215 Va. 770
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SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 740559

GAIL YEATTS MURPHY,

Appellant,

v.

VIRGINIA-CAROLINA FREIGHT LINES, INCORPORATED,

Appellee.

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MOTION FOR JUDGMENT
Filed April 14, 1973

Your plaintiff, Gail Yeatts Murphy, respectfully moves the Court for judgment against the defendants, jointly and severally, in the amount of $75,000.00 based upon the following:

1. That on or about January 12, 1972, at or about 9:45 o'clock A.M., the plaintiff, Gail Yeatts Murphy, was operating a certain Ford sedan motor vehicle in an easterly direction on U. S. Highway 58 in Pittsylvania County, Virginia; and,

2. That at the time and place aforesaid, the defendant, Edgar Anderson Lawson, was operating a certain Mack truck motor vehicle in an easterly direction on or about said Highway, U. S. 58; and,

3. That at the time and place aforesaid, the defendant, Thomas Boyd Arthur, was operating a certain Mack truck motor vehicle in an easterly direction on or about said Highway, U. S. 58; and,

4. That at the time and place aforesaid and in operating said motor vehicle, the defendant, Edgar Anderson Lawson, was at all times acting as the agent, servant and employee of the defendant, Virginia Carolina Freight Lines, Incorporated, within the scope of his authority as such; and,

5. That at the time and place aforesaid and in operating said motor vehicle, the defendant, Thomas Boyd Arthur, was at all times acting as the agent, servant and employee of the defendant, Hemmingway (sic) Transport, Inc., within the scope of his authority as such; and,

6. That at the time and place aforesaid, the defendant, Lawson, did operate the motor vehicle of the defendant, Virginia Carolina Freight Lines, Incorporated, in a negligent manner thereby causing the same to come into collision with the vehicle operated by the defendant, Arthur, and the motor vehicle operated by the plaintiff; and,

7. That at the time and place aforesaid, the defendant, Thomas Boyd Arthur, did operate said motor vehicle of Hemmingway (sic) Transport, Inc., in a negligent manner, thereby causing the same to come into collision with the vehicle operated by the defendant, Lawson, and thereby causing the last said vehicle to come into collision with the plaintiff's vehicle; and,

8. That as a proximate result of said collision at the time and place aforesaid and of the negligence of the four defendants herein the plaintiff was caused to sustain serious and permanent injuries, including but not limited to, and injury of the cervical, thoracic and dorsal spine; and,

9. That as a result of said injuries, the plaintiff has sustained expenses for medical services; loss of earnings; and that said injuries caused substantial pain and suffering and that she may continue to suffer from said injury permanently.

WHEREFORE, the plaintiff renews her motion for judgment against the defendants in the sum of $75,000.00.

JURY VERDICT
July 24, 1973

We, the jury, on the issue joined, find in favor of the plaintiff, Gail Yeatts Murphy, against the defendant, Virginia Carolina Freight Carriers, and assess her damages at $25,000, and we find in favor of the defendants, Hemingway Transport, Inc. and Thomas Boyd Arthur.

O. R. Hogan, Foreman

OPINION LETTER OF TRIAL COURT
October 17, 1973

Mr. Charles E. Carter
Attorney at Law
Masonic Building
Danville, Virginia 24541

Mr. Frank O. Meade
Meade, Tate, Meade & Daniel
Masonic Building
Danville, Virginia 24541

Mr. G. Kenneth Miller
May, Garrett, Miller & Parsons
8th Floor, 700 Building
Richmond, Virginia 23219

Re: Gail Yeatts Murphy v. Virginia-Carolina Freight Lines, Incorporated and Hemingway Transport, Incorporated, et al

Gentlemen:

The verdict of July 24th, exonerated the co-defendant, Hemingway of any liability for negligence and judgment will be entered accordingly for Hemingway.

The verdict against Virginia-Carolina Freight Lines was in the amount of $25,000.00. The medical evidence indicated that the plaintiff suffered no permanent disability and was discharged by her doctor in less than six months after the accident. The special damages proven at the trial were less than $1250.00 and the verdict was more than twenty times that figure. The Court is of the opinion that the verdict is excessive. National Cab Co. v. Thompson, 208 Va. 731 (1968).

The verdict will, therefore, be set aside and a new trial awarded to Virginia-Carolina Freight Lines on the issue of damages alone.

This new trial can be scheduled for Tuesday, October 30th, if counsel can be ready by that date.

With best wishes, I am

Very truly yours,

/s/ W. Carrington Thompson

ORDER OF COURT SETTING ASIDE VERDICT AND
GRANTING A NEW TRIAL ON DAMAGES
Entered October 22, 1973

This day came the parties again, by their attorneys, and the Court having maturally considered the motion of the defendant, Virginia Carolina Freight Lines, Inc., to set aside the verdict of the jury heretofore returned herein, is of the opinion too and doth sustain said motion on the grounds that the award of damages in the verdict of the jury of July 24, 1973, is excessive against the defendant, Virginia Carolina Freight Lines, Inc.

It is therefore ADJUDGED and ORDERED that said verdict of the jury heretofore returned be, and the same is hereby, set

aside as to the defendant, Virginia Carolina Freight Lines, Inc., but said verdict is final as to Hemingway Transport, Inc., the said Hemingway Transport, Inc. having been exonerated of all liability herein, and the plaintiff is granted a new trial against Virginia Carolina Freight Lines, Inc., on the issue of damages alone, to which action of the Court the plaintiff, by counsel, objects and excepts.

JURY VERDICT
January 29, 1974

We, the jury, on the issue joined, find in favor of the plaintiff and assess her damages at $10,000.00.

John C. Robey, Foreman

JUDGMENT ORDER
Entered February 20, 1974

This cause came on the 29th day of January, 1974, to be heard upon a new trial on the issue of damages only, pursuant to directions of an order of this Court entered on October 22, 1973.

Whereupon came a jury, to-wit, Archie A. Neal, Alex Clark, John C. Robey, Curtis Gregory, George Layne, Oscar Clark and Charlie T. Crane, Jr., who were sworn to well and truly try the issue joined and a true verdict give according to the evidence and the law.

Thereupon evidence of the plaintiff was presented, and with no evidence being presented by the defendant, the jury, having received instructions from the Court and hearing arguments of counsel, retired to their room to consult of their verdict and after some time returned into court with the following verdict:

> "We, the jury, on the issue joined, find in favor of the plaintiff and assess her damages at $10,000.00.
>
> John C. Robey, Foreman"

After the jury was dismissed, plaintiff, by counsel, moved the Court to set aside the verdict and to reinstate the verdict in the amount of $25,000.00 rendered by the jury on July 24, 1973, and to enter judgment thereon. For reasons heretofore expressed, the Court doth overrule said motion and doth enter judgment against the defendant, Virginia Carolina Freight Lines, Incorporated, in the amount of $10,000.00, with interest thereon from January 29, 1974, until paid, and costs, on the verdict of the jury rendered in the new trial on January 29, 1974, to which action plaintiff, by counsel, excepts.

The plaintiff having indicated her intention to seek a Writ of Error and Supersedeas, the Court doth fix the appeal bond of the plaintiff at the sum of $1,000.00.

Pursuant to Rule 5:9, it is directed that the transcripts of all hearings in this case, including the testimony taken at the first trial on July 24, 1973 and at the second trial on January 29, 1974, be a part of the record.

ENTER: 2/20/74

/s/ W. C. Thompson
Judge

Seen:

Charles E. Carter
Counsel for Plaintiff

Frank Opie Meade
Of Counsel for Defendant

ASSIGNMENTS OF ERROR
Filed February 25, 1974

1. That the trial court erred in setting aside the verdict rendered by the jury in the above matter on July 24, 1973, in the amount of TWENTY-FIVE THOUSAND DOLLARS ($25,000.00), by order entered October 22, 1973, on the grounds that said verdict was excessive.

