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IN THE
Supreme Court of Virginia

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RECORD NO. 810736

JAN 31 1984

EVA JUDITH WEEMS,

Appellant

v.

DELTON DENNIS BLALOCK,

Appellee

APPENDIX

Robert H. Hovis, III
4544 A John Marr Drive
Annandale, Virginia 22003

Counsel for Appellant

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FILED
IN CIRCUIT COURT
CLERK'S OFFICE
APR 10 1980

CLERK, FAIRFAX COUNTY, VA
STREET TAX PAID \$ 5
DEPOSIT, 111, 25

VIRGINIA:

IN THE CIRCUIT COURT OF THE COUNTY OF FAIRFAX

EVA JUDITH WEEMS,
Plaintiff,

v.

Law No. _____

DELTON DENNIS BLALOCK,
4322 DeHaven Drive
Chantilly, Virginia

Defendant.

MOTION FOR JUDGMENT

COMES NOW the Plaintiff, EVA JUDITH WEEMS, and moves for judgment against Defendant, DELTON DENNIS BLALOCK, on the grounds and in the amount as herein-after set forth:

1. On the 13th day of April, 1978, plaintiff was a passenger in an automobile which was moving in an easterly direction on Interstate 66, 1.25 miles from its intersection with highway 495 in Virginia.
2. At the time and place aforesaid defendant was operating an automobile, owned by him, in an easterly direction on Interstate 66, 1.25 miles from its intersection with highway 495 in Virginia.
3. At that time and place it was the duty of defendant to operate his vehicle with reasonable care and with due regard for others using the road.
4. Notwithstanding said duties, defendant did then and there so carelessly, recklessly and negligently operate his automobile that it collided with the automobile that plaintiff was a passenger in with great force and violence. Defendant was negligent in that he

(a) failed to keep a proper lookout;

(b) operated his vehicle at an excessive rate of speed under the circumstances and conditions then and there existing; and

(c) followed the vehicle in which plaintiff was a passenger too closely.

5. As a direct and proximate result thereof, plaintiff was caused to sustain serious and permanent injuries, has been prevented from transacting her business, had suffered and will continue to suffer great pain of body and mind; has sustained permanent disability, deformity and loss of earning capacity; has incurred and will incur in the future hospital, doctors' and related bills in an effort to be cured of said injuries.

WHEREFORE, plaintiff demands judgment against the defendant in the sum of FIFTY THOUSAND AND NO/100 Dollars (\$50,000.00), and her costs in this behalf expended.

Eva Judith Weems

EVA JUDITH WEEMS
by Counsel

Robert H. Hovis, III

ROBERT H. HOVIS, III
Adams and Hovis
7250 Maple Place
Annandale, Virginia 22003

O R D E R

UPON MOTION by the Plaintiff, Eva Judith Weems, by counsel, for entry of an Order granting her leave to amend the Motion for Judgment heretofore filed herein by increasing the amount of the Addamnum clause from \$50,000.00 to \$100,000.00; and it is hereby

ORDERED, ADJUDGED and DECREED that the Plaintiff, Eva Judith Weems, may increase the amount claimed in the Addamnum clause of her Motion for Judgment heretofore filed herein from \$50,000.00 to \$100,000.00; and it is

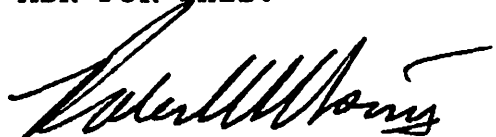
FURTHER ORDERED and ADJUDGED that the Clerk of Court shall provide certified copies of this Order to all counsel of record forthwith;

AND THIS CAUSE IS CONTINUED.


ENTERED this 23rd day of February, 1981.


JUDGE

I ASK FOR THIS:


Robert H. Hovis, III
4544-A John Marr Drive
Annandale, Virginia 22003
Counsel for Plaintiff

SEEN:


Michael L. Zimmerman
10533 Main Street
Fairfax, Virginia 22030
Counsel for Defendant

V I R G I N I A:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

FILED

MAR 1981

JAMES E. WOFFNAGLE
Clerk of the Circuit Court
of Fairfax County, Va.

EVA JUDITH WEEMS)
)
Plaintiff,)
)
vs.)
)
DELTON DENNIS BLALOCK)
)
Defendant.)

