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Clerk, Supreme Court of Appeals
Richmond, Va.

Record No. 6794

In the
Supreme Court of Appeals of Virginia
at Richmond

HYDELIA COTMAN

v.

WINFRED WHITEHEAD, ET AL.

FROM THE CIRCUIT COURT OF CHARLES CITY COUNTY

RULE 5:12—BRIEFS

§5. Number of Copies. Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 on or before the day on which the brief is filed.

§6. Size and Type. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

HOWARD G. TURNER, Clerk.

Court opens at 9:30 a.m.; Adjourns at 1:00 p.m.

IN THE

Supreme Court of Appeals of Virginia

AT RICHMOND

Record No. 6794

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 10th day of October, 1967.

HYDELIA COTMAN, Plaintiff in error,

against

WINFRED WHITEHEAD AND NANNIE LEE JONES, Defendants in error.

From the Circuit Court of Charles City County
Robert T. Armistead, Judge

Upon the petition of Hydelia Cotman a writ of error is awarded her from a final order entered by the Circuit Court of Charles City County on the 17th day of April, 1967, in a certain motion for judgment then therein depending, wherein the said petitioner was plaintiff and Winfred Whitehead and another were defendants; upon the petitioner, or some one for her, entering into bond with sufficient security before the clerk of the said circuit court in the penalty of $300, with condition as the law directs.

RECORD

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page 1 }

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MOTION FOR JUDGMENT

Plaintiff moves the Court for judgment against the defendants, jointly and severally, in the sum and on the grounds hereinafter set forth.

1. On or about the 4th day of April, 1966, a certain Ford automobile in which plaintiff was an occupant was involved in a collision with a certain Chevrolet truck on State Route No. 5, at its intersection with State Route No. 606, in Charles City County, Virginia.

2. At the time of the aforesaid collision, the said Ford automobile, which was operated and controlled by the defendant, Nannie Lee Jones, was being driven by her in a westerly direction on said State Route No. 5.

3. At the same time, the said Chevrolet truck, which was owned, operated and controlled by the defendant, Winfred Whitehead, was being driven by him in an easterly direction on said State Route No. 5, approaching the said Ford automobile from the opposite direction thereof.

4. And the said defendants, and each of them, did then and there so carelessly, recklessly and negligently, and page 2 } in a grossly negligent manner, run and operate their respective automobiles so that the same were caused to come into collision with each other with great force and violence.

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

WHEREFORE, plaintiff demands judgment against the defendants, jointly and severally, in the sum of Fifteen Thousand Dollars ($15,000.00) and costs.

Trial by jury is demanded.

HYDELIA COTMAN,

By WILBUR C. ALLEN
(Allen, Allen, Allen and Allen)
1809 Staples Mill Road
Richmond, Virginia
Attorney for the plaintiff.

Filed in the Clerk's Office the 14 day of Dec., 1966.

J. H. BINNS, Clerk

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page 6 }

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PLEA OF RELEASE

The defendant, Winfred Whitehead, by counsel, says that previously to the plaintiff's Motion for Judgment being filed on December 14, 1966, in the Circuit Court of Charles City County, the plaintiff in consideration of the sum of Thirty-Five and 00/100 Dollars ($35.00) then paid to her by the defendant, Nannie Lee Jones, on April 13, 1966, did on said day acknowledge the consideration and did on said day release and discharge the defendant, Nannie Lee Jones, from any and every claim, demand, right, or cause of action of whatever kind or nature, either in law or in equity, especially the liability arising from the accident which occurred on April 4, 1966, at or near the intersection of Virginia State Route 606 and Virginia State Route No. 5, Charles City County, Virginia, and further discharged the defendant, Nannie Lee Jones, for the several matters and things set forth in her Motion for Judgment and on account of which she is now seeking recovery against the defendants, Nannie Lee Jones and Winfred Whitehead, and these defendants allege the said release was freely and fairly given and executed by the said plaintiff on the 13th day of April, 1966, and that the plaintiff well knew the nature and effect of said release previous to executing the same and that the said sum of Thirty-Five and 00/100 Dollars ($35.00) so paid by the defendant, Nannie Lee Jones, to the plaintiff was a full and

fair equivalent for any demand which the said plaintiff could or might have at the time of giving the release against these defendants in respect to the several matters set forth in her Motion for Judgment.

That though the said Winfred Whitehead was not a party to the aforesaid release nevertheless is entitled to be
page 7 } discharged by the said release, for a release of one *tort feasor* is a release of all *tort feasors*.

WHEREFORE, the defendant, Winfred Whitehead, pleads the said release in bar of the said plaintiff's Motion for Judgment and prays judgment of this Honorable Court whether he shall be compelled to make any further our other answer to the said Motion for Judgment, and ask that he be dismissed in this case with his reasonable cost and charges in his behalf in this matter expended.

WINFRED WHITEHEAD

By TRAVIS W. POOLE
601 Mutual Building
Richmond 19, Virginia
Counsel

* * * * *

Filed Dec. 27, 1966.

J. H. BINNS, Clerk

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page 21 }

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PLEA OF RELEASE AND MOTION TO DISMISS OF NANNIE LEE JONES

PLEA OF RELEASE

The defendant, Nannie Lee Jones, represents unto the Court that the plaintiff, prior to filing her Motion for Judgment herein, did execute a release, releasing the defendant herein from any and all claims arising out of the accident which is the basis of this action; this defendant further represents unto the Court that the plaintiff was paid the consideration recited in the release and accepted such payment in full

compromise settlement of all claims against this defendant arising out of the accident which is the basis of this suit; the defendant further represents unto the Court that said release was not an admission of liability on the part of this defendant or anyone else to the plaintiff.

MOTION TO DISMISS

This defendant respectfully moves the Court to dismiss the Motion for Judgment on the grounds hereto-
page 22 } fore stated in the plea of release.

NANNIE LEE JONES
By Counsel

J. CALVITT CLARKE, JR.
SANDS, ANDERSON, MARKS & CLARKE
Suite 1420—Fidelity Building
Richmond, Virginia 23219

* * * * *

Filed Jan. 14, 1967.

J. H. BINNS, Clerk

* * * * *

page 25 } RELEASE OF ALL CLAIMS

KNOW YE, That I Hydelia Cotman, an individual For and in consideration of the sum of Thirty-five and 00/100 Dollars ($35.00) to me/us in hand paid by George Washington Jones and/or Nannie Lee Jones the receipt of which is hereby acknowledged, I/We being of lawful age, for myself/ourselves, my/our heirs, administrators, executors, successors and assigns hereby remise, release, acquit and forever discharge the said George Washington Jones and/or Nannie Lee Jones, his/her successors and assigns, and/or his, her, their, and each of their associates, heirs, executors and administrators, and any and all other persons, associations and/or corporation, whether herein named or referred to or not, of and from any and every claim, demand, right, or cause of action of whatever kind or nature, either in law or in equity, especially the liability arising from an accident which occurred on or about the fourth day of April, 1966 at or near the intersection of

Va. State Rt. #606 and Va. State Rt. #5, Charles City County, Va. for which I/We have claimed the said George Washington Jones and/or Nannie Lee Jones to be legally liable, but this release shall not be construed as an admission of such liability.

