

245 Va. 478

SUPREME  
OCT 30 1992  
RICHMOND, VIRGINIA

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IN THE  
**Supreme Court of Virginia**

AT RICHMOND

RECORD NO. 920932

**WANDA P. HENDERSON,**

*Appellant,*

**v.**

**DANA L. GAY, Administrator of the Estate of  
Ruth A. King, deceased,**

*Appellee.*

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**JOINT APPENDIX**

---

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V I R G I N I A :

IN THE CIRCUIT COURT OF THE CITY OF PETERSBURG

WANDA P. HENDERSON

Plaintiff

v.

DANA L. GAY, Administrator  
de bonis non of the Estate of  
Ruth A. King, deceased

Defendant

SERVE: Dana L. Gay, Esquire  
GORDON, DODSON & GORDON  
10303 Memory Lane  
Suite 101  
Chesterfield, Va 23832  
(County of Chesterfield)

AMENDED  
MOTION FOR JUDGMENT

The plaintiff, Wanda P. Henderson, by counsel, moves this Court for judgment against the defendant, Dana L. Gay, Administrator de bonis non of the Estate of Ruth A. King, deceased, on the grounds and in the amounts as hereinafter set forth:

1. On or about December 9, 1988, at or near the intersection of S. Dunlop Street and Farmer Street, within the City of Petersburg, Virginia, the defendant's decedant, Ruth A. King, carelessly, recklessly and negligently operated a 1981 Chevrolet motor vehicle so as to cause it to collide with the 1978 Chevrolet motor vehicle being operated by the plaintiff.

2. As a result thereof, the plaintiff was caused to sustain serious and permanent injuries; has incurred and will incur loss of income; has incurred and will incur medical and

other related expenditures; has sustained loss of earning capacity; has suffered and will continue to suffer pain of body and mind; has suffered damage to her property and has had her ability to engage in her usual activities and to enjoy life adversely affected on account of the accident and resulting injuries.

3. Ruth A. King is now deceased, and Dana L. Gay has qualified in this Court as the Administrator de bonis non of her Estate.

WHEREFORE, the plaintiff demands judgment against the defendant in the sum of FIFTY ONE THOUSAND THREE HUNDRED TWENTY FIVE AND NO/100 DOLLARS (\$51,325.00) plus costs and interest from the date of the accident.

TRIAL BY JURY IS DEMANDED.

PLAINTIFF'S FIRST INTERROGATORIES

Comes now the Plaintiff, by counsel, requesting the defendant to file an answer in writing and under oath, pursuant to Rule 4:8 of the Rules of the Supreme Court of Virginia, to the following interrogatories, amending them as additional information becomes available and to serve a true copy thereof on plaintiff's counsel, within such period as prescribed by the Rules of the Supreme Court of Virginia:

INSTRUCTIONS

a. These Interrogatories are continuing in character, so as to require you to file supplementary answers if you obtain further or different information before trial.

CERTIFICATE

I hereby certify that a true and exact copy of the foregoing Amended Motion for Judgment was mailed this 25<sup>th</sup> day of September, 1990, to Dana L. Gay, Esquire, GORDON, DODSON & GORDON, Post Office Box 130, Chesterfeld, VA 23832.

  
\_\_\_\_\_  
William R. Keown

COPY

1 VIRGINIA:

2 IN THE CIRCUIT COURT FOR THE CITY OF PETERSBURG

3  
4 -----  
5 WANDA P. HENDERSON,

6 Plaintiff

7 v.

8 DANA L. GAY, Administrator  
9 de bonis non of the Estate of  
Ruth A. King, deceased,

10 Defendant  
11 -----  
12  
13  
14

15 TRANSCRIPT of trial of above-captioned case,  
16 (Exclusive of Defendant's Motion to Strike Plaintiff's  
17 evidence) heard November 26, 1991, before the Honorable  
18 Oliver A. Pollard, Jr., Judge, with Jury.  
19  
20  
21  
22  
23

24 CRANE-SNEAD & ASSOCIATES, INC.  
4914 Fitzhugh Avenue  
25 Richmond, Virginia 23230  
Tel. No. (804) 355-4335

1    APPEARANCES

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        Pamela S. Baskervill, Esquire  
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        Petersburg, Virginia 23803  
        Counsel for the Defendant



1 Hearing on --  
 2 November 26, 1991.

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4 -----

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22  
 23  
 24  
 25 Reported by D. McGuire.



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MS. DAVENPORT: Your Honor, Plaintiff  
would call Officer Joseph Bucka as our first  
witness.

OFFICER JOSEPH F. BUCKA, a witness called  
to testify on behalf of the Plaintiff, first being duly  
sworn, testified as follows:

DIRECT EXAMINATION

BY MS. DAVENPORT:

Q Would you state your full name for the  
jury, please?

A Office Joseph F. Bucka, Petersburg Police  
Department.

Q What is your present position with the  
Petersburg Police Department?

A I am currently working in the Patrol  
Division, midnight shift.

Q Were you so employed on December the 9th,  
1988?

A Yes, ma'am.

Q And what were your job duties at that  
time?

1                   A            I was a member of the Traffic Division at  
2   that time.

3                   Q            Did you have occasion to investigate an  
4   accident involving Wanda Henderson and Ruth King on December  
5   the 9th of 1988?

6                   A            Yes, ma'am.

7                   Q            And where did this accident occur?

8                   A            The accident took place within the City of  
9   Petersburg at the intersection of South Dunlop Street and  
10   Farmer Street.

11                  Q            And can you tell what the weather was that  
12   day?

13                  A            I don't have my overlay sheet.    I would  
14   have to overlay it and check the numbers on the side.    I  
15   don't recall what the weather was precisely that day.

16

17                               MS. BASKERVILL:   Excuse me.   I have a  
18   copy.   Do you want it?

19                               MS. DAVENPORT:   (Nodding affirmatively)

20

21                               NOTE: A document is handed to the witness.

22

23                               MS. BASKERVILL:   (Handing document to  
24   witness)   If that's what you are referring to, that  
25   might be helpful.   Is that what you are referring

1 to?

2 OFFICER BUCKA: Yes, ma'am.

3

4 A I've got cloudy.

5 Q You don't have any notation as to whether  
6 the roads were wet or dry?

7 A Two -- (Referring to document) I'm sorry.  
8 The surface of the roadway was wet.

9 Q Thank you. Who was involved in this  
10 accident, Officer Bucka?

11 A Upon my arrival there, I found a Ruth A.  
12 King, who was operating a '78 Chevrolet four-door; Ms. Wanda  
13 B. Henderson, who was operating a '81 Chevrolet four-door;  
14 and a William Wilkins, who was operating a '81 Chevrolet  
15 pickup truck.

16 Q Would you describe your observations when  
17 you arrived at the scene?

18 A I'm sorry?

19 Q Would you describe your observations when  
20 you arrived on the scene?

21 A Yes, ma'am. I found that the collision  
22 had taken place at the intersection of Farmer and Dunlop.  
23 I interviewed all parties involved. Ms. King and Wanda  
24 Henderson, at that time, both of them indicated to me  
25 that the other one ran the stop sign. The intersection

1 is controlled by a four-way stop sign. Also, Mr. Wilkins,  
2 who was at a stopped position, stopped at the stop sign,  
3 said after the collision took place, his vehicle was  
4 involved, also

5 Q Officer Bucka, do you know what the speed  
6 limit in that area is?

7 A Yes, ma'am, twenty-five miles an hour.

8 Q That was on both streets, Dunlop as well  
9 as Farmer Street, is that correct?

10 A Yes, it was.

11 Q Would you describe the damage that you  
12 observed on the vehicles and the locations of damage?

13 A The damage to Ms. King's vehicle was to  
14 the front, Ms. Henderson's was to the left-hand side front  
15 fender, and Mr. Wilkins' vehicle was -- it was the front of  
16 his vehicle.

17

18 MS. DAVENPORT: Your Honor, I would like  
19 to show him two pictures I would like to have  
20 marked, for identification purposes, as Plaintiff's  
21 Exhibit Number 1 and Number 2. (Handing pictures to  
22 the Sheriff)

23 THE SHERIFF: Which one do you want as 1,  
24 either one?

25 MS. DAVENPORT: The windshield is Number



1                   2.

2

3                   NOTE: Two pictures of the Plaintiff's  
4                   vehicle are marked for identification as Plaintiff's  
5                   Exhibits 1 and 2.

6

7                   Q           Officer Bucka, I would like for you to  
8                   take a look at the pictures and tell me if you can recognize  
9                   them.

10                  A           It appears to be Ms. Henderson's car, yes,  
11                  ma'am.

12                  Q           Does it show the damages you saw on the  
13                  day of the accident?

14                  A           Yes, ma'am, to the left front fender.

15                  Q           Okay. And Picture Number 2?

16                  A           That also shows the front windshield, the  
17                  left front corner of the windshield of Ms. Henderson's  
18                  vehicle.

19                  Q           How would you describe the impact between  
20                  the King and Henderson vehicle?

21

22                               MS. BASKERVILL: I am going to object,  
23                               Judge. He wasn't there to see the impact.

24                               THE COURT: Objection sustained.

25

1           Q           Did you have ny further communication with  
2 any of the drivers involved in the accident?

3           A           The interview that took place at the  
4 scene, of course. Mrs. King and Ms. Henderson, of course,  
5 both parties had indicated that the other one had ran the  
6 stop sign. The interview that took place with Mr. Wilklins  
7 at that time...

8  
9           MS. BASKERVILL: Judge, I'm going to  
10 object to anything Mr. Wilkins told him. He is not  
11 a party.

12           THE COURT: You are saying he is not here  
13 to be cross-examined?

14           MS. BASKERVILL: That's hearsay.

15

16           Q           Were any of the drivers injured in the  
17 accident, to your knowledge?

18           A           Yes, ma'am, Ms. Henderson.

19           Q           What were Ms. Henderson's complaints?

20           A           The Accident Report indicates there is no  
21 visible signs of injuries, but complained of pain and  
22 momentary unconsciousness.

23

24           MS. DAVENPORT: Thank you. That's all I  
25 have.

1 THE COURT: Cross-examine.

2

3

4

5 CROSS-EXAMINATION

6 BY MS. BASKERVILL:

7 Q Officer Bucka, what time of day did this  
8 accident take place?

9 A 2:11 P.M.

10 Q So it was daylight?

11 A Yes, ma'am.

12 Q And that is a residential neighborhood,  
13 isn't it?

14 A That's correct.

15 Q How did you characterize that intersection  
16 on the day that you arrived to investigate this accident in  
17 terms of openness and any obstruction to vision?

18 A I recall nothing there that would obstruct  
19 the view of either of these vehicles.

20 Q And, in fact, you so noted on your report?

21 A Yes, ma'am.

22 Q Was there any debris in the road when you  
23 arrived?

24 A Yes, ma'am. It was some in the inter-  
25 section, but the exact, precise point, I'm not sure.

1 Q Were there any skid marks?

2 A No, ma'am.

3 Q All right. Did any of the parties --  
4 either of the parties make any statements to you about their  
5 speed immediately before impact?

6 A I don't have any notes in regards to it.

7 Q Is there anything in your investigation,  
8 your statement, that indicated any excessive speed of either  
9 of the parties?

10 A I don't recall.

11 Q And did anyone identify themselves to you  
12 as a witness to this accident, other than the parties  
13 themselves?

14 A No, ma'am.

15

16 MS. BASKERVILL: Thank you.

17 THE COURT: Is there any redirect  
18 examination?

19 MS. DAVENPORT: Yes, sir.

20

21

22

23

24

25

1 REDIRECT EXAMINATION

2 BY MS. DAVENPORT:

3 Q With reference to the intersection where  
4 this accident happened, are there houses on each of the  
5 corners?

6 A Yes, ma'am. This is residential with  
7 houses on each of the corners.

8 Q Do you recall how close to the road the  
9 houses were situated?

10 A No, I don't.

11

12 MS. DAVENPORT All right.

13 THE SHERIFF: (To the witness) You may  
14 step down.

15

- - - - -

16

WITNESS STOOD ASIDE.

17

18 THE COURT: Does either side want the  
19 witness to remain, or can he be excused?

20 MS. DAVENPORT: He can go, as far as we're  
21 concerned.

22 THE COURT: Next witness.

23 MS. DAVENPORT: Plaintiff calls Latour  
24 Dabney, please.

25 MR. TRAYLOR: Judge we are going to need



1 the easel in this. Could we move it around?

