 22030-0022



John D. McGavin, Esquire
Virginia State Bar 21794
Counsel for Defendant

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **BRIEF IN OPPOSITION** was mailed postage pre-paid this 7th day of October, 1993, to, William L. Schmidt, Esquire, Counsel for Plaintiff, 6225 Brandon Avenue, Suite 275, Springfield, Virginia 22150.



John D. McGavin

10/21/84

V I R G I N I A :

IN THE CIRCUIT COURT FOR THE COUNTY OF ARLINGTON

BRENDA E. ROBERTSON,)	
)	
Plaintiff,)	
)	
v.)	LAW NO. 91-1302
)	
METROPOLITAN WASHINGTON)	
AIRPORT AUTHORITY, <u>et al.</u> ,)	
)	
Defendants.)	

MEMORANDUM OF LAW

COMES NOW, your Plaintiff, BRENDA E. ROBERTSON, by counsel and submits the following Memorandum of Law in Support of her Motion to Reconsider previously filed herein.

Misconduct of a jury is grounds for granting a new trial if that misconduct has caused prejudice to one of the litigants. Whenever it appears that the ends of justice will best be served by a new trial, it will be awarded. Michie's Jur. Pr. New Trials § 4 (19xx). Virginia law requires that jurors stand indifferent to the cause they hear. If they do not, other jurors shall be chosen in their place to hear the trial. Va. Code § 8.01-358 (1950, as amended). Irregularities in the venire such as to probably cause injustice to the party making the objection can be cause for granting a new trial or setting aside a verdict. Va. Code § 8.01-352 (B) (1950, as amended). These basic requirements indicate that prejudice results if a juror, or jurors, ever become partial to one side in a case before they are charged to deliberate.

When jury misconduct occurs, the question is whether that misconduct was prejudicial to the litigants. Prejudice occurs when jurors come to a conclusion prior to the end of the case. This brief will consider the issue of prejudice resulting from bias or a premature decision by jurors.

In Haddad v. Commonwealth, 229 Va. 325, 329 S.E.2d 17 (1985), a juror made a comment to an attorney to the effect that attorneys who represent guilty criminal defendants and assist them in avoiding guilty verdicts should be ashamed. The juror went on to comment that attorneys care only about getting paid, and then said that the attorney's client would not "get off." The defendant in the case moved for a mistrial. The trial judge denied the motion after questioning the juror, who said that he could still render a fair and impartial verdict. The Supreme Court of Virginia reversed, stating that the juror's comments were sufficient to establish a probability of prejudice. Despite the fact that Haddad is a criminal case and not civil, the rule is nonetheless on point because of the requirement contained in the Virginia Code that jurors stand indifferent to the cause. Va. Code § 8.01-358 (1950, as amended). The Haddad court cited authority from both civil and criminal cases to identify the law, drawing no distinction between the two types of cases.

A civil litigant is no less entitled to a fair and impartial trial than a defendant in a criminal case. 75 Am. Jur. 2d Trial § 192 (19xx). The right to a fair and impartial

trial in a civil case is as fundamental as it is in a criminal case, as it lies at the very basis of organized society and confidence in our judicial system. Temple v. Moses, 175 Va. 320. The administration of justice demands that verdicts, criminal as well as civil, be rendered by impartial juries and shall be the result of honest deliberations, free from prejudice or bias. Mack v. Commonwealth, 177 Va. 921, 929, 15 S.E.2d 62, 65 (1941).

When a juror makes a comment indicating that he or she has formed a belief as to the guilt or innocence of a party prior to the time the jury is charged to deliberate, a presumption of prejudice is raised. As well, a heavy burden shifts to the party defending the verdict to show that the error was harmless. Gray v. Hutto, 648 F.2d 210 (Va. 1981). In Hutto, a juror commented to her husband during a lunch recess, while the trial was still going on, to the effect that she thought the defendant was guilty. Once the issue was brought to the court's attention, an evidentiary hearing was held in which the errant juror testified that she had not prejudged the case. The trial court found that the misconduct was harmless and denied a new trial. Id., at 211. In a habeas corpus proceeding, the District Court, Eastern District of Virginia, acted on the assumption that the statement indicated a belief of guilt on the part of the juror, and held that the state court's finding of harmless error was supported by the evidence and not to be disturbed. The Court of Appeals

for the Fourth Circuit reversed, however, holding that if the juror's comment expressed a premature conviction of guilt, then the comment was presumptively prejudicial. Once a premature belief is shown by the party moving for a new trial, a heavy burden is placed on the non-moving party to show the error to be harmless. Id. Moreover, the court ruled that the pressure on the juror to claim not to have reached an early decision is so great that her testimony is self-serving and can not be credited. Id. Finally, it is questionable, the court stated, whether even a prompt curative instruction could remedy this sort of defect.