IN WITNESS WHEREOF, I/We have hereunto set my/our hand(s) and seal(s) this 13 day of April, 1966.

READ CAREFULLY BEFORE SIGNING

Hydelia Cotman (SEAL)
Witness Ronald L. Coleman

* * * * *

page 32 }

* * * * *

April 19, 1966

Mr. Ronald L. Coleman, Adjuster
4909 Augusta Avenue
Crawford and Company
Richmond, Virginia

RE: Miss Hydelia Cotman
April 4, 1966

Dear Mr. Coleman:

Miss Cotman was seen in our office on April 13, 1966, for evaluation of injuries allegedly sustained in an automobile accident on Monday, April 4, 1966. This 28-year-old colored female at this time was the passenger in the right front seat of an automobile which was struck on the left side. At this time she was thrown against the windshield striking her head. She has been having aching pain in the upper back and neck region since this time as well as some headache. However, after the accident she felt only a mild headache, but the next morning she awoke with stiffness in her neck. Since this time she has continued to have some aching in her neck as well as stiffness which she feels is related to the amount of standing she is required to do in her work as an aid. Her headache has occurred off and on since the time of the accident and has had no visual or hearing difficulty since the time of the accident. She has had some aching pain in the upper portion of her back

and the region between the shoulder blades which "feels like something pulling." She denies any arm or leg pain and dizziness.

Examination at the time revealed an extremely obese colored female who does not appear to be in distress. Examination of the head revealed the absence of any deformity. There is limitation of neck rotation, particularly to the right. There is some tenderness over the right anterior neck muscles but no deformity or spasm. There is slight tenderness in the lower dorsal spine region of T 10, T 11. X-rays of the cervical and dorsal spine did not reveal any abnormality.

It is my impression that Miss Cotman sustained a mild cervical strain at the time of her accident. She is recovering slowly, however, I feel that she will profit from a mild analgesic as well as some heat to the painful area. She was given directions for the same at this visit and we plan to see her again in two weeks. I would anticipate an uneventful recovery, approximately one month to six weeks.
page 33 } Certainly no permanent disability is anticipated from this relatively mild injury.

Most sincerely yours,
E. L. Clements, Jr., M.D.

ELC:nb

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page 42 }

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ORDER

This day came the parties, by counsel, on the plea of release and motion to dismiss filed by the defendant, Nannie Lee Jones and the defendant, Winfred Whitehead, upon consideration whereof and having heard the evidence in the case, the Court doth sustain the pleas of release and motions to dismiss filed by both of the defendants, to which said action the plaintiff, by counsel, doth note her objections and exceptions. Whereupon, the Court doth order that this case be dismissed with prejudice.

ENTER THIS ORDER: 4/17/67.

ROBERT T. ARMISTEAD, Judge

We ask for this:
TRAVIS N. POOLE
Counsel for Winfred Whitehead

NATHAN H. SMITH
Counsel for Nannie Lee Jones

Seen and objections and exceptions noted:
REGINALD P. MORRIS
Counsel for plaintiff

* * * * *

page 43 }

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ASSIGNMENT OF ERROR

The trial court erred in sustaining the pleas of release and motions to dismiss filed by defendants, and in rendering judgment in favor of defendants.

* * * * *

Respectfully submitted,
HYDELIA COTMAN
By: JAMES A. EICHNER
Of counsel

JAMES A. EICHNER
ALLEN, ALLEN, ALLEN & ALLEN
P. O. Box 6855
Richmond, Virginia 23230

Filed June 1, 1967.

J. H. BINNS, Clerk

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Hydelia Cotman

page 5 }

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The Court:

* * * * *

I believe, Mr. Morris, you agree that your client has signed a release?

Mr. Morris: Oh, yes, sir; no question about that.

The Court: And the amount paid therefor was, you tell me, $35.00?

Mr. Morris: $35.00. There is no question about that.

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page 6 }

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The Court: We all agree, so I do not suppose there is any need. I will mark that Defendants' 1 and 2, there being no dispute. The draft is 1, and the release is 2.

(The draft was received as Defendants' Exhibit No. 1.)

(The release was received as Defendants' Exhibit No. 2.)

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page 7 }

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EVIDENCE ADDUCED IN BEHALF OF THE PLAINTIFF

HYDELIA COTMAN, plaintiff, was sworn, and testified in her own behalf, as follows:

DIRECT EXAMINATION

By Mr. Morris:

Q. Mrs. Cotman, would you state for the record, please, your full name and address?

Hydelia Cotman

A. Hydelia Cotman; Route 3, Box 520, Charles City.
Q. How old are you, Mrs. Cotman?
A. Twenty-nine.
Q. Were you involved in an automobile accident on April 4, 1966, in Charles City County?
A. Yes, I was.
Q. Where were you located, as far as the vehicles were concerned, passenger, driver, or what?
page 8 } A. Passenger.
Q. Which car were you riding in?
A. Mrs. Annie Lee Jones.
Q. Where were you headed, at that time?
A. To work.
Q. Where would that be?
A. In Richmond.
Q. Who was in the car with you?
A. Just Annie Jones and I.
Q. Where were you located in that car?
A. Setting on the side from the driver. She was driving, and I was sitting on the side.
Q. In the front seat?
A. Front seat.
Q. You say you were involved in an accident, would you describe briefly how the accident happened, as far as you are concerned?
A. As we was going towards Richmond, this car was backing down the road, and those two trucks came around this curve, one truck cut out and passed by us, and the other truck came right across and hit Mrs. Annie Jones' car.
Q. Were you injured, as a result of this collision?
page 9 } A. Yes, sir.
Q. Just basically, what injuries did you receive in this accident?
A. I had terrible headaches, and then I started having this pain in my neck, and it went in my back.
Q. Did you receive any medical attention for these injuries?
A. I went to St. Philip emergency room, and they gave me three *of* four Darvons and told me to take those. And then, I went to see Dr. Clements after Mr. Coleman told me to go see him.
Q. Let's back up for a moment. Did you see a bill for your services—for treatment rendered at MCV?
A. Yes, sir, I did.
Q. Do you know how much that was?
A. I think it was five-fifty.

Hydelia Cotman

Q. $5.50. Did you miss any time from work, as a result of these injuries?

A. Yes, sir.

Q. How much did you miss, the first few weeks? How many days?

A. Three days.

Q. About how much do you make per day?

A. About ten dollars a day.

page 10 } Q. About ten dollars. So you missed about three days, or about $30.00. Did there come a time when you talked with anyone about this accident, from the insurance company, representing Mrs. Jones?

A. I talked to a Mr. Coleman.

Q. Mr. Ronald Coleman. Do you see him in the courtroom today?

A. Right there (indicating).

Q. Is that the same gentleman that you talked to?

A. Yes, sir.

Q. Where did you talk with Mr. Coleman?

A. I met him up there at the hospital, but I talked to him on Twelfth Street.

Q. Do you know what date that was?

A. I think it was the 13th of April.

Q. What date did the accident happen on?

A. On the 4th of April.

Q. So, nine days later, you talked with Mr. Coleman. Where were you located, so far as when you talked with him, in the car, in the building, or where?