2 THE COURT: The Sheriff will help you move  
3 the easel.

4 NOTE: An easel is moved to the right rear  
5 of the witness stand.

6 THE SHERIFF: (To the witenss) Face the  
7 jury and speak so the jury and court reporter can  
8 hear you. So you have to speak up.

9  
10  
11  
12 LATOUR DABNEY, a witness called to testify  
13 on behalf of the Plaintiff, first being duly sworn, testified  
14 as follows:

15 DIRECT EXAMINATION

16 BY MS. DAVENPORT:

17 A All right.

18 Q Mr. Dabney, would you please state your  
19 full name for the jury?

20 A My name is Latour Dabney.

21 Q And what is your address, Mr. Dabney?

22 A 850 Farmer Street, Petersburg, Virginia.

23 Q How old are you?

24 A Eighteen

25 Q Are you presently employed?

1                   A           Yes, I am.

2                   Q           Where are you employed?

3                   A           At McDonald's and Dinwiddie Volunteer

4   Resque Squad.

5                   Q           Are you also a student?

6                   A           Yes, I am.

7                   Q           At what school?

8                   A           Petersburg High School.

9                   Q           And what grade, what year are you in?

10                  A           My senior year.

11                  Q           Did you observe a motor vehicle accident

12   at the intersection of South Dunlop and Farmer Street on

13   December the 9th of 1988, Mr. Dabney?

14                  A           Yes, ma'am.

15                  Q           What occasioned you to be in that vicinity

16   on that day?

17                  A           I was there to bring (inaudible).

18                  Q           Was this your residence. At the time, did

19   you live there?

20                  A           At the time, no, ma'am. It was my

21   grandmas's house.

22                  Q           And exactly where were you located?

23                  A           In my grandma's yard, on the corner.

24                  Q           All right. I'm going to ask you to tell

25   the jury what happened, what you observed that day. Would

1 you like to draw a diagram? Would you do that?

2 A Yeah, I'll try to.

3 Q Let me ask you to step down

4

5 NOTE: During the ensuing testimony, the  
6 witness is standing, drawing a diagram on a sheet of  
7 paper that has been placed on an easel.

8

9 A All right. The lady driving the other  
10 car, she was -- first, let's start with her. (Denoting  
11 Plaintiff Henderson) She came up here on the corner here,  
12 right here, and stopped right there at the stop sign.

13

14 THE COURT: Excuse me. Ms. Davenport, you  
15 are going to have a problem with your record in this  
16 case. He said she came up here and her, and the  
17 record isn't going to know where that is and who  
18 stopped.

19

20 Q Mr. Dabney, you're going to need to state  
21 the vehicle, what it looked like, or the driver, Ms.  
22 Henderson, was in the orange-red car. I will ask you to  
23 state which vehicle or which driver was on which road.

24 First of all, would you tell the jury  
25 where you were watching from, where you were located?

1           A           I was right here. That's my grandma's  
2 house right here, and I was standing right here in the yard,  
3 right inside of the fence.

4  
5           MS. BASKERVILL: For the record, I think  
6 he needs to say, I have just drawn a circle or  
7 whatever that was.

8           THE COURT: (To Ms. Davenport) You are  
9 not going to be able to put this chalkboard into  
10 evidence, and that's not a very effective way of  
11 doing it. You will have to identify verbally for  
12 the record.

13  
14          Q           First of all, would you state the  
15 intersection that you have drawn?

16          A           The intersection as Farmer and South  
17 Dunlop.

18          Q           Okay. Would you state on which corner  
19 your grandmother lived, at which corner you were located?

20          A           I was located on the south corner.

21          Q           Southeast or west?

22          A           Southeast corner of Farmer and  
23 South Dunlop?

24          Q           Southeast corner. Thank you. Would you  
25 describe, and try to use something descriptive of the vehicle

1 or of the driver?

2 A Okay. Ms. Henderson, she came up here to  
3 the corner and had stopped at the stop sign. Then this other  
4 guy driving a white pickup truck, he came down, and he  
5 stopped at the corner, right here. Then they both were --  
6 looked like they was, you know, not finding out who was going  
7 to go first. But before then, she had looked both ways,  
8 before the guy came down.

9 So after, I guess, she seen he won't going  
10 to go, she decided to pull off. And at the same time I had  
11 noticed this lady named Ms. King -- I didn't notice her until  
12 she was right here at my grandma's yard. She has a big oak  
13 tree where it sits -- I was standing right beside it. And I  
14 didn't notice her car come up until her front end was past  
15 the tree.

16 And when the front end went past the tree,  
17 that's when I noticed she was going to run the stop sign.  
18 Then when she got to the corner, she slammed on brakes and  
19 the car slid into the intersection, hitting Ms. Henderson,  
20 and pushing her into this guy right here at the corner, into  
21 the white pickup truck.

22 Q Where was Ms. Henderson when you first saw  
23 Ms. King. Where was the orange car, Ms. Henderson's car,  
24 when you first saw Ms. King approach the intersection?

25 A Just about right here, right in the middle



1 of the intersection.

2 Q And for what distance or time were you  
3 able to observe Ms. King?

4 A Well, I guess about four or five seconds.

5 Q How fast would you estimate Ms. King was  
6 traveling?

7 A Forty to fifty miles per hour.

8 Q Did Ms. King stop at the stop sign.

9 A No, ma'am.

10 Q Did Ms. Henderson stop at the stop sign?

11 A Yes, ma'am.

12 Q Okay. You can return to your seat. Thank  
13 you.

14

15 NOTE: The witness returns to his seat in  
16 the witness box.

17

18 Q What did you do after the accident?

19 A I jumped over my grandmother's fence and  
20 ran directly to her car. (Pointing to Ms. Henderson)

21 Q And why did you go to her car?

22 A Because seemed like she was holding her  
23 head.

24 Q Did you converse with Ms. Henderson?

25 A Yes, ma'am.

1                   Q           And what did she say to you?

2                   A           She said, "That lady just hit me and my  
3 neck is hurting."

4                   Q           Did you hear any statements by any of the  
5 other drivers?

6                   A           Yeah. The guy in the white pickup, he  
7 just set there at the intersection, and he didn't want to...

8  
9                   MS. BASKERVILL: I'm going to object.

10                  THE COURT: Objection sustained.

11                  (To the witness) You can't say what the  
12 man in the truck said. He is not here to testify.

13

14                  Q           Who, if anyone, was injured, to your  
15 knowledge?

16                  A           Her. (Denoting the plaintiff)

17

18                  MS. BASKERVILL: I'm going to object,  
19 Judge. I don't think he can draw that conclusion.

20                  THE COURT: I will agree.

21                  Ms. Davenport, unless he saw blood or  
22 saw something -- he is not a doctor.

23

24                  Q           Did you see any indication of any injury?

25                  A           She was holding the back of he neck with

1 her hand.

2 Q Thank you. I want to show you two  
3 pictures, also.

4 (To the Court) If I could have the two  
5 pictures.

6  
7 NOTE: The Sheriff hands the pictures to  
8 Ms. Davenport, who shows them to the witness.

9  
10 Q Would you look at those two pictures and  
11 tell me if you can identify them?

12 A Yes, ma'am.

13 Q And what is it?

14 A That was the car that she was driving.

15 Q And does it show the damage as you saw it  
16 that day?

17 A Yes, ma'am.

18 Q Thank you. Mr. Dabney, on the day of this  
19 accident, did you know any of the three drivers?

20 A No, ma'am.

21 MS. DAVENPORT: Thank you.

22

23

24

25

1 CROSS-EXMAINATION

2 BY MS. BASKERVILL:

3 Q Mr. Dabney, you didn't know Ms. Henderson  
4 before the accident?

5 A No, ma'am.

6 Q You hadn't just seen her in the grocery  
7 store?

8 A Yes, ma'am. But I don't know her as a  
9 person, if that's what you're speaking of.

10 Q Okay. But you knew of her?

11 A No. All I know, I seen her in the grocery  
12 store, buying groceries. She was another face.

13 Q And when did you make the connection,  
14 immediately when you saw her?

15 A After the accident?

16 Q That's right.

17 A Yes, ma'am.

18 Q And do you have any family connection with  
19 her, or does she have any employment relationship with  
20 anybody in your family?

21 A Not to my knowledge, I don't.

22 Q Your father doesn't work with her?

23 A I guess he does. I don't know, I don't  
24 stay at home half the time. I'm gone half the time from  
25 home.

1                   Q           When you say, I guess he does, I mean,  
2                   what are you basing that on? Do you know or not whether your  
3                   father works with Ms. Henderson?

4                   A           No, I don't.

5                   Q           You do not?

6                   A           No, ma'am.

7                   Q           Did you tell the police officer that you  
8                   had seen this accident?

9                   A           No, ma'am.

10                  Q           Did you tell anyone that you had seen this  
11                  accident or did you have any contact with any of the  
12                  participants in this litigation until October of this year?

13                  A           Can you rephrase that? Can you say that  
14                  again?

15                  A           Did you tell any of the people in this row  
16                  (Denoting counsel tables) either me, Ms. Henderson, or Mr.  
17                  Traylor, or Ms. Davenport -- that you had seen this accident,  
18                  at any time before October of this year?

19                  A           No, ma'am.

20                  Q           All right. At the time you saw this  
21                  accident, you were not a licensed driver, were you?

22                  A           No, ma'am.

23                  Q           All right. And did I understand your  
24                  testimony that when you saw Ms. King, she was already past  
25                  you?



1                   A           Yes, ma'am?

2                   Q           Okay. And did I also understand your  
3 testimony that Ms. Henderson was already stopped at the stop  
4 sign before the pickup came to the intersection?

5                   A           Yes, ma'am.

6                   Q           All right. How much distance -- well let  
7 me see if I can ask this clearly. I want to know how much  
8 distance Ms. King's vehicle traveled in the time it took Ms.  
9 Henderson to go from the stop sign to where the impact  
10 occurred?

11                  A           Car lengths?

12                  Q           However you want to express it.

13                  A           Two and a half car lengths.

14                  Q           And how far did Ms. Henderson travel from  
15 the stop sign to the point of impact?

16                  A           Measuring by her car?

17                  Q           However you want to describe it?

18                  A           I guess her car would be about two.

19                  Q           All right. In fact, Ms. King never left  
20 what would be her lane of travel, is that correct? She never  
21 went into the oncoming lane of Farmer Street, is that right?

22                  A           No, ma'am.

23                  Q           All right. And then Ms. Henderson had not  
24 gotten more than halfway through the intersection when the  
25 impact occurred, is that correct?

1                   A           That's right.

2                   Q           So whatever distance it took her from the  
3 stop sign to where they collided, Ms. King stayed in her own  
4 lane, is that correct?

5                   A           That's right.

6                   Q           All right. And you had no trouble seeing  
7 Ms. King's vehicle at all, did you?

8                   A           No, ma'am.

9                   Q           It is a fairly open intersection, is that  
10 correct?

11                  A           That's right.

12                  Q           And you had no trouble seeing Ms.  
13 Henderson's vehicle?

14                  A           No, ma'am.

15                  Q           And is it your testimony that you knew  
16 from the first time you saw Ms. King that she was not going  
17 to stop?

18                  A           What you mean saw, that I knew?

19                  Q           All right. Well, let me ask it another  
20 way: Did you ever see Ms. King, according to your version of  
21 the story, slow down?

22                  A           No, ma'am.

23                  Q           Did you...

24                               THE COURT: Ms. Baskervill, just a minute.  
25 We have to take a recess.

1  
2 NOTE: The jury leave the courtroom at  
3 10:45 a.m., after which the trial resumes as  
4 follows:  
5

6 JURY OUT

7 THE SHERIFF: The witness, too?

8 THE COURT: No, that's all right.

9 Mr. Traylor, you have been, with your  
10 head, giving signs, directions to the witness,  
11 before they answer.

12 MR. TRAYLOR: No, Your Honor, not to my  
13 knowledge, that I knew of it.

14 THE COURT: The Court officials all have  
15 seen the same thing I have. You cannot instruct  
16 the witness, by signs with your head, how to answer  
17 a question.

18 MR. TRAYLOR: Well, it's just unbeknownst  
19 to me.

20 THE COURT: If I see it again, I'm going  
21 to declare a mistrial.

22 MR. TRAYLOR: Pardon the Court, I really  
23 didn't know that I was doing that.

24 THE COURT: Do you want to ask the Clerk's  
25 Deputy or the Sheriff's Deputy? They both have

1           seen the same thing.