AT LAW NO. 49000

MOTION TO AMEND MOTION FOR JUDGMENT

COMES NOW the Plaintiff, by counsel, and moves this Honorable Court for entry of an order granting her leave to amend the Motion for Judgment heretofore filed herein by deleting the specific acts of Negligence set forth in subparagraphs (a), (b) and (c) of paragraph 4 thereof.

EVA JUDITH WEEMS

Eva Judith Weems

By Counsel

Robert H. Hovis, III

Robert H. Hovis, III
Counsel for Plaintiff
4544-A John Marr Drive
Annandale, Virginia 22003

TRIAL BRIEF FACE SHEET AND INDEX

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

FILED
JAN 10 1994
JAMES L. W. SINGLE
Clerk of the Circuit Court
of Fairfax County, Va.

EVA JUDITH WEEMS)

Plaintiff,)

vs.)

AT LAW NO. 49000

DELTON DENNIS BLALOCK)

Defendant)

PLAINTIFF'S TRIAL BRIEF

Submitted by

ROBERT H. HOVIS, III

ROBERT H. HOVIS, III, P.C.
4544 A John Marr Drive
Annandale, Virginia 22003

Attorney for Plaintiff

I N D E X

Statement of Facts

Prior Medical History

Facts of the Collision

The Injuries

Witnesses

Plaintiff's Position

What Plaintiff Seeks

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

EVA JUDITH WEEMS)

Plaintiff,)

vs.)

AT LAW NO, 49000

DELTON DENNIS BLALOCK)

Defendant)

PLAINTIFF'S TRIAL BRIEF

COMES NOW the Plaintiff, Eva Judith Weems, by and through her Attorney, Robert H. Hovis, III, and submits to the Court her Trial Brief in support of her claim for relief against the Defendant, who is represented by Michael L. Zimmerman, Esquire.

STATEMENT OF FACTS

Eva Judith Weems is a 32-year old female employed by the United States Postal Service as a secretary. She has been married to Roger Weems, a telephone installer for C. & P. Telephone Company, for 11 years. There are no children of the marriage.

PRIOR MEDICAL HISTORY

Prior to this injury Eva Judith Weems had no significant illness or injury of any type. She had always been considered to be in excellent physical condition prior to the collision and participated in sports and outdoor activities.

FACTS OF THE COLLISION

At approximately 7:30 a.m. on April 13, 1978, Eva Judith Weems, then aged 29, was a passenger in a Volkswagen Van, east-bound on Interstate 66 in Virginia. Mrs. Weems was on her way to her job in Washington, D. C., the weather was clear, it was daylight, and the road surface was dry. About one mile before I-66 joins I-495, (the Capital Beltway), the Van in which

Mrs. Weems was riding was stopped or about stopped in the center lane of the three-lanes of east-bound traffic because of the early morning traffic back-up at the junction of the highways.

While the Van was stationary, Mrs. Weems heard screeching brakes just before the Van was hit by a 1965 Plymouth 2-door hardtop driven by the Defendant. The right-rear quarter panel of the Defendant's car hit the left-rear of the Van as the Defendant's car crossed from a position in the center lane directly behind the Van, across to the left lane, and thence eventually came to a halt on the grass median strip.

g.2)

THE INJURIES

There were no apparent injuries noted at the time of the accident; however, towards evening on the day of the accident, Mrs. Weems developed pain in the cervical-lumbar region of the back and in the shoulders. She was seen by a physician (Dr. Stanley Rottschild) the following day. Dr. Rottschild diagnosed cervical strain and prescribed pain medication and heat treatment. Mrs. Weems' condition did not improve, and she experienced continued neck stiffness, shoulder and back pain, frequent headaches, and "spots" in front of her eyes. Over the next three years, up to the present, Mrs. Weems saw two more doctors, received physical therapy, did various prescribed home exercises and treatments, but her condition remains essentially unchanged.

WITNESSES

Plaintiff will call the following witnesses:

EVA WEEMS: Mrs. Weems' testimony will establish the facts of the collision, the extent of her injuries, and the damages she has suffered as a result.

ANGELA BURRIGHT: Mrs. Burright is the bookkeeper of Dr. James J. Scheiner and she will authenticate the medical expenses of Mrs. Weems.

WILLIAM MOTLEY: Mr. Motley is the custodian of Mrs. Weems' payroll

records and he will testify to Mrs. Weems' salary and lost work time.

ROSEMARY EDGER, P.T.: Mrs. Edger will be qualified as an expert witness and will testify about Mrs. Weems' physical limitations and physical therapy.