A. In the car.

Q. In Mr. Coleman's car. And did you sign anything, at that time?

A. I signed a piece of paper, that when he asked page 11 } me about the accident, where it was, and what happened, was I paying Mrs. Annie Jones, and everything. He let me read that, and I signed that piece of paper.

Q. Did you sign another piece of paper?

A. Yes, I did.

Q. Would you take a look at this piece of paper that was just handed to the Court, and tell me at this time if that is your signature on this piece of paper?

The Court: I understood that it had been stipulated that it was.

Mr. Poole: Yes, it was.

Hydelia Cotman

Mr. Smith: Could we refer to the exhibit number, for the record?

The Court: Defendants' Exhibit No. 2.

By Mr. Morris:

Q. Miss Cotman, will you look at that, and tell us for the record if that is your signature on it?

A. Asked me what now?

Q. If that is your signature on that piece of paper?

A. Yes, sir.

Q. Did you read that piece of paper, before you signed it?

A. No, sir.

page 12 } Q. What did Mr. Coleman—you may hand that back to the clerk—what did Mr. Coleman tell you —let me ask you, first, did Mr. Coleman give you any money or a check?

A. He gave me a $35.00 check.

Q. Did you endorse that check and cash it?

A. Yes, I did.

Q. What was that $35.00 for?

A. He told me it was for pay for the medical care that I got at the hospital, because he asked me had I got the bill, and I told him yes, and he told me to pay that. And the other one was for days that I was off from work.

Q. Did Mr. Coleman tell you whether or not that $35.00 was for future pain and suffering, or future damages, or future doctors' bills, or anything of that nature?

A. No, sir, because he just said to me for being off from work, and paid the medical bill that I got at the hospital.

Q. Did you later receive any medical attention?

A. Yes, sir. He told me to go to see Dr. Clements, because they should have X-rayed me there at the hospital, which they didn't. So I went to see Dr. Clements.

Q. Did you go that same day?

A. Yes, sir.

Q. Have you been under his care, since then?

page 13 } A. Yes, sir.

Q. Have you worn a brace, at times?

A. Yes, sir.

Q. Have you received physical therapy treatments at MCV?

A. Yes, sir.

Q. Was this as a result of injuries sustained in this accident?

A. Yes, sir.

Q. Did you know that you were injured that badly, at the time of this accident, when you signed this release?
A. No, sir.

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page 14 }

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Q. Just tell us, then, in your own words, and I think probably you already have, just what did you think that the $35.00 included?
A. I thought the $35.00 was just for my days being off from work, and pay the bill in the emergency room.
Q. Did Mr. Coleman so tell you, that that was what that was for?
A. Yes, sir.

Mr. Poole: Objection.
The Court: Why don't you ask her what Mr. Coleman told her, if anything?

By The Court:
Q. Can you tell us, in your own words, just what was the conversation between you and Coleman?
A. Well, he told me the check was for my days of being off, and paid for the emergency room. Then he told me to go see Dr. Clements, which I did, because he told page 15 } me that she had this $500.00 medical care, and knew it would take care of me, and told me for not to say anything to her about the check that he gave me, because I probably will get something else out the accident, might get something from both the insurance, and he would let me know.
Q. In other words, you could collect, both under the medical care and under the liability?
A. I reckon.

By Mr. Morris:
Q. In response to the Court's question, did you feel that it was—do you know anything about what, if anything, do you know about medical pay on cars, medical pay provisions on automobile policies?

A. I don't know nothing about it.

Q. Don't know anything. What did you think Mr. Coleman meant, when he said you might could recover from both insurance companies?

A. I just thought probably I would get money to pay the bill, and I might get something out of the accident, from the accident.

Q. When he said both insurance companies, what did you think that meant?

A. I just thought maybe I could get something for to pay the medical bill that I went to the doctor and
page 16 } thought I probably might get, you know, receive some money from the accident.

Q. How many vehicles were involved in the accident?

A. Just two.

* * * * *

CROSS EXAMINATION

By Mr. Smith:

Q. Miss Cotman, whom do you work for?

A. The Medical College Hospital.

Q. What do you do at Medical College Hospital?

A. A transport *aid.*

Q. You do what?

A. A transport *aid,* transporting patients.

Q. Is that called hospital *aid?*

A. Well, that is what I was, when I first went in,
page 17 } but I got transferred, and said transport, and it's transport service now.

Q. At the time of the accident, back in April of last year, 1966, you were a hospital *aid,* at that point?

A. Uh-huh.

Q. How long had you been a hospital *aid?*

A. It was two years in February.

Q. Two years this February, you mean?

A. Yes.

Q. This month?

A. Uh-huh.

Q. So, at the time of the accident, you had been over a year?

A. Yes, sir.

Q. As a hospital *aid?*

A. Yes, sir.

Q. In fact, you mentioned that in the emergency room, they gave you Darvon?

A. Yes, they gave me.

Q. You are familiar with Darvon, then?

A. Uh-huh.

Q. What is it?

A. It's packed in a red and grey capsule; they give for headache; and they said it's Darvon.

page 18 } Q. It's for pain?

A. Yes.

Q. You can read, can't you, Miss Cotman?

A. Yes, sir.

Q. Do you have a high school education?

A. I went as far as the tenth grade.

Q. You were given an opportunity to read the statement and the release, Exhibit No. 2, that was just handed you, weren't you?

A. I read the piece of paper that he asked me how the accident happened, and everything, but I didn't read that piece of paper there.

Q. You had a chance to do it, didn't you?

A. You are talking about did I read? That is when he gave it to me.

Q. I mean, at the time that you signed it, you had a chance to read it, didn't you?

A. Well, I didn't read it.

Q. You just didn't. You had a chance to do it, because you read the other instrument, the longer one?

A. Yes. He gave me, and told me to read this.

Q. This had your statement on it?

A. Yes. He told me to read that.

page 19 } Q. And you also had an opportunity, then, to read the release, too, didn't you?

A. Well, he didn't say, "Read it." I just went on and signed it.

Q. Well, at the time that you signed it, you knew, did you not, that it was a release?

Mr. Smith: May I see Exhibits 1 and 2, Your Honor?

Q. (Continuing) What did it say at the top? In big letters, there, at the top?

A. Release of all claims.

Q. Now, you signed, as I understand it, it has been stipulated that you signed this check, Defendants' Exhibit No. 2; is that your signature on the back there?