Haddad indicates that the right to a fair and impartial jury extends throughout the trial. Hutto makes it clear that litigants have a right to have their causes tried in court by a tribunal that is fair and impartial all the way to the end of the trial. Whenever any juror abandons impartiality and comes to a decision prior to the end of a trial, the litigants have been denied the right to fairness both in procedure and in substance. Such prejudice is essentially per se grounds for a new trial since the testimony of the jurors in error cannot be used to support their own claim of impartiality once they have indicated bias or premature decision. Furthermore, the burden shifts to the non-moving party to prove that there was no bias or that the error was harmless.


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Robertson v. Washington Metropolitan Airports Authority

Every litigant has a right to a fair and impartial jury and a fair and impartial trial that results in a complete hearing of admissible evidence. Failure to allow this right to litigants is violative of a basic tenet of our judicial system.

In the Robertson case, the jurors wrote a letter indicating that they had begun deliberations prior to the end of the trial and that they were going to find for the defendant if no additional evidence was adduced. This was clearly misconduct. The contents of the letter alone indicate that the jury had deliberated and had concluded matters of fact and law prior to the end of the trial. The factual issue they deliberated went to the existence, location, and size of the hole. The legal issue they deliberated was the legal significance of these facts. Because their consideration was prior to closing arguments and the court's instructions, the jury could not possibly have been qualified to make such legal judgments.

The jurors' actions constituted misconduct, and that misconduct was prejudicial per se because it indicated that the jurors had reached a decision before the litigants had had a complete opportunity to make their case. This is a violation of the litigant's right to a full and fair hearing before an impartial jury. Measuring the impact of their consideration on the final verdict is unnecessary because the

letter indicated the outcome of the trial. Although there is no evidence as yet of a causal link between the jury's letter and early deliberations, and the final outcome, the court is bound to assume that where a jury has stated its position during the trial and prior to deliberations, impartiality is lost and fairness denied the litigants. This requirement is contained in Haddad and Hutto, which hold unmistakably that any indication during the trial that a juror or jurors have begun to reach a conclusion before they are formally given the case, raises a strong presumption that prejudice has resulted. Overcoming this presumption may only be done by strong evidence that does not come from the aberrant jurors, for their testimony is tainted by the fact that their action has put them at odds with the court's instructions and with the fair and impartial execution of their oaths.

A court proceeding in all its phases must not only be fair and impartial, but must also appear to be fair and impartial. 75 Am. Jur. 2d Trial § 192. All the parties are entitled to open making a statement to the jury summarizing the case, to examine all of the witnesses and make all necessary arguments before the court, and, finally, to close. The plaintiff is allowed the opportunity to make the first statement and the last statement in the trial and the judge is bound to give the jury instructions on the law and their task in rendering a fair and impartial verdict.


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When a litigant presents her case before the court she does so with the expectation that every stage of the case will be met with open and unbiased ears. This is denied where the jurors predetermine the litigants' rights and liabilities. It is often said in opening statements that evidence presented in a case is like the pieces of a jigsaw puzzle. Throughout the case, pieces will be inserted here and there in an order that is the most logical and persuasive. But this process does not necessarily result in a complete picture all at once. If jurors reach a decision on some point before the evidence is completely presented, before the attorneys have had an opportunity to argue in conclusion how that evidence fits together, and before the judge gives the jury instructions on how that evidence must be considered and what the law requires of them, then the litigants cannot expect that fairness will result. The jury will have shown that it is predisposed to a certain outcome without having heard all of the trial or been charged with the law.

In Robertson the court is presented with a case unlike most of the cases in this area of the law. The closest are Haddad and Hutto, where jurors indicated at trial to third parties that they had some predisposition. The jury was not exposed to statements from third parties, was not exposed to evidence not adduced at trial, never viewed the site of the accident, or any other common form of jury misconduct. Their misconduct was discussing the case and deciding certain

questions prior to the time the case was given to them. This court, in greeting the jury, told them unequivocally that their duty was to not speak with anyone until they were allowed to deliberate (and then only to speak among themselves) and to not deliberate until they were called upon to do so by the court. Their consideration was in private and the evidence that we have of it was their letter to the court. It is impossible to know on the facts available to us what was the substance of their premature consideration or whether they fully understood the evidence as the attorneys would explain it to them in closing arguments. We know their premature deliberations must have been extensive, as they took the time to write a letter and distill their views to illicit more evidence on certain points. As well, we know they considered the legal import of the existence and size of the hole. Although it could be argued that they had all of the evidence in the case except for closing arguments and jury instructions, it cannot be asserted that the jurors are presumed to be experts in the law. To allow them to make legal judgments prior to the time they are instructed as to the law is tantamount to allowing them to decide what law they choose to apply before they are told what law they must apply.