2. That the trial court erred in not setting aside the jury verdict rendered in the above matter on January 29, 1974, in the amount of TEN THOUSAND DOLLARS ($10,000.00), and reinstating the verdict rendered by the jury on July 24, 1973, in the amount of TWENTY-FIVE THOUSAND DOLLARS ($25,000.00).

The plaintiff reserves the right to file supplemental assignments of error.

GAIL YEATTS MURPHY

By Counsel

ASSIGNMENT OF CROSS-ERROR
Filed March 6, 1974

Defendant assigns as cross-error the failure of the Trial Court to declare a mistrial when, during the course of the trial on July 24, 1973, plaintiff's father and/or husband improperly communicated with jurors.

VIRGINIA CAROLINA FREIGHT LINES, INCORPORATED

By Counsel

EXCERPTS FROM TRANSCRIPT OF RECORD
July 24, 1973

OPENING STATEMENTS

[2]

1 MR. MEADE: I would like to have the jury asked if they
2 know the plaintiff personally, or acquainted with her, or worked
3 with her?
4 THE COURT: Do any of you know Mrs. Gail Yeatts Murphy
5 - - - acquainted with, or seen her before - - - have you ever
6 heard of her?

* * * *

[3]

13 . . . There is no way of telling in advance how long this
14 trial will last, so as a matter or precaution- - - thinking we

15 are trying to be absolutely impartial - - - you shouldn't have
16 any connection with anyone during this case. You may know the
17 attorney, or the witness, or the parties - - - if you do, please
18 don't talk to them until the case is over, and after the case is
19 over, don't discuss your deliberations.

* * * *

[4]

15 THE COURT: Do you gentlemen desire to make an opening
16 statement?
17 MR. CARTER: Yes, sir.
18 THE COURT: All right, Mr. Carter - - - proceed.
19 MR. CARTER: If it please the Court - - - ladies
20 and gentlemen of the jury, I am Charles Carter, of Danville, and
21 as Judge Thompson has told you, my client is Mrs. Gail Murphy, . .

* * * *

[5]

1 . . . . . The purpose
2 of the opening statement is for counsel - - - me and Mr. Meade
3 and Mr. Miller, a time to speak to tell you what we think the
4 evidence will show - - - it being your ultimate responsibility
5 to gather from the witnesses, the testimony, and put your inter-
6 pretation on it, but as part of our pre-trial procedures and
7 preparations, in such a case of this sort, we have a lot of in-
8 formation that comes to both sides, in advance of trial, so
9 that we can tell you what we think the evidence will show. I
10 will try not to mislead you, and I'm sure Mr. Meade and Mr.

11 Miller will (not)---if we tell you something that doesn't come out
12 please accept it as an honest error on our part.

* * * *

[8]

18 . . . It will be your responsibility to determine whether the
19 Hemingway truck contributed to the accident, and if you do think
20 it did, you will find it jointly liable with the Virginia-
21 Carolina Freight Lines. There will be, in addition to this, one
22 big issue - - - the extent of Mrs. Murphy's injury, and her
23 damages, if any, to which she is entitled.

* * * *

[10]

18 . . . She had a drug bill which ran in excess of $100.00,
19 for pain killing medicine, prescribed by the doctor, relating
20 to this injury, and she had babysitting - - - actual cost of
21 babysitting, $240.00, and she had lost earnings of approximately
22 $3,252.00. All of those above items, I don't think there will be
23 any conflict, except the computation on the loss of earnings.
24 Mrs. Murphy will tell you she is a qualified weaver - - - Mr. Davis
25 is one of the superintendents from Dan River, is here, and he will

[11]

1 tell you likewise, and she was employed by Dan River, and on
2 December 16, 1971, as a result of a minor dispute with a super-
3 visor, she was sent out, and at that time, she was earning
4 approximately $101.00 a week, and the minor dispute was such that
5 she did not wish to return to work under him, and she told Mr.

6 Davis, who was the big superintendent, and said she would like to
7 go back, and not under him, and Mr. Davis had told her, in effect,
8 he would try to find a place for her, and for her to come back
9 and see him. Mr. Davis is here, and will tell you, and she will
10 tell you, on the day of the accident, she was going by her
11 friend's house, Mrs. Collins, and she was going to Danville, to
12 see Mr. Davis, and she had made an appointment, and the fore-
13 runner had been through her father, and she was a qualified
14 weaver, and she would have earned during this period of dis-
15 ability, $3,200.00. As indicated, there may be some substantial
16 conflict over this - - - obviously, the trucking firm, or firms,
17 wants to pay as little as possible, and she wants a full verdict.

* * * *

23 MR. MEADE: If it please the Court, and ladies and gentle-
24 men of the jury, the Court has already told you that my name is
25 Frank Meade, . . .

* * * *

[13]

14 . . . As Mr. Carter indicated to you, there will be some
15 very serious and valid conflicts in the evidence and the testi-
16 mony of the various parties involved in this action, as to who
17 hit who, and what hit first. . . .

* * * *

[14]

10 MR. MILLER: May it please the Court - - - ladies and
11 gentlemen of the jury, you have been told my name is Kenneth

12 Miller, and I represent the Hemingway Transport Company. . . .

* * * *

[15]

2 . . . . . Also, as counsel for the
3 plaintiff has told you, and I think it is quite vital, and that
4 is the fact that what any of us say in opening statements, is not
5 evidence, and this is not to be considered by you the evidence
6 in the case. The purpose it to simply give you a whole picture,
7 and show you where the controversy is, so that you can note the
8 first witnesses, and the importance of their testimony, as
9 well as the others. . . .

* * * *

DIRECT EXAMINATION OF DR. ROBERT E. MUSGRAVE

BY MR. CARTER

[40]

8 Q. What is your profession?
9 A. I practice orthopedic surgery.
10 Q. And what are your qualifications?
11 MR. MEADE: Mr. Carter, for Virginia-Carolina, I will
12 concede Dr. Musgrave's qualifications.
13 THE COURT: I'm sure Mr. Miller will too, so let's
14 proceed.

* * * *

20 Q. And in your capacity as an orthopedic surgeon, did
21 you have an occasion to examine Mrs. Gail Murphy, in connection
22 with injuries that were received in an accident of January 12,
23 1972?

24 A. Yes sir, I did.

25 Q. And when was she first seen by you?

[41]

1 A. She was first seen in the emergency room of Memorial
2 Hospital, on the 12th of January, 1972.

3 Q. What were the findings, at that time?

4 A. She had sustained an injury to her neck, and our
5 diagnosis at that time was a sprain to the cervical spine, in-
6 volving the muscles and ligaments of that area.

7 Q. What, if any, treatment did you administer, at that
8 time?

9 A. She was given some medication for pain, and fitted
10 with a supporting collar for her neck, and instructed to return
11 to our office for some follow-up treatment.

12 Q. And when did you next see her?

13 A. We next saw her on the 17th - - - five days later,
14 and she was having more pain, and in addition to the neck, she
15 was having some pain in her back, and we advised her to be ad-
16 mitted to the hospital for treatment, at that time.

17 Q. What hospital was that?

18 A. Memorial Hospital.

19 Q. And was she so admitted?

20 A. Yes, on the 18th - - - the next day.

21 Q. Did you treat her while she was so confined?

22 A. Yes, I did.

23 Q. Could you tell us what your treatment consisted of,

24 while she was in the hospital, and her progress?

25 A. Her treatment consisted mainly of rest and muscle

[42]

1 relaxants, and medication for pain, and physical therapy to the

2 areas involved.

3 Q. You have indicated that there were drugs administered

4 for pain. Could you comment on the necessity for this - - -

5 whether or not, in your best medical opinion, it was a necessary

6 prescription?

7 A. Yes. I think her pain was mostly due to muscle

8 spasm, and the stretching and tearing of the muscles and liga-

9 ments are experienced in the area.