A. Yes, sir.

Q. It is?

Hydelia Cotman

A. Uh-huh.
Q. You signed it?
A. Yes.
Q. And got the money?
A. Yes, sir.
Q. Spent the money, I take it?
A. Yes, sir.
Q. When you talked with Mr. Coleman, I think you said it was nine days after the accident, were you ex-
page 20 } periencing any pain?
A. Yes, I was having pains down in my neck, and it was going down in my back. So that is when I went to see Dr. Clements.
Q. And, in fact, did you ask Mr. Coleman what doctor you might see?
A. No, sir. He recommended Dr. Clements to me, told me to go see Dr. Clements at the Medical Arts Building, and he gave me their names.
Q. And you did go?
A. Uh-huh.
Q. And didn't Mr. Coleman tell you, at the same time, that there was a medical payments policy?
A. Yes, sir, he said—
Q. I think you told him Mrs. Jones, the driver of your car, had a medical payments policy?
A. Yes, sir.
Q. And did you understand that that was to pay the medical bills, up to the limit of $500.00? Did you understand that?
A. You mean to pay it up—the medical bill would be approximately up to $500.00, he paid us to $500.00?
Q. Yes. That is, if your doctor bills with Dr. Clements, and your hospital bills, and whatever, that they
page 21 } would be paid up to $500.00. You understood that?
A. Yes, sir. He told me that, said that much.
Q. And you also understood that this $35.00, which you got receipt of, was to release Mrs. Jones from any further question, didn't you, any further liability?
A. Say that again.
Q. Did you understand that the $35.00 that you got in exchange for signing the paper that was marked "RELEASE OF ALL CLAIMS," at the top, didn't you understand that that was to release Mrs. Jones, the driver of your car?
A. No, sir. I just thought—took the $35.00 was to be for the—

Hydelia Cotman

Q. What did you think it was for—you were going to get the medical payments through medical payments policy?

A. I just took the $35.00 to be just for the days, like he told me, I lost from work; and plus the pay for the emergency room.

Q. It didn't develop later that you had any broken bones, or anything?

A. No, sir, I didn't.

Q. And you did go to Medical College of Virginia the day of the accident, didn't you?

A. Yes, sir.

page 22 } Q. I take it, when you went in to work, you just checked into the emergency room and had them look you over?

A. We didn't go to work at all. Her brother-in-law took and carried us to the emergency room.

Mr. Smith: I have no further questions.

By Mr. Poole:

Q. Miss Cotman, you tell us, you said that you were riding with Mrs. Jones, would you tell us whether or not you paid her anything; I mean, you paid her anything to ride with her?

A. Yes, sir, I did pay her.

Q. How much did you pay her?

A. Seventy-five cents a day.

Q. When Mr. Coleman first saw you, up on, I believe you said, on Twelfth Street, and you talked in the car?

A. Yes, sir.

Q. After that—that was after you had been examined at the hospital, was it not?

A. Yes, sir.

Q. And, at that time, I believe you said you had lost one day from work, up until that time? Did I understand you correctly in that?

page 23 } A. It was three days, altogether.

Q. I know, but when Mr. Coleman talked to you, you had lost one day from your work at that time?

A. No, sir, I lost three days.

Q. You had lost three days?

A. Yes, sir.

Q. I misunderstood you then. When you talked to Mr. Coleman there, you told him that you had some pain in your legs, did you not?

Hydelia Cotman

A. I told him my neck. See, I had pains in my neck.

Q. Didn't you tell him, at the time that you signed this statement here, that you had pains in your leg? You said that you read this statement, did you not?

A. I read the statement that he asked me, where he wrote down and he let me read it, yes, sir.

Q. And you read that. Now, in the statement, didn't you just merely tell him that you had some pains in your legs, at the time?

A. I don't know whether I did or not.

Q. And you didn't say anything to him about pains in your neck, or your head, or anything else, did you?

A. I told him I had pain in my neck, and it was running down my back; and that is when he decided for
page 24 } me to go see this other doctor. And he said they should have X-rayed me at the hospital.

Q. But I mean, when he wrote out the statement and you signed that statement, didn't you, at that time, merely tell him that you didn't know anything about your injuries, but you had little pains in your leg?

A. I can't remember that.

* * * * *

Q. Now, Miss Cotman, you said that you didn't tell Mr. Coleman that you had pains in your legs, but you did tell him that you had pains in your neck?

A. Yes, sir.

Q. That was at the time the settlement was made, was it not?

A. That was when I talked with him in the car.
page 25 } Q. You talked with him there. Now, when you signed the release for the $35.00 and he gave you that, then he told you to go to the doctor, and that your medical bills would be paid, did he not, when he told you to go to the doctor?

A. He just told me to go to the doctor, and when I get the bills for to send them to him.

Q. To send them to him. And that they would be paid. Now, the release that you signed, he told you that that was a release of any claim against Mrs. Jones; but you would get your medical bills, in addition to that? Did he not tell you that?

A. No, sir, I can't remember that.

Q. You can't remember it?

A. No.

Q. Why did you think you had to send the bills to him? He told you to go to the doctor and send the bills to him, didn't he?

A. Yes, he did.

Q. And did you intend to do that?

A. I sent the bill to him for that first one that I got from the Medical Arts, from the X-rays; but still, they sent me another one, that the bill hadn't been paid.

Q. And he told you that those bills would be paid; that is why you sent them to him, isn't it?

page 26 } A. Well, they wrote back to me for the money, still.

Q. Yes. But he told you that your medical bills would be paid; that is why you had the bills sent to him, didn't he?

A. He told me to send them to him, so I sent them to him.

Q. Well, what did you think that he wanted the bills for, if he wasn't going to pay them? You expected him to pay them; that is why you sent them to him?

A. Yes, he said she had insurance to pay the bills, so I was expecting him to pay the bills.

Q. That is right. And he told you that your medicals would be paid, in addition to the settlement. Didn't he tell you that?

A. I don't know.

Q. Now, when you discussed this with Mr. Coleman, it wasn't a question—you knew that you told him that you were hurt?

A. Yes, sir.

Q. And that you had the pains in your neck at that time, and that he took the release from you, and that was for the injuries, was it not?

A. He took what from me?

page 27 } Q. The release.

Mr. Poole: If Your Honor please, may I see Exhibits 1 and 2?

Q. (Continuing) Mr. Coleman wrote out the statement, did he not? He wrote out the statement about the accident, and you read that?

A. Yes, sir.

Q. Now, it is easier for you to read printing than it is to

read some strange handwriting, is it not? Can't you read printing easier than you can read some person's handwriting that you had never seen before? I mean, you saw this, you had this release in your hand, did you not?

A. Yes, sir.

Q. When you signed it. See big, bold letters up here, "RELEASE OF ALL CLAIMS"? You saw that, didn't you?

A. He just said, "Sign it," so I just signed it.

Q. But you had this, and it is printing; you can read. Right above your signature, it says, "Read carefully before signing." Did you notice that, right up over your signature?

A. No, sir, I just went on and signed it. He said, "Sign it," and I signed it.

Q. Even if it was easier to read. Now, the release also says on the back, "In settlement of all claims and

page 28 } accounts" arising out of the accident. Now, when you endorsed this draft, did you read the back of it?

A. No, sir.

Q. You didn't read that, either?

A. No, sir.

Q. All you read was the amount?

A. Yes, sir; and I signed it.

Q. Did you read that this is a draft for Selected Risks Insurance Company? Did you see that was from the insurance company?

