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SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 740564

CECIL G. MONDAY,

Appellant,

V.

EDGAR C. OLIVER,

AND

JOHN DOE,

Appellees.

APPENDIX

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VIRGINIA: IN THE CIRCUIT COURT OF HENRY COUNTY

EDGAR C. OLIVER, Plaintiff, vs. CECIL G. MONDAY, Route 3, Bassett, Virginia, and JOHN DOE, Defendants.	)	AMENDED MOTION FOR JUDGMENT

TO THE HONORABLE JOHN D. HOOKER, JUDGE OF SAID COURT:

Plaintiff respectfully shows the following case:

1. On or about January 24, 1971, Plaintiff was riding as a passenger in an automobile which was being operated by Herman L. Ashley in the east bound lane of Route 57, at approximately 10:00 a.m., in Henry County, Virginia.

2. At the time and place aforesaid, the Defendant, Cecil G. Monday, was operating an automobile in the west bound lane of Route 57.

3. At the time and place aforesaid, the Defendant, John Doe, was operating an automobile which was stopped in the west bound lane of travel on Route 57.

4. Notwithstanding the duties which the Defendant, Cecil G. Monday, owed to the Plaintiff, Defendant was negligent in that:

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(a) He operated the automobile under his control at an excessive rate of speed under the circumstances then and there existing;

(b) He operated the automobile under his control without keeping a careful and proper lookout;

(c) He operated the automobile under his control in such a negligent manner that he caused the said automobile to cross from its proper lane of travel into the lane of travel which was then occupied by the automobile in which the Plaintiff was riding as a passenger, wrecking both of the said automobiles and injuring the Plaintiff.

5. Notwithstanding the duties which the Defendant, John Doe, owed to the Plaintiff, Defendant was negligent in that:

(a) He operated the automobile under his control in such a negligent manner that he caused the automobile to block and impede the free flow of traffic on Route 57;

(b) He operated the automobile under his control without keeping a careful and proper lookout;

(c) He operated the automobile under his control in such a negligent manner and caused his automobile to stop and park, in such a negligent manner, on Route 57, that his negligence was a contributing cause of the accident which injured the Plaintiff.

6. As a direct and proximate result of the joint and combined negligence of the Defendants, the Plaintiff was caused serious and permanent injuries about his person, internally and externally, was caused excruciating pain and mental anguish, was required to incur great medical expenses and will be required to do so in the future, was permanently maimed and disabled,

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was required to suffer loss of earnings and earning capacity, and was rendered less capable of performing his normal daily tasks, all to his damage.

WHEREFORE, the undersigned doth move the Court for judgment against the Defendants, jointly and severally, in the amount of Thirty Thousand Dollars ($30,000.00).

EDGAR C. OLIVER

By James W. Haskins
Of Counsel

Young, Kiser & Haskins, p.q.
60 West Church Street
Martinsville, Virginia 24112

CERTIFICATE

This is to certify that I have this 7th day of November, 1972, mailed a true copy of the foregoing Amended Motion for Judgment to David B. Worthy, of Stone, Joyce, Worthy & Stone, 46 W. Main Street, Martinsville, Virginia, 24112, counsel of record for the Defendant, Cecil G. Monday.

James W. Haskins
James W. Haskins

VIRGINIA: IN THE CIRCUIT COURT OF HENRY COUNTY

EDGAR C. OLIVER, Plaintiff, vs. CECIL G. MONDAY, and JOHN DOE, Defendants.	GROUNDS OF DEFENSE

Now comes defendant Cecil G. Monday, by counsel, and for his grounds of defense to an amended motion for judgment heretofore filed against him and another by plaintiff, states as follows:

1. The allegations of numbered paragraphs one, two, and three of said motion for judgment are admitted.

2. All allegations of numbered paragraph four of said motion for judgment imputing any negligence to this defendant are denied, and this defendant avers that the accident described in said motion for judgment was unavoidable insofar as he was concerned, and was proximately caused by the negligence of defendant John Doe, and this defendant avers further that plaintiff was guilty of contributory negligence and/or assumption of the risk, all of which bar any recovery on his part against this defendant.

3. This defendant is not advised as to the nature and extent of any injuries and damages suffered, or to be suffered, by plaintiff, and demands strict proof thereof, but denies that he is liable for any therefor.

WHEREFORE, this defendant moves the Court to be dismissed from this action at the cost of plaintiff.

CECIL G. MONDAY

By _____ Counsel

VIRGINIA

IN THE CIRCUIT COURT OF HENRY COUNTY

EDGAR C. OLIVER, Plaintiff	:	
v.	:	GROUNDS OF
CECIL G. MONDAY and JOHN DOE, Defendants	:	DEFENSE

For his grounds of defense to the amended motion for judgment filed in the above styled case defendant John Doe replies, denying he is liable to plaintiff, and for answer says:

1. The allegations of Paragraph 1 of the amended motion for judgment are not denied.

2. The allegations of Paragraph 2 of the amended motion for judgment are not denied.

3. This defendant is without sufficient information to answer the allegations of Paragraph 3 of the amended motion for judgment and requires strict proof thereof.

4. The allegations of Paragraph 4 of the amended motion for judgment are true.

5. The allegations of Paragraph 5 of the amended motion for judgment are denied.

6. The allegations of Paragraph 6 of the amended motion for judgment are denied.

WHEREFORE, defendant John Doe denies he is liable to plaintiff

in any amount and requests this action be dismissed as to him with his costs expended.

JOHN DOE

By Counsel

Counsel

MEADE, TATE AND MEADE
516 Masonic Building
Danville, Virginia 24541

By _____
Member of Firm

CERTIFICATE OF COUNSEL

I, Frank O. Meade, of counsel for defendant John Doe in the above styled action, hereby certify that a true copy of the foregoing grounds of defense was served by mailing on the 4th day of December, 1972, to James W. Haskins, of counsel for plaintiff, 60 West Church Street, Martinsville, Virginia, and to David B. Worthy, of counsel for defendant Cecil G. Monday, 46 West Main Street, Martinsville, Virginia.

_____

(Dep. 47) CECIL G. MONDAY

the next witness, being first duly sworn, deposed and stated as follows:

EXAMINATION BY MR. MEADE:

Q. What's your full name?

A. Cecil G. Monday.

Q. How old are you?

A. Fifty.

Q. Are you married?

A. Yes, sir.

Q. Do you live with your wife?

A. Yes.

****

(Dep. 48) Q. How far had you driven before this accident happened? How far had you come from your home?

A. About three miles, I guess.

Q. This was Sunday, wasn't it?

A. Yes, sir.

Q. This was going to be sort of a ride?

A. We was kind of planning on going up to my mother-in-law's.

Q. What time of day did it happen?

A. Around ten, ten-thirty, something like that.

Q. Now, what was the weather when you left home?

A. It wasn't doing a thing at the house. We went on down into Bassett, stopped at a

service station, filled up with gas. A little snow started to fall. We started up the hill. The farther up the hill we got, the more snow we went to getting into.

Q. Where this accident happened is a straight stretch?

A. It wasn't exactly straight. There's some broken lines

(Dep. 49) going west of Bassett, on 57.