10 Q. What is muscle spasm?

11 A. It's an involuntary contraction of a muscle, usually

12 resulting from some injury or some irritation to the nerve in

13 that area.

14 Q. When you state it's involuntary, what do you mean?

15 A. You have no direct control over the muscle - - -

16 it's an involuntary contraction of the muscle.

17 Q. That is, your patient has no control over it?

18 A. That's correct.

19 Q. It cannot be fained or faked - - - it is an in-

20 voluntary reaction?

21 A. That's correct.

22 Q. What causes muscle spasm?

23 A. It's a reflex phenomenon, and it's supposedly an

24 attempt on the part of a body to splint an area that has been
25 injured.

[43]

1 Q. How long did you keep Mrs. Murphy confined in the
2 hospital?
3 A. We discharged her on February 1, 1972.
4 Q. When did you next see her?
5 A. On the 11th of February, in the office.
6 Q. What were your findings, at that time?
7 A. She had had another flare-up of her discomfort,
8 and this was mainly in the lower back, and she also had some
9 enlargement of some lymph nodes in her neck, at that time, and
10 we applied a corset for her lower back, and then saw her again,
11 in about a week.
12 Q. And what were your findings on the next visit?
13 A. She was somewhat improved at that time, and she
14 still had a lot of muscle spasm, and it was still necessary for
15 her to wear the corset and collar, but, in general, she had
16 made some progress.
17 Q. What date was that?
18 A. February 28.
19 Q. When did you next see her?
20 A. On the 21st of March, 1972.
21 Q. What were your findings, at that time?
22 A. She had made some slight improvement, and she was
23 doing some very light work at home, and was not having as much

24 pain as she had had on the previous visit.

25 Q. When did you next see her?

[44]

1 A. On April 24th.

2 Q. What were your findings then?

3 A. She had improved and her neck motion was a little

4 better than it was, and she had some swelling of her hands, and

5 feet, at that time, which we did not think was a result of any

6 orthopedic problem, and we gave her an injection of some B12,

7 and saw her again on May 22, which was about a month later.

8 Q. What were your findings on May 22nd?

9 A. Her back and neck were doing much better, and she

10 was having some problem with plantar warts on her feet, and she

11 was unable to walk around well, because of these.

12 Q. This was some four and one-half, or more than four

13 months, following the accident?

14 A. That's right.

15 Q. When did you next see her?

16 A. On the 23rd of August, 1972.

17 Q. What were your findings then?

18 A. She had no symptoms relative to her neck and back,

19 and her examination was completely negative, and she had complete

20 motion with no pain, and we discharged her at that time.

* * * *

CROSS-EXAMINATION OF DR. ROBERT E. MUSGRAVE

BY MR. MEADE

[44]

25 Q. Your office first saw the plaintiff in the emergency
26 room, at the Memorial Hospital?

[45]

1 A. That's correct.
2 Q. And at that time, she was complaining of pain in
3 the neck?
4 A. Yes sir.
5 Q. Anything else?
6 A. Not at that particular time.
7 Q. It was limited to pain in the neck then?
8 A. To the neck, yes sir.
9 Q. What is this - - - a whiplash type of situation
10 she was complaining about?
11 A. Yes.
12 Q. Was it necessary, at that time, to put her in the
13 hospital?
14 A. Well, we didn't think so, but this frequently
15 happens - - - at the time of the initial injury, and then, sever-
16 al days later, or twenty-four or forty-eight hours later, there
17 is a stiffness of the muscles, and more pain occurs, so that
18 this is not an unusual thing.
19 Q. At that time, she was released from the emergency
20 room, and sent home?

21 A. That's right.

22 Q. Generally, what was her condition, at that time,

23 other than muscle spasms of the back, and discomfort, what was

24 her general condition?

25 A. I would say it was good.

[46]

1 Q. She could move around on her own?

2 A. Yes.

3 Q. She could do her regular housework, except for heavy

4 lifting?

5 A. I would say so, at that particular time, yes sir.

6 Q. Was she prescribed a collar, at that time?

7 A. Yes sir - - - in the emergency room.

8 Q. Had any history been taken at that time, that she

9 had been in a prior accident, in which she injured her neck, and

10 used a collar?

11 A. Yes sir. She had an accident in 1971, and had been

12 treated in Danville.

13 Q. In 1971?

14 A. Yes.

15 Q. What type of injury was that?

16 A. According to the record I obtained, from Dr. Atkins,

17 it was a sprain of the cervical spine also.

18 Q. The same thing?

19 A. Yes.

20 Q. And he treated her for that?

21 A. That's right.

22 Q. And you had never treated this patient before,

23 yourself?

24 A. No sir, I hadn't.

25 Q. You saw her next, after the emergency room - - - you

26 saw her, I believe, on the 17th?

[47]

1 A. Five days later.

2 Q. And at that time, she was complaining of pain in the

3 dorsal spine, as well as in the neck?

4 A. Yes.

5 Q. Where is the dorsal spine?

6 A. In the chest region, just below the cervical spine,

7 between the shoulders.

8 Q. The cervical spine is the neck?

9 A. Yes, and this was between the shoulders, and upper

10 back.

11 Q. We are generally talking about the neck and upper

12 back?

13 A. Yes.

14 Q. Now, Doctor, I assume - - - she was complaining

15 about discomfort and pain?

16 A. Yes.

17 Q. Is pain something that you can actually see and

18 clinically diagnose, or just something you rely on the patient?

19 A. This is a subjective symptom - - - it's something

20 she experienced. She also had some tenderness, which is ob-
21 jective. I can touch her muscle, and it was sore, and she also
22 had a lot of stiffness and limitation of motion in her spine.
23 Q. Did she have any curvature changes?
24 A. Not at that time.
25 Q. She had had a curvature change in the first accident?

[48]

1 A. Apparently, the x-ray showed that.
2 Q. At the onset, this injury was not as serious as
3 the one before, was it, Doctor?
4 A. I couldn't say that, but according to the records,
5 it was a similar type injury.
6 Q. Was she given generally conservative treatment - - -
7 bedrest and medication?
8 A. Right.
9 Q. She could move around in the hospital?
10 A. Yes.
11 Q. Was she put in traction?
12 A. No sir.
13 Q. Do you know whether or not she was in traction,
14 for the injury in June of 1971?
15 A. I don't know - - I sure don't.
16 Q. Now, in the hospital, there was no surgery or
17 anything performed there?
18 A. No sir.
19 Q. It was an uneventful hospitalization, so to speak?

20 A. Yes sir - - - she made satisfactory improvement.

21 Q. During the course of her stay in the hospital, was

22 she seen by any other doctors? Specifically, was she seen by

23 Dr. Greenberg?

24 A. She was seen by Dr. Greenberg during the course of

25 her illness, and I would have to refer to my notes to tell you

[49]

1 the exact date. I have a report here from Dr. Greenberg, in

2 which he saw the patient on January 25th.

3 Q. That would be while she was in the hospital?

4 A. I would assume - - - yes sir.

5 Q. Did he see her at your request?

6 A. Yes.

7 Q. For what did he see her?

8 A. She was having some dizziness and ringing in her

9 ears, and things that indicated middle ear problems.

10 Q. Is this something you determined she experienced

11 from the first accident, rather than the second accident?

12 A. I assume it was from the second, because it had

13 occurred since she had the accident.

14 Q. You are not aware of the fact that she made an en-

15 gagement to see Dr. Greenberg, before the accident happened in

16 January?

17 A. No sir.

18 Q. If she had been complaining, or suffering from this

19 condition, prior to the second accident, and made an appoint-

20 ment with Dr. Greenberg, it would be attributed to the first
21 accident?
22 A. Yes sir.
23 Q. What was her general condition after she was re-
24 leased from the hospital? Could she move around, and do things
25 at home?