A. I seen it from the Selected Risk Insurance Company. I saw that on there. I read that.

Q. You read this part, but you—

A. No, I didn't read it, I just read it when I went to the store to sign it. So the man who cashed the check for me asked me where it was from, and I told him where it was from.

Q. But you did not read what was on the back of it?

A. No, sir, I didn't read that.

Q. Miss Cotman, when you talked with Mr. Coleman, you thought you had received some injuries in this accident, didn't you?

A. Yes, sir.

page 29 } Q. In fact, you knew it at that time, because you went to the Medical College; you had been there before, hadn't you, before you saw Mr. Coleman?

A. Yes, I went to the emergency room, the same day that the accident happened, but it was late in the evening when I went there.

Hydelia Cotman

Q. Well, they examined you, didn't they?
A. They just took—looked at my head and mashed on it, and everything, so he just said I probably just got shook up. But they didn't X-ray me or nothing.
Q. They didn't X-ray you?
A. Huh-uh.
Q. You didn't have any broken bones, did you?
A. No, sir.
Q. So X-rays wouldn't have told you anything, other than what you knew. They also gave you some medicine?
A. They gave me some pills.
Q. How many days after that was it before you talked to Mr. Coleman?
A. I talked to Mr. Coleman on the 13th.
Q. The 13th; and the accident happened on the 1st?
A. On the 4th.
Q. So it would be nine days afterwards?
page 30 } A. Yes, sir.
Q. So all during that nine-day period of time, had you gone back for further medical treatment?
A. No, sir, I just took those pills he gave me and rubbed some linament that I had at home for the pains in my neck.
Q. You still had the pains in your neck for nine days?
A. Yes, sir.
Q. You had the pains in your neck, when you talked to Mr. Coleman?
A. That's right.
Q. And you knew it?
A. Yes, sir.

* * * * *

Q. When you talked to Mr. Coleman, there was no one else present, was there?
A. Nobody but Mr. Coleman and I.
Q. Just the two of you?
A. That's right.
page 31 } Q. Did you tell him that you were going to a doctor, or did you ask him what doctor to see?
A. I was telling him about the emergency room. He decided for me to go to Dr. Clements, himself.
Q. Did he mention Dr. Clements, by name?
A. He wrote three doctors' names down for me, and said it was in the Medical Arts Building.

Hydelia Cotman

Q. And I believe you said that you knew Dr. Clements, so you would go to him?

A. I didn't say I know Dr. Clements. The first time I ever seen him was the day that I went there.

Q. But you did select Dr. Clements, yourself?

A. No. When I went to see the doctors, I asked for all three. They said Dr. Clements was in. See, I called and made an appo ntment, so I went there that evening.

Q. So he was the doctor that was available?

A. He was the one that saw me, Dr. Clements.

Q. When you talked to Dr. Clements, did you tell him that you would send the bills to Mr. Coleman? Did he ask you?

A. I told him, "Mr. Coleman sent me here."

Q. And that Mr. Coleman would pay the bills?

A. I just told him, "Mr. Coleman sent me here."

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page 32 }

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By Mr. Smith:

Q. At the time you and Mr. Coleman were talking, you were wide awake at the time, I take it?

A. Yes, sir.

Q. He didn't put you under any duress, or physical threat of harm, did he? You weren't afraid that he was going to do something to you, were you?

A. No, sir, I wasn't afraid.

Q. You weren't afraid of Mr. Coleman?

A. No, sir.

Q. He didn't do anything to make you afraid of him?

A. No, sir.

Q. And you were perfectly wide awake, you weren't under any drugs?

A. Yes, sir.

Q. Or influence of alcohol, or anything else, were you?

A. No, sir.

page 33 } Q. You understood what he was telling you, and what he said to you? He talked in language that you understood what he had to say, didn't he?

A. Yes, sir, I understood what he said.

Q. Have any of these medical bills been paid, to your knowledge?

Hydelia Cotman

A. The ones at the hospital have been paid.
Q. What about—
A. That is, for the emergency room; but still owe for the physical therapy.
Q. How about Dr. Clements?
A. His haven't been paid, neither.
Q. Have you finished seeing Dr. Clements?
A. No, sir. I was supposed to go back to him Wednesday.

Mr. Smith: I have no further questions.

RE-DIRECT EXAMINATION

By Mr. Morris:
Q. Miss Cotman, when you and Mr. Coleman talked in the car, who wrote out the statement that counsel have been referring to?
A. Who wrote out the what?
Q. Who wrote concerning the happening of the
page 34 } accident?
A. Mr. Coleman.
Q. Did you write any part of it?
A. No, sir.
Q. Did you read it before you signed it?
A. Yes, sir, I read that, and about how the accident happened, and everything.
Q. Did Mr. Coleman give you a copy of that statement?
A. No, sir.
Q. Have you ever seen a copy, since then?
A. No, sir.
Q. Who wrote out the list of doctors for you to select from?
A. Mr. Coleman.
Q. Do you have that list with you?
A. Yes, sir.
Q. May I see it, please?
A. (Exhibiting)
Q. Would you read it into the record, the names on that list, Miss Cotman?

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page 35 }

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A. Dr. E. L. Clements, Jr., Dr. James Tucker, Dr. James Dalton—D-a-l-t-o-n, and Dr. Beverley C-l-a-y, or C-l-u-y, one, and then, 401 Medical Arts Building, or 116 East Franklin Street, Richmond.

Mr. Poole: That is Dr. Clary, we will stipulate for the record; the last one was Dr. Clary.

Mr. Morris: I would like to introduce this as Plaintiff's Exhibit.

The Court: That will be Plaintiff's Exhibit 1.

(The list of doctors was received as Plaintiff's Exhibit No. 1.)

By Mr. Morris:

Q. Was one of the doctors on that list one that you saw?

A. Dr. Clements.

Q. You continued to see him?

A. Yes, sir.

page 36 }

* * * * *

By The Court:

Q. Let me ask you this: You say Dr. Clements' bill was not paid?

A. No, sir, it was not paid.

Q. Did you ever talk to Mr. Coleman, or anyone, as to why he did not pay your bill?

Mr. Morris: Your Honor, I might clear that up, if I might. Apparently, these bills were submitted to Mr. Coleman, and he, in turn—I don't know, I think he can clear this up as to the check that was issued for payment of some of these bills, which—

The Court: The question I was really directing to her was, when the bills were not paid, did she ever communicate—

Hydelia Cotman

By The Court:

Q. Did you ever go to Mr. Coleman, or try to find out why they did not pay the bills?

A. No, sir.

Q. What did you do, when the bill was not paid?

page 37 } Did you do anything?

A. No, sir.

Mr. Morris: Your Honor, my only point was that a draft was issued for payment of some of these bills, by Mr. Coleman's company, which I have in my possession, and Miss Cotman turned over to me. But I intended to bring that out with Mr. Coleman, as to where it came from, and for what purpose, because I don't think she knew that.