Q. How were you driving as you were driving along short of the accident scene? How fast were you driving?

A. About twenty-five or thirty, I guess.

Q. Did you have to drive that slow because of the road?

A. I didn't have to.

Q. But you were?

A. Just cruising up the hill.

Q. Were you still going on your trip?

A. When it went to snowing, we talked about turning around, coming back.

Q. But you hadn't actually turned around?

A. No.

Q. Did you have snow tires on your car?

A. No, I didn't have snow tires on my car. That's why we were going to turn around.

****

Q. Just tell me what happened.

(Dep. 50) A. I was going up the hill there, went on around kind of a curve there. This car was sitting off on the right-hand side of the road there.

Q. On the right-hand side of the road?

A. Yes, sir.

Q. On your right-hand side?

A. Yes, on my side.

Q. Which way was it headed?

A. It was headed toward Bassett.

Q. Toward you?

A. Yes.

****

(Dep. 51) Q. You were almost headlight to headlight?

A. I didn't get that close to him.

Q. How far back did you stop?

(Dep. 52) A. I guess two car lengths.

Q. Completely on your side of the road?

A. Yes.

****

A. He got out of the car when I stopped, walked around the front of the car, looked up the road, motioned me around, to go on.

****

(Dep. 54) Q. You could see him look?

A. Yes. He motioned me on around, and I could see around the car anyway.

****

(Dep. 55) Q. Did you have any trouble pulling out to go around him?

A. No, I didn't have no trouble.

****

Q. How come you stopped in the first place?

A. I didn't know whether to take a chance on going around until I made sure nothing was coming.

Q. Of course, you made sure nothing was coming, and he signaled to you, too, and you started around?

A. Yes.

Q. Where was Mr. Ashley's car when you first saw it?

A. It come over that . . . .

Q. You saw him come over the hillcrest?

A. He was over the hill by the time I noticed it. I was going to back up in the driveway and turn around, go back down the hill.

Q. Were you in the process of getting ready to turn around when this accident happened?

(Dep. 56) A. I was just past his car far enough where I could back up in the driveway.

****

Q. You say you were preparing to turn around?

A. Yes, as soon as I pulled up where I could

back up in this driveway. This driveway comes out kind of at an angle.

(Dep. 57) Q. Were you moving or stopped when you first saw Mr. Ashley's car, or do you know?

A. I don't know now.

Q. You think you had stopped, getting ready to back up to go in the driveway when this happened?

A. I think so.

****

(Dep. 58) Q. You said you were going to stop and back into the driveway on the left-hand side of the road so you could turn around and go back, is that correct?

A. Yes.

Q. You can't say whether you had actually stopped, getting ready to back or not?

A. No. I was watching in my mirror, sideview mirror to see if any traffic was coming up the hill behind me before I got in there. He motioned me around. I looked to see if it was clear behind me.

Q. Your plan was to bring your car to a stop, put it in reverse and back into this driveway?

A. That's what I was intending to do.

Q. Had you brought your car to a stop getting ready to back in this driveway when you saw

the Ashley car? Were you moving, or had you come to a stop when you saw Mr. Ashley?

A. I can't tell you right off.

Q. You don't remember?

A. I don't remember.

Q. You just can't say one way or the other, is that correct?

(Dep. 59) A. Yes.

****

Q. Mr. Monday, Mr. Oliver testified here under oath when they first saw you, that you were stopped in the road, you don't deny that, do you? You may have been stopped getting ready to back into that driveway?

A. I could have been.

Q. You just can't say one way or the other?

A. No.

****

(Dep. 61) MRS. CECIL G. MONDAY

the next witness, being first duly sworn, deposed and stated as follows:

EXAMINATION BY MR. MEADE:

Q. Mrs. Monday, you were with your husband the day of this accident?

A. Yes.

Q. And he has already testified that you all were going, I think you were expecting to go

to Mt. Airy, I believe, to visit your mother?

A. Yes.

****

(Dep. 62) Q. Before this accident happened, is it correct you all were planning to turn around, go back home?

A. Yes, when he got to seeing it snow on the road, he said "We will turn around here and go back down the hill."

Q. That's what he said?

A. When we passed that car where slid off on our side of the road.

Q. When you got to this car that slid off the road, that sort of sold you to going back home?

A. Yes. I thought it was wrecked.

Q. Was it in your lane?

A. Yes.

Q. It was on the wrong side of the road?

A. Yes.

****

(Dep. 63) Q. Your husband started around this car?

A. Yes. He sat there until this man got out of the car. He motioned for him to come on by.

Q. Where was the man when he did that?

A. He got out of his car, stood there in the

road, looked up the road, motioned for him to come on.

Q. Could you see up the road?

A. Yes, you could see up the road a pretty good little ways.

Q. Did you see anything coming?

A. Didn't see a thing until he started to put the car in whatever you put it in to back up for this driveway. There it come.

Q. Do I understand your husband, after the driver of that other car motioned him on, your husband started around the car, the one that slid off the road, your husband started to go around it?

A. Yes, he started going around it.

Q. He went around it?

(Dep. 64) A. Yes, he had to, for that man that was slid off.

Q. Do I understand your husband stopped and was going to put it in reverse, back up in a driveway?

A. Yes. You see, this driveway was almost straight across from where the car was, maybe a car length, not much more than that, I would say.

Q. Mrs. Monday, was your husband's car stopped, or was it moving backwards?

A. It was moving backwards when that one hit us.

Q. Mr. Monday's car was moving backwards?

A. It was moving backwards, to back up in that driveway.

Q. When you all got hit?

A. To turn around, that's right.

Q. Did you see this car come over the hillcrest, the one that hit you?

A. Yes.

Q. When you first saw that car was your husband going backwards or still stopped?

A. He was going backwards. I said, "There comes a car." By that time it had done hit us.

Q. So when you first saw that car, you saw it as soon as you could have seen it?

A. I reckon, it come so fast down that hill.

Q. So, when you first saw it, your husband was in reverse, going backwards?

(Dep. 65) A. Yes.

Q. When you all got hit, he was in reverse going backwards, is that correct?

A. Yes.

Q. What side of the road were you on?

A. On the left-hand side.

Q. Were you completely on the left-hand side?

A. Yes, in the lane to go back in the driveway.

Q. But you were on the wrong side of the road?

A. Yes, it was on the left-hand side.

****

1 All witnesses were called, sworn, separated and excluded from
2 the courtroom. A jury of seven was empaneled and duly sworn.
3 Opening statements were presented by Mr. Young, Mr. Worthy,
4 and Mr. Meade, which are omitted.

5 TROOPER L. A. McMAHON

6 the first witness called to testify for the plaintiff, being
7 first duly sworn, testified and stated as follows:

8 THE COURT: It is agreed by the lawyers in this case that Mr.
9 Oliver, at the time of the accident, was sixty years of age,
10 with a life expectancy of sixteen years. Now, as a result
11 of this stipulation, it will not be necessary to bring the
12 tables, things of that kind, for this fact.

13 DIRECT EXAMINATION

14 BY MR. YOUNG:

15 Q. What is your name?

16 A. L. A. McMahon.

17 Q. Did you investigate an accident which occurred
18 January 24, 1971 at approximately ten o'clock on Route 57
19 west of Bassett, involving an automobile driven by a Mr.
20 Ashley and one driven by a Mr. Monday?

21 A. Yes, I did.

22 Q. Please tell us exactly what your investigation
23 revealed.

24 A. I arrived at the scene at approximately 10:55 A.M.,
25 Route 57, 1.6 miles west of Bassett where an accident

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occurred, would be just south of . . . .