[50]

1 A. She had some flare-up of pain in her lower back,
2 but in general, she was much improved over the time we admitted
3 her.
4 Q. Could she get around and do various things at home?
5 A. She wasn't able to do much - - - we didn't really
6 let her do any work at that time, or didn't advise her to do
7 anything except eat her meals.
8 Q. That was February 11?
9 A. Yes sir.
10 Q. Did you see her on February 18th, or was that a
11 call-in?
12 A. That was a call-in prescription, and my associate,
13 Dr. Gross, called in a prescription for some darvon and muscle
14 relaxant.
15 Q. What is darvon?
16 A. Pain reliever - - - analgesic.
17 Q. Aspirin type?
18 A. No - - - it's a synthetic - - darvon compound
19 has aspirin, but not this.

20 Q. And the other medication was muscle relaxant?

21 A. Yes.

22 Q. And so, February 28, you saw her?

23 A. Yes.

24 Q. And on March 21?

25 A. I saw her on March 21, and she had improved, and

[51]

1 we told her she could do some light work at home, which involved
2 table level work, and things like that.
3 Q. I believe you testified, on April 24th, you saw her,
4 and she was improved and you noted she was having some swelling
5 of the hands and fee, and you said that was not related to the
6 accident?
7 A. We could find no reason for it.
8 Q. You don't relate it to the accident?
9 A. No.
10 Q. On May 16th, did you see her?
11 A. No sir. Apparently, that was a note that my
12 secretary made, and I don't know the circumstances around it, but
13 it was a note made by the secretary, that the patient returned
14 to regular work, at that time, authorized by me, and the way
15 this frequently occurs - - - the patient will call in, and say,
16 "I'm doing right much better - - - is it all right for me to go
17 back to work", and I assume that's what happened at that time.
18 Q. That is initialed by you?
19 A. Yes.

20 Q. When did you initial that?

21 A. I suppose on that day.

22 Q. And then on May 22, you saw her - - - were there any

23 notations made at that time, as to whether or not she could work,

24 or why she couldn't?

25 A. She couldn't work at that time, because of some

26 plantar warts on the bottom of her feet.

[52]

1 Q. And that's not related to the accident?

2 A. No.

3 Q. Any findings related to her back?

4 A. Her back was doing well, at that time.

5 Q. Did you make any notation as to why she would be

6 unable to work?

7 A. I stated in my notes that she was unable to work

8 because of the warts on her feet.

9 Q. From that point on, you didn't see her at all - - -

10 A. No sir.

11 Q. . . . until August, and on May 22, what was her

12 general condition? Was she basically recovered, at that time?

13 A. From her injuries, yes sir.

14 Q. And at that time, you think she could be expected

15 to resume her normal activities?

16 A. Well, I thought so, yes sir.

17 Q. At that time?

18 A. Yes sir.

19 Q. So, as of May 25, 1972, you thought basically that
20 she had recovered, and could resume her normal activities?
21 A. Yes sir.
22 THE COURT: Is that May 25th - - - I thought he said
23 the 22nd.
24 Q. May 22nd - - - then, the examination in August - - -
25 she returned to you at that time. Was that pursuant to your
26 directing her to come to see you?

[53]

1 A. We frequently ask them to come back for a final,
2 and make sure they are not having any problems, and we can give
3 them an official discharge then.
4 Q. She made no complaint, or call-in, or visit, after
5 May 22nd?
6 A. I have no record.
7 Q. When she did come back in August, you examined her?
8 A. Yes.
9 Q. And as of that date, likewise she was getting along
10 all right?
11 A. Yes.
12 Q. Did you make any notes as to any disability as a
13 result of this accident?
14 A. I didn't feel she had any permanent disability.
15 Q. Did she have any limitation of motion of her neck
16 or back?
17 A. No sir.

18 Q. Was she complaining of any pain or discomfort?

19 A. Not at that time.

20 Q. So, at that time, she was completely asymptomatic?

21 A. Yes.

22 Q. Which means she was completely recovered?

23 A. She had no symptoms relative to her injured area.

* * * *

CROSS-EXAMINATION OF DR. ROBERT E. MUSGRAVE

BY MR. MILLER

[54]

13 Q. I believe this lady does have a problem with excess

14 weight?

15 A. Yes sir.

16 Q. And that does give back problems unrelated to

17 accidents - - - isn't that a common finding in your field?

18 A. Yes sir.

* * * *

RE-DIRECT EXAMINATION OF DR. ROBERT E. MUSGRAVE

BY MR. CARTER

22 Q. Would it help you - - - I notice you have been re-

23 ferring to your notes throughout, by mutual consent of all of

24 us - - - would it help you to re-refer to your original emergency

25 room note, to find her exact complaint, when she was originally

26 examined and x-rayed at the emergency room?

[55]

1 A. This is a carbon copy, and it didn't come through
2 too well, so I can't read you that.
3 Q. Do you object to my showing him a machine copy of
4 the report (defense counsel looks at report)? Doctor, I hand
5 you a photocopy of what is purported to be the emergency room
6 report - - - a copy of the original - - - is that it?
7 A. This is Dr. Gatigan's writing, who was associated
8 with us, at that time. That's the reason I couldn't read it
9 before.
10 Q. What areas - - - he indicated areas of complaint?
11 A. Area of complaint noted on the emergency room record,
12 on the day of the accident - - - his final diagnosis was muscle
13 strain - - - neck and back.
14 Q. What areas were x-rayed?
15 A. Both the thoracic and cervical spine, which is be-
16 tween the shoulders, and just below the head.
17 Q. The thoracic area is where?
18 A. Between the shoulders.
19 Q. So, in addition to the cervical spine, there was the
20 original complaint of back injury?
21 A. That is correct. I stand corrected on that - - -
22 yes sir.

* * * *

RE-CROSS EXAMINATION OF DR. ROBERT E. MUSGRAVE

BY MR. MEADE

[56]

2 Q. You mentioned x-rays - - - they didn't show any-
3 thing injured?
4 A. There was no pathology noted.

* * * *

DIRECT EXAMINATION OF DAVID GARLAND

BY MR. CARTER

[57]

13 Q. What kind of vehicle were you driving?
14 A. It was a 1951 Chevrolet pickup.

* * * *

[58]

2 A. Mrs. Murphy was in front of me.
3 Q. What kind of car was she driving?
4 A. She was driving a Thunderbird - - - I don't know
5 what model.

* * * *

[59]

6 Q. What happened then?
7 A. She went to make a right turn, and this truck was
8 behind me, and hit me, and knocked me into her.

* * * *

[62]

1 Q. What, if any, damage was there to your truck?

2 A. You say what damage was it to my truck?

3 Q. To your truck?

4 A. You mean how much?

5 Q. What parts of it were damaged?

6 A. It hit the rear end.

7 Q. After it hit the rear end, where did your car go?

8 A. It went across the bank, and turned over there.

9 Q. Did your truck hit anything between the time the

10 truck hit you, and the time it went over the bank?

11 A. It hit the bank, after it hit Mrs. Murphy - - - it

12 turned over.

13 Q. It hit Mrs. Murphy and then the bank, and then

14 turned over?

15 A. Yes.

* * * *

[126]

1 IN CHAMBERS:

2 (After a conference in chambers, out of the presence

3 of the jury, and the court reporter, between the Court and

4 counsel, the plaintiff's husband, Jerry Wayne Murphy, was

5 brought into chambers, to be questioned regarding an alleged

6 conversation with a juror, during the lunch recess.)

7 **********

8

9 THE WITNESS, JERRY WAYNE MURPHY, testified as follows,

10 after being first duly sworn:

11 EXAMINATION BY THE COURT:

12 Q. What is your name?

13 A. Jerry Wayne Murphy.

14 Q. What relation are you to Gail Yeatts Murphy?

15 A. That's my wife.

16 Q. You have been here in the courtroom, all day, have

17 you not?

18 A. Right.

19 Q. Has there been any communication between you and

20 any members of the jury?

21 A. No sir.

22 Q. I mean the seven people who are sitting in the box

23 - - - have you talked to any of them?