By The Court:

Q. Let me ask you this: You say that you have continued to go to Dr. Clements, up to this time?

A. Yes, sir.

Q. And are still going?

A. Yes, sir.

Q. Have you lost any time from work, since then?

A. No, sir.

Q. What is your present complaint?

A. Well, I suffer with my back, and I wear this back support.

Q. You are wearing a support now?

A. No, sir. He told me to take it off, and he was going to X-ray me when I come back to him Wednesday.

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page 38 }

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The Court: Could we get Dr. Clements' letter? Do you have some report from him?

Mr. Smith: I have a series of them, Your Honor. I would be glad to. I think, if Miss Cotman's counsel would agree, we could stipulate this would be his testimony.

Mr. Morris: No, sir, I would not stipulate to that. I will certainly have no objection to the Court reading the letters.

The Court: If his testimony would be different from the

letter, I don't see that stipulating would get you very far. It would not be possible to resolve the matter today. That is what I was—

Mr. Smith: That is what I had hoped we could do.

The Court: Are the details of this going to be
page 39 } of any consequence, the details of Dr. Clements' testimony?

Mr. Morris: I doubt it seriously, Your Honor, frankly.

The Court: If there is not going to be—

Mr. Morris: I haven't talked to Dr. Clements. What his testimony would be, I really don't know. I assume it would be in general line with the reports. I would have to assume it would be generally what the reports would show, but I don't know that; I haven't talked to Dr. Clements at all.

Mr. Poole: Mr. Morris, you have copies of the reports.

Mr. Morris: Apparently, I don't have them. I see some of them here. I am not sure; I would like to look at them, to be sure.

Mr. Smith: Why don't you look at them? They are in chronological order, I think, pretty much.

Mr. Morris: Your Honor, there is one report that I have not seen, and that was the first one, dated April 19 of 1966; and then, there is one report which they do not have, apparently, which is January 6, 1967. I will add that, from my file.

Then, I have one report, Your Honor, from Dr. I. A. Jackson, orthopedist, in Richmond, that also saw this
page 40 } lady. I think that ought to be presented to the Court; dated June 4, 1966.

Mr. Smith: I have no objection to that, Your Honor.

The Court: He is your doctor; surely, you don't expect him to testify to something differently?

Mr. Morris: No, not in any detail. It certainly should show a general idea of her injuries.

The Court: Are you willing to stipulate this? I cannot consider the letter, unless there is some stipulation. The letter is hearsay.

Mr. Morris: I don't think, Your Honor, there would be any material difference in his testimony from this. I think it would just be in more detail, and possibly would deal with the future, as far as permanency is concerned, more than these letters have gone into detail. For that reason, I wouldn't be able to stipulate as to this being exactly his testimony. I certainly think it would be in line with it, though.

Mr. Smith: If I remember correctly, Dr. Clements did have something in his reports about prognosis.

The Court: Let me read them over, and see.

Mr. Smith: Yes, sir.

(Intermission)

page 41 } The Court: Did you say there was a letter from Dr. Jackson? Perhaps I overlooked that.

Mr. Morris: Yes, sir. I passed one up.

(Intermission)

The Court: There may be some slight conflict as to the degree of the injuries, from reading the medical reports. You do not have any final report from Dr. Jackson?

Mr. Morris: No, sir, that is the only report that I have. I am sure that it is the only one. That is the only report that I have, Your Honor.

The Court: I am sure that the nature and the extent of the injuries had a lot of bearing on the Supreme Court, in the case which went up from Norfolk.

Mr. Poole: Yes, sir. We will discuss the two cases, the ruling cases in this situation, as soon as we have the evidence, sir.

The Court: I understand. But I am just wondering can you show any additional ailments, other than these mentioned here?

Mr. Morris: No, sir. Other than what the plaintiff testified to, and the reports, there is nothing, to my knowledge, than what is covered here. The degree, of course, is something that I don't know the extent of, at this point.

page 42 } The Court: It would appear, from reading this, that she was making satisfactory progress; but, obviously, had some pain and discomfort, in the past.

Mr. Morris: Yes, sir.

The Court: Let me ask you this. Are there any additional facts which you wish to present?

Mr. Morris: Well, Your Honor, I have no additional medical facts, other than if the matter would go to court, I am—trial, I am sure that Dr. Clements would be called as a plaintiff's witness; and possibly, Dr. I. A. Jackson. But they would be only two, to my knowledge, at this time. Whether the defense would get independent medical examinations from other physicians, I do not know.

The Court: No, what I am getting at is stipulating these letters. It would seem to me obvious that the case, which I had in mind, was decided a good deal on the basis of the fact that the person thought he had practically no injury, and it turned out he was quite seriously injured. As I remember,

even at the time that the case was in the Supreme Court, he had not yet been able to resume his work.

Mr. Morris: I realize, in that case you are referring to, that certainly was a factor in the case. I don't
page 43 } feel, however, that that was the controlling factor.
I think the basic premise of law, where there is a mutuality of mistake, mutual mistake of facts—

The Court: Let me ask you this question. Are you willing to stipulate these letters?

Mr. Morris: I would like to dispose of the matter today, Your Honor, as well as the other counsel, so I would stipulate the letters, yes, sir.

The Court: And you have no other additional medical testimony which you wish to offer?

Mr. Morris: No, sir.

The Court: That seems to solve that problem. I will mark the letters Defendants' Exhibit 3, attach them all together, and mark them 3.

(The letters were received as Defendants' Exhibit No. 3.)

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page 44 } RONALD L. COLEMAN was sworn, and testified in behalf of the plaintiff, as follows:

DIRECT EXAMINATION

By Mr. Morris:

Q. Mr. Coleman, what is your full name, please?

A. Ronald L. Coleman.

Q. How old are you, sir?

A. Twenty-five.

Q. By whom are you employed?

A. Crawford and Company, insurance adjusters.

Q. Did you have an occasion to investigate an accident April of '66?

A. Yes, I did.

Q. Did this particular accident involve—that you are speaking of, happen in Charles City County?

A. Yes, it did.

Q. Well, now, in the course of your investigation did you determine whether or not Miss Cotman, the plaintiff here today, was involved in this accident in any way?

A. Yes, she was.

Q. Did you talk with her about this accident?
A. Yes.
Q. And the place, location of this discussion, was the same as which she testified to this morning?
page 45 } A. That is correct.
Q. Do you remember the date of that discussion?
A. Yes, I do. It was April 13, 1966, at 11:15 a.m.
Q. 11:15?
A. A.m., yes, sir.
Q. How long did that discussion go on? Do you recall approximately?
A. Well, I wrote a six-page statement, and filled out a draft, and also filled out a release. So I would assume it was probably about an hour and forty-five minutes. That is just approximate.
Q. What company were you representing, at this time?
A. I was representing Selected Risk Insurance Company of Branchville, New Jersey.
Q. And you all are independent adjusters for this company?
A. Yes, sir.
Q. What education or training have you had in this particular job, Mr. Coleman?
A. You mean my college training, or training since I graduated from college?
Q. Well, college training.
A. Well, I graduated from VPI in 1964; and in
page 46 } June of that year, I went to Atlanta, Georgia, through a formal training class; and since that date, I have had correspondence courses from our home office, with periodic tests, once a month.
Q. Have you attended law school?
A. No.