Q. Excuse me for interrupting. It might save some time to come down, testify, point out on your diagram exactly what your diagram is intended to represent.

A. This would be State Route 57 looking back toward Bassett. This would be a downgrade. Hillcrest up here. I found two vehicles. This is not to scale. There's a driveway in this general area here going up the hill. Mr. E. Dalton lives there now, the old Carter estate. Vehicle No. 1, a 1963 Rambler, two-door, operated by a Mr. Herman Linwood Ashley, damaged the hood, grill, front bumper, right front fender and windshield. This vehicle was in the westbound lane of Route 57, headed in an easterly direction. The other vehicle involved was a 1966 Mercury two-door operated by Mr. Cecil C. Monday, had damage to the entire front end, to the windshield, approximate cost to repair damage on the Mercury, $450.00, on the Rambler $300.00. At the time I arrived at the scene, it was snowing, the road was covered with snow, and I found this vehicle, the Rambler, to be equipped with snow tires. This vehicle, the Mercury, did not have snow tires or chains. I had snow tires on my police vehicle. This is downgrade, the direction in which the Rambler was coming. It was daylight at the time. I could not determine the point of impact, or where the two vehicles had crashed. Approximately fifty-five minutes had elapsed from the time of

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1 impact to my arrival. It was snowing. I talked to both
2 drivers. Mr. Ashley made the following statement to me.
3 MR. MEADE: Wouldn't that be hearsay? Mr. Ashley is not a
4 party.
5 Q. Was this in the presence of Mr. Monday?
6 A. Yes. Mr. Ashley said, "I was coming over the hill
7 fifteen to twenty miles per hour. I glanced down. Because
8 I knew I was going to slide, I turned my wheels, just started
9 sliding, and we hit." Mr. Monday made this statement to me,
10 "I was coming uphill. There was a Cadillac sitting on my
11 side of the road. He motioned me on around. After I started
12 around, I saw him, and was going to try to cut in the drive,
13 but couldn't."
14 Q. Did you question him as to what drive, or was there
15 only one there?
16 A. There is only one drive on the hill.
17 Q. If I understand you correctly, and you have told us
18 this is not to scale, but these cars, even though you don't
19 know exactly where they hit, it was to the west of the
20 driveway?
21 A. Yes.
22 Q. Tell us about the grade there, starting at the
23 driveway, looking up the hill, what type grade, or do you
24 know?
25 A. This is a straight grade approximately one hundred

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1 yards, maybe a little further in this direction, the hill
2 crests off, and a slight curve.
3 Q. What kind of a hillcrest would that be for a driver
4 driving in the direction of Mr. Ashley, the car Mr. Oliver
5 was riding in?
6 A. It would be downgrade for this vehicle, and from
7 the crest of the hill to the driveway, I would say,
8 approximately one hundred yards sight distance.
9 Q. Are you in a position to tell us what a driver in
10 Mr. Ashley's car would be able to see in the slight curve
11 just before you get to the hillcrest looking down the hill,
12 if anything?
13 A. What could he see?
14 Q. Yes.
15 A. His vision would be obstructed until he crested the
16 hill.
17 Q. So, until you crest the hill, it is a blind hill-
18 crest?
19 A. Yes.
20 Q. That would apply both ways?
21 A. Yes.
22 Q. You found that the car -- just to make sure the jury
23 understands your drawing -- car No. 1, the Ashley car, had
24 been in this lane?
25 A. Yes.

1 Q. Car 2 had been in this lane?

2 A. Yes.

3 Q. There had been another car there, according to what

4 Mr. Monday told you, and he had pulled to the left, if I

5 understand you correctly, to go in that private drive . . .

6 MR. MEADE: I object to the leading question.

7 Q. I am confused on the statement. Would you tell us

8 what Mr. Monday told you?

9 A. "I was coming up the hill, and there was a Cadillac

10 on my side of the road. He motioned me around. After I

11 started around, I saw him, and I was going to try to cut

12 into the driveway and couldn't."

13 Q. That is what he said? He told you he tried to cut

14 into the driveway and couldn't?

15 A. After he saw -- apparently. . . .

16 Q. He said that's what he attempted to do?

17 MR. MEADE: I object to any interpretation. The man is

18 here to testify. I also object to this evidence against

19 John Doe. I think it is hearsay.

20 MR. YOUNG: I think that's all at this time.

21 CROSS EXAMINATION

22 BY MR. WORTHY:

23 Q. Trooper McMahon, it was snowing at the time of the

24 accident?

25 A. Yes.

1 Q. Snowing when you got word of the accident?

2 A. I don't recall.

3 Q. But it was snowing when you got there?

4 A. Yes.

5 Q. And it was snow on the road?

6 A. Yes.

7 Q. Depending on how much it was snowing, that would

8 cut down on the sight distance of drivers going east or west?

9 A. Yes.

10 Q. I believe the diagrams here where you put the two

11 vehicles somewhat to the west of the private drive, is not

12 drawn to scale?

13 A. No.

14 Q. You can't tell us exactly how far to the west these

15 two vehicles were?

16 A. No.

17 Q. Can you tell us they were in the vicinity of this

18 private driveway?

19 A. Yes.

20 Q. Mr. Monday told you there was a car in his lane, a

21 Cadillac?

22 A. Yes.

23 Q. He started around it?

24 A. Yes.

25 Q. I gather there was a broken line here for passing?

1 A. It is on the highway, but I believe it was covered
2 with snow.
3 Q. Without snow, there was a broken line?
4 A. Yes.
5 Q. There was a broken line?
6 A. Yes.
7 Q. There's a grade, but no hillcrest until you get
8 further up?
9 A. Yes.
10 Q. Passing is permitted?
11 A. Yes.
12 CROSS EXAMINATION
13 BY MR. MEADE:
14 Q. Trooper, you arrived at the scene at 10:55?
15 A. Yes.
16 Q. Did you determine from the parties about what time
17 this accident happened?
18 A. Ten o'clock.
19 Q. So you arrived fifty-five minutes after the accident
20 occurred?
21 A. Yes.
22 Q. Was it snowing when you arrived?
23 A. Yes.
24 Q. You really don't know the condition of the weather
25 at the time of the accident?

1 A. No.

2 Q. Do you know the condition of the highway at the time

3 of the accident?

4 A. No.

5 Q. You found no tire marks or anything of that nature?

6 A. No.

7 Q. I suppose the road was covered with snow when you

8 got there?

9 A. Yes.

10 Q. How deep was it when you got there?

11 A. I don't recall.

12 Q. What is the width of this road?

13 A. I would have to approximate it.

14 Q. What's your estimate?

15 A. Two ten or two twelve-foot lanes, approximately

16 twenty to twenty-four feet.

17 Q. Would you be willing to give us your estimate as

18 two twelve-foot lanes?

19 A. Probably two twelve-foot lanes.

20 Q. Broken line when clear weather?

21 A. Yes.

22 Q. Now, as an officer, do you know approximately the

23 width of an automobile? Seven feet?

24 A. I would say seven to eight feet.

25 Q. That would be your American car?

1 A. Right.

2 Q. And this diagram you said is not to scale, but the

3 positions of the two vehicles with reference to each other,

4 are these about as close as you can get from your investigatio

5 A. Yes.

6 Q. One car, which was the Ashley vehicle, ended up on

7 its left side of the road?