[127]

1 A. No sir, I haven't.

2 Q. I thought I observed you in the noon recess, in

3 front of the courthouse, in conversation with a black member.

4 I could be mistaken.

5 A. That was my father-in-law, talking to them - - - I

6 was just standing there.

7 Q. Who is your father-in-law?

8 A. Larry Yeatts.

9 Q. He is in the witness room?

10 A. Yes.

11 Q. What was that conversation?

12 A. They were talking about some people they used to

13 know, down near Java.

14 Q. Let me admonish you this - - - don't go near the

15 jury. Don't even speak to them - - - do you know any of them

16 yourself?

17 A. No sir, I don't.

18 Q. And don't speak to any of the attorneys, except your

19 wife's attorney.

20 A. Right.

21 MR. MILLER: Was his father-in-law one of the sworn

22 witnesses, this morning?

23 MR. MEADE: Yes sir.

24 MR. MILLER: Well, then, the Court's law has been

25 violated.

[128]

1 MR. CARTER: I think he should be brought in, and asked

2 what he said. (The witness returned to the courtroom.)

3 (At this point, the plaintiff's father, Larry Marvis

4 Yeatts, was brought into chambers, for questioning.)

5 THE WITNESS, LARRY MARVIS YEATTS, STATED AS FOLLOWS,

6 UPON BEING QUESTIONED BY THE COURT:

7 Q. For the record, what is your name and address?

8 A. Larry Marvis Yeatts, 105 Alpine Drive, Danville.

9 Q. What is your relationship to the plaintiff, Gail

10 Yeatts Murphy?

11 A. I am her father.

12 Q. And you have been here all day today, July 24 - - -

13 you were separated from the courtroom, as a witness, is that
14 right?
15 A. Yes sir.
16 Q. During the noon recess, did you have any communi-
17 cation or conversation with any of the jurors?
18 A. No sir, I did not - - - not to my knowledge.
19 Q. Your son-in-law, Mr. Murphy, indicated that you
20 were talking to one of them, in front of the courthouse - - -
21 beyond the end of the steps.
22 A. Who was the person?
23 Q. I don't know - - - one of those seven people on
24 the jury. Do you know any of them?
25 A. I think there's two people that I know.

[129]

1 Q. Who are they?
2 A. Mr. Emerson, and Mr. Brumfield was excused.
3 Q. Did you talk to Mr. Emerson?
4 A. No more than just spoke to him.
5 Q. Did you converse with any of the black members of
6 the jury?
7 A. No. The colored man that was involved was standing
8 on the porch as I went out for lunch, and I didn't even speak
9 to him. I spoke to Mr. Emerson, and I spoke to Mr. Hogan - - -
10 no discussion.
11 Q. Anything further you gentlemen want to ask Mr.
12 Yeatts?
13 MR. CARTER: To your knowledge, did you talk to any of

14 the jurors, at lunchtime?

15 A. No more than I spoke to Mr. Emerson, and said,

16 "How are you" - - - this is all that was said - - - and I haven't

17 spoke to any colored person.

18 (The witness left chambers at this point, and was re-

19 turned to the witness room.)

20 MR. MEADE: I move for a mistrial, at this stage. This

21 is contrary to the directions of the Court - - - a ruling which

22 I think we all knew. The difficult part here is that you have

23 got the men - - - you have the plaintiff's husband denying that

24 he was talking to any juror, and this is something the Court,

25 at his own motion, brought up, because he was concerned about it.

[130]

1 The young man - - - the husband of the plaintiff, denied he con-

2 versed with jurors, but at the same time, he testified under

3 oath that his father-in-law did, and that he, the husband, was

4 present, and they talked about acquaintances in the Java area.

5 One says one thing, and the other denies it - - - we have a

6 question as to what is correct - - - what is true, and under

7 that circumstance, I think we will have to assume that there was

8 a communication with a juror, and frankly, I think we will have

9 to presume that it was improper and prejudicial, because how are

10 we to conclude otherwise, when they contradict each other?

11 MR. MILLER: I am also in a dilemma at these things.

12 I guess I will have to join in Mr. Meade's motion. I feel like

13 there is a reflection here, and the matter is of such momentum

14 to the parties that in a fair trial, I think any verdict that
15 would be secured would be tainted.
16 MR. CARTER: I oppose the motion, but prior to the
17 Court ruling on the motion, I would like for the Court to further
18 examine the young man - - - perhaps communication is one of our
19 greatest problems in life - - - as I recall the Court's question,
20 "Were you talking to a juror", and he said, "No", and he said,
21 "I got the impression you were talking with one of the black
22 jurors", and he said, "Well, my father-in-law was talking", but he
23 didn't specifically say about some people in Java, and he didn't
24 say it was a black man. If the jury has been tainted - - - be-
25 fore you rule on the motion, I don't think any of us would want

[131]

1 a verdict if the jury is tainted, but before the Court rules
2 on the motion, we should have something other than the mere
3 response - - - just the fact that his father-in-law was talking
4 to some people when the Judge observed them.
5 MR. MEADE: The young man - - - Mr. Murphy, has a very
6 direct interest in the outcome of this case. This is his wife,
7 and technically on top of that, he has a claim, and I believe
8 if she got a verdict in this case - - - there is a direct
9 connection. It's tainted, and we try to avoid it, and it happens
10 over here, and the Court should declare a mistrial.
11 MR. CARTER: We live in a very small community, and
12 we don't have the conveniences of big city life. We have one
13 restaurant, and all counsel and all witnesses and all jurors,

14 just about, eat in the same restaurant, practically elbow to
15 elbow, and it is unfortunate that it's a small community. If
16 you're going to eat, you have to go to the same eating place.
17 At lunch, Mr. Meade and Mr. Meade's client were there, and we
18 sat right next to them - - - we couldn't help it - - - we had to
19 sit there, mute, and talk about the hot or cool day. I submit
20 that no more than has been brought forth here would not con-
21 stitute a ground for a mistrial, with the expense of bringing
22 medical expenses, and coming here again.
23 THE COURT: As Mr. Meade has indicated, it is a problem
24 that has persisted, and I'm going to do something about it. I'm
25 getting tired of it. It's primarily because we know each other

[132]

1 so well. I'm not sure the witnesses were told this morning - - -
2 I told the jurors. I'm not sure Mr. Yeatts was aware of that,
3 and according to what he said, he was just exchanging the
4 pleasantries of the day, and general inquiries. This business
5 of making it look like we have a cheering section on each side
6 is bad. I will overrule the motion for the timebeing, and let's
7 proceed.
8 MR. MEADE: What about the testimony?
9 MR. CARTER: I don't really need the father.
10 MR. MILLER: Is the Court ruling on the question of the
11 evidence that the boy gave, that the father-in-law did talk with
12 the colored juror? I thought the Court saw that.
13 THE COURT: I said I could be wrong.

14 MR. MILLER: Is the Court holding that the man did not
15 talk with the colored juror, as the boy testified?
16 THE COURT: The court is going to overrule the motion,
17 at this time.

* * * *

DIRECT EXAMINATION OF GAIL YEATTS MURPHY

BY MR. CARTER

[132]

23 Q. Would you state your full name, please?
24 A. Gail Yeatts Murphy.

* * * *

[133]

2 Q. What is your age?
3 A. Twenty-eight.
4 Q. Are you married?
5 A. Yes sir.
6 Q. Do you have children?
7 A. Yes sir.
8 Q. How many?
9 A. Three.

* * * *

[136]

18 Q. Would you describe the damage to your vehicle?
19 A. It totally demolished the trunk, and it messed
20 up the bumper, and it knocked out both tail lights, and it bent
21 the frame, and when we started it, or tried to get it out of her

22 yard, to move it, it would not move and drive at all.

23 Q. What injury did you receive, if any?

24 A. I received a back injury from it.

25 Q. What did you do, following the accident, with re-

26 ference to that?