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page 47 }

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Q. Let me ask you, Mr. Coleman, if, during your conversation, the word came out, or phrase was discussed, joint *tortfeasor,* in any way?
A. No, it was not.
Q. Did you, in any way, represent the company involved with the other vehicle, which was involved?

Ronald L. Coleman

A. No, sir, I only represented Selected Risk Insurance Company, our principal.

Q. And that was involved with which person in this accident?

A. Annie Lee Jones.

Q. Was she the driver of the automobile in which Miss Cotman was the passenger?

page 48 } A. Yes, she was.

Q. Well, now, in the conversation—discussion you had with Miss Cotman, the statement that was taken, did you write that statement out, yourself?

A. Yes, I did.

Q. Did she write any part of it, or make any corrections in it?

A. Well, she signed each copy of the statement, after having read it. And I am just looking to see if she wrote a sentence on there, to the effect that she had read the statement. Yes, she wrote the following sentence: "I have read and understood the above six pages and they are true." And she signed her name to the last page of the statement, which is page No. 6, and she also signed her first name and surname to the other five pages.

Q. Did you complete a release, which was signed at that time?

A. Yes. While she was reading the statement and signing the statement, I filled out the release, and we had reached an agreed consideration of $35.00 beforehand.

Q. Let me ask you, Mr. Coleman, in the course of your arriving at this $35.00, is it true, as Miss Cotman has testified, that that included the medical bills that she had incurred at that point, and three days' lost time?

page 49 } A. Well, it not only included the medical bills she had incurred up to that point, which I understand is $5.50, but also—I can't say specifically whether she told me three days, but I recall it was one day she had lost from work. I could be wrong. But I explained to her that this was a complete settlement, from the standpoint of our insured, and filled the release out; and after she had read the statement, I gave her the release—I don't know whether she read it or not, but she signed it; and, as she was signing the release, I completed the draft, and gave her the draft.

Q. And you witnessed the release; is that right?

A. Yes, I did. I witnessed her signature.

Q. Were you, at any time, speaking for the other party in this case, when—

A. No, indeed. I only represented the insurance carrier for Mrs. Jones.

Q. Did you know, Mr. Coleman, that a release would release any other person that happened to be in this accident?

Mr. Poole: If Your Honor please, that calls for a conclusion of law. The man says he is not a lawyer, and I object to it, and it is improper, sir.

The Court: This may have a bearing on whether page 50 } there was a mutual mistake of fact, if he knew or didn't know it.

Mr. Morris: Yes, sir.

The Court: I will overrule the objection.

A. Would you repeat—

The Court: The question was: Did you understand that she, in signing this claim, that might affect her rights to sue others?

A. (Continuing) I didn't even think about that, at that time. Now, previous training, I knew it; but that didn't enter my mind. I wasn't concerned with the other party, or what claim she had against the other party. I only represented her principal.

By Mr. Morris:

Q. The $35.00 that you gave her, was that paid, sir, under the liability policy of Mrs. Jones, or under the medical payments provision?

A. It was paid under the liability provision of the policy; yes, sir.

Q. Have you, since then, issued a draft to anyone from the medical payments provisions, or from the liability part of the policy of Mrs. Jones?

A. Yes. Dated December 29, 1966, draft No. 48937, payable to Dr. E. L. Clements, Jr., and Hydelia Cotman, page 51 } in the amount of $126.25, was mailed to Miss Cotman on January 13, 1967.

Q. Did that draft, in any way, include the bill that was incurred at the Medical College?

A. No, sir. This included an itemized statement my office received from E. L. Clements, and the medical bills from MCV Hospital was, I believe, $5.50. I know it was $5.00 and some odd cents was paid, at the time I procured the release from Miss Cotman.

Ronald L. Coleman

Q. How much of that $35.00 did you pay Mrs. Clements for wages that she missed three days from work?

A. Paid Mrs. Clements, or Miss Cotman?

Q. Let me start it over, and disregard that part of it. Assuming that she missed three days from work, or thereabouts, you had a bill of $5.50—and had a bill of $5.50 from the hospital, how much of the $35.00 did you allot to pain and suffering that she had incurred?

A. As I previously stated, it was my understanding, as far as I can recollect, it was only one day she lost from work. And we computed that, I don't remember right now the exact amount; I might have it in my notes here; but it was $5.00, and I assume it is $8.00 for one day's work, or $10.00. Then, the remaining amount of this medical bill and lost day was for pain and suffering, inconvenience, or both.

page 52 } Q. Could you check your notes, to be absolutely certain about that?

* * * * *

A. Yes, I wrote in the statement, I recall now, that she told me she had earned $46.00 per week, and she worked five days per week. So I recall dividing five into forty-six; and then paid the medical bill, which I think was $5.50, on top of that.

By Mr. Morris:

Q. Well, did that include three days' lost time, the $35.00?

A. I cannot state whether she told me three days, but I recall it was only one day.

page 53 }

* * * * *

By The Court:

Q. Could you state positively that she did not tell you that she had lost three days from work?

A. I can't say that she didn't tell me that; but as far as I recall, it was only one day from work. I can be wrong.

By Mr. Morris:

Q. Certainly. Assuming she missed three days and you paid her for it, and $5.50, how much of that $35.00-draft did you include for pain and suffering?

* * * * *

Ronald L. Coleman

A. Had she missed three days from work, I would have paid her more than $35.00, to give additional con-
page 54 } sideration over and above her actual out-of-pocket loss.

By Mr. Morris:

Q. I thought you just said that you couldn't state whether she said it or not, whether she had three days.

A. I cannot state that she told me that she lost three days; no, I can't. As I recall, it was only one day. But, had she told me three days, I would certainly have paid her additional consideration, over and above her actual loss.

Q. Is that your general policy to do that?

A. Well, it's the general policy, in settling any claim, to compensate the injured party; and reasonable, in paying a person's just out-of-pocket expenses, they are getting fair compensation.

Mr. Poole: If Your Honor please, I object to that.

A. Yes, that is.

By Mr. Morris:

Q. Do you know the various elements taken into consideration, when a person sues for damages, that are taken into consideration, in arriving at a verdict, what a person is entitled to receive in an accident?

A. I know what constitutes special damages.

Q. Does this include pain and suffering, in your way of thinking?

page 55 } A. Well, yes. Well, special damages is a figure that we use to base that settlement evaluation on. Putting a monetary valuation on pain and suffering, I can't do it.

Q. Going back to my initial question, which has not been answered, to my knowledge, I would like to know how much of this $35.00 you attributed to future pain and suffering?

The Court: I believe he has answered that pretty well. You take $35.00, you subtract $5.50, for the medical bills; and subtract approximately $9.00 for what he thought was one day from work; and that would give you roughly $20.00 for pain and suffering.

A. If you would like me to answer that, it would be $9.50 for one day lost wages, and $5.50 for the medical bill from

MCV, which is $11.00. So, $35.00 release, she would have the difference. So it's $24.00.

Mr. Poole: That's right, sir.