2                   MR. TRAYLOR: I will try not to look at  
3           the witness.

4                   THE COURT: And I saw it that time. Your  
5           head was just going like that. (Making motion with  
6           head)

7                   Ms. Baskervill, with that information, I  
8           think you should know that this has been going on.

9                   MS. BASKERVILL: I will keep going,  
10          Judge. I will keep going; I will waive it for now.

11                  THE COURT: (To the Sheriff) You can ask  
12          the jury to come back.

13  
14                  NOTE: The jury returns to the courtroom,  
15          at 10:50, after which the trial resumes as follows;

16  
17                  MS. BASKERVILL: Could I ask the court  
18          reporter to read the last question?

19  
20                  NOTE: The court reporter reads the  
21          pending question as follows: Question: All right.  
22          Well, let me ask it another way: Did you ever see  
23          Ms. King, according to your version of the story,  
24          slow down?"

25

1 JURY IN

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9 Q Mr. Dabney, I was asking you about what  
10 you had observed about the speed and actions of Ms. King's  
11 vehicle. From the point where you first began observing it,  
12 did you see Ms. King diminish her speed from that point to  
the point of impact?

13

A No, ma'am.

14

15 Q Did you earlier say you saw her apply the  
brakes though, and skid through the intersection?

16

A Yeah, but her car didn't slow down.

17

18 Q It didn't even slow down after the  
application of brakes?

19

A No, ma'am, because it had the accident.

20

21 Q And where in relation to the intersection  
were you when you saw the slide begin?

22

A Right at the stop sign.

23

24

MS. BASKERVILL: Thank you.

25

THE COURT: Is there any redirect?

1 MS. DAVENPORT: Yes, Your Honor, I have a  
2 few more questions.  
3  
4  
5

6 REDIRECT EXMAINATION

7 BY MS. DAVENPORT:

8 Q Mr. Dabney --

9 A Yes, ma'am.

10 Q Why did you not talk to the police when  
11 the police arrived at the scene of the accident?

12 A Because it was the type of neighborhood  
13 that the accident happened in.

14 Q And what would be the problem with talking  
15 to the police officer?

16 A The type of neighborhood I live in, it's  
17 dangerous around there. You know, there was a car, two  
18 females, you still don't talk to the police -- you don't see  
19 nothing, you don't hear nothing, that's the type of  
20 neighborhood that I live in.

21 Q I want to ask you one more time exactly  
22 where Ms. King was located when you first saw her.

23 A When I first saw Ms. King?

24 Q Yes.

25 A Where was she located? She was located on

1 Farmer Street.

2 Q Okay. And approximately what distance  
3 from the intersection?

4 A Two and a half car lengths.

5 Q Two and a half car lengths?

6 A Uh-huh. (Indicating affirmatively)

7 Q Were you closer to the intersection or  
8 further from the intersection than she was?

9 A I guess I was more -- you know, I guess  
10 kind of like when I first seen her was like a fifty-fifty,  
11 I guess, you would say.

12 Q You were about...

13 A The same. I was from the front of her,  
14 here -- see, I was standing right beside the tree. Like  
15 this is the tree right here, and I was standing right here.  
16 Her car was going right past me. I was beside the tree.

17 Q And where was Ms. Henderson's car when you  
18 first observed Ms. King?

19 A Just gone through the intersection -- it  
20 had started through the intersection.

21 Q And what would you estimate Ms.  
22 Henderson's speed as she went through the intersection?

23 A Forty to fifty miles.

24 Q I'm sorry, Ms. Henderson.

25 A Oh, Ms. Henderson? Ten to fifteen. She

1 had pulled off slow.

2

3 MS. DAVENPORT: That's all I have. Thank  
4 you.

5 THE COURT: Is there any recross?

6

7

8

9 RECROSS EXAMINATION

10 BY MS. BASKERVILL:

11 A Mr. Dabney, this accident happened in  
12 broad daylight, didn't it?

13 A Yes, ma'am.

14 Q And you knew all it was, was an automobile  
15 accident. It wasn't a drug deal, there was nothing shady  
16 about it, was there?

17 A No, ma'am.

18 Q And it involved two females?

19 A Yes, ma'am.

20 Q Was anyone else standing around other than  
21 Ms. King, Ms. Henderson, and the driver of the pickup?

22 A Me.

23 Q And you, and the police officer?

24 A No, I left before the police officer came  
25 there.



1 Q But it wasn't like it was a crowd around.

2 A No, ma'am.

3 Q All right. Before you saw Ms. King, did  
4 you hear her coming down the street?

5 A No, ma'am.

6

7 MS. BASKERVILL: Thank you.

8 THE SHERIFF: (To the witness) You may  
9 step down.

10 MS. DAVENPORT: He can leave. Your Honor,  
11 this witness can go, as far as I'm concerned.

12 THE COURT: Ms. Baskervill, is there any  
13 objection to this witness leaving?

14 MS. BASKERVILL: No, sir.

15 - - - - -

16 WITNESS STOOD ASIDE.

17

18 MS. DAVENPORT: The Plaintiff calls Dr.  
19 Norris Johnson.

20 THE SHERIFF: Face the jury and speak out  
21 clear so the jury and the court reporter can hear  
22 you.

23

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DR. NORRIS JOHNSON, a witness called to  
testify on behalf of the Plaintiff, first being duly sworn,  
testified as follows:

DIRECT EXAMINATION

BY MS. DAVENPORT:

Q Sir, will you please state your full name  
for the jury?

A I'm Norris J. Johnson, M.D.

Q And where is your office located, Dr.  
Johnson?

A 3900 River Road in Ettrick, Virginia.

Q Are you licensed to practice medicine in  
the Commonwealth of Virginia?

A Yes, I am.

Q And where did you receive your medical  
education?

A I finished medical school at Howard  
University and did a family practice residency through the  
MCV programs at Chippenham Hospital Health Center for Family  
Practice.

Q And, Dr. Johnson, do you specialize in any  
particular field of medicine?

A Yes, family practice.

Q Will you explain to the jury what is

1 involved in the field of family practice?

2 A Family practice generally does minor  
3 surgery, internal medicine, pediatrics, some matter of  
4 psychiatry, and some of the surgery and orthopedics.

5 Q How long have you practiced medicine, Dr.  
6 Johnson?

7 A A little over eleven years.

8 Q And how long have you specialized in  
9 family practice?

10 A All the time.

11 Q Are you a member of any medical societies  
12 or associations in the field of family practice?

13 A Yes, the American Academy of Family  
14 Practice.

15

16 MS. DAVENPORT: I would like to ask the  
17 Court to recognize Dr. Johnson as an expert in the  
18 field of family practice.

19 THE COURT: (To Ms. Baskervill) Is there  
20 any objection?

21 MS. BASKERVILL: No, sir.

22 THE COURT: All right. So ordered.

23

24 Q Dr. Johnson, would your practice include  
25 the treatment of individuals injured in automobile accidents?

1                   A           Yes, it does.

2                   Q           And, Dr. Johnson, did you have occasion to  
3 examine Wanda Henderson following her accident in December of  
4 1988?

5                   A           Yes, I did.

6                   Q           On what date did you first examine Ms.  
7 Henderson following her accident, which was on December the  
8 9th of 1988?

9                   A           It was on December the 12th.

10                  Q           And what were Ms. Henderson's complaints  
11 when you saw her on December the 12th, 1988?

12                  A           She complained of soreness in the right  
13 side, back, left shoulder, thigh, numbness of the left hand.

14                  Q           What history did Ms. Henderson give you  
15 regarding those complaints?

16                  A           She stated she was the driver of an  
17 automobile that was struck. On impact, her vehicle was  
18 pushed in the side and it pinned her vehicle against the  
19 truck, and went forward.

20                               She was thrown around in the vehicle at  
21 the time of the accident, and it pinned her door inward so  
22 she couldn't get out. She was thrown around in the car,  
23 striking her head on the metal head liner between the seats.

24                  Q           Did you examine Ms. Henderson, Dr.  
25 Johnson?

1           A           Yes, I did.

2           Q           And what did your examination reveal?

3           A           She was tender on the left scapula. There  
4 was tenderness along the left shoulder, along the scapular  
5 spine which is this part (Pointing to back), tenderness of  
6 the right CVA, and then on the opposite side, there was  
7 tenderness of the knee and the left hand.

8           Q           Dr. Johnson, what was your diagnosis of  
9 Ms. Henderson at that time?

10          A           Contusion of the scalp, contusion of the  
11 right flank, contusion of the left knee and hip, and  
12 contusion, sprain of the left trapezius, which is the muscles  
13 of the back of the neck to the shoulder and of mid back, with  
14 paresthesia, which means numbness.

15          Q           Dr. Johnson, will you just tell the jury  
16 what these contusions -- what the term contusion involves?

17          A           A contusion is a soft tissue injury, as a  
18 result of blunt trauma, where the muscles react in a certain  
19 way.

20          Q           Based upon history that Ms. Henderson  
21 related to you, do you have an opinion, to a reasonable  
22 degree of medical certainty, as to whether these injuries  
23 resulted from that automobile accident on December 9  
24 of 1988?

25          A           Yes, I do.

1 Q And what, if anything, did you think?

2 A They were.

3 Q What treatment did you prescribe for Ms.  
4 Henderson?

5 A Well, she had received Motrin in the  
6 emergency room. I added a muscle relaxer. And then the  
7 following day, she basically wasn't improving, so I sent her  
8 to physical therapy.

9 She still, after physical therapy, did not  
10 improve as far as the shoulder was concerned. We tried an  
11 injection, and she still did not improve, so we had her seen  
12 by a neurologist, Dr. Subramaniam, who did a nerve  
13 conduction test.

14 After that, I placed her on immobilization  
15 of her wrist, with the splint and we changed that, I think.  
16 There was immobilization of her wrist with the splint, and  
17 we changed the splint, I think, to a sling after that.

18 Q Let me ask you, Dr. Johnson, why did you  
19 refer Ms. Henderson to -- you did mention that you referred  
20 her, I believe.

21 A Yes.

22 Q And who was that to?

23 A Dr. Subramaniam, a neurologist.

24 Q And for what reason did you refer her to  
25 Dr. Subramaniam?

1                   A           To try to make sure that the acute pain  
2 she was in was not related to nerve injury instead of some  
3 other component.

4                   Q           Did you ever refer her for specific  
5 testing?

6                   A           Yes, the EMG, the nerve conduction tests  
7 are useful in trying to determine if there is injury to a  
8 nerve. These are small electrical currents that go from one  
9 part of the body to the other, and there are standard tables  
10 which is normal, so you can make a decision on whether or not  
11 there is damage there or not related to some injury.

12                  Q           Let me just clarify: Did you refer her to  
13 Dr. Subramaniam simply for testing, or also for treatment?

14                  A           For testing, because we had found then it  
15 was abnormal. Then she went to an orthopedic. Also, an  
16 orthopedic would really have been the one to -- an orthopedic  
17 would rely on the EMG to make a decision, whether surgery or  
18 some other modality.

19                  Q           What orthopedist did you refer her to?

20                  A           Dr. Haines, Haines and Crosier. I think  
21 we did make the appointment with Dr. Crosier, the orthopedic.

22                  Q           And were the testing and referrals made  
23 necessary by the injuries she received in this accident, in  
24 your opinion?

25                  A           Yes.

1                   Q           And, Dr. Johnson, did you form an opinion  
2 -- based on the referrals to the other physicians, did you  
3 form your own opinion as to Ms. Henderson's prognosis?

4                   A           Well, I had a suspicion that she had what  
5 is called carpal tunnel syndrome, which is a syndrome that is  
6 brought on by trapping of the nerve as it passes through the  
7 wrist bone, the carpal tunnel. That is the kind of injury  
8 that she had. I made a clinical determination. This was  
9 also substantiated by using the other specialties.

10                  Q           Okay. And was your diagnosis sub-  
11 stantiated, in your opinion?

12                  A           Yes, it was.

13                  Q           And in your opinion, what was the  
14 diagnosis?

15                  A           Carpal tunnel syndrome.

16                  Q           And what are the symptoms of carpal tunnel  
17 syndrome?

18                  A           Pain and paresthesia, numbness, that  
19 mostly affects the hand, but it may affect up to the elbow  
20 and sometimes the shoulder, depending on where the entrapment  
21 is along the course of the nerves. The nerves are going to  
22 come out at different levels.