[137]

1 A. They had sent an ambulance down to pick me up.

2 I'm frightened of an ambulance - - - they remind me of a death,

3 and I don't want to get in them. My girlfriend got me in her

4 car, and carried me to my mother's, and I had already called my

5 husband, and he met me there, and carried me to the emergency

6 room.

7 Q. What happened there?

8 A. They took x-rays, and they give me some prescriptions

9 to be filled for pain.

10 Q. Who is they?

11 A. Dr. Musgrave, and he told me to come back, five

12 days later.

13 Q. When did you next see Dr. Musgrave?

14 A. On January 17.

15 Q. What happened then?

16 A. The pain had got worse in my back, and he told me

17 he thought I should be admitted - - -

18 MR. MEADE: I object to hearsay.

19 Q. As a result of your going to the doctor that day,

20 did anything else happen?

21 A. He entered me in the hospital.

22 Q. When did you enter into the hospital?

23 A. On January 18th.

24 Q. What, if any, treatment did you receive in the

25 hospital?

[138]

1 A. I received fluid in my veins daily, and physical

2 therapy, and every four hours, they had me on my pain pills.

3 Q. Were you ambulatory or bedridden?

4 A. I could only get up and go to the bathroom - - -

5 no walking in the halls at all.

6 Q. How long did you stay in the hospital?

7 A. From the 18th of January, to the 1st of February.

8 Q. What were the pills?

9 A. Pain and relaxing of muscles.

10 Q. What pain?

11 A. The pain I had in my back.

12 Q. Where did you have pain?

13 A. In my back - - - in the lower part of my back.

14 Q. Following your release from the hospital on Feb-

15 ruary 1, where did you then go?

16 A. He wanted me to go over into the new part - - -

17 Q. Don't tell us what he told you - - - where did you

18 go?

19 A. I went to my mother's home, and he said I could go

20 there, if I would take bed rest, and not do anything.

21 Q. How long did you stay there, on bed rest?

22 A. I stayed at my mother's, from February 1, until

23 March, in the bed.

24 Q. March what?

25 A. March 16, or something.

[139]

1 Q. How long did your treatment of this continue?

2 A. He saw me the 15th or 16th of March, and he told

3 me - - -

* * * *

12 Q. Don't tell us what he told you - - - what did you

13 do on March 16th - - - did you leave your mother's?

14 A. Yes sir, I did.

15 Q. Where did you go?

16 A. We rented us a trailer up on Route 360.

17 Q. Who?

18 A. My husband and three children.

19 Q. How did you get along then?

20 A. I got along pretty well - - - I still couldn't

21 do any heavy housework.

22 Q. Do you recall when you next saw the doctor?

23 A. Sometime in April - - - the 23rd, I believe.

24 Q. Were you working at the time of the accident?

25 A. I was in reference to go back to work. I hadn't

26 really quit, but I really wasn't working either.

1 Q. Where had you been working before the accident?

2 A. In Dan River, in 1A Weave, in Section 2, under the

3 overseer of Walter Oakley. I had thought, and had said

4 before - - -

5 MR. MEADE: Objection.

6 Q. Don't tell us what you thought. When had you last

7 worked for Mr. Oakley? Don't tell us what you said - - - when

8 had you last worked?

9 A. December 16, 1971.

10 Q. What department were you working in, at that time?

11 A. 1A Weave, Section 2.

12 Q. Why did you stop working, on that day?

13 A. Mr. Oakley had - - -

14 MR. MEADE: I object to this.

15 THE COURT: Don't tell us what Mr. Oakley said.

16 Q. Why did you stop working on December 16?

17 A. Mr. Oakley and I had had a disagreement.

18 THE COURT: I believe you stated that in your opening

19 statement.

20 Q. And as a result of this disagreement, what did you do?

21 A. I came home and called Mr. Ben Davis - - - he's our

22 big division overseer, and I told him Mr. Oakley - - -

23 Q. Don't say that. As a result of your call to Mr.

24 Davis, what happened, with reference to your employment with

25 Dan River?

1 A. He told me to come back, and - - -
2 MR. MEADE: I object.
3 THE COURT: Sustained.
4 Q. Without telling us what he said - - -
5 THE COURT: Ask her what she did.
6 Q. What did you do, after talking with Mr. Davis - - -
7 as a result of having talked to them, what did you then do?
8 A. I was to go back to the mill, and - - -
9 MR. MEADE: She is going to tell us what she was
10 supposed to do in the future.
11 THE COURT: Just ask her when she went to work, if she
12 did. You have Mr. Davis here - - - I saw him in the courtroom.
13 Don't get her quoting anything from what Mr. Davis said, or what
14 happened between them.
15 Q. It might help to approach the bench - - - the
16 question of when she returned to work, we will get to, but I need
17 to get some intervening steps in.
18 THE COURT: I expect that will be developed for you.
19 Q. Where were you going on the day of the accident?
20 A. I was going to Mrs. Collins', because her and
21 my - - -
22 Q. Don't tell us what she told you - -- where were you
23 and Mrs. Collins going?
24 MR. MEADE: I don't think this is proper - - - let's
25 take it up in chambers.

1 IN CHAMBERS:

2 THE COURT: We came in here, so the jury would not
3 hear what you say - - - so, talk plainly, low and distinctly.

4 MRS. MURPHY, STATED AS FOLLOWS, UPON QUESTIONING BY
5 MR. CARTER:

6 Q. After you left on December 16, would you state what
7 you did with reference to continued employment at Dan River?

8 A. I had called Mr. Davis that morning, and told him
9 of the argument Mr. Oakley and I got into, and Mr. Davis told
10 me that there was still a job at Dan River for me, and he would
11 talk to me about another job on another section, not working under
12 Mr. Oakley, and I was to go up and talk to him, and have him to
13 put me on another section, and I had talked to Mrs. Collins,
14 which is my best girlfriend, and she said, "Gail, why don't you
15 get him to put you in 1B Weave, where I am, so that we would be
16 together down there working", so I - - - we had made an appoint-
17 ment to see Mr. Davis one day earlier, and one of my children got
18 sick, and I went to the doctor, so I couldn't keep the appoint-
19 ment - - - that week, it was on Saturday, he saw my father at
20 the Heartline Drive-In, and told him then that he wanted to know
21 why I hadn't come back, and my father explained that I had called
22 him, and told him my child was sick. Mr. Davis doesn't always
23 get the messages that are sent to him, because he's in several
24 departments. He said, "You tell her to be sure and get in touch
25 with me, so she can come back to work, and I have promised her

1 I will not put her under Walter Oakley." My father come home
2 that Saturday - - - to my mother's, is where I was at, and told
3 me to be sure and get in touch with Mr. Davis so that I could
4 make an appointment with him to go back to work. I called him
5 on Monday, and I was to see him on Tuesday - - - that was the
6 day of the accident. Tuesday, January 12, and I never got to
7 keep my appointment with him.
8 THE COURT: The 12th was on Wednesday.
9 Q. Of course, I realize that she can't say what she was
10 told, but I think she is entitled to say that as a result of the
11 communications, that she was going to the mill on that day, for
12 an appointment with Mr. Davis, for re-employment. That's not a
13 state of mind - - - it's a fact. This is where she was going.
14 (The witness was returned to the courtroom.)
15 THE COURT: I gather what she is trying to say is Mr.
16 Oakley discharged her.
17 MR. CARTER: He sent her out, which really isn't a
18 discharge - -- she could have gone back.
19 THE COURT: He ran her off the job.
20 MR. MEADE: Who says that - - - based on her testimony,
21 she has no job to base loss of earnings on - - - she didn't have
22 a job. She was going to talk to this man about a job.
23 THE COURT: Can you establish that she did?
24 MR. CARTER: I can show by Mr. Davis that she was a
25 qualified weaver, and they were in demand, and that he made an