By The Court:

Q. Let's see. $35.00, and you subtract $5.00?

A. $5.50.

Q. And then you subtract $9.00?

A. $9.50.

Q. And you get 24?

page 56 } Mr. Morris: That is $21.00, I believe.

A. Oh, I'm sorry. Excuse me.

The Court: Do it again. I think you are going to get around $20.00.

Mr. Smith: It is just a matter of arithmetic, Your Honor.

Mr. Morris: $15.00.

The Court: $15.00 from 35.

By Mr. Morris:

Q. Did you know at that time, when you talked with Miss Cotman, that she was injured to the extent she would have to wear a brace, and see a doctor for several months, six or eight months?

Mr. Poole: If Your Honor please, I think that question is unfair. He didn't know, at that time.

Mr. Morris: I submit he didn't know.

The Court: Obviously, he would have no way of knowing what would happen in the future.

Mr. Poole: It is an improper question. He didn't have his crystal ball there with him.

By Mr. Morris:

Q. Mr. Coleman, if you had known that she was going to have this future trouble, you would have paid her more; isn't that true?

page 57 } A. Well, she told me the type—well, she gave me her subjective complaints.

Q. Subjective complaints?

A. Yes. She told me what was bothering her, and she gave me a statement that she had pain in the side of her neck, both sides, and it was stiff, and the pain was radiating down into the middle region, or thoracic area of her back. And I doubt if I would have paid her any more. We reached

an agreed figure of $35.00. She accepted. So why should I pay her any more?

Q. Who reached that figure? Who came up with $35.00?

A. I asked her would $35.00 be satisfactory to her.

Q. So you reached the $35.00?

A. Certainly. And she said, "Yes."

Q. And you are saying now that, even if you had known she was going to have this future difficulty, you wouldn't have paid her any more than this $35.00?

A. It's according to how much future difficulties she's had. I don't have all of the medical reports. I don't know how much difficulty she has had, since I settled the claim.

page 58 } Q. You received these reports from Dr. Clements?

A. As soon as I received them, I mailed them to Mr. Smith, and copies to Mr. Travis Poole's principal, also. I had closed my file; I had no future interest in the file, myself.

Mr. Morris: I have no further questions at this time, Your Honor.

CROSS EXAMINATION

By Mr. Smith:

Q. Mr. Coleman, would you tell us, in your own words, what you told the plaintiff in this case, Miss Cotman, about this settlement, proposed settlement, that you made to her of $35.00? Just what did you say to her?

A. I just asked her did she want to settle the case.

Q. What did she say?

A. I asked her would $35.00 be acceptable to her. She knew I represented Mrs. Jones. And I believe there was some discussion, that she told me that Mrs. Jones wasn't at fault for the accident; and she said $35.00 was acceptable to her.

I told her that the availability of the medical pay coverage on the principal's policy of $500.00, she was entitled to it for one year from date of accident, if she wanted to

page 59 } use it; and asked her if—whether she was planning on seeking additional medical attention, and she said she was.

Q. What did you tell her?

A. Wait just a minute. Let me be sure on that statement.

Q. Go ahead.

A. I believe she said she was planning to seek additional medical attention. And, if I recall correctly, I asked her

whether she had a family doctor, and she said, "No." And I suggested that she see either Dr. James Dalton, or Dr. James Tucker, or Dr. E. L. Clements, or Dr. Beverley Clary, because they were right near the hospital up there, Medical Arts Building. And I told her, when I got the medical bills, I would pay them, up to the limits of the policy.

Q. As a matter of fact, it still haven't been a year since the date of the accident, yet, has it?

A. It will not be a year, until the 3rd of April.

Q. And I think it has already been brought out that part of the bills already have been paid Dr. Clements?

A. Yes, sir, I have an itemized statement from Dr. Clements; and our principal issued a draft, and I forwarded it to Miss Cotman.

Q. Did you tell Miss Cotman, or lead her to believe, that she would have any further claim against anyone,

page 60 } as a result of this accident?

A. Did I lead her?

Q. Did you lead her to believe that she had any claim against anybody else?

A. No.

Q. On account of the accident?

A. No, we didn't discuss anything about her claims, or anything, or what causes of action that she may have in the future. I didn't even discuss that.

Q. What did you tell her about the release and the draft, when you handed them to her? If you can recall what you told her, let's hear what it was that you told her.

A. I just told her that this was a release from our insured, Miss Cotman, and I didn't read the release to her.

Q. Did you explain to her what a release was?

A. No, I didn't explain it to her.

Q. Did you explain to her what it was that she would be signing?

A. I just told—

Q. What it meant, I mean?

A. Well, I didn't go into detail, explaining to her what a release was; I told her it was a release from our insured, Miss Jones—or Mrs. Jones, rather.

page 61 } Q. Did she have an opportunity to read what it was she was signing?

A. Yes, she did.

Q. You weren't forcing her, or pushing her to do anything?

A. Huh-uh. She held the release in her own hand, and signed it.

Q. She agreed that the amount was a proper amount?
A. Yes.

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page 62 }

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The Court: I think there is a difference. Let me say this: While my sympathies are with you, I think it unconscionable to try to expect to settle the case for her pain and suffering for $20.00.

Mr. Poole: If Your Honor please, may I be heard a moment, sir?

The Court: Well, I don't know. Let me finish, and then I will give you an opportunity to be heard, if you like.

What I was going to say, I think it is unconscionable, in a sense, to insist that she receive only $20.00 for her pain and suffering, and my sympathies are with her. But I feel that it is a case of poor judgment, which we all make; and never a day goes by that we don't make some mistake or do something we regret. This is, perhaps, an unusual example, but it is one. I just do not believe that a mistake as to what the future holds for us is a mutual mistake of fact, from which I could relieve; and I would be willing to
page 63 } relieve, if I could. I think it is a question that everyone knew that she was going up to see the doctor to get an X-ray, that everyone thought that an X-ray was going to reveal no disability, and that she would be fully recovered within a few days. I think that is a fine line to draw, but I think the line that has been drawn was that in the storage case, the man did not think he had any personal injury, he had been to a doctor, and the doctor had assured him that he was all right, he was only bargaining for his time from work.

In her case, she knew definitely that some future treatment was required, and her mistake is one of degree, as distinguished from the facts.

So, for that reason, I am inclined to hold that the release is a valid one.

Mr. Smith: Does Your Honor wish us to prepare an order?

The Court: Yes.

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Mr. Morris: I would like to note an exception
page 64 } to the Court's ruling.

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A Copy—Teste:

Howard G. Turner, Clerk.

INDEX TO RECORD

	Page
Writ of Error Awarded	1
Record	2
Motion for Judgment	2
Plea of Release of Winfred Whitehead	3
Plea of Release and Motion to Dismiss of Nannie Lee Jones	4
Release of all Claims	5
Letter of E. L. Clements, Jr., M. D. to Mr. Ronald L. Coleman, Adjuster dated April 19, 1966	6
Final Order—April 17, 1967	7
Assignment of Error	8
Proceeding	9, 25, 37
Witnesses:	
Hydelia Cotman	9
Ronald L. Coleman	28