SAMUEL M. HAWKEN, M.D.: Dr. Hawken will be qualified as an expert witness to testify about Mrs. Weems' injuries and will give his opinion that her symptoms will persist indefinitely and that Plaintiff suffers from a permanent partial disability of 5 percent.

TROOPER K. W. EVANS: Trooper Evans was the Virginia State Police Officer who investigated the accident. Defendant may call him to testify as to the facts of his investigation.

PLAINTIFF'S POSITION

It is Plaintiff's position that a rear-end collision is a prima facie case of negligence on the part of the Defendant and that Mrs. Weems' physical injuries were the direct result of this collision. It is also Plaintiff's position that having established the prima facie case the burden of going forward with the evidence on the issue of negligence shifts to the Defendant.

This proposition is supported by the cases of:

Pickett vs. Cooper, 202 VA.60 (1960)

Watford vs. Morse, 202 VA.605 (1961)

Cook vs. Basnight, 207 VA.491 (1966)

WHAT PLAINTIFF SEEKS

Plaintiff seeks \$100,000 in damages.



Robert H. Kovis, III



ROBERT H. HOVIS, III
Counsel for Plaintiff
John Marr Professional Center
4544A John Marr Drive
Annandale, Virginia 22003

V I R G I N I A:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

EVA JUDITH WEEMS,

*

Plaintiff,

*

vs.

*

AT LAW NO. 49000

DELTON DENNIS BLALOCK,

*

Defendant.

*

O R D E R

HERETOFORE on the 3rd day of March, 1981, came the plaintiff, in person and by counsel, and came the defendant, in person and by counsel, and the parties' witnesses in this case came on for trial upon the plaintiff's Motion for Judgment, the Answer and Grounds of Defense of the defendant, and the other pleadings filed herein.

THEREUPON came a jury of thirteen (13) veniremen who were sworn and examined on their voir dire and found to be competent and qualified jurors, and from the panel of veniremen, seven (7) persons were duly selected with counsel for the plaintiff and counsel for the defendant each having exercised three pre-emptory strikes.

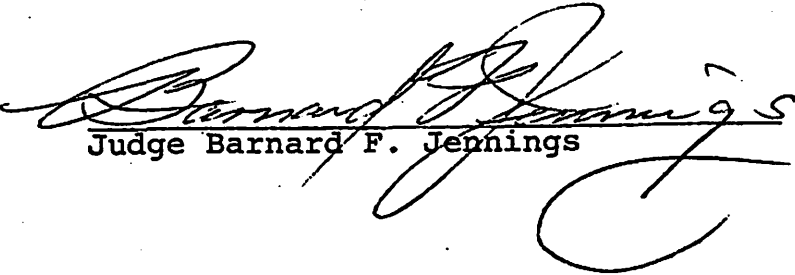
THEREUPON the said jury heard the opening statements of counsel and heard the evidence of the plaintiff. Upon the conclusion of the plaintiff's evidence, counsel for the defendant made a motion to strike the plaintiff's evidence. After hearing argument on said motion by counsel for the defendant and counsel for the plaintiff and after carefully considering the evidence, the Court being of the opinion that the evidence should be

stricken because the plaintiff failed to show a prima facie case of negligence against the defendant, it is by this Court

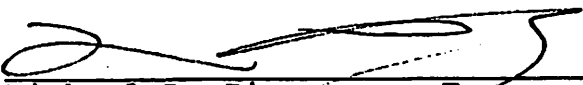
ORDERED, ADJUDGED AND DECREED that the motion of the defendant, by counsel, to strike the plaintiff's evidence, be, and the same hereby is, granted to which ruling of the Court the plaintiff, by counsel, notes his exception.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the plaintiff, Eva Judith Weems, recover nothing from the defendant, Delton Dennis Blalock.

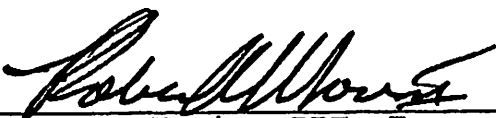
ENTERED this 23rd day of March, 1981.