23                               The median nerve is the one that is  
24 most affected. That is the nerve that enervates the medial  
25 part of the hand like this. (Holding palm upward). But it



1 can cause a problem, and sometimes many, many injections;  
2 sometimes medicine; and you sometimes have to have an  
3 operation on it to relieve the pain.

4 Q Thank you. Dr. Johnson, did you refer  
5 Ms. Henderson for any repeat, repetition of the testing done  
6 by Dr. Subramaniam?

7 A Yes, I did, because I believed that there  
8 was still something there. I could not measure whether it  
9 was getting better or worse without the testing.

10 Q So in your opinion, was it necessary for  
11 her to return to have the testing repeated?

12 A Yes, it was.

13 Q What was the danger of not having it  
14 repeated?

15 A The danger that it would go on and could  
16 possibly result in irreversible nerve damage with the injury,  
17 and with loss of function.

18 Q And, Dr. Johnson, how many times were  
19 these testings done?

20 A Three.

21 Q And were all three testings necessary, in  
22 your opinion -- medically necessary in your opinion?

23 A At the time, I felt they were.

24 Q Did you continue to see Ms. Henderson for  
25 the other problems that she has had?

1                   A           Well, the other responded with the usual  
2 treatment that I employ in my specialty.

3                   Q           And what was the last date that you saw  
4 Ms. Henderson?

5                   A           On April the 24th, 1989.

6                   Q           And what were your findings at that time?

7                   A           She was still complaining of some  
8 tenderness in her left arm, but they were controlled by use  
9 of splint and using a medication as needed.

10                               One sign we use clinically is a Tinel's  
11 sign. I didn't write this down, but that is when you  
12 traumatize the portion that you suspect is causing the  
13 problem, and repeat it.

14                   Q           And at the time you released Ms.  
15 Henderson, did she have a remaining test? Had you advised  
16 her to have a test repeated on one more occasion?

17                   A           Well, that was generally to make sure,  
18 if she was still having symptoms, to make an appointment.  
19 And the appointment I had was set up for her at that last  
20 visit.

21                   Q           What was your final diagnosis of Ms.  
22 Henderson, Dr. Johnson?

23                   A           Contusion of her scalp, a contusion of the  
24 right flank, left knee and hip, contusion, strain of the left  
25 trapezius with paresthesia which has a residual and comes

1 with certain activity.

2 Q Would you explain, or what was your  
3 opinion, to a reasonable degree of medical certainty  
4 regarding her prognosis for the future?

5 A Well, considering the medical history  
6 of carpal tunnel syndrome, it may flare up from time to time.  
7 Sometimes people experience it with change of weather or  
8 increased activities.

9 Q Did you tell Ms. Henderson that she may  
10 have symptoms in the future?

11 A I wrote down that she will probably  
12 experience episodes of pain on a permanent basis. I'm  
13 trying to recall.

14 I don't know exactly what I said to her.  
15 But I probably did.

16 Q Can I just ask you to break your  
17 terminology down? You had said permanently episodal, I  
18 believe.

19 A Which means that you could expect it to  
20 be symptomatic from time to time.

21 Q Thank you. And in your opinion, to a  
22 reasonable degree of medical probability, were these  
23 conditions caused by the injury at the time of the  
24 December 9, 1988, automobile accident?

25 A Yes, they were.

1           Q           And in your opinion, Dr. Johnson, did the  
2 injuries prevent Ms. Henderson from working at her job as an  
3 operating room technician at Soutside Redional Hospital for  
4 any period of time?

5           A           Yes. We first released her to return to  
6 work on -- it was around the 20th, I think it was.

7           Q           Thank you.

8           A           To return on the 26th. And then she  
9 returned, and then I am unsure as to whether she missed any  
10 further work or not.

11

12                   MS. DAVENPORT: I would like to have  
13 another exhibit marked for identification purposes  
14 only at this point, which is a list of the  
15 Plaintiff's medical expenses.

16

17                   NOTE: List of Plaintiff's medical  
18 expenses is marked for identification as Plaintiff's  
19 Exhibit Number 4.

20

21           Q           Dr. Johnson, I am going to ask you to  
22 review a list of medical expenses that Ms. Henderson will  
23 later attest that she incurred during this period of time.  
24 I believe the exact bills that she received are attached to  
25 the list of medical bills. I am asking you to review the

1 list of expenses incurred by Ms. Henderson, that she will  
2 later attest to the time period.

3 In your opinion, to a reasonable degree of  
4 medical probability, these were the bills for the treatment  
5 that was medically necessary and appropriate?

6 A Yes, they were.

7 Q And in your opinion, to a reasonable  
8 degree of medical probability, was the medical treatment  
9 reflected on the exhibit by these health care providers  
10 necessary solely by medical conditions proximately caused by  
11 that motor vehicle accident on December the 9th of 1988?

12 A Yes, they were.

13 Q And, Dr. Johnson, in your opinion, were  
14 the bills reasonable in amount? By that, I mean not an  
15 excessive amount, considering the prevailing cost in the  
16 area?

17 Well, I have no way of comparing these  
18 other charges.

19 Q All right. Would you just attest to the  
20 reasonableness of those that you are familiar with?

21 A Well, the hopsital probably was for the  
22 x-ray. Dr. Crosier was for the orthopedic. And, in my  
23 opinion, the prescriptions seem to be reasonable. My fees  
24 are structered according to usual and customary practice in  
25 the prevailing area. I'm not sure about Dr. Subramaniam,

1 whose specialty is a different fee structure.

2 MS. DAVENPORT: Thank you. That's all I  
3 have.

4

5

6

7

CROSS-EXAMINATION

8 BY MS. BASKERVILL:

9 Q Dr. Johnson, did Ms. Henderson ever  
10 complain to you about her neck?

11 A I can't find a specific complaint which I  
12 wrote down "neck" in my notes.

13 Q When you first began seeing her in -- it  
14 was on December 12? I'm having a little trouble with your  
15 handwriting.

16 A So am I now, I'm sorry to say.

17 Q If I could get you to refer to your August  
18 note, about three-quarters of the way down the page, and I  
19 think that is where you are writing down her complaints and  
20 your observations, when you say right CVA, and across from  
21 that you have something written, what is that?

22 A Intrinsic muscle strength. That is test  
23 to see if the muscle was operating properly. And that is a  
24 degree of getting an idea if a nerve injury occurred or not.  
25 If it was trapped and it loses the function, the muscle

1 wouldn't be able to manipulate the hand.

2 Q But, in fact, you found that she had good  
3 muscle strength?

4 A Yes.

5 Q Now, as I understand your notes, you saw  
6 her on the 12th, the 13th, and the 14th, and on the 14th, you  
7 apparently thought she would be able to return to work on the  
8 19th, is that correct?

9 A Yes.

10 Q Okay. She was making some improvement  
11 with you, wasn't she?

12 A Yes.

13 Q And, in fact, on the 16th, you actually  
14 released her from your care?

15 A Yes, I did. It is unsure, because our  
16 notes sometimes are incomplete.

17 Q But it does say that you released her  
18 actually on December 16, which is about a week after the  
19 accident?

20 A It may have been to return to work  
21 because...

22 Q Well, you have "return to work" a couple  
23 of days before on December 19, 1989. -- Well, I think it's  
24 supposed to be '88. Okay? But she continued to come back to  
25 you, right, for her physical therapy. Even though you

1 initially released her on December 16, it appears that she  
2 did come back to see you.

3 A Yes, on January the 3rd, it says "The  
4 left shoulder, right side. Returned to work. I found  
5 tenderness along the mid biceps, actually of the left  
6 shoulder; further, a relapse on activity, and ongoing back  
7 pain. And I then I saw her on.

8 Q Let me ask you about the 9th.

9 A Yes, I was just coming to the 9th.

10 Q Let me interrupt you. You saw her on the  
11 9th of January? What is "URI" (ph.), when you saw her, in  
12 your note on the 9th of January.

13 A I am in family practice, and I treat for  
14 other things. She had a cold. And that is my note of the  
15 9th.

16 Q Now, on January 23, you saw her, and how  
17 did you characterize her complaints about her shoulder on  
18 that day?

19 A She was having less pain at that time. I  
20 thought that there was improvement with physical therapy and  
21 her -- (Referring to notes) Improvement -- well, I don't  
22 know what the thing says.

23 Q But she, in fact, was making a lot of  
24 improvement with you, wasn't she, with your physical therapy  
25 and the wrist splint.



1           A           Apparently, at that time.

2           Q           Now, on February 21, I see in your notes  
3 that she complained about swelling in her left wrist. Is  
4 that the wrist area that you were describing earlier in  
5 response to Ms. Davenport's questions, the left wrist?

6           A           Yes, it was the same wrist.

7           Q           And that is the first time that she had  
8 ever reported to you any swelling in her wrist?

9           A           As far as I can recall.

10          Q           And that was some two and a half months  
11 after the accident?

12          A           Yes.

13          Q           Most of the complaints to you centered on  
14 the shoulder, didn't they?

15          A           Well, we treated that more than other  
16 areas.

17          Q           Now, as I read your notes, when you saw  
18 her on March 6, you really only expected to see her in the  
19 future on an as-needed basis, is that correct?

20          A           Yes. She had seen Dr. Crosier, and he  
21 probably had her on conservative treatment. However, it did  
22 improve, and on that day, she had no problem, but she was  
23 using the splint.

24          Q           And is it fair to say that after February,  
25 as you read your notes, you saw her one time in March and one

1 time in April, and both of them were in response to a follow-  
2 up visit to another doctor?

3 A That's correct.

4 Q You didn't actually treat her, perform any  
5 active treatment after February, 1989, in connection with an  
6 accident?

7 A It does not appear that I did.

8 Q And when you released her in April, 1989,  
9 did you tell her she could come back to see you if it was  
10 necessary, if she was having any further problems?

11 A Yes, most likely.

12 Q And she did not? She has not been back  
13 since April of 1989?

14 A No.

15 Q All right. You addressed the test by Dr.  
16 Subramaniam and you talked about how -- I know in opening  
17 statement there was a reference made to the doctor had  
18 scheduled these appointments for return visits. Did you,  
19 in fact, direct her to go back to Dr. Subramaniam after  
20 the first time? I mean, I understand that you definitely  
21 did the first time, but the second and third time, I didn't  
22 see any reference in your notes to your taking the  
23 initiative as opposed to the other doctor in doing these  
24 tests?

25 A Well, that is not unusual, because Dr.

1 Subramaniam, in addition to providing me with the tests, also  
2 is a specialist, and if he suspected that she is going to  
3 have difficulty, he schedules her for evaluations that are  
4 appropriate to make sure of what's going on.

5 Q But that is his judgement, not yours, is  
6 that correct?

7 A I agree with it. I didnt make the  
8 appointment; I don't find anything wrong with it.

9 Q But they were not at your initiation?

10 A Not the follow-ups.

11 Q Not the last two. The first one, I  
12 understand...

13 A But this is not unusual for that, in that  
14 particular time frame, to be followed, because sometimes, you  
15 know, with carpal tunnel, you have good days and you may have  
16 bad days. And, you know, you really can't predict whether  
17 it's going to get worse or whether they are going to get  
18 better. And you need to follow them along to make sure that  
19 they don't have any damage occur.

20 The pain that the patient experiences is  
21 not related to the damage to the nerve. A lot of times, the  
22 patient's complaints is substantiated by using the tests and  
23 appropriately giving it a comparative to make a statement of  
24 what the problem is about.

25 Q Carpal tunnel syndrome, is it true that

1 that is also related to repetiitive movement?

2 A Yes. There is a list of about twelve  
3 things that can cause it, and I mentioend some of them, in  
4 addition to repetitive movement -- illnesses, changes, and  
5 disease of the nerve itself. These are the most prevalent.  
6 But repetitive activity is used, too.

7 Q Thank you.

8 A It is difficult, you know, to determine.

9 Q Okay. Is it, in fact, true that carpal  
10 tunnel syndrome more often results from repetitive movement  
11 than it does from trauma, overall?