This misconduct amounts to prejudice per se. The jury decided the case before they were given the case. The jury decided the law before they were given the law. Prejudice is defined as "a forejudgment; bias; [or]

preconceived opinion." Black's Law Dictionary (4th Ed. Rev. 1968). Any deliberation or conclusion by the jury prior to their being given the case was prejudice and at odds with the litigants' right to a full, fair, and impartial hearing.

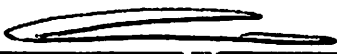
WHEREFORE, your plaintiff respectfully prays that this Honorable Court reconsider its prior ruling on her Motion for a Mistrial and enter an Order declaring a mistrial in the proceedings conducted before it on the 6th and 7th day of July, 1993; setting aside the jury verdict rendered in this cause on July 7, 1993, and granting your Plaintiff, BRENDA E. ROBERTSON, a new trial.

BRENDA E. ROBERTSON
By Counsel

PRESENTED:

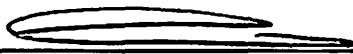
WILLIAM L. SCHMIDT & ASSOCIATES, P.C.

By:


MARCO A. LOPEZ
Virginia Bar No. 31408
6225 Brandon Avenue
Suite 275
Springfield, VA 22150
(703) 866-2343
Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Notice and Motion has been sent via facsimile transmission to John D. McGavin, Esquire, Lewis, Trichilo, Bancroft & McGavin, P.C., 4117 Chain Bridge Road, Suite 400, P.O. Box 22, Fairfax, Virginia 22030-0022 this 21st day of October, 1993.


MARCO A. LOPEZ

WILLIAM L.
SCHMIDT
& ASSOCIATES P.C.
ATTORNEYS AND COUNSELORS AT LAW

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Springfield, Virginia 22150
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V I R G I N I A:

IN THE CIRCUIT COURT FOR THE COUNTY OF ARLINGTON

BRENDA E. ROBERTSON

Plaintiff,

v.

AT LAW NO. 91-1302 ✓

METROPOLITAN WASHINGTON
AIRPORTS AUTHORITY

and

INTERNATIONAL BUSINESS
SERVICES, INC., OF D.C.
d/b/a/ INTERNATIONAL
BUSINESS SERVICES, INC.
a Subsidiary of COMARCO, INC.

Defendants.

FINAL JUDGMENT ORDER

This matter came before the Court on July 6-7, 1993, for trial before the Honorable Paul F. Sheridan, sitting with jury; for trial of the Amended Motion for Judgment filed by Brenda E. Robertson; the Answer and Grounds of Defense filed by the defendants; and the other pleadings herein; and

Following voir dire, seven jurors were chosen from a panel of thirteen veniremen; and

Whereupon the jury heard the evidence presented by the plaintiff and reviewed the exhibits submitted on her behalf after which counsel for the defendant moved to strike the plaintiff's evidence with the motion being denied in part and granted in part and in consideration whereof; it was

-2-

ORDERED that the motion to strike of the defendant Metropolitan Washington Airports Authority was granted and the Court entered summary judgment for the defendant Metropolitan Washington Airports Authority; and it was further

ORDERED that the motion to strike the plaintiff's evidence by the defendant International Business Services, Inc., of D.C., d/b/a/ International Business Services, Inc., a subsidiary of COMARCO, Inc., was overruled with the defendant noting its objections to the Court's ruling; and

Whereupon the jury heard the evidence and reviewed the exhibits presented by the defendant and at the conclusion of the defendant's case, the defendant renewed its motion to strike the plaintiff's evidence with the Court denying the motion and the defendant noting its objection to the Court's ruling; and

Whereupon the Court recessed the proceedings for July 6, 1993, to resume on July 7, 1993;, and

Whereupon July 7, 1993, the proceedings resumed and the jury presented a written question, the content of which is reflected in the record; and

Whereupon the plaintiff moved this Court to grant a mis-trial with the Court denying the motion and the plaintiff noting an objection to the Court's ruling; and

-3-

Whereupon the Court presented its instructions to the jury and the jury received the closing arguments of counsel and retired to consider its verdict at approximately 10:55 a.m., on July 7, 1993; and