Judge Barnard F. Jennings

I ASK FOR THIS:


Michael L. Zimmerman, Esq.
BRAULT, GESCHICKTER, PALMER & GROVE
10533 Main Street
P. O. Box 248
Fairfax, Virginia 22030
Counsel for Defendant

SEEN AND OBJECTED TO AND
EXCEPTION NOTED:


Robert H. Hovis, III, Esq.
John Marr Professional Center
4544-A John Marr Drive
Annandale, Virginia 22003
Counsel for Plaintiff

ASSIGNMENT OF ERROR

THE COURT ERRED IN STRIKING PLAINTIFF'S EVIDENCE AT THE CONCLUSION OF HER CASE WHEN SHE HAD ESTABLISHED THAT THE VEHICLE IN WHICH SHE WAS RIDING WAS STRUCK FROM THE REAR BY A VEHICLE OPERATED BY THE DEFENDANT WHEN HER VEHICLE WAS STOPPED IN TRAFFIC.

1 our answers that we gave Mr. Zimmerman yesterday. I
2 believe he supplemented his this week too.

3 I'd also like to file a trial brief which we
4 have prepared for your benefit and a copy is being given
5 to Mr. Zimmerman, as well as two motions. One to amend
6 the Motion for Judgment by deleting the specific allegations
7 of negligence that are set forth in subparagraphs A, B and
8 C and just allege negligence in general.

9 The second motion is a Motion in Limine for
10 entry of an order or a direction to Mr. Zimmerman
11 restricting him from inquiring in any way of Mrs. Weems as
12 to why she didn't go to Group Health when a charge of only
13 three dollars a visit would be involved, if she used
14 Group Health rather than some of the other doctors that
15 she did go to see.

16 I think that -- I anticipate that Mr. Zimmerman
17 may attempt to raise this as an issue to mitigate damages
18 and I don't think that that would be proper mitigation.
19 Then our only burden would be to show that the charges are
20 reasonable and that they were necessary and what a three
21 dollar charge is for Group Health. She could have had a
22 number of different reasons -- I believe some of which she
23 gave at the deposition -- as to why she went to other

1 doctors other than Group Health.

2 But I think it would be extremely prejudicial
3 to Mrs. Weems if that was brought out before the jury and
4 we'd ask the Court --

5 THE COURT: Fine.

6 Mr. Zimmerman.

7 MR. ZIMMERMAN: Well, Your Honor, I have no
8 objection to his first motion to delete the paragraphs A,
9 B and C of the specific acts of negligence. I have no
10 objection to that.

11 As far as -- you heard in my opening statement,
12 as far as the testimony is going to be that Mrs. Weems
13 waited a great period of time before going to see these
14 doctors. I think I am entitled to ask her why she didn't
15 go to Group Health. She is a member of Group Health and
16 why she didn't make an appointment to see this doctor.

17 The issue is mitigating damages and why didn't
18 she go to seek treatment.

19 THE COURT: Anything else?

20 MR. HOVIS: Well, Your Honor, she was seeking
21 treatment from different doctors at the time that he asked
22 her in the deposition about Group Health. But if he is
23 trying to mitigate damages by showing that she can have a

* * *

1 A. Eleven years.

2 Q. Do you have any children?

3 A. No.

4 Q. Now, directing your attention to the 13th day
5 of April, 1978. Did anything unusual occur to you on that
6 day?

7 A. Yes. I was in a van on the way to work and we
8 were stopped on Route 66 eastbound near the Beltway. I
9 heard brakes screeching for a couple of seconds and then we
10 were hit quite hard and the defendant's car went off the
11 road in a cloud of dust. He wound up in the median strip.

12 Q. Now, you say you were in a van.

13 MR. HOVIS: Your Honor, I believe there is a
14 rule on witnesses.

15 THE COURT: Is this your witness?

16 MR. HOVIS: That is one of the witnesses, Your
17 Honor.

18 THE COURT: To the gentleman that just came in,
19 there's been a rule on the witnesses which means the
20 witnesses have to stay outside the courtroom, except during
21 the period of time they are testifying. Mr. Tilbury will
22 show you where to stay.

23 BY MR. HOVIS:

1 Q Now, Eva, you say you were in a car-pool van;
2 is that correct?

3 A Yes; that's correct.

4 Q How many people were in that van?

5 A There were a total of eight people.

6 Q And what time of day did this happen?

7 A It was approximately seven a.m..

8 Q Were you on your way to work?

9 A Yes.

10 Q And would you tell the ladies and gentlemen of
11 the jury what the weather was like.

12 A It was a clear day, dry, nothing unusual, an
13 ordinary dry day.

14 Q Now, when the accident happened how were you
15 seated in the van?

16 A I was sitting behind the driver and I had turned
17 around to see what the screeching was about and the brakes
18 were screeching. Just as I was turning around we were hit.