12 A I am not aware of the statistical basis of  
13 it, I'm afraid.

14

15 MS. BASKERVILL: That's fine. Thank you,  
16 Doctor.

17 THE COURT: Is there any redirect-  
18 examination?

19 MS. DAVENPORT: Yes, Your Honor.

20

21

22

23

24

25

1

2

## REDIRECT EXAMINATION

3

BY MS. DAVENPORT:

4

Q

Dr. Johnson, I think it is clear and

5

understood that Dr. Subramaniam scheduled the second and

6

third testing. But did it, in fact, become your opinion,

7

that the second and third testing were necessary?

8

A

Like I said, carpal tunnel syndrome is

9

something that you can't judge, can't predict what it is

10

going to do. And I think it is reasonable that a neurologist

11

would also think that and would schedule return testing at

12

appropriate intervals. Did that answer your question? I'm

13

not sure.

14

Q

I guess I am asking, did you form any

15

opinion as to whether that second and third repeat testing

16

was necessary?

17

A

I felt it was fairly customary.

18

Q

It is fairly customary?

19

A

Yes.

20

Q

Was it necessary?

21

A

I would have to say yes.

22

Q

Thank you. Did you instruct or tell Ms.

23

Henderson to return for the testing?

24

A

I didn't document it, but I wouldn't have

25

had any problem with it.

1           Q           To your knowledge, in your history-taking  
2 of Ms. Henderson, et cetera, did she exhibit any of those  
3 additional characteristics that precede carpal tunnel  
4 syndrome that Ms. Baskerville just asked you about?

5           A           As far as repetitive?

6           Q           Right.

7           A           Well, she complained about activities,  
8 such as she performed these kind of things aggravated it.  
9 And they would qualify as repetitive activity. She went back  
10 to work, she had repetitive activity. But I'm not sure...

11          Q           That's fine. Dr. Johnson, just one final  
12 question: In your opinion, and to a reasonable degree of  
13 medical probability, was the carpal tunnel syndrome that you  
14 had diagnosed as a result of the injuries Ms. Henderson  
15 suffered as a result of the automobile accident?

16          A           Yes.

17

18                   MS. DAVENPORT. Thank you.

19                   That's all I have, Your Honor.

20                   THE SHERIFF: (To the witness) Then you  
21 may step down, sir.

22

- - - - -

23

WITNESS STOOD ASIDE.

24

25                   THE COURT: (To counsel) Is there any

1                   need to hold Dr. Johnson?

2                   MS. DAVENPORT: No, sir.

3                   THE COURT: Ms. Baskervill?

4                   MS. BASKERVILL: No, sir.

5                   THE COURT: (To the witness) You may be  
6                   excused.

7                   THE WITNESS: Thank you.

8  
9                   MS. BASKERVILL: (Referring to exhibits)  
10                  Did she have those marked for identification?

11                  THE SHERIFF: Right.

12                  MS. DAVENORT: Plaintiff calls  
13                  Wanda Henderson.

14                  THE SHERIFF: (To the plaintiff) Come  
15                  forward and be sworn, please.

16                  THE CLERK: (To Ms. Henderson, who has  
17                  come to the front of the courtroom) Do you swear  
18                  the testimony you are about to give is the truth,  
19                  the whole truth, and nothing but the truth, so help  
20                  you God?

21                  MS. HENDERSON: I do.

22                  THE SHERIFF: Turn around and face the  
23                  jury. Speak loud and clear so the jury and court  
24                  reporter can hear you.

25

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25

WANDA P. HENDERSON, the Plaintiff in the case, first being duly sworn, testified as follows:

DIRECT EXAMINATION

Q Ms. Henderson, would you state you full name for the jury, please?

A Wanda Patrice Henderson.

Q And what is your address, Ms. Henderson?

A 215 Graham Road, Petersburg, Virginia.

Q Are you married, Ms. Henderson?

A No.

Q Do you have any children?

A Yes.

Q And what are their names and ages, please?

A Barry Lee, age nine years old; and Jamil is five years old.

Q And how are you currently employed?

A I'm a medical technician at Southside Regional Medical Center. I do trays.

Q How long have you been at Southside Regional Medical Center?

A Eleven years.

Q Were you employed by them in December of 1988?

A Yes.



1                   Q           What are your current job duties and  
2 responsibilities there?

3                   A           I sterilize and wash the instruments and  
4 then put them back together.

5                   Q           Are those the same duties or different  
6 type duties than you had at the time of the accident?

7                   A           Same.

8                   Q           Ms. Henderson, were you involved in an  
9 automobile accident on December the 9th of 1988?

10                  A           Yes.

11                  Q           Where did that accident occur?

12                  A           At the intersection of Dunlop and Farmer  
13 Street.

14                  Q           And that is in the City of what?

15                  A           Petersburg.

16                  Q           What was the weather like on that day, Ms.  
17 Henderson?

18                  A           I believe it had rained and snowed -- rain  
19 and snow mixed together.

20                  Q           Was the road wet or dry, do you recall?

21                  A           I believe it was wet.

22                  Q           Where had you been before the accident?

23                  A           To the grocery store.

24                  Q           Okay. And where were you headed when the  
25 accident happened?

1                   A            To my baby-sitter's to pick up my  
2 children.

3                   Q            And would you just tell the jury, if you  
4 can, exactly what happened as you were headed to your  
5 baby-sitter's?

6                   A            I was coming down Dunlop Street, which I  
7 was going south. And after I got to the stop sign, I noticed  
8 that there was a white truck to my right. And I looked to my  
9 left first, and I didn't see anything, and I looked ahead of  
10 me, I didn't see anything. And I looked back to my right and  
11 waited for the white truck to move.

12                               And I noticed he didn't move. and it  
13 appeared that he was parked, so I looked down to my left, and  
14 I didn't see any vehicle anyway. And I looked ahead of me,  
15 and I didn't see anything. So noticing that the white truck  
16 was still parked, I proceeded on.

17                               And as I got into the middle of the  
18 intersection, I noticed -- I heard a big, loud crash. And  
19 next thing I know, I was laying over against, beside this  
20 white truck.

21                   Q            What happened to your body during the  
22 collision?

23                   A            I was thrown to the right, to the left,  
24 and I hit my head, and my shoulder. And I noticed my side  
25 was hurting. And I was complaining about headaches.

1                   Q           And what happened to your automobile  
2 during the impact?

3                   A           It was knocked over to the side, beside  
4 the white truck. My door on the driver's side was bent in.  
5 And the upper front part on the left-hand side of my car.  
6 And my windshield was cracked.

7                   Q           Did either of the other drivers make any  
8 statement to you?

9                   A           Yes.

10                  Q           Who?

11                  A           Ms. King.

12                  Q           And what was said to you?

13                  A           She told me she didn't see me.

14                  Q           And what did you tell her?

15                  A           I told her I was hurting.

16                  Q           Do you recall talking with anyone else at  
17 the scene?

18                  A           Yes.

19                  Q           Who?

20                  A           The Dabney boy. He came to my window and  
21 he asked me did I need him to do anything. And I asked him  
22 could he call the police and to call my baby-sitter, and ask  
23 my baby-sitter to call my mother and let them know that I had  
24 been in an accident.

25                  Q           And what did you do after that?

1                   A               I sit there and waited for someone to get  
2 me out of the car.

3

4                   MS. DAVENPORT: May I have the Plaintiff's  
5 Exhibits Number 1 and 2, please?

6

7                   NOTE: The Sheriff hands two pictures,  
8 Plaintiff's Exhibits 1 and 2 to Ms. Davenport.

9

10                  Q               Ms. Henderson, would you look at these  
11 photographs and tell me if you recognize them?

12                  A               Yes.

13                  Q               And what are they? What do they  
14 represent?

15                  A               It's from the impact, where my car was ran  
16 into by the station wagon, and the windshield is cracked from  
17 it.

18                  Q               Is that the way it appeared to you right  
19 after the accident?

20                  A               Yes, ma'am.

21

22                  MS. DAVENPORT: I would like to introduce  
23 Plaintiff's Exhibit Number 1 and Number 2 into  
24 evidence, Your Honor.

25                  THE COURT: All right.

1  
2 NOTE: Two photographs of the Plaintiff's  
3 vehicle are entered in evidence as Plaintiff's  
4 Exhibits Number 1 and 2.

5  
6 Q Did you move your automobile after the  
7 accident?

8 A No. I was pinned in-between the station  
9 wagon and the white truck.

10 Q Did you experience any pain at the  
11 accident scene?

12 A Yes. I experienced that my head was  
13 hurting, and my eye was hurting because glass had popped in  
14 my eye. And my shoulder -- from the impact, when I came back  
15 to the left, my head and my shoulder hit the metal part of  
16 the car, between the front door and the back door.

17 Q Would you tell me one more time, as you  
18 got to the intersection, what did you do?

19 A I came to a complete stop as I got to the  
20 intersection, because before the intersection, it had stop  
21 signs, so therefore, anybody that come through the  
22 intersection, they had to stop because of the stop sign.

23 And when I got there, there was this white  
24 truck at the stop sign. And I was waiting for him to move.  
25 But before, I looked, noticed that he wasn't moving. So I

1 looked to my left, and I didn't see anything. There wasn't a  
2 car coming in sight. And I looked ahead of me, and there  
3 wasn't anything coming. So I looked to my right, waiting for  
4 the truck to move. And after I noticed that apparently he  
5 was parked, I proceeded on into the intersection.

6 Q Ms. Henderson, did you seek any medical  
7 treatment the day of the accident?

8 A Yes.

9 Q Where?

10 A At Southside Regional.

11 Q How did you get to Southside Regional?

12 A By ambulance.

13 Q What did they do for you at Southside  
14 Regional?

15 A They examined me and they rinsed my left  
16 eye out, and they gave me medication for pain.

17 Q And did they discharge you?

18 A Yes.

19 Q Did they give you any instructions?

20 A Yes. they told me if I continued to have  
21 any problems, to go to my family physician.

22 Q And did you go home?

23 A No, to my mother's house.

24 Q Why did you go to your mother's house?

25 A Because I wasn't able to take care of

1 myself and my children. I was in bad shape, and my shoulder  
2 -- my shoulder and my head was still hurting. And I wasn't  
3 able to do anything. And someone had to take care of my  
4 kids. And I was on medication.

5 Q How long did you stay at your mother's  
6 house?

7 A About a week.

8 Q And what were you able to do during that  
9 time?

10 A Nothing.

11 Q When did you first seek follow-up  
12 treatment for your injuries?

13 A That Monday, three days after the  
14 accident.

15 Q And to whom did you go for follow-up  
16 treatment?

17 A Dr. Johnson.

18 Q Had you ever been to Dr. Johnson before  
19 this?

20 A No.

21 Q Had anyone else in your family been to Dr.  
22 Johnson?

23 A Yes, my mother.

24 Q Did Dr. Johnson examine you?

25 A Yes.

1                   Q           Do you recall what was bothering you when  
2 you first saw Dr. Johnson?

3                   A           I had been in pain with -- my head was  
4 hurting and my left shoulder, and my back, and I had numbness  
5 in my left hand and my side, and the hip, and my knee was  
6 bothering me.

7                   Q           What treatment did Dr. Johnson provide to  
8 you?

9                   A           He took hot packs to my back and shoulder,  
10 and an electrical stimulator.

11                  Q           And did you continue to have problems?

12                  A           Yes.

13                  Q           Did you continue to see Dr. Johnson?

14                  A           Yes.

15                  Q           Did you continue to have physical therapy  
16 treatment?

17                  A           Yes.

18                  Q           Did Dr. Johnson refer you to any other  
19 doctors?

20                  A           Yeah.

21                  Q           And for what reason did he refer you?

22                  A           I was still in pain, and with the numbness  
23 in my hand, and my left shoulder.

24                  Q           Had your other problems improved?

25                  A           Yes, somewhat.



1 Q Who did Dr. Johnson refer you to?  
2 A Dr. Subramaniam.  
3 Q Do you recall when you first saw Dr.  
4 Subramaniam?  
5 A About the end of January.  
6 Q What did Dr. Subramaniam do?  
7 A He made a nerve test.  
8 Q Would you tell the jury what he did to  
9 you? How did he do those tests?  
10 A Well, there were needles he stuck in my  
11 hand, in my left hand. And what he would do was push them.  
12 And then he asked me how did I feel, and I would tell him  
13 that it would be hurting, because he would be pushing them  
14 more and more into my hand. And then he checked my right  
15 hand the same way -- which he put the pins in my neck, too.  
16 Q Was the test painful?  
17 A Very painful.  
18 Q What advice did he give you?  
19 A Told me to -- with my hand, to come back  
20 in two months.  
21 Q Did you do that?  
22 A Yes.  
23 Q Did you have a repeat test in two months?  
24 A Yes.  
25 Q What did he tell you at that time?