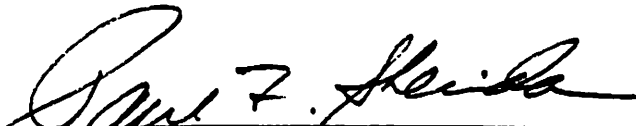
Whereupon at approximately 12:05 p.m., on July 7, 1993, the jury announced that it had obtained a unanimous verdict and thereafter the jury returned into open Court and rendered its verdict in favor of the defendant; and

Whereupon the jury was discharged and in consideration of the jury's verdict; it is

ORDERED that judgment shall be entered for the defendant International Business Services, Inc., of D.C., d/b/a/ International Business Services, Inc., a Subsidiary of COMARCO, Inc., and the plaintiff, Brenda E. Robertson, shall recover nothing in this action against the defendant, International Business Service Inc., of D.C., d/b/a/ International Business Services, Inc., a Subsidiary of COMARCO, Inc.

THIS ORDER IS FINAL.

ENTERED this 22^d day of October, 1993.


Honorable Paul F. Sheridan

-4-

SEEN WITH OBJECTION NOTED TO ADVERSE RULINGS:



John D. McGavin, Esquire
VSB 21794

LEWIS, TRICHILO, BANCROFT, MCGAVIN, & HORVATH, P.C.
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Counsel for Defendants

SEEN WITH OBJECTION NOTED TO ADVERSE RULINGS:


William L. Schmidt, Esquire

William L. Schmidt & Associates, P.C.
6225 Brandon Avenue
Suite 275
Springfield, Virginia 22150

VA Bx # 12961

V I R G I N I A :

IN THE CIRCUIT COURT FOR THE COUNTY OF ARLINGTON

BRENDA E. ROBERTSON,

Plaintiff,

v.

LAW NO. 91-1302 ✓

METROPOLITAN WASHINGTON
AIRPORT AUTHORITY, et al.,

Defendants.

AMENDED STATEMENT OF FACTS

COMES NOW your Plaintiff, BRENDA E. ROBERTSON, by counsel, and pursuant to Rule 5:11 of the Rules of the Supreme Court of Virginia submits the following as her amended written statement of the facts, testimony, and other incidents of trial for purposes of pursuing her appeal of the rulings of the above-styled court in this cause.

The Plaintiff's claim herein arose from personal injuries which she alleged were sustained as a result of the a slip and fall alleged by her to have occurred in a parking lot located at Washington National Airport in Arlington County, Virginia. The Defendants herein denied liability.

On July 6 and 7, 1993, a jury trial was held in the Circuit Court of Arlington County, Virginia, the Honorable Paul F. Sheridan presiding.

On July 6, 1993, following voir dire, seven (7) jurors were chosen from a panel of 13 veniremen, the jury then heard the evidence presented by the Plaintiff and the Defendants and the court then recessed the proceedings for July 6, 1993, to resume on July 7, 1993.

Handwritten notes:
DIRECT
his Amended
Statement of Facts
Be filed
as of 5 January 1994
Paul F. Sheridan
6 January 94
TWC

WILLIAM L. SCHMIDT
ASSOCIATES P.C.
225 Brandon Avenue
Suite 275
Springfield, Virginia 22150
(703) 866-2313

On July 7, 1993, the proceedings resumed and the jury presented a written question to the court, the content of which is reflected on page 2 of Exhibit 1 attached hereto. Exhibit 1 is a written transcript of the trial proceedings from their commencement on the 2nd day of trial, July 7, 1993, except for the reading of jury instructions to the jury and the closing arguments of counsel which followed.

Following the court's presenting its instructions to the jury and the closing arguments of counsel, the jury retired to consider its verdict and returned a unanimous verdict in favor of the Defendants.

The jury was discharged and in consideration of its verdict, a final order of judgment was entered in favor of the Defendants.


Attached hereto as Exhibit 2 is a partial transcript wherein all comments made by Judge Sheridan to the jury on the first day of trial, July 6, 1993, are set forth.

BRENDA E. ROBERTSON
By Counsel

PRESENTED:

WILLIAM L. SCHMIDT & ASSOCIATES, P.C.

By:


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SEEN AND AGREED:

LEWIS, TRICHILO, BANCROFT & MCGAVIN, P.C.

By:



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ASSIGNMENT OF ERROR

The trial court erred in denying Brenda Robertson's motion for a mistrial when presented with undeniable evidence that the jury began deliberating prior to hearing closing arguments and jury instructions, which was in direct violation of the court's specific instruction not to begin its deliberations until after ordered to do so by the trial judge.