19 Q Now, let me ask you again if you would keep
20 your voice up so everyone can hear what you have to say.

21 A Okay.

22 Q Now, did you see who was operating the car that
23 hit you?

1 A. (No response.)

2 Q Did you see who was operating the car that hit
3 you?

4 A Yes. After he went off the road the defendant
5 got out of his vehicle and I saw him then.

6 Q This gentleman here?

7 A Yes.

8 Q Now, was there any other vehicle that you saw
9 that was involved in the accident in any way, other than
10 your vehicle and his vehicle?

11 A No, sir.

12 Q Did you talk to the defendant at the scene?

13 A No, I did not.

14 Q Now, after the accident did you think you were
15 hurt?

16 A Not immediately after, no.

17 Q What did you do?

18 A We went on to work after the policemen got
19 through.

20 Q And what did you do the rest of that day?

21 A I did my work. By that afternoon I was
22 beginning to get stiff. My neck was beginning to get sore
23 and it got worse that evening and then by the next morning

1 I couldn't lift my head off the pillow. So I --

2 Q Now, as far as the accident itself is concerned
3 what part of the van that you were in was struck by what
4 part of the vehicle the defendant was driving, if you know?

5 A Our rear end, the left rear panel was struck by
6 the defendant's car.

7 Q Do you know what --

8 A His -- the side of his rear was struck.

9 Q Now, do you know what lane of travel you were in
10 at that time?

11 A We were in the middle lane, I am pretty sure.

12 Q And how many lanes of travel does Route 66 have
13 at that point?

14 A It has three lanes.

15 Q Okay. Now, you say the next morning you
16 couldn't raise your head off the pillow?

17 A Yes, sir. That's right.

18 Q Why was that?

19 A My neck had no strength to it. It was -- I
20 couldn't pick it up. I had no strength. I had to hold it
21 up.

22 Q Well, now would you explain to the ladies and
23 gentlemen of the jury how you felt that morning.

* * *

1 Q Okay. You made a mistake.

2 And today you are positive you were in the
3 center lane, or do you know for sure?

4 A Yeah, I am virtually positive.

5 Q Okay. What happened to you in the impact; did
6 your head hit anything?

7 A I was thrown back and then forward.

8 Q Okay. And didn't you tell everybody after the
9 accident that you had no problems at all?

10 A Yes, right after the accident.

11 Q And prior to the impact did you ever see the
12 other automobile?

13 A I heard brake -- the brakes screeching.

14 Q My question was, ma'am: Did you see the other
15 automobile prior to the impact?

16 A No; no, sir.

17 Q The first thing you heard was the screeching of
18 brakes?

19 A Yes.

20 Q And there were seven other people in the car?

21 A Yes.

22 Q Where are they today?

23 A The driver is in Pennsylvania.

1 Q Okay. What about the other six people; are
2 any of them here today to testify?

3 A Oh, here? No, sir.

4 Q They are not here to testify today?

5 A No.

6 Q Are the other six people in the Washington, D.C.
7 area?

8 A I only knew two of the others in the van.

9 Q Well, two of the others, those two people, are
10 they in the Washington, D.C. area?

11 A Yes, they are.

12 Q Okay. They are in the State of Virginia today?

13 A (No response.)

14 Q Do they both live in the State of Virginia?

15 A They used to. I am not sure where they live
16 now.

17 Q Did you actually see the impact of this other
18 automobile and the van you were riding in; did you actually
19 see it occur?

20 A No. I felt it occur.

21 Q When was the first time you saw the other
22 automobile?

23 A As he was going across the highway and in the

1 median, I saw him go in there.

2 Q After the impact?

3 A Yes.

4 Q Did you talk to the driver of the other
5 vehicle, Mr. Blalock, after the accident at all?

6 A No, sir, I did not.

7 ~~Q Was the van that you were riding in driveable
8 after the accident; did you drive away in the van to work?~~

9 ~~A Yes. Yes, it was driveable.~~

10 Q The damage was to the right rear taillight; is
11 that correct, or the left rear taillight?

12 A The rear area, yeah.

13 Q Right around the taillight?

14 A I think so.

15 ~~Q But it was no problem with driving the van on
16 to work that morning?~~

17 ~~A No, no.~~

18 ~~Q Okay. As a matter of fact, you went on to work
19 that morning.~~

20 ~~A Yes.~~

21 ~~Q You saw Dr. Rothschild on three occasions, I
22 believe.~~

23 ~~A Yes, sir.~~

* * *

1 doctor comes that we would hear him?