1 appointment with her, and he's not the employment office per se,
2 and that the work was there, and available for her, and that she
3 would process through the normal channels.
4 THE COURT: Does he have direct knowledge of her case?
5 MR. CARTER: Yes - - - basically, he will testify to
6 what I said then.
7 MR. MEADE: I think the pertinent question is, did she
8 have a job on the date of the accident, or not?
9 MR. CARTER: That's not essential to the loss of
10 earnings - - - the fact that they might be temporarily out of
11 employment, and have a job, and are going to work - - - she is
12 entitled to it.
13 THE COURT: If you can prove that she had a job avail-
14 able to her, on January 12, I will let you do that - - - if she
15 was employable on January 12, and had a job, which she could not
16 get to, because of what happened to her, I will let you show
17 that.
18 MR. MEADE: Are you going to let him show she had a job
19 that would commence on a certain date?
20 THE COURT: If that is subsequent to January 12, and after
21 she was discharged, but Doctor - - - the doctor said she was
22 employable on May 25th - - - if she could have worked then, and
23 this thing kept her from doing that, then it's an element of
24 damages.
25 THE COURT: It is difficult to keep it away from

1 hearsay. All I really was trying to get in was the fact that
2 she was going to see Mr. Davis, on this morning, as a result of
3 communications.
4 THE COURT: Don't let her get into Mrs. Collins.
5 MR. MILLER: Unless Mr. Davis is the man who has the
6 authority to say you are fired or hired, or that you have a
7 job - - - I understand he was not the employment office. I don't
8 understand that, because you are a big-wig in the place, you
9 decide who is coming and going. I would have to object to his
10 testimony, unless he is the authority who would give the job.
11 (At this point, Mr. B. W. Davis, was brought into
12 chambers.)
13 THE COURT: We are in here informally, but Mr. Carter
14 will ask you some questions.
15 THE WITNESS, MR. B. W. DAVIS, STATED AS FOLLOWS, UPON
16 BEING QUESTIONED BY MR. CARTER:
17 Q. You are Mr. B. W. Davis?
18 A. Right.
19 Q. Where are you employed?
20 A. Dan River, Incorporated.
21 Q. What is your capacity?
22 A. Division Manager - - - we have three weave divisions,
23 and I am in change of one division.
24 MR. MEADE: Directing your attention to early in January
25 of 1972, were you so employed at that time?

A. Yes.

Q. And in the same capacity?

A. Same capacity.

Q. And did you know professionally, Mrs. Gail Murphy?

A. Yes, I have known her for several years.

Q. And do you know what Mrs. Murphy's qualifications are, with reference to the textile industry?

A. She is a qualified weaver, and that means she is able to perform an average job - - - we have certain machines.

Q. And she qualified as a weaver?

A. Yes.

Q. Early in January of 1972, did you have any conference, or telephone conference with her, with reference to her work, or employment at Dan River, Incorporated?

A. Yes, I did. She called me, and asked me about going back to work. She was out of work. She had had the job in 1A Weaveroom, which we know as the fifty inch loom, and she said she couldn't get along with the supervisor, and she either quit, or walked out, or something happened, but she wanted to know if she could be transferred to some other job, in some other area, and I told her, her only experience, to my knowledge, was the narrow loom, and I doubted very seriously if she could run the wider loom, but if it was some problem, we could resolve as far as supervision was concerned, I would be willing to talk with her, and to come to see me as soon as she could, and she said she would be in on the following Monday, and she never came,

1 and she called me about a month later, and said she had an acci-
2 dent is the reason she didn't come.
3 Q. Was work available in the weaveroom area, in which
4 she was qualified?
5 A. Yes.
6 Q. Would you have so employed her, if she had come on
7 the day of the appointment?
8 A. I would probably have considered moving her to
9 another area, because she had so said she wasn't interested, or
10 would not come and work for this particular man. I didn't
11 know what the problem was - - - if she had been out of work
12 and had to pass through the employment section, which would have
13 been through Dr. Viccellio or the clinic, and if she had passed
14 those tests, I would have considered it, yes.
15 Q. Were weavers sufficiently scarce at that time, so
16 that in a normal employment channel, she would have been accepted,
17 barring any physical problem?
18 A. Yes - - - we would have accepted qualified weavers.
19 As far as the wide loom, I questioned her about the wide loom.
20 One time since that, we did hire her in the wide looms, and
21 she tried it a few days, and walked out at 1:30 in the morning,
22 and I haven't heard of any reason she did that.
23 THE COURT: On January 12, 1972, can you say she would or
24 would not have had a job, had she not been hurt?
25 A. If we could have resolved the problem persisting,

she would have. I don't know how serious it was.

THE COURT: That was contingent upon your talking to her, and getting this worked out?

A. Yes sir.

****

CROSS EXAMINATION BY MR. MEADE:

Q. So far as her status as of January 12, 1972, she was in a terminated status?

A. Right.

Q. She had been terminated?

A. Yes.

Q. On December 16th, she had been terminated?

A. Right.

Q. Was that the approximate date she called you the first time?

A. I don't remember the date exactly. The way it first came to me - - - I ran into her father one morning, and he told me about how bad she needed to work, and asked if I would consider talking to her, and I told him I would.

Q. She was at a terminated status, as of January 12?

A. Yes.

Q. And as of that date, she had no job with Dan River?

A. Yes.

Q. And she would have had to go through personnel and Jimmy Spangler, to get a job?

A. Right.

1 Q. He's the one that does the hiring?

2 A. That office staff - - - he probably wouldn't have

3 seen her personally.

4 Q. And they in turn, would confer with you?

5 A. That's correct - - - they would not have employed

6 her unless I approved her.

7 Q. And you had not reached that stage?

8 A. No. It was contingent on the problem she had when

9 she left, and whether I could place her in that area or not.

10 **********

11 RE-DIRECT EXAMINATION BY MR. CARTER:

12 Q. She was in fact, re-employed at a later date, in

13 substantially the same capacity, which she asked to be employed

14 in, on January 12?

15 A. She was employed in January 1973, if I remember

16 correctly, on the wide loom.

17 THE COURT: And that was terminated?

18 A. Right.

19 THE COURT: How long did she work?

20 A. I would say three or four days - - - she walked out

21 at about 2:00 o'clock in the morning, and didn't say anything.

22 MR. MEADE: Were the circumstances different then?

23 THE COURT: It's not admissible. The way it turned out,

24 it wasn't resolved too happily. I will have to rule that it is

25 not admissible - - - it's too speculative.

[150]

11 Q. Mrs. Murphy, it has been agreed that the statement
12 of the Danville Orthopedic Clinic was $175.00, for services
13 rendered to you, and that your original statement from Memorial
14 Hospital was for $55.00, for the emergency room - - - is that
15 correct?
16 A. Yes sir.
17 Q. And that your statement for the stay for the period
18 through February 1, 1972, was $671.75, is that correct?
19 A. Yes sir.
20 Q. Now, did you have any other expenses in connection
21 with your injury, other than the three bills we have mentioned?
22 A. Yes sir. I've got a drug bill, and I had to pay my
23 mother and my sister both, to help watch after the children.
24 Q. How much did you pay the babysitters?
25 A. It was a total of $240.00.

[151]

1 Q. And you mentioned a drug bill - - - I hand you a
2 statement from Johnson's Riverside Drug, Incorporated, dated
3 May 8, 1973 - - - would you explain to us what the drugs listed
4 there were for?

* * * *

15. Q. Were they prescription drugs?
16 A. Yes.
17 Q. Who prescribed them?

18 A. Dr. Musgrave.

19 THE COURT: I think whatever he prescribed even beyond

20 the discharge point, would be proper.

21 Q. How much is that bill?

22 A. $107.60.

* * * *

[152]

4 Q. Now, Mrs. Murphy, the Court has ruled since you were

5 not employed on the day of your accident, that we cannot go into

6 the question of the earnings you might have earned.

7 MR. MILLER: This is not a question - - - it's a

8 special, and I object.

9 Q. What other, if any, expense did you have, other than

10 loss of earnings?