8 A. Yes.

9 Q. Headed east?

10 A. Yes.

11 Q. The No. 2 vehicle, Mr. Monday's vehicle, was on

12 his wrong side of the road in which would be the eastbound

13 lane, is that correct?

14 A. Yes.

15 Q. Both of these vehicles had damege to the front end?

16 A. Yes.

17 Q. This driveway, is this a private driveway?

18 A. Yes.

19 Q. Is it surfaced?

20 A. Yes, blacktop.

21 Q. Is it blacktop?

22 A. Yes.

23 Q. As it leads off of the south side of -- this is 57,

24 isn't it?

25 A. Right.

1 Q. As it leads off the south side of 57, it is a bit
2 of an angle, is it not?
3 A. Yes.
4 Q. And that angle would be towards the west?
5 A. Yes.
6 Q. So then, No. 2 vehicle, if he is going to back into
7 it, he has to back into a road that leaves 57 at an acute
8 angle?
9 A. Yes.
10 Q. In other words, he has to go more than ninety degrees?
11 A. It was a right large drive. It would have to make
12 a sharp angle.
13 Q. More of an acute angle?
14 A. Right.
15 Q. And looking west it is an upgrade?
16 A. Yes.
17 Q. Trooper, I am going to ask you, if you will, to mark
18 Route 57 and also, if you will, initial it, and I would like
19 to offer this as Exhibit 1 for the record.
20 REDIRECT EXAMINATION
21 BY MR. YOUNG:
22 Q. Would you mark the automobile there -- based on
23 what you learned after you got to the scene -- approximately
24 where the stalled automobile was.
25 MR. MEADE: I object to that. That is based on hearsay.

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1 MR. YOUNG: If the Court please, we would like to enter
2 this as an exhibit.
3 THE WITNESS STANDS ASIDE.
4 *
5 (The testimony of the next witness, DR. PAUL TOMS, is
6 omitted)
7 *
8 HERMAN LINWOOD ASHLEY
9 the next witness, called to testify on behalf of the
10 plaintiff, being first duly sworn, testified and stated as
11 follows:
12 DIRECT EXAMINATION
13 BY MR. YOUNG:
14 Q. What is your name, please?
15 A. Herman Linwood Ashley.
16 Q. Where do you live?
17 A. Bassett.
18 Q. Do you know Mr. Edgar C. Oliver?
19 A. Yes.
20 Q. Would you tell us where, at approximately ten o'clock
21 on January 24, 1971 where you and Mr. Oliver were?
22 A. In an accident.
23 Q. Where did that occur?
24 A. Bassett Hill.
25 Q. In Henry County?

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1 A. Yes.

2 Q. That's Bassett Hill? Where is Bassett Hill located?

3 A. Right above Bassett.

4 Q. I believe it would be west of Bassett on 57?

5 A. Yes.

6 Q. Tell us how the accident happened.

7 A. Well, I was coming over this blind hill, and the

8 road was blocked, and I was about one hundred and fifty feet

9 away from the cars when I seen them.

10 Q. What happened when you first saw the cars you say

11 were blocking -- in your lane?

12 A. Yes.

13 Q. What lane were you in?

14 A. The right lane.

15 Q. How fast were you going?

16 A. Fifteen or twenty miles per hour.

17 Q. Why were you going so slowly?

18 A. Because the hill was kind of . . . . .

19 Q. It was snowing?

20 A. I knew it might be slick.

21 Q. What kind of tires did you have on?

22 A. Snow tires.

23 Q. You were one hundred and fifty feet away, you saw

24 the road blocked. What was it blocked by?

25 A. Two cars.

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1 Q. Do you know what type cars they were?

2 A. One was unknown. One was a '66 Mercury.

3 Q. Where was the '66 Mercury in relation to your lane

4 of travel?

5 A. In my lane.

6 Q. Which way was it headed?

7 A. West.

8 Q. Did you learn who was driving that car?

9 A. Cecil Monday.

10 Q. That's one of the defendants? When you first saw

11 Mr. Monday's car in your lane of traffic, what did you do, if

12 anything?

13 A. I started pumping my brakes, trying to stop, because

14 if I didn't, I would hit the car.

15 Q. What happened?

16 A. I kept on going down the hill.

17 Q. Then what happened?

18 A. I hit the car.

19 Q. Which car did you hit?

20 A. Mr. Monday.

21 Q. What lane of traffic was it in when you hit it?

22 A. In my lane.

23 Q. In your lane?

24 A. Yes.

25 Q. Did you talk with Mr. Monday afterwards?

1 A. I seen him in the police car.

2 Q. Did you talk with him there?

3 A. Well, I knew him before.

4 Q. Did you talk with him about the accident?

5 A. No.

6 Q. Did you see another car there?

7 A. I seen one, but it was gone when I hit.

8 Q. Which way was that car headed?

9 A. Down the hill.

10 Q. Then it would have been headed in the same direction

11 you were headed. Which lane was it in?

12 A. It was in the wrong lane.

13 Q. It was to your left?

14 A. Yes.

15 Q. You say after the accident that car was gone?

16 A. Yes.

17 Q. After the accident occurred, did you see Mr. Oliver?

18 A. Yes.

19 Q. Tell us what his condition was after the accident

20 occurred.

21 A. He was bleeding.

22 Q. From where?

23 A. From his face.

24 Q. Are you in a position to tell this Court and jury

25 how his face was injured?

1 A. Well, not at that time.

2 Q. What was the condition of the windshield on his side

3 of the car, Mr. Ashley?

4 A. It had a hole in it.

5 Q. What was the size of that hole?

6 A. The same size as his head.

7 Q. Did it go all the way through, break the glass all

8 the way through?

9 A. It looked like it did. I don't know for sure.

10 Q. I don't want to go into any conversation, but did

11 you try to talk to Mr. Oliver after the accident?

12 A. I tried to, yes.

13 Q. Did he respond to your questions? Did he answer you?

14 A. No.

15 Q. What did you then do?

16 A. I got out of the car and went down to the car down

17 below there, asked them to go down, get an ambulance.

18 Q. Was Mr. Oliver ever conscious before the ambulance

19 got there?

20 A. As far as I know he was.

21 Q. Was or was not?

22 A. He was conscious.

23 Q. Was he able to talk?

24 A. I told him to be quiet, because I knew if he talked,

25 it would hurt.

1 Q. The only conversation you had there was with Mr.
2 Monday?
3 A. Yes.
4 Q. And you didn't have a conversation with him related
5 to how the accident occurred?
6 A. No.
7 Q. After the trooper got there, did you talk with Mr.
8 Monday about what had happened, and the trooper?
9 A. I told him my story. He said it happened exactly
10 like I said, or something like that.
11 Q. Mr. Monday said that?
12 A. Yes.
CROSS EXAMINATION BY MR. WORTHY:
13 Q. I understood you to say you came over this hillcrest.
14 You were coming out of a curve, also, on your left?
15 A. Yes.
16 Q. On a downgrade?
17 A. Yes.
18 Q. It was snowing and the road was slippery?
19 A. Yes.
20 Q. You saw two cars ahead of you, blocking the road
21 entirely?
22 A. Yes.
23 Q. One was pointing toward you on your side of the
24 road. That was Mr. Monday's car?
25 A. Yes.

1 Q. Another car pointed away on the other side of the
2 road?
3 A. Yes.
4 Q. For the direction it was pointed, it was also on the
5 wrong side of the road?
6 A. Yes.
7 Q. You cannot tell us who the driver of that car was?
8 A. No.
9 Q. When you first saw these vehicles, were they more
10 or less side by side?
11 A. Yes.
12 Q. When you saw these two vehicles in front of you,
13 you cut your wheel to the right?
14 A. Yes.
15 Q. You went straight ahead?
16 A. Yes.
17 Q. Collided with the Monday vehicle?
18 A. Yes.
19 Q. You did not attempt to turn to the left?
20 A. No.
21 Q. Is the reason you did not attempt to turn to the
22 left because this other lane was blocked by this other car?
23 A. Yes.
24 Q. I believe that at sometime immediately before, or
25 immediately after, or during this impact, this other car

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1 left the scene of the accident?

2 A. Yes.

3 Q. Can you tell us when it left?

4 A. No.

5 Q. You can tell us it was in that lane when you

6 considered turning to the left?

7 A. Yes.

8 Q. But after you collided and had gotten out of the

9 car and you looked for this other car, it was not there?

10 A. That's right.

11 Q. Exactly when it left the scene of the accident, you

12 cannot tell us?

13 A. No.

14 Q. Do you know if the Monday vehicle was moving when

15 you struck it, or can you say?

16 A. No.

17 Q. Approximately how much time lapsed between the

18 moment you first saw these two vehicles blocking the road

19 until you collided with Mr. Monday's car?

20 A. I couldn't tell.

21 MR. WORTHY: That's all the questions I have.

22 CROSS EXAMINATION

23 BY MR. MEADE:

24 Q. Mr. Ashley, if I am not mistaken, you had come over

25 to Mr. Oliver's house to pick him up?

1 A. Yes.

2 Q. To carry him somewhere?

3 A. Yes.

4 Q. When you picked him up, it was snowing a little then,

5 or just starting?

6 A. Just started.

7 Q. From his house to where this accident happened, how

8 far was it, approximately? About three miles?

9 A. About six miles.

10 Q. And from the time you left his house up until the

11 time the accident happened, it was snowing?

12 A. Yes.

13 Q. In fact, it began snowing a little harder, didn't it?

14 A. Yes.

15 Q. Before you get to the scene of this accident, you

16 had to go around a curve and over a knoll, is that correct?

17 A. Yes.

18 Q. How fast had you been driving, generally, from the

19 time you left Mr. Oliver's home.

20 Q. About three miles before I slowed down.

21 Q. About three miles before you slowed down?

22 A. Yes.

23 Q. Was that because of the weather?

24 A. Yes.

25 Q. So, when you topped this hillcrest, I believe you

1 testified you were going about fifteen or twenty miles, and
2 you topped this hillcrest. By the time you had gotten over
3 it, to where you could see, you saw these two vehicles
4 below you?
5 A. Yes.
6 Q. You were going downhill?
7 A. Yes.
8 Q. Did I understand you to say you were about one hundred
9 and fifty to two hundred feet away when you saw these cars?
10 A. Right.
11 Q. Would you say one hundred and fifty to two hundred
12 feet?
13 A. I would say about one hundred and fifty feet.
14 Q. When you first saw these two vehicles, Mr. Monday's
15 vehicle was on your side of the road?
16 A. Yes.
17 Q. Coming toward you?
18 A. Yes.
19 Q. He was completely in your lane, was he not?
20 A. Yes.
21 Q. Another vehicle was in the other lane, that is, the
22 lane that would be coming towards you?
23 A. Yes.
24 Q. But that vehicle was going the wrong direction, so
25 to speak?

1 A. Yes.

2 Q. In other words, he was going east, but he was in the

3 westbound lane, is that correct?

4 A. Yes.

5 Q. He was completely in that lane too, wasn't he?

6 A. Yes.

7 Q. Now, actually, that car's left side was pretty close

8 to the edge of the road, wasn't it?

9 A. Yes.

10 Q. Mr. Monday's car was about the middle of the lane

11 you were in, wasn't it?

12 A. Yes.

13 Q. But the other car headed towards Bassett, its left

14 wheels were pretty close to the edge of the road, weren't

15 they?

16 A. Yes.

17 Q. Do you know whether they were over on the shoulder

18 a little bit, or right on the edge?

19 A. I don't know.

20 Q. You can't say whether they were off of the edge, or

21 on the edge?

22 A. I couldn't tell for sure.

23 Q. You couldn't tell for sure whether they were on or

24 off the hard surface, is that what you are saying?

25 A. I don't know.

1 Q. Did I understand you really don't know whether these
2 left wheels were off the hard surface or not?
3 A. No.
4 Q. They were a lot closer to the left edge than the
5 center line, though?
6 A. Yes. It happened so quick . . . .
7 Q. When you first saw these cars, the first thing you
8 did was start putting on brakes?
9 A. I started pumping my brakes.
10 Q. The reason you started pumping your brakes was to stop
11 A. Yes.
12 Q. Your car didn't stop?
13 A. No.
14 Q. After your car wouldn't stop, I assume you decided
15 you better turn it to avoid hitting Mr. Monday, is that
16 correct?
17 A. Yes.
18 Q. After the brakes wouldn't work, you started cutting
19 to the right, is that correct?
20 A. Yes.
21 Q. Did the car respond to your cutting to the right?
22 A. No.
23 Q. So, when you turned your wheels to turn, your car
24 wouldn't turn, it kept on sliding straight?
25 A. Yes.

1 Q. Am I correct?

2 A. Yes.

3 Q. So, you first tried your brakes, your brakes wouldn't

4 work. Of course, if it hadn't been any snow, you could have

5 stopped without hitting Mr. Monday or anybody?

6 A. Yes.

7 Q. The snow is what caused this, is that correct?

8 A. Yes.

9 Q. You applied brakes, couldn't stop, so you cut it?

10 A. Yes.

11 Q. You turned your wheel and the car did not respond

12 to your turning the wheel, it kept sliding straight, is that

13 correct?

14 A. Yes.

15 Q. In other words, it kept you from being able to turn

16 your car the way you wanted to turn it, is that correct?

17 A. Yes.

18 Q. You just slid right down, hit this car head on?

19 A. Yes.

20 Q. You were in your lane when you hit it?

21 A. Yes.

22 Q. He was in your lane when you hit it?

23 A. Yes.

24 Q. There was no contact with the John Doe car?

25 A. No.

1 Q. You don't even know where the John Doe car was when
2 you hit, do you?
3 A. No.
4 Q. After the accident, of course, you saw that the
5 John Doe car was not there?
6 A. Yes.
7 Q. When he left, you don't know, do you?
8 A. No.
9 Q. Whether he was still beside Mr. Monday's car when
10 you all hit, you don't know, do you?
11 A. No.
12 Q. Did I understand you to say you don't know whether
13 the John Doe car was moving or stopped?
14 A. No.
15 Q. I believe you said the same thing about Mr. Monday,
16 too, didn't you?
17 A. Yes.
18 Q. You don't know how this John Doe car got over there,
19 do you?
20 A. No.
21 Q. From what you said, I think it is pretty obvious
22 this road as you were coming, in the direction you were
23 going, was very slippery?
24 A. Yes.
25 Q. It didn't respond to your brakes, and it didn't

1 respond to your turning.

2 THE COURT: I think you have covered that.

3 MR. MEADE: I think so.

4 Q. Mr. Ashley, you hadn't seen that car before that

5 was off the road?

6 A. No.

7 Q. So you don't know how long it had been there, or how

8 it got there?

9 A. No.

10 Q. Do you know how many people were in it?

11 A. No.

12 Q. Did you ever see any people in it?

13 A. No.

14 Q. Did you ever see any people outside?

15 A. No.

16 Q. Could you tell what sort of car it was?

17 A. No.

18 Q. I believe this was a Sunday morning?

19 A. Yes.

20 Q. About ten o'clock?

21 A. Right.

22 Q. When you came over this hillcrest you saw these

23 two cars as soon as you could see them, didn't you?

24 A. Yes.

25 MR. MEADE: That's all.

1 A. He cannot work.

2 MR. WORTHY: I would have to object to this. This is

3 improper testimony. I would ask the Court to tell the jury

4 to disregard it.

5 THE COURT: I think that's a conclusion he has come to,

6 without being in a position to state . . .

7 MR. YOUNG: Does he work now?

8 A. No.

9 Q. Or, have you seen him work since the accident

10 occurred?

11 A. No.

12 RECROSS EXAMINATION

13 BY MR. WORTHY:

14 Q. At the scene of the accident there's a hill over

15 on this side of the road as you come down the road toward

16 Bassett?

17 A. Yes.

18 Q. Then a drop in the bottom?

19 A. Right beside the cars is a drop.

20 Q. A bank over on the left side?

21 A. Yes.

22 Q. Can you tell us if the road is banked away from the

23 hill?

24 A. Banked away from the hill.

25 THE WITNESS STANDS ASIDE.

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(TR 30) EDGAR C. OLIVER

the plaintiff, being first duly sworn, testified and stated as follows:

DIRECT EXAMINATION

BY MR. YOUNG:

Q. You are Mr. Edgar C. Oliver?

A. Yes.

Q. Mr. Oliver, you were riding in an automobile driven by a Mr. Ashley on January 24, 1971 when it was in an accident west of Bassett, is that correct?

A. Yes, sir.

Q. When did you first realize there was going to be an accident? How old are you?

A. I am going on sixty-three. I am sixty-two.

Q. Tell us what you first saw, if anything, before the accident occurred up there.

A. In other words, we came over that hill around that curve in that wide cut. Just as we got in sight, about one hundred and fifty feet from the two cars, there was one on this side, one on this side. It frightened me. I said to Herman, "Look a-yonder. Lord have mercy!"

****

(TR 36) CROSS EXAMINATION

BY MR. MEADE:

Q. Mr. Oliver, it was snowing when this accident happened?

A. Yes.

Q. As I understand it, you were a passenger in Mr. Ashley's car?

A. Yes, sir.

Q. I believe you all were coming to Martinsville?

A. Yes.

Q. You came over this little hillcrest?

A. Yes.

1 Q. And you could see downhill below you two cars in
2 the road, couldn't you?
3 A. Yes.
4 Q. And one of them was on your side headed toward you,
5 and the other one was in the other lane headed toward Bassett,
6 isn't that right?
7 A. Yes.
8 Q. The man that was over on your side of the road --
9 Mr. Ashley was on his side of the road?
10 A. Yes.
11 Q. He was driving on his proper side of the road?
12 A. Yes.
13 Q. This one car was completely on your side, blocking
14 your lane?
15 A. Yes.
16 Q. That's the car you hit, isn't it?
17 A. Yes, sir, that's the car we hit.
18 Q. Beside that, or pretty close to being beside that,
19 was another car, is that correct?
20 A. Yes.
21 Q. That car was headed toward Bassett?
22 A. That's right.
23 Q. That car was almost on the edge of that left-hand
24 lane?
25 A. Edge of the road.

1 Q. His left wheels were right at the left edge of the
2 road as you were going down the road, is that correct?
3 A. As near as I could see.
4 Q. So close you can't say whether his wheels were just
5 off the hard surface, or just on the hard surface?
6 A. That's right.
7 Q. This car you saw in your lane when you first came
8 over the hillcrest, he was stopped?
9 A. Yes.
10 Q. He appeared to be stopped to you?
11 A. Yes, he seemed to be sitting still.
12 Q. He seemed to be sitting still?
13 A. Yes.
14 Q. But on your side of the road. The car you were in
15 simply slid right down the road and hit that car?
16 A. It hit it. I don't know whether it slid or not.
17 I couldn't swear to that.
18 Q. This car on the left side of the road, could you
19 see anybody in it?
20 A. No, sir, I couldn't see nobody in it.
21 Q. Are you saying there was nobody in it, or you
22 couldn't tell?
23 A. I couldn't see them.
24 Q. Did you see any people out in the road?
25 A. No, sir.

Q. You don't know how that car got over there, do you?

A. No, sir.

Q. You don't know why it got over there, do you?

A. No, sir.

Q. You don't know how long it had been over there, do you?

A. No, sir.

Q. You don't know whether the motor was running on that car you saw, do you?

A. No, sir.

Q. The car you hit was the car that was in your lane?

A. That's right.

Q. And you were in your lane when you hit it?

A. Yes, sir.

Q. Was this car you hit sort of midway in your lane?

A. It was all the way over on my side.

Q. Was it about the middle of your lane?

A. It was in the lane.

Q. In your best judgment it was stopped?

A. Sir?

Q. In your best judgment it was stopped?

A. As far as I know, that I could see, yes, sir.

MR. MEADE: That's all.

THE WITNESS STANDS ASIDE.

* *

1 MR. YOUNG: Court please, plaintiff rests.

2 (Court and counsel go into chambers)

3 IN CHAMBERS

4 MR. MEADE: Please the Court, at the conclusion of plaintiff's
5 evidence, defendant, John Doe, moves the Court to strike
6 plaintiff's evidence as to this defendant, and this defendant
7 only, and to enter summary judgment for the defendant, John
8 Doe, upon the grounds that the evidence is not sufficient
9 to present a jury question as to the alleged negligence of
10 John Doe, and as to its being - if there is such negligence -
11 a proximate cause of the accident. Now, I made objection to
12 hearsay evidence. As I understood the Court's ruling, this
13 evidence was admitted by the Court, but not with respect
14 to the defendant John Doe, so the evidence that you have in
15 this case as to the facts in the case, disregarding the open-
16 ing statements and such matter, is that Mr. Ashley and
17 Mr. Oliver came over the hillcrest, and after clearing the
18 hillcrest, had a view of one hundred and fifty feet to where
19 these two vehicles were. Just at the end of this one hundred
20 and fifty foot view - estimate, rather - was Mr. Monday,
21 the defendant, completely and wholly within the eastbound
22 lane, but headed in a westerly direction, stopped. Approximate-
23 ly beside him - I don't think anybody had the exact position,
24 but approximately beside him, was a John Doe vehicle with
25 its left wheels just on the shoulder off the hard surface, or

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1 right at the edge. That's the plaintiff's own testimony.
2 You've got an estimate of the width of an American car,
3 seven to eight feet, a twelve-foot lane. So here you've got
4 this vehicle in this position; in the westbound lane, but
5 headed east, with the left wheels right at the edge. You've
6 got four feet to the center line. But over in the eastbound
7 lane, but headed west, is Mr. Monday stopped. Now, the
8 gentleman is not going around a vehicle if he is stopped,
9 so what we've got is John Doe over on the wrong side of the
10 road. Why, we don't know. Or how he got there, we don't
11 know. How long he was there, we don't know. We've got Monday
12 on the wrong side of the road in Mr. Ashley and Mr. Oliver's
13 lane. That's where the collision took place. With respect
14 to Mr. Monday, he was on the wrong side of the road, and was
15 in collision with a vehicle on that side of the road. That
16 raises a presumption and the burden of proof to go forward
17 on Mr. Worthy to explain why Mr. Monday was there, so at
18 that point, there's no question but we've got a jury issue
19 as to Mr. Monday. But the law, with respect to John Doe,
20 is different, because Mr. John Doe was not in collision with
21 a vehicle over on the wrong side of the road, and there's no
22 presumption of negligence by virtue of his being over there,
23 and the case which establishes this, the most recent, is
24 Hicks vs. Cassada. This is Paul Whitehead's case. A man
25 and a girl were in the back seat. A friend was driving. I

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1 believe the friend was driving. After the accident they
2 were both naked as a jay bird outside the car in an unusual
3 position. That was their case. The Court said - it made
4 the distinction - said he went over on the wrong side of the
5 road, therefore we've got a presumption of negligence. The
6 guy in the back seat - it was his car. This was a simple
7 negligence case. The Court distinguished these other cases,
8 said when you go over on the wrong side of the road, and
9 there's no collision with a vehicle on that side of the road,
10 there's no presumption of negligence. You can pass, pass an
11 obstruction in the road, go around an obstruction, go around
12 a defect, nothing negligent about driving on the wrong side
13 of the road, but the law says when you hit somebody on the
14 wrong side of the road, we will presume negligence.
15 Here we've got a case where the man is on the wrong
16 side of the road, stopped. We don't know how he got there,
17 why he is there, or how his so-called accident -- if you want
18 to call it an accident -- happened. Add to this the rule
19 that the skidding of an automobile on a slippery highway is
20 not negligence. That's Pullen vs. Fagen. The mere skidding
21 of an automobile on a slippery highway is not negligence.
22 What you've got in this case is a man on the wrong side of
23 the road. How he got there, why he got there, we don't have
24 any idea. It is pure speculation. I think our best guess
25 would be he slid or slid to some extent like Mr. Ashley,

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1 and he slid one hundred and fifty feet. That's one
2 possibility, John Doe slid into the wrong lane. How long
3 he had been there, we don't know. He could have been there a
4 long time, but we assume he just got there. Whether he went
5 off, hit something off the road, bounced back, we don't know.
6 The fact is, he was there. We don't know whether he was
7 driving too fast, lost control. We don't know whether he
8 was looking away, lost control. We don't know whether he had
9 on slick tires. We don't know whether somebody in the car
10 hit the steering wheel. We don't know whether the man was
11 fighting and lost it. We don't know whether he was avoiding
12 an animal or pedestrian. It would be pure speculation to
13 say why this car was over there. We just don't know. As
14 I say, the more consistent inference would be he slid over
15 there. I think that's completely consistent with the whole
16 evidence in this case.
17 Assuming he slid over there, is that negligence?
18 Now, you know the statute that prohibits stopping on the high-
19 way takes into account you can be stopped on the highway in
20 emergency conditions, and it mentions an accident, so it is
21 not negligence to stop on a highway because of an accident.
22 These things happen. The statute relieves you of responsibil-
23 ity. That's what we've got in this case at the conclusion
24 of plaintiff's evidence, only that there were two cars there.
25 Admittedly, when they saw these two vehicles, both lanes

1 were blocked. Mr. Ashley's proper lane was blocked, the
2 other lane was blocked. But turn it around. This John Doe
3 could have been a car in its proper lane, but headed the other
4 way. So, suppose Mr. Ashley comes over the hillcrest, sees
5 the John Doe car, but it is moving, going uphill, slow,
6 because of this snow. Here is Mr. Monday on Mr. Ashley's
7 side of the road, but stopped. What is John Doe, in this
8 particular instance, doing wrong? He is there, but he is
9 not a cause of this accident, and the cause of this accident
10 is the fact Mr. Monday is blocking the path of Mr. Ashley,
11 and stopped right in his lane, and that's it. The trouble
12 here is I don't have a John Doe to testify. Never will.
13 And there's no way I can put somebody on and say if he was
14 trying to avoid a dog or pedestrian or child, and he cut
15 left and skidded and he got over there.
16 This has been my position throughout this whole
17 matter; there's no proof of negligence on the part of John
18 Doe. His being there was a condition. Maybe Mr. Monday
19 wouldn't have been where he was if John Doe wasn't there, but
20 that doesn't make legal responsibility. John Doe could
21 have been there with a heart attack, you can't blame him
22 for that, and Mr. Monday was going around. There are so
23 many consistent situations where John Doe was on the wrong
24 side.
25 If you go on the opening statements and the

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1 depositions, I think you have the very definite added factor
2 of lack of probable cause. Mr. Monday's and his wife's
3 depositions are quite clear.
4 THE COURT: The only thing we are concerned with now is
5 what we've got out there this morning, just what was testified
6 to by these witnesses.
7 MR. MEADE: That's the status as I see it. The burden of
8 proof -- I will cite Bare vs. Jones, 206 Va. 848. An
9 inference cannot be drawn from a presumption, but must be
10 founded on some fact, not only that Jones was negligent,
11 but his negligence was the proximate cause of the collision
12 between the Chevrolet and Ford. It is incumbent upon the
13 plaintiff who alleges negligence to show why and how the
14 accident happened. If that is left to conjecture, guess,
15 or random judgment, he cannot recover.
16 What is the negligence of John Doe in this case? This
17 business about weaving over is not the point in this case.
18 It is hearsay. This guy could see anyway. I assume the
19 foundation for the negligence they allege is the fact John
20 Doe was on the wrong side of the road. The question is:
21 is he negligent in being there? There is no proof to
22 establish he was negligent in being there. The only thing
23 they can really show is a presumption, but the presumption
24 would not apply in this case. It would apply if somebody
25 coming in Mr. Monday's direction had collided with John Doe.

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1 If Mr. Monday had collided with John Doe, I would say there
2 would be a presumption. There is no indication there was
3 any joint venture between John Doe or Mr. Monday. If two
4 guys are getting ready to race, or in a conversation, it is
5 a joint venture, but no joint venture is involved in this case.
6 MR. YOUNG: We don't have anything to say.
7 MR. WORTHY: Judge, I say it boils down to this. You have
8 Herman Ashley coming over the hillcrest, one hundred and fifty
9 feet away from him two cars blocking the road, both on the
10 wrong side. The evidence is both were stopped. Without
11 getting into the business of presumption, you've got two cars
12 blocking the road, both on the wrong side, evidence from
13 which the jury can infer stopped. Ashley goes down, hits my
14 man. He states that he cut his wheels to the right, but
15 nothing happened. He states also the road was banked to the
16 left, from which the jury can infer he could have cut to
17 the left. He would have gotten on the left-hand lane, but
18 he didn't do that because that lane was blocked by the John
19 Doe vehicle. As to whether or not the presumption applies
20 to a case in which there was no collision, I meant to
21 parallel the Whitehead case. That was a case where everyone
22 died, no one was around to explain what happened. The Court
23 held the presumption didn't apply because the cause of the
24 accident was the car going out of control, going to the wrong
25 side of the road, hitting a tree. They said the fact it was

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1 on the wrong side of the road had nothing to do with the
2 accident. Also, the car got out of control before it went
3 on the wrong side. Here the fact the car was on the wrong
4 side, blocking half the road, preventing Mr. Ashley from
5 going in the other lane, would be a proximate cause of the
6 accident, or would be a fact from which the jury could infer
7 it was a proximate cause of the accident. The fact he was
8 on the wrong side of the road raises the presumption he was
9 negligent. Certainly I don't think any car on the wrong
10 side of the road has to be on the wrong side. Suppose I am
11 coming down the road, a car on my side, I swerve, miss it
12 altogether, hit the car coming the other way. I think that
13 car on the wrong side of the road caused me to swerve over,
14 and would have a duty to explain what it was doing there.
15 No collision notwithstanding, but certainly the cause of the
16 accident, based on what the plaintiff's evidence is so far,
17 and it will be even more so after our evidence is presented.
18 MR. MEADE: Let me mention two things: I judge how the
19 Court views this skidding business is not negligence itself.
20 THE COURT: If the skidding is caused solely by the slippery
21 condition of the highway, or the skidding results from ice
22 on the highway or road.
23 MR. MEADE: What I am saying, the evidence, with respect to
24 John Doe, it is just as consistent for this to be an
25 avoidable accident so far as John Doe is concerned. His

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1 being over there is just as consistent with an unavoidable
2 accident. I am talking about before anybody else has a
3 wreck, he is out there by himself, slid to the wrong side
4 of the road. The evidence of his being over there is just
5 as consistent with an unavoidable accident as negligence. He
6 didn't hit anybody over there, he didn't disturb any traffic
7 in that lane that was entitled to that lane.
8 THE COURT: How about Monday?
9 MR. MEADE: But Monday was an intervening cause. You are
10 going beyond plaintiff's evidence now. The only thing we've
11 got in plaintiff's evidence is the fact they were both
12 there. We don't have any evidence Monday was in the process
13 of going around John Doe. The opening statement would
14 indicate he was not in the process of going around him. At
15 this point there's no evidence of him going around John Doe.
16 They didn't call Monday. Mr. Ashley testified he put on
17 brakes, didn't stop, then he cut over, said when he cut the
18 car was not involved, because it was a slippery surface.
19 Assuming John Doe wasn't even there, that that lane was
20 completely clear, no evidence he wouldn't do this. He is
21 going down the road, it is clear when this guy gets ready to
22 cut. When he cuts, it doesn't respond. There's no evidence
23 in this case had John Doe not been there, that Mr. Ashley
24 could have gotten into that lane to go around Monday anyway.
25 I am simply suggesting to the Court at this point, based on

1 plaintiff's evidence, it is pure speculation as to John
2 Doe's negligence. What did he do that was negligent? The
3 only thing we can say, he must have been going too fast,
4 or he must have skidded on the wrong side of the road, but
5 there's no evidence of negligence in skidding to the wrong
6 side of the road. Mr. Monday is locked in.
7 MR. WORTHY: I will unlock him. One point, he said there
8 was no evidence that he could have gone to the left, gone
9 around Mr. Monday that way. I think there is evidence from
10 which the jury could infer that, because Mr. Ashley testified
11 the road was banked away from the hill. There's a bottom
12 down there, a bank on the left. He said the road was banked
13 to the left. If he tried to cut to the right, naturally it
14 wouldn't go to the right, but there is evidence he could have
15 gone to the left. He stated the reason he didn't cut left
16 was because that lane was blocked on the wrong side of the
17 road.
18 THE COURT: He stated that in his deposition, but he didn't
19 state that today.
20 MR. WORTHY: Yes, he did. Right now it is a case of the
21 highway being blocked.
22 MR. YOUNG: He stated that.
23 MR. MEADE: I am not so sure he said that.
24 MR. YOUNG: On cross examination Mr. Worthy said "You didn't
25 go to the left because of the John Doe car?" He said,

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"That's right."

MR. WORTHY: I asked "At the time you considered going to the left, the John Doe car was there?"

THE COURT: "I made no attempt to turn left because the westbound lane was blocked by John Doe." That's my language, but the gist of Mr. Ashley's statement, he made no attempt to turn left because the westbound lane was blocked by this automobile.

MR. WORTHY: I would like to cite Elliott vs. Lewis, 207 Va. 361, which a car operated by Elliott had gotten partly off the highway, partly on, on the wrong side of the road. He had gotten out of the car, working on it, blocking that lane. Another car came up behind him, asked what was wrong. In the meantime, another car came up, hit the first car, hit Elliott's car, killed him. Even though his car was not in the lane of travel occupied by the other two cars, the question of his negligence came up. The Court held it was a jury question whether he was blocking one lane or another car was blocking the other lane, was a matter for the jury.

MR. MEADE: You had an explanation in that case why he was there.

MR. WORTHY: I would submit the presumption arises here. He is talking about skidding, may be so. He may have stopped to go to the bathroom, I don't know.

MR. MEADE: Maybe somebody grabbed the steering wheel.

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1 MR. WORTHY: I would submit we don't have to worry about
2 that.
3 THE COURT: I don't think we can assume at this point why
4 John Doe was where he was. I don't think we can assume
5 anything that was favorable to him, I don't think we can
6 assume anything that was unfavorable. The burden is on
7 John Doe to show why he was on the wrong side of the road.
8 Obviously, he cannot do it, but we do find an automobile
9 traveling east completely in the westbound lane. We find
10 an automobile traveling west completely in the eastbound
11 lane. The evidence at this point indicates these two
12 automobiles were stopped. The plaintiff approached. He
13 could not turn left by reason of the fact the westbound lane
14 was completely blocked by John Doe. He collided with Mr.
15 Monday, one of the two defendants, in the eastbound lane.
16 To repeat, what either or both of them were doing there,
17 we don't know at this point. The motion to strike the
18 evidence, as relates to John Doe, at this point will be
19 overruled. To that Mr. Meade objects and excepts.
20 (Court and counsel return to courtroom)
21 (RECESS FOR LUNCH)
22 *
23 CECIL C. MONDAY
24 the defendant, being first duly sworn, testified and stated
25 as follows:

1 DIRECT EXAMINATION

2 BY MR. WORTHY:

3 Q. Your name is Cecil C. Monday?

4 A. Yes.

5 Q. Where do you live, Mr. Monday?

6 A. Bassett.

7 Q. Where do you work?

8 A. William Bassett.

9 Q. On the day of the accident I believe you and your

10 wife and young son -- how old was your son with you?

11 A. He was six.

12 Q. Six at the time?

13 A. Yes.

14 Q. The three of you were headed to Mt. Airy, you were

15 thinking about going to Mt. Airy to see your wife's mother?

16 A. Yes, we were thinking about it.

17 Q. When you left your wife's home in Bassett was it

18 snowing?

19 A. Maybe a flake now and then was falling.

20 Q. Did you stop anywhere before you got out of Bassett

21 to get gas?

22 A. Yes, stopped at Bassett Esso, stopped and gassed up.

23 Q. Did you run into any snow at this time?

24 A. No, not to amount to anything, until we stopped.

25 At the time we stopped, it began