2 MR. HOVIS: I don't have any problem with that.

3 THE COURT: All right.

4 Suppose you go ahead and proceed then,
5 Mr. Zimmerman.

6 MR. ZIMMERMAN: Your Honor, I don't want to
7 prejudice my motion to strike. Any problem with that?

8 THE COURT: Well, I understand. I guess this
9 would be an appropriate time to hear that now since
10 Mr. Hovis -- the only other witness he has is a medical
11 witness.

12 MR. ZIMMERMAN: I will be glad to make it now,
13 Your Honor.

14 THE COURT: Any problem about that, Mr. Hovis?

15 MR. HOVIS: None, Your Honor.

16 THE COURT: All right. Let's go ahead.

17 MR. ZIMMERMAN: Your Honor, I'd move to strike
18 the testimony. The only testimony that I understand that
19 we have received so far is from Mrs. Weems.

20 THE COURT: Before I actually hear your motion,
21 though, suppose we have a recess for a couple of minutes
22 and, Mr. Hovis, you might talk to your client again about
23 the liability aspect of it and to Mr. Zimmerman.

1 MR. HOVIS: Okay.

2 THE COURT: See if you all can resolve
3 anything. Suppose I recess for about five minutes.

4 MR. HOVIS: Okay.

5 (Whereupon, a recess was taken.)

6 THE COURT: Mr. Zimmerman.

7 MR. ZIMMERMAN: Your Honor, I will begin with
8 the cases I believe Mr. Hovis will not rely on. Pickett
9 versus Cooper is a case where the defendant crossed over
10 from northbound to southbound. It is not on point. Cook
11 versus Basnight is a case where the defendant ran a red
12 light; not on point.

13 The case I assume Mr. Hovis is going to rely
14 is Watford versus Morse, 202 VA 605. In that case the
15 evidence was the defendant's foot slipped off of his
16 brake and he ran into the rear of the plaintiff, who was
17 stopped at a red light.

18 The difference in that case is there is some
19 testimony of what the plaintiff did. The court specifically
20 referred, it is true, that the fact the defendant's foot
21 slipped off the brake does not as a matter of law
22 constitute negligence as the sole proximate cause of the
23 plaintiff's injury.

1 It goes on to say: But when you have got that
2 evidence plus the fact that the plaintiff was stopped or
3 nearly stopped at a red light, there was a prima facie case
4 of negligence.

5 Where is it in this case, Your Honor?

6 The Snead versus Snead case I think is more on
7 point. That is a recent case where a lady went off the
8 edge of the road and she was killed and her two infant
9 children were in the car. The case was tried and the
10 Virginia Supreme Court said: Where there is no evidence of
11 what caused her to go off the side of the road and caused
12 her death -- and I am sure Your Honor is well aware of the
13 reading.

14 Senator Brault and George Allen got in a big
15 fight about this. Delegate Allen tried to pass a bill
16 showing it was prima facie negligence to go off the edge
17 of the road or cross over the line and that bill was
18 strongly defeated by the legislature.

19 The law in the State of Virginia is a mere
20 happening of an accident is not sufficient evidence of
21 negligence.

22 In this particular case the only evidence you
23 have of how this accident occurred -- and the jury has --

1 is the fact that the plaintiff says, I heard some
2 screeching of brakes, there was an impact and I saw
3 Mr. Blalock's car over in the median strip. That is not
4 enough evidence to go to the jury on, Your Honor.

5 There's got to be some indication of what
6 happened and the impact is not a regular rear end impact,
7 Your Honor. The evidence is that the damage was to the
8 right rear of Mr. Blalock's automobile and the left rear of
9 the automobile. It is not just an impact that occurred
10 when the defendant ran into the rear of the plaintiff.

11 There's got to be some more testimony. I don't
12 know where that testimony was. There was a lot of other
13 witnesses here at the scene who are not here to testify
14 today. But the only evidence you have right now to present
15 to that jury is, I heard screeching of brakes, there was
16 an impact and I saw Mr. Blalock's car in the median strip,
17 going to the median strip.

18 Your Honor, that is just not -- he's got to
19 prove negligence. That is his burden, not my burden, to
20 show how this accident occurred. I think the law is quite
21 clear. The mere happening of an accident is not sufficient
22 to show negligence and there is no evidence to go to the
23 jury at this time.