11 A. I had to pay the babysitter - - - I said that.

12 THE COURT: Have you given us all of them now?

13 Q. I think so - - - when were you first able to work

14 following the accident?

15 A. In August - - - August 28th.

16 Q. Where did you then go to work?

17 A. I went the first of September, and tried for em-

18 ployment at Dan River - - -

19 MR. MEADE: I think the question is where did she go

20 to work - - - I think she should be responsive to that.

21 THE COURT: Tell us where?

22 A. I went to Mebane, North Carolina, after not being

23 able to be hired by Dan River.

24 Q. Where did you apply for work first?

25 A. Dan River Mills.

* * * *

[153]

5 Q. Where did you go to work?

6 A. In Mebane, North Carolina, at Universal Texturized

7 Yarn.

8 Q. It is in evidence by Dr. Musgrave, that following

9 the emergency room, you were placed in a collar?

10 A. Yes.

11 Q. When was that done?

12 A. They placed me in a collar the day I was at the

13 emergency room.

14 Q. How long were you required to wear that?

15 A. When they entered me in the hospital, they didn't

16 put the collar back.

17 Q. Did you ever wear it again?

18 A. No sir.

19 Q. The doctor testified he prescribed a corset?

20 A. Yes.

21 Q. When was that placed on you?

22 A. After I left the hospital - - - after February 1.

23 Q. How long did you wear that?

24 A. I wore that up until April, I believe it was.

25 Q. Now, I believe it is in evidence that you took

[154]

1 certain drugs - - - on whose prescription were those drugs?

2 A. They were prescribed by Dr. Musgrave.

3 Q. How long did you continue to take those?

4 A. I'm still taking them.

5 Q. Why?

6 A. Because if I do any heavy work - - - housework,

7 such as mop, or anything like that - - -

* * * *

22 Q. It is in evidence that you had a prior accident?

23 A. Yes.

24 Q. When was that?

25 A. On June 23, 1971.

* * * *

[155]

1 Q. What injury did you receive with reference to your

2 back?

3 A. I didn't have any trouble with my back, in that

4 accident.

5 Q. You were treated by Dr. Atkins?

6 A. Dr. Samuel Atkins.

* * * *

16 Q. What was your state of health with reference to your

17 neck injuries that you sustained back in June?

18 A. I had an inner-ear problem about which I had already

19 made mention - - - as far as my neck and all - - - that was fine.

20 There was nothing wrong, and as far as this inner-ear, I'll have

21 it the rest of my life.

22 Q. But that is unrelated to this accident?

23 A. No, it don't have anything to do at all with this

24 accident.

* * * *

[156]

8 Q. Since your discharge by Dr. Musgrave, in August of

9 1972, have you had any problems with your back or neck, with

10 reference to the first accident, or second accident?

11 MR. MEADE: She can't testify to that. The doctor has

12 testified that so far as this accident we are concerned with,

13 she recovered from it. She can't attribute to one thing or

14 accident.

15 THE COURT: Maybe she can - - - that was his medical

16 opinion - - - she is entitled to state how she felt before she

17 was discharged, and since.

18 MR. MILLER: We object. She can testify to how she

19 felt. She can testify about this accident - - - her physician

20 has testified.

21 THE COURT: Proceed.

22 A. The only trouble that I have is inner-ear, which

23 I have stated - - - it has nothing to do whatsoever with this

24 second accident. My back - - - if I do heavy or strenuous house-

25 work, it does hurt me, and it always will.

[157]

1 Had you ever had any trouble with your lower back?

2 A. No, I have never had any trouble with my lower back.

3 Q. Before the accident of January 12?

4 A. No sir - - - never.

5 Q. In the accident of June, 1971, what part of your

6 back was hurt?

7 A. My neck and ear.

8 Q. Had you ever had any injury any time, any where

9 to your lower back?

10 A. No sir - - - never.

11 Q. What, if any, problem do you have, with your lower

12 back, today?

13 MR. MILLER: he testified she had a neck problem, and a

14 thoracic back problem, between her shoulder - - - this lady is

15 now trying to talk about her lower back - - - there is no evi-

16 dence that she complained - - - she wasn't treated for it, and

17 never said it to the doctor, and we ask the Court to exclude

18 that.

19 THE COURT: I will exclude that.

* * * *

CROSS-EXAMINATION OF GAIL YEATTS MURPHY

BY MR. MEADE

[157]

23 Q. Mrs. Murphy, do I understand that in June of 1971,

24 some six, seven or eight months prior to this second accident

25 with the tractor-trailer, that you had been in an automobile

26 accident?

[158]

1 A. Yes sir, I had.

2 Q. Was this an accident in which you were struck from

3 behind?

4 A. Yes.

5 Q. Were you in a stopped vehicle, on that occasion?

6 A. Yes sir, I was.

7 Q. As a result of that accident, did you receive an

8 injury to your neck?

9 A. Yes.

10 Q. And to your ear, also?

11 A. Yes - - - from the blow on the steering wheel.

12 Q. A blow on the steering wheel, and a neck injury?

13 A. Right.

14 Q. And as a result of that, you sought medical attent-

15 ion from Dr. Atkins, an orthopedic surgeon also?

16 A. Yes.

17 Q. During the course of your treatment by him, did you

18 wear a cervical collar?

19 A. Yes.

20 Q. The same type of collar you wore after this acci-

21 dent also?

22 A. They were made a little different.

23 Q. Fitting the same place - - - both for your neck?

24 A. Yes sir.

25 Q. Now, at the same time, did Dr. Atkins also treat

[159]

1 you by use of traction, apply traction to your neck?

2 A. When I had my office visits, he put me in a traction

3 thing around my neck, that had weights on it, and went up and

4 down.

5 Q. Did you have the same treatment, after the second

6 accident?

7 A. No.

8 Q. I think it was pretty clear that this ear problem

9 you had that Dr. Greenberg saw you for in the hospital, that you

10 suffered from, you got that in the first accident?

11 A. No sir - - - in fact, Dr. Atkins told me to go to

12 Dr. Greenberg, before he released me. I had made an appointment

13 with Dr. Greenberg, and I was in the hospital at the time I was

14 to keep his appointment.

* * * *

25 Q. Why was it you made this appointment - - - dizziness

26 or something like that?

[160]

1 A. Yes sir - - - you have a very dizzy head, and

2 ringing in your ear.

* * * *

CLOSING ARGUMENTS OF COUNSEL

MR. CARTER:

[189]

2 The Court ruled, since she was not employed, that what I told

3 you about loss of earnings, in my opening statement, is to be
4 disregarded - - - she was not employed at the time of the acci-
5 dent. . . .

* * * *

MR. MEADE:

[191]

25 . . . . . Fortunately for her, she

[192]

1 only suffered out of pocket expenses of $175.00 to Dr. Musgrave,
2 and emergency room examination and hospital bill was $671.00,
3 and drugs as she has given a list, for $107.00, and these drugs
4 go all the way through December, I know, a good many after August,
5 and these are prescription numbers - - - whether all of them
6 pertain to this accident, and the inner ear problem - - - we
7 don't know - - - babysitting to her mother and sister, $240.00
8 - - - not exactly $1300.00 or $1400.00, but $1,243.35, as I
9 calculated. . . .

* * * *

THE COURT:

[217]

8 THE COURT: All right, is there any motion, after the
9 jury is dismissed?
10 MR. MEADE: Yes. The defendant, Virginia-Carolina,
11 by counsel, moves the Court to set aside the verdict on the
12 grounds it is contrary to the law and evidence, and on the
13 grounds previously stated at the conclusion of plaintiff's

14 evidence, and all the evidence. I also ask the Court to set
15 aside the verdict and grant a new trial on the grounds that
16 error was committed in refusing the motion for mistrial, and
17 finally, I move the Court to set aside the verdict, and grant a
18 new trial on the grounds that the verdict is excessive.

* * * *