1

2

MS. BASKERVILL: Judge, I'm going to  
object to what was told her.

3

4

THE COURT: Objection sustained.

5

6

Q In the meantime, Ms. Henderson, did you

7

continue to treat with Dr. Johnson?

8

A Yes.

9

Q Did Dr. Johnson refer you to any other

10

physician?

11

A Dr. Robert Crosier.

12

Q For what reason? What did he treat you

13

for? What did Dr. Crosier do for you?

14

A He took x-rays.

15

Q How many times did you see Dr. Crosier?

16

A Once.

17

Q Did the physical therapy that Dr. Johnson

18

had been providing you create improvement in your other

19

symptoms?

20

A It helped some.

21

Q Did you return to Dr. Subramaniam for

22

repeat tests?

23

A Yes. He told me -- the last time he told

24

me to come back in four months, which I did.

25

Q Ms. Henderson, did you miss any time from

1 work as a result of these injuries that you sustained in this  
2 accident?

3 A Yes, I did.

4 Q And did Dr. Johnson instruct you not to  
5 work during that period of time?

6 A Yes.

7 Q Do you recall the number of days that you  
8 missed from work?

9 A About ten days.

10 Q Do you remember the exact days?

11 A No.

12

13 MS. DAVENPORT: May I have this marked as  
14 Plaintiff's Exhibit Number...

15

16 NOTE: The Sheriff hands a document to the  
17 witness.

18

19 Q Ms. Henderson, would you review this for  
20 me? Would you tell the jury what it is?

21 A It's a statement of my lost wages from  
22 work.

23 Q And will you review it. Is it accurate?  
24 Does it appear to be an accurate calculation about the lost  
25 time and wages as a result of the injuries incurred as a

1 result of this accident?

2 A Yes.

3

4 MS. DAVENPORT: I would like to introduce  
5 this into evidence as Plaintiff's Exhibit Number 4.

6 THE CLERK: Number 3.

7

8 NOTE: Statement of Lost Wages is entered  
9 in evidence as Plaintiff's Exhibit Number 3.

10

11 MS. DAVENPORT: (To the Sheriff) Before  
12 you sit down, could I get that Plaintiff's Exhibit  
13 Number 3, which is the list of medicals with the  
14 attached bills?

15 NOTE: The Sheriff hands documents to Ms.  
16 Davenort.

17

18 Q Ms. Henderson, could you identify this for  
19 me, please?

20 A This is a statement of my medical  
21 expenses.

22 Q Is this a statement of the medical  
23 expenses, and are the attached bills the bills that you  
24 received for medical treatment as a result of the injuries  
25 you sustained in this accident?

1           A           Yes.

2           Q           And do they appear to be accurate  
3 statements of the bills that you received?

4           A           Yes.

5  
6                   MS. DAVENPORT: I would like to introduce  
7 those into evidence at this time, if I haven't  
8 already.

9                   MS. BASKERVILL: Could I just look  
10 through it, Judge.

11                   NOTE: The Sheriff hands document to Ms.  
12 Baskervill.

13                   MS. BASKERVILL: It's two copies of the  
14 same thing.

15  
16                   NOTE: List of Medical Expenses is entered  
17 in evidence as Plaintiff's Exhibit Number 4.

18  
19           Q           Ms. Henderson, how did your injuries  
20 affect your daily life and activities immediately after the  
21 accident?

22           A           Well, I couldn't do housework, and I  
23 couldn't really care for my children like I wanted to. And  
24 when I would go back to work, I mean, as far as my job, you  
25 know, the instruments that I had to do, I have to be required

1 to put them together.

2 And the trays are heavy. and it was like  
3 maybe up to 25 or 30 trays that I have to lift -- would have  
4 to lift. And it creates a problem with my hand. As far as  
5 I'm standing for a period of time, my leg bothered me because  
6 my knee was sore.

7 Q Are you still experiencing any of those  
8 problems at the present time?

9 A Yes, I am, very much.

10 Q What problems are you experiencing now?

11 A My shoulder, my left shoulder, and my  
12 hand. I still have the numbness in my hand, and the  
13 tingling. And I'm left-handed.

14 Q What efforts have you made to deal with  
15 these problems?

16 A I have to deal with the pain because I  
17 have to work. I have two small kids.

18 Q You don't get any other medical treatment  
19 for them?

20 A No. The only thing, I just take Tylenol  
21 at home.

22 Q Ms. Henderson, was your car ever repaired?

23 A No, it was totaled.

24

25 MS. DAVENPORT: Could I mark this as

1 Exhibit 5? That is a stipulation of property  
2 damage. I don't need to question her on it. We  
3 will offer it into evidence. It is stipulated as  
4 to the amount.

5  
6 NOTE: Stipulation of Property Damage  
7 is entered in evidence as Plaintiff's Exhibit  
8 Number 5.

9  
10 MS. DAVENPORT: Those are all the  
11 questions I have of Ms. Henderson.

12  
13  
14  
15 CROSS-EXAMINATION

16 BY MS. BASKERVILL:

17 Q Ms. Henderson, was it daylight when an  
18 accident occurred?

19 A Yes, it was.

20 Q Were there any obstructions to your vision  
21 as you were at the stop sign on South Dunlop Street in terms  
22 of whether you were able to see the traffic coming toward you  
23 from Farmer Street?

24 A It was a clear view. I could see up and  
25 down the street.

1           Q           You never saw Ms. King until after you  
2 were struck, is that correct?

3           A           Yes.

4           Q           Was the white truck already there when you  
5 came up to the stop sign?

6           A           Yes, it was.

7           Q           Neither Dr. Haines nor Dr. Subramaniam did  
8 anything for you other than diagnostic tests, did they?

9           A           That's all.

10          Q           All your treatment came from Dr. Johnson?

11          A           Yes.

12

13                   MS. BASKERVILL: Thank you.

14                   MS. DAVENPORT: No redirect, Your Honor.

15                   THE COURT: (To the Plaintiff) You may  
16 step down.

17

- - - - -

18

WITNESS STOOD ASIDE.

19

20                   MS. DAVENPORT: Plaintiff calls Ms. Allie  
21 Henderson.

22                   THE SHERIFF: All right. Face the jury,  
23 and speak loud so the jury and court reporter can  
24 hear you.

25



1                    ALLIE HENDERSON, a witness called to  
2 testify on behalf of the Plaintiff, first being duly sworn,  
3 testified as follows:

4                    Ms. Henderson, would you state your name  
5 for the record?

6                    A                    Allie Mead (ph.) Henderson.

7                    Q                    Do you know Wanda Henderson?

8                    A                    She's my daughter.

9                    Q                    And did you see Ms. Henderson following  
10 her accident on December the 9th of 1988?

11                   A                    Yes.

12                   Q                    When did you see her?

13                   A                    About an hour later at Southside Regional  
14 in the emergency room.

15                   Q                    Would you describe your observations of  
16 Ms. Henderson at that time?

17                   A                    Yes. She had pains in her head, in her  
18 left shoulder and arm, her hip, and she also had glass in her  
19 eye.

20                   Q                    What did you see about Ms. Henderson?  
21 Did you see anything unusual about her?

22                   A                    No more than she was in a lot of pain.

23                   Q                    And did you continue to see her after  
24 that?

25                   A                    I took her from the emergency room to my

1 home for a week.

2 Q And why did you take her to your home?

3 A Because she had two small boys. She was  
4 unable to provide (sic) her duties.

5 Q What could she do at that time?

6 A Not much of anything for that first week.

7 Q What happened after that first week?

8 A The second week, she came home, but I  
9 still had to go to her house each day and help her.

10 Q And did she appear to be, at any time, in  
11 any pain during that second week?

12 A Yes, but not quite as much.

13 Q Were there any activities that she  
14 participated in before this accident that she couldn't do  
15 after the accident?

16 A Before the accident?

17 Q Any of the things that she did before the  
18 accident that she couldn't do after the accident?

19 A During the time that I was with her?

20 Q Yes.

21 A She couldn't do anything.

22 Q Have you ever known Ms. Henderson to  
23 exaggerate an injury or to stay out of work without cause?

24 A No.

25 Q Based upon your observation, does she

1 have any pain or discomfort associated with her arm, back, or  
2 shoulders?

3 A At this time?

4 Q Yes.

5 A Yes, she do (sic).

6 Q And did Ms. Henderson ever experience any  
7 problems like these before the accident of December 9, 1988?

8 A No.

9 MS. DAVENPORT: That's all the questions I  
10 have.

11 MS. BASKERVILL: I don't have any  
12 questions, Judge.

13 THE COURT: All right.

14 THE SHERIFF: (To the witness) You may  
15 step down.

16 - - - - -

17 WITNESS STOOD ASIDE.

18  
19 MS. DAVENPORT: Your Honor, this concludes  
20 the Plaintiff's case.

21  
22 NOTE: At this point, there is a motion to  
23 strike, followed by recess for lunch, after which  
24 the hearing resumes as follows:  
25

1                   I will now read the Court's instructions  
2 to you. As I said, you will be able to take these with you  
3 to the jury room when you finally retire to deliberate, to  
4 reach a verdict.

5                   Now, there is some technical language. I  
6 think if you stick with it, it will all fall into place for  
7 you.

8                   Your verdict must be based on the facts  
9 as you, the jury, find them to be and on the law contained in  
10 all of these instructions.

11                  The issues in this case are: First, was  
12 the defendant's decedent negligent? Second, if she was  
13 negligent, was her negligence a proximate cause of the  
14 collision? On these issues, the plaintiff has the burden  
15 of proof.

16                  The third issue, was the plaintiff  
17 negligent? And the fourth issue, if she was negligent, was  
18 her negligence a proximate cause of the accident? On these  
19 issues, the defendant has the burden of proof.

20                  And the fifth issue, if the plaintiff is  
21 entitled to recover, what is the amount of her damages? On  
22 this issue, the plaintiff has the burden of proof.

23                  Your decision on these issues must be  
24 governed by the instructions that follow.

25                  As a jury, you are the judges of the

1 facts, the credibility of the witnesses, and the weight of  
2 the evidence. You may consider the appearance and manner of  
3 the witnesses on the stand, their intelligence, their  
4 opportunity for knowing the truth and for having observed the  
5 things about which they testify, their interest in the  
6 outcome of the case, their bias and, if any have been shown,  
7 their prior inconsistent statements, or whether they have  
8 knowingly testified untruthfully as to any material fact in  
9 this case.

10                   You may not arbitrarily disregard  
11 believable testimony of a witness; however after you have  
12 considered all the evidence in the case, then you may accept  
13 or discard all or part of the testimony of a witness as you  
14 think proper. You are entitled to use your common sense in  
15 judging any testimony.

16                   From these things and all other  
17 circumstances of this case, you may determine which witnesses  
18 are more believable and weigh their testimony accordingly.

19                   When one of the parties testifies  
20 unequivocally to facts within his or her knowledge, those  
21 statements of fact and the necessary inferences from them are  
22 binding upon them. The witness cannot rely on other evidence  
23 in conflict with his own testimony to strengthen his case;  
24 however you must consider his testimony as a whole, and you  
25 must consider a statement made in one part of his testimony

1 in light of any explanaiton or clarification made elsewhere  
2 in his testimony.

3 When a party has the burden of proof on an  
4 issue, then he or she must prove that issue by the greater  
5 weight of all the evidence. This is sometimes called the  
6 preponderance of the evidence. It is that evidence which you  
7 find more convincing. The testimony of one witness whom you  
8 believe can be the greater weight of the evidence.

9 Negligence is the failure to use ordinary  
10 care. Ordinary care is the care a reasonable person would  
11 have used under the circumstances of this case.

12 A proximate cause of an accident, injury,  
13 or damage is the cause which a natural and continuous  
14 sequence produces the accident, injury or damage. It is a  
15 cause without which the accident, injury, or damage would not  
16 have occurred.

17 Contributory negligence is the failure to  
18 act as a reasonable person would have acted for their own  
19 safety under the circumstances of this case. When the  
20 defendant claims contributory negligence as a defense, she  
21 has the burden of proving by a greater weight of the evidence  
22 that the plaintiff was negligent and that this negligence was  
23 a proximate cause of her injury.

24 Contributory negligence may be shown by  
25 the defendant's evidence or by the plaintiff's evidence.

1                   The maximum speed limit at the time and  
2 place of the collision was --

3                   (To counsel) You have got in one place  
4 where it is 35 and another 25. You wanted 25, didn't you?

5                   MS. DAVENPORT: Yes.

6                   THE COURT: That is a mistake I didn't  
7 catch.

8                   (To the Jury) All right. The maximum  
9 speed limit at the time and place of the collision was 25  
10 miles per hour. If the defendant, Ruth King, was driving a  
11 vehicle faster than this limit, then she was negligent.

12                   The driver of a vehicle has a right to  
13 assume that the driver of another vehicle will operate it in  
14 a lawful manner until she realizes, or, in the exercise of  
15 ordinary care should have realized, that the other driver is  
16 not going to do so.

17                   All drivers approaching a four-way stop  
18 sign have a duty to stop at a point nearest the intersecting  
19 road where they would have a view of approaching traffic.  
20 Such drivers also have a duty to keep a proper lookout, which  
21 requires ordinary care, to look in all directions for  
22 vehicles that would affect their driving, to see what a  
23 reasonable person would have seen, and to react as a  
24 reasonable person would have acted to avoid a collision  
25 under the circumstances.

1                   If you find from the greater weight of  
2 the evidence. that both the plaintiff and the defendant's  
3 decedent were negligent and that their negligence proximately  
4 contributed to the accident, you may not compare the  
5 negligence of the parties. Any negligence of the plaintiff  
6 which was a proximate cause of the accident will bar the  
7 plaintiff from recovery.

8                   The fact that there was an accident and  
9 that the plaintiff was injured does not of itself entitle the  
10 plaintiff to recover. The plaintiff has a burden of proving  
11 by the greater weight of the evidence that the defendant's  
12 decedent was negligent and that her negligence caused the  
13 plaintiff's injury.

14                  You shall find your verdict for the  
15 plaintiff in this case if she has proved by the greater  
16 weight of the evidence that, first, the defendant's decedent  
17 was negligent and that, secondly, the defendant's decedent's  
18 negligence was the sole proximate cause of the plaintiffs  
19 accident and damages.

20                  You shall find your verdict for the  
21 defendant if the plaintiff fails to prove either or both of  
22 the two elements above, or if the defendant has proved by  
23 the greater weight of the evidence that the plaintiff was  
24 contributorily negligent and that her contributory negligence  
25 was a proximate cause of the accident.



1                   The burden is on the plaintiff to prove by  
2 the greater weight of the evidence each item of damage she  
3 claims and to prove that each item was caused by the  
4 defendant's decedent's negligence.

5                   She is not required to prove the exact  
6 amount of her damages, but she must show sufficient facts and  
7 circumstances to permit you to make a reasonable estimate of  
8 each item. If the plaintiff fails to do so, she cannot  
9 recover on that item.

10                  If you find your verdict for the plaintiff  
11 in this case, then in determining the damages to which she is  
12 entitled, you may consider any of the following which you  
13 believe by the greater weight of the evidence was caused by  
14 the negligence of the defendant.

15                  First, any bodily injuries she sustained  
16 and their effects on her health according to their degree and  
17 probable duration.

18                  Second, any physical pain and mental  
19 anguish she suffered in the past and any that she may  
20 reasonably be expected to suffer in the future.

21                  Third, any inconvenience caused in the  
22 past and any that probably will be caused in the future.

23                  Fourth, any medical expenses incurred in  
24 the past.

25                  And fifth, any earnings she lost because

1 she was unable to work.

2 And six, any property damage she  
3 sustained.

4 Your verdict should be for such sum as  
5 will fully and fairly compensate the plaintiff for the  
6 damages sustained as a result of the defendant's negligence.

7 You must not base your verdict in any way  
8 upon sympathy, bias, guesswork, or speculation. Your verdict  
9 must be based solely upon the evidence and the instructions  
10 of the Court.

11 Any statement of counsel for the plaintiff  
12 referring to the amount sued for is not evidence in this  
13 case. You should not consider it in arriving at the amount  
14 of your verdict, if any.

15 We always attach one last instruction  
16 which we call the verdict form which amounts to a fill-in  
17 blank type situation.

18 The verdict has to be in one of the  
19 following forms -- after you go back in the jury room and  
20 review the facts and put the facts against the law and you  
21 decide for the plaintiff, you will complete the top form  
22 which says, we the jury on the issue joined find in favor  
23 of the plaintiff and fix her damages at blank dollars. And  
24 you have to put in that amount, and that verdict form will be  
25 signed by your foreman.

1                   Or, in the second alternative, you find  
2 for the defendant based on the facts and the law, you will  
3 sign the verdict form, we the jury on the issue joined find  
4 in favor of the defendant, and the form will be signed that  
5 way.

6                   Now, your verdict must be unanimous,  
7 either way, that is, all seven must agree on the verdict.

8                   At this point, I will turn it over to the  
9 attorneys for their closing argument. The one last thing I  
10 will say to you, once they finish the argument, go back in  
11 the jury room, your first order of business is to select a  
12 foreman. This you do yourself; just pick one of the seven  
13 that you have confidence in.

14                   Now, the person you select as your foreman  
15 is more or less a chairman of the meeting. He or she must  
16 insure that the case is fully discussed, and any member of  
17 the jury wishes to make their views known to the others gets  
18 a fair chance to state their opinions on the case and the  
19 evidence and so forth.

20                   The most important responsibility of the  
21 foreman is, when he or she thinks the time is right, and the  
22 case has been fully talked over, and you are ready to make  
23 the decision, find out what is the jury's verdict, what is  
24 the jury decision, then take that last instruction which is  
25 your verdict form and complete it to comply with the jury

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\* \* \*

When you bring a suit on a personal injury matter, you are required to file a suit for a certain amount. We have sued for \$51,325.00. We trust that you will do what is right and just to return a verdict for Ms. Henderson in an amount that will adequately compensate her.

\* \* \*

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THE CLERK: We the jury, on the issue  
joined, find in favor of the plaintiff and fix her damages at  
\$51,000.00. Signed by James E. Smith, Foreman.



## 11th Judicial Circuit

OLIVER A. POLLARD, JR.  
JUDGE'S CHAMBERS  
PETERSBURG, VIRGINIA

CITY OF PETERSBURG  
COUNTY OF DINWIDDIE  
COUNTY OF NOTTOWAY  
COUNTY OF AMELIA  
COUNTY OF POWHATAN

THOMAS V. WARREN  
JUDGE'S CHAMBERS  
NOTTOWAY, VIRGINIA

February 26, 1992

Pamela Shell Baskervill, Esq.  
White, Hamilton, Wyche & Shell  
20 E. Tabb Street  
Petersburg, Virginia 23803

Hazel E. Davenport, Esq.  
Traylor & Morris  
P.O. Box 786  
Chester, Virginia 23831

Re: Wanda P. Henderson  
v.  
Dana L. Gay, Admin. of the Estate  
of Ruth A. King, deceased

Dear Counsel:

The Court has under consideration the defendant's Motion to Set Aside the jury verdict of November 26, 1991, and to this end, the Court has reviewed the trial transcripts, the memoranda of law submitted by counsel, and a substantial number of the authorities cited by counsel.

In view of the jury verdict in favor of the plaintiff, the evidence will be set out in a light most favorable to her. The accident which gave rise to Ms. Henderson's injuries occurred at the intersection of Dunlop and Farmer Streets in the City of Petersburg at 2:11 p.m. on December 9, 1988. All four entrances to this intersection are controlled by stop signs. Plaintiff came to the intersection proceeding south on Dunlop Street. She stopped for the stop sign, looked in all directions, noticed a white pickup truck to her right that was stopped, looked again to her left and when it appeared that the white truck was not going to move, she then proceeded into the intersection. She said that she had a clear view and could see up and down the street. As she got towards the middle of the intersection she was struck on the left side of her vehicle near the front by a vehicle operated by defendant's decedent, Ms. King. Latour Dabney, who was fifteen years old at the time of the accident, testified that he was standing in his grandmother's yard which was situated on the southeast corner of the intersection. He stated that he had observed that the plaintiff stopped, looked both ways, and proceeded slowly into the intersection. He did not see the King vehicle until it was two and one-half car lengths from the intersection but estimated her speed to be forty to fifty miles per hour. He stated that the Henderson vehicle "had just started through the intersection when he saw the King vehicle." He also stated that Ms. King "slammed" on brakes when she got to the corner and slid into the intersection, however, her speed did not diminish prior to the point of impact. Officer Joseph Bucka of the Petersburg Department of Police testified that the speed limit on both streets was twenty-five miles per hour, being a residential neighborhood, and that both parties told him that the other had run the stop sign.

## 11th Judicial Circuit

OLIVER A. POLLARD, JR.  
JUDGE'S CHAMBERS  
PETERSBURG, VIRGINIA

CITY OF PETERSBURG  
COUNTY OF DINWIDDIE  
COUNTY OF NOTTOWAY  
COUNTY OF AMELIA  
COUNTY OF POWHATAN

THOMAS V. WARREN  
JUDGE'S CHAMBERS  
NOTTOWAY, VIRGINIA

Re: Wanda P. Henderson v. Dana L. Gay, Admin., etc.

Page 2-

He testified that Ms. Henderson's car was damaged on the front left side; that Ms. King's car was damaged on the front; that he recalls nothing that would have obstructed the view of either driver; and, that he found no skid marks at the scene of the accident.

Counsel for the defendant moved to strike the evidence for the reason that the evidence showed, as a matter of law, that plaintiff was guilty of negligence which proximately contributed to cause the accident and plaintiff's damages. This Motion was taken under advisement by the Court and the case was allowed to go to the jury. After a verdict was returned in favor of the plaintiff, the defendant moved to set aside the verdict as being contrary to the law and evidence.

The issue we have is a fairly narrow one being when Ms. Henderson stopped and looked, was Ms. King's vehicle where Ms. Henderson was bound to see it and so close that a reasonable person would have concluded it was not safe to proceed. If the evidence is such that reasonable men could differ in the conclusion to be reached, then it was properly a jury question. On the other hand, if reasonable men could not disagree about it then it was not properly a jury question. See Oliver v. Forsyth, 190 Va. 710.

In this case it was daylight and the plaintiff had a clear view "up and down the street", with no obstructions. The only other vehicles in the area were the King vehicle which came from her left and the white pickup which was stopped to her right. Plaintiff was struck on the left side near the front of her vehicle when she was somewhere near the middle of the intersection. Ms. Henderson never saw the King vehicle until after the collision. Plaintiff argues that since there was no evidence presented of the location of Ms. King when Ms. Henderson entered the intersection, and Ms. King was going forty to fifty miles per hour, reasonable men could differ as to where Ms. King was when Ms. Henderson entered the intersection. This is not correct. Plaintiff's witness Latour Dabney, on re-direct at page 27 of the transcript, testified that he saw Ms. King when she was two and one-half car lengths from the intersection and Ms. Henderson at that time had started through the intersection. In this Court's opinion, based on the evidence, there is but one conclusion to be drawn and that is that the King vehicle was in clear view and dangerously near the intersection when Ms. Henderson proceeded into the intersection. This case is clearly disquishable from Newman v. Dalton, 206 Va. 119, cited by plaintiff, where the plaintiff did see the other vehicle involved after he entered upon the highway but decided to proceed accross the road rather than stopping. Either Ms. Henderson did not look or she did look but so carelessly that she failed to see what was obvious and she was, therefore, negligent as a matter of law, and because of the obvious close proximity of the King vehicle when she proceeded to enter the intersection, her negligence was a proximate cause of the collision and her damages. See Van Roy v. Whitescarver, 192 Va. 384, and Sayre v. Shields, 209 Va. 354.

11th Judicial Circuit

OLIVER A. POLLARD, JR.  
JUDGE'S CHAMBERS  
PETERSBURG, VIRGINIA

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THOMAS V. WARREN  
JUDGE'S CHAMBERS  
NOTTOWAY, VIRGINIA

Re: Wanda P. Henderson v. Dana L. Gay, Admin, etc.  
Page 3-

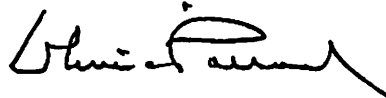
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The Court will, therefore, sustain the Motion of the defendant to set aside the verdict awarded Ms. Henderson.

The Defendant's post trial motion also relates to the amount of the jury verdict which was for substantially the same amount as sued for, notwithstanding the Court's instruction that the amount sued for was not to be considered in fixing the verdict. Defendant also complains the verdict was excessive considering medical bills of \$4,738.85, ten days missed from work for a wage loss of \$489.44 and property damage in the sum of \$950.00; the \$51,000.00 verdict being approximately ten times the plaintiff's special damages.

As stated in Hogan v. Carter, 226 Va. 361, the Court has the duty to correct a verdict which is so excessive as to shock the consciousness or compels the conclusion that the verdict was a product of passion or prejudice or some misunderstanding of the facts of the law. Plaintiff's counsel, in closing argument, told the jury that "we have sued for \$51,325.00", and "if you want to go back in that jury room and don't believe that she's entitled to what she has asked for, then decide in your mind how much more pain and suffering should any people -- should she have to go through to get something." The jury, thereafter, returned a verdict of \$51,000.00. Were it not for this Court's decision to set aside the verdict on the basis of the contributory negligence of the plaintiff, the Court would order a re-trial on the issue of damages since it obviously appears that the jury acted improperly and did not follow the Court's admonition that the amount sued for was not to be considered by it in fixing the verdict. I will ask defense counsel to prepare and circulate an appropriate order.

Very truly yours,



Oliver A. Pollard, Jr.  
Judge

OAP,Jr/gk



VIRGINIA:

IN THE CIRCUIT COURT OF THE CITY OF PETERSBURG

MARCH 19, 1992

WANDA P. HENDERSON

Plaintiff

v.

DANA L. GAY, Administrator  
of the Estate of RUTH  
A. KING, deceased

Defendant

ORDER

On the 26th day of November, 1991, came the plaintiff in person and by counsel, and the defendant by counsel, and the defendant having heretofore filed Grounds of Defense herein, issue was joined.

Whereupon came a jury who were sworn to well and truly try the issue joined and a true verdict render according to the evidence and law.

The evidence of the plaintiff was presented and at the conclusion of which, counsel for the defendant moved the Court to strike the plaintiff's evidence for the reason that the evidence showed, as a matter of law, that the plaintiff was guilty of negligence which proximately contributed to cause the accident and plaintiff's damages, which Motion the Court took under advisement.

After receiving instructions from the Court and hearing arguments of counsel, the jury retired to their room to deliberate and did reach the following verdict:

We the jury, on the issue joined, find in favor of the plaintiff and fix her damages at \$51,000.00.

After the jury was dismissed, the Court directed counsel to file memoranda in support of their positions regarding the Motion to Strike the Evidence of the Plaintiff previously made by the defendant and taken under advisement by the Court; and the defendant, by counsel, further moved the Court to set aside the verdict of the jury as being excessive as a matter of law; and thereafter on the 5th day

of December, 1991, the defendant filed further written Motions to set aside the verdict of the jury for the reason that the evidence showed as a matter of law that the plaintiff was guilty of contributory negligence and for the further reason that the jury acted improperly and ignored the instructions of the Court and specifically Instruction 18 dealing with the consideration by the jury of the amount sued for by the plaintiff.

And the Court having maturely considered the Motions filed herein, the evidence given at the time of trial, the memoranda filed by counsel for each party stating their relative positions as to the evidence and the law, and having reviewed the evidence and the law applicable to the case, finds that, for the reasons set forth in its Memorandum Opinion dated February 26, 1992, the evidence viewed in the light most favorable to the plaintiff discloses that the plaintiff was herself guilty, as a matter of law, of negligence which was a proximate and contributing cause of the collision and her damages.

WHEREFORE, the Court ORDERS that the verdict awarded to the plaintiff by the jury herein is hereby set aside and judgment entered herein for the defendant.

The Clerk is directed to send certified copies of this Order to all counsel of record.

I ask for this:

Samela K. Parker, p.d.

I have seen and object to this:

Harold C. Davenport, p.q.

Enter this:

Blaine [Signature], Judge

Date: 3-19-92.

A COPY TESTE: Albert A. Dawson, Jr., Clerk

By: K. Pawl  
Deputy Clerk

### ASSIGNMENTS OF ERROR

Pursuant to Rule 5:25 of this Court, the appellant assigns the following errors:

1. The Petersburg Circuit Court erred in setting aside the verdict rendered by the jury on November 26, 1991, and finding that Ms. Henderson was negligent as a matter of law and that her negligence was a proximate cause of the collision and her damages.

2. The Petersburg Circuit Court erred in determining that had it not set aside the verdict, it would order a re-trial on the issue of damages on the basis that the jury acted improperly and did not follow the court's admonition that the amount sued for was not to be considered by it in fixing the verdict.

### ASSIGNMENT OF CROSS-ERROR

To the extent that the statement by the trial judge that had he not set aside the verdict, he would have ordered a new trial as to damages is to be considered at the time of this appeal, the Appellee assigns as cross-error the action of the Court in indicating that a new trial would relate to damages only and not to liability as well.

CALCULATION OF LOST WAGES

Wanda Henderson claims lost wages of: \$ 489.44

\$6.118 per hour x 8 hrs = \$48.94

\$48.94 x 10 days = \$489.44

Total Wage Loss: \$489.44

**STATEMENT OF MEDICAL TREATMENT**

|  |                   |
|--|-------------------|
| Southside Regional Medical Center.....             | \$ 74.40          |
| Dr. Norris Johnson/Ettrick Medical Center.....     | 1,345.00          |
| Dr. Poovillam S. Subramaniam, M.D.....             | 3,215.00          |
| Dr. Leo Crosier/Petersburg Orthopaedic Center..... | 64.00             |
| Prescriptions.....                                 | 15.45             |
|  | -----             |
| <b>TOTAL MEDICAL EXPENSES.....</b>                 | <b>\$4,713.85</b> |

~~Plaintiff~~  
~~Defence~~

Exhibit No.

5

9/

Filed

11-26

, 1989

Oliver a. [Signature]

Judge LATION

The plaintiff and defendant stipulate to the following facts:

1. The amount of property damage sustained by the 1981 Chevette automobile of Wanda Henderson resulting from the accident occurring on December 9, 1988 is \$ 950.00.

INSTRUCTION NO. 6.

A proximate cause of an accident, injury, or damage is the cause which in natural and continuous sequence produces the accident, injury, or damage. It is a cause without which the accident, injury, or damage would not have occurred.

James:  
11-26-91  
GHP  
James

INSTRUCTION NO: 10

The driver of a vehicle has a right to assume that the driver of another vehicle will operate it in a lawful manner until she realizes, or in the exercise of ordinary care should realize, that the other driver is not going to do so.

*Given 11-26-81*  
*AP*  
*Jus*



INSTRUCTION NO. 11.

All drivers approaching a four way stop sign have a duty to stop at a point nearest the intersecting road where they would have a view of approaching traffic. Such drivers also have a duty to keep a proper lookout which requires ordinary care to look in all directions for vehicles that would affect their driving, to see what a reasonable person would have seen, and to react as a reasonable person would have acted to avoid a collision under the circumstances.

Jan 11-26-81  
CH  
7.

INSTRUCTION NO. 16

If you find your verdict for the plaintiff, then in determining the damages to which she is entitled, you may consider any of the following which you believe by the greater weight of the evidence was caused by the negligence of the defendant:

(1) any bodily injuries she sustained and their effects on her health according to their degree and probable duration;

(2) any physical pain and mental anguish she suffered in the past and any that she may be reasonably expected to suffer in the future;

(3) any inconvenience caused in the past and any that probably will be caused in the future;

(4) any medical expenses incurred in the past.

(5) any earnings she lost because she was unable to work at her calling.

(6) any property damage she sustained.

Your verdict should be for such sum as will fully and fairly compensate the plaintiff for the damages sustained as a result of the defendant's negligence.

*Given*  
*11-26-81*  
*ORP*  
*Jud*

INSTRUCTION NO. 18

Any statement of counsel for the plaintiff referring to the amount sued for is not evidence in this case; you should not consider it in arriving at the amount of your verdict, if any.

Simon 11-26-91  
[Signature]  
Jus



NINETEENTH JUDICIAL CIRCUIT OF VIRGINIA

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JAMES KEITH  
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LEWIS H. GRIFFITH  
RETIRED JUDGES

June 23, 1992

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4117 Chain Bridge Road, Suite 400  
Fairfax, Virginia 22030

RE: Washburn v. Powell  
At Law No. 102926

Dear Counsel:

This matter comes before the court on defendant's motion for judgment notwithstanding the verdict on the grounds that the plaintiff was contributorily negligent as a matter of law. For reasons set forth below, the motion is denied.

The plaintiff testified at trial that as she was approaching the intersection, she did not see the defendant until the time of the collision, even though the weather was clear and visibility was unobstructed. Defendant relies on the case of Sayre v. Shields, 209 Va. 409 (1968) for her argument that this testimony renders the plaintiff contributorily negligent as a matter of law. The court disagrees.

In Sayre, the Supreme Court of Virginia upheld the trial court's decision to set aside plaintiff's verdict based on the following two-pronged finding:

Reasonable men should not disagree that the plaintiff was negligent in failing to see defendant's cab, which was in plain view, and that her negligence efficiently contributed to the accident.

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Id. at 411. Justice Poff underscored the dual nature of the finding in his concurring opinion in Butler v. Yates, 222 Va. 550 (1981).

In [Sayre], the Court held, as a matter of law, that the plaintiff was guilty of contributory negligence. Since a plaintiff's negligence bars recovery only when his negligence proximately contributed to his injury, [the] holding was underpinned by two findings, viz. (1) that the plaintiff was guilty of negligence in failing to maintain a proper lookout to determine whether the defendant might fail to yield the right of way, and (2) that such failure was a proximate cause of the collision.

Id. at 555.

Unless a trial court makes both findings as a matter of law, Sayre is not controlling. Butler v. Yates, 222 Va. at 554. It is not enough to find as a matter of law that the plaintiff failed to keep a proper lookout. Before it can properly grant defendant's motion for judgment notwithstanding the verdict, the court must also find as a matter of law that the failure to keep a proper lookout proximately caused the collision. In other words, the court must find as a matter of law that had the plaintiff seen the defendant, she would have been able to avoid the collision.

This court declines to make either finding as a matter of law.

In the first place, the fact that plaintiff did not see the defendant does not conclusively establish that she failed to keep a proper lookout. As the Butler court stated:

[The plaintiff] had no obligation to continuously watch the unidentified road or the eastbound lanes of Route 50 for vehicles which might dart across the paved crossover into his lane of travel. While [plaintiff] failed to see [defendant's] car until it began entering the left-hand westbound lane, reasonable persons could differ on whether

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[plaintiff] should have observed the  
[defendant's] vehicle sooner.

222 Va. at 554.

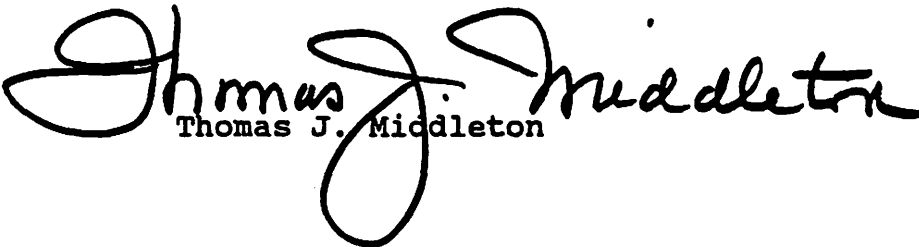
Secondly, assuming for the purpose of argument that she did fail to keep a proper lookout, it is not clear that this failure proximately caused the collision. In a similar case, the Butler court distinguished Sayre as follows:

[Sayre] is not controlling here because in Sayre the plaintiff did not see the defendant's vehicle prior to the collision and could have easily avoided the collision if she had done so.

Id. (emphasis added). At least one Justice has gone so far as to say that "to the extent our decision in Sayre . . . rested upon a finding of proximate cause as a matter of law, I would overrule [the] decision." Id. at 556 (J. Poff, concurring). This court declines to find as a matter of law that had Ms. Washburn seen defendant's car stopped at the median, she would have been able to avoid the collision. Since she had the right-of-way, Ms. Washburn might reasonably have assumed that once the defendant's car had stopped, it would remain stopped until the way was clear.

The motion for judgment notwithstanding the verdict is denied, and the endorsed Final Judgment Order has been entered as of this date.

Very truly yours,

  
Thomas J. Middleton

TJM/jt