1 MR. HOVIS: Your Honor, in response to that,
2 I agree the law is quite clear that the mere happening of
3 an accident does not make out a prima facie case. But I
4 don't agree, number one, with what the recitation of the
5 testimony is. The testimony is that she heard screeching
6 of the brakes; that there was an impact and that
7 Mr. Blalock's car went over in the median strip and that
8 he was the driver of that car and that that car was the
9 car that impacted with her car and the place it impacted
10 was in the rear end of that car.

11 In response to a question that Mr. Zimmerman
12 asked Mrs. Weems, he asked her -- and if I can quote the
13 question directly -- he said, did you talk with
14 Mr. Blalock after he had hit you. There is no question
15 that he had conceded that Mr. Blalock hit the vehicle that
16 Mrs. Weems was riding in, in the rear.

17 Based upon the cases that I have cited in my
18 memorandum that fact, which is all we know at this point,
19 makes out a prima facie case of negligence and the burden
20 shifts to the defendant to go forward with the evidence
21 and explain some reason.

22 There may be other evidence that we have to
23 offer and for reasons of tactics, if nothing else, we may

1 not choose to present it at this time. But we have made
2 out a prima facie case and it is not incumbent upon us to
3 reveal other things at this point once we have done that.

4 We can save them for rebuttal and that is what
5 we intend to do. Once we establish, which we have in this
6 case, that Mrs. Weems was in the vehicle; that the
7 defendant, Mr. Blalock, struck the vehicle that she was
8 in from the rear; then that establishes under the cases
9 that I have cited.

10 I would like to read from Watford versus
11 Morse, after the part that Mr. Zimmerman points out about
12 the foot slipping off the brake. The court said: As the
13 case cite points out, it is generally held that a foot
14 slipping off a brake is not negligence as a matter of law.
15 But when the plaintiff showed by the evidence that the car
16 in which she was riding was struck from the rear while
17 stopped or nearly stopped -- which is what we have in this
18 case -- at a red traffic light, she made out a prima facie
19 case of negligence and the burden of going forward with
20 the evidence on the issue of negligence shifted to the
21 defendant.

22 So at this point we have made out a prima facie
23 case and the burden of going forward on the issue of

1 negligence is now in the defendant's lap to explain why he
2 impacted with the vehicle in which Mrs. Weems was riding.

3 MR. ZIMMERMAN: Your Honor, I will just be
4 brief.

5 Mr. Hovis has got the "but" part right, you
6 know; but the plaintiff was stopped at or nearly stopped.
7 He forgets the other part of the case that I did quote
8 that the defendant's foot slipped off the brake. We don't
9 have any evidence in this case and here is his statement.

10 One, there is an impact and, two, that
11 Mr. Blalock caused the impact and Mrs. Weems was a
12 passenger in the van. That is what he just stated, Your
13 Honor; those three things happened. That is not enough.
14 He's got to prove what Mr. Blalock did that was negligent
15 and wrong and he hasn't done that in this case.

16 THE COURT: Well, Mr. Hovis, I am sure you
17 realize that you have problems in this case and I think
18 Mr. Zimmerman is right. I think that you do have to show
19 that there is some negligence on the defendant's part. At
20 this point the only thing that has been shown is that
21 there has been an impact; that in all probability this lady
22 was injured, although, of course, we don't have the
23 doctor's testimony now, but for the purposes of this

1 argument I would accept the fact that she was injured in
2 the accident.

3 But I think all you have shown at this point
4 is that there has been an accident, period. Of course,
5 there was an accident from the rear portion of it.

6 MR. HOVIS: Well, Your Honor --

7 THE COURT: I don't feel I have any choice but
8 to accept the motion. I would grant it.

9 MR. HOVIS: Well, okay.

10 I would like to point out that the court in
11 the decision did not say that the reason that the -- we
12 have to establish the reason that the car hit the car in
13 the rear and that is what we are basing our motion on and
14 our statement of law on it.

15 We take exception to the Court's ruling.

16 THE COURT: All right. I will note your
17 exception. The motion is granted.

18 If you would prepare an appropriate order.

19 MR. ZIMMERMAN: Yes, sir, I will.

20 THE COURT: If you'd ask the jury to come back.

21 (Whereupon, the jury returned
22 to open court.)

23 Members of the jury, while you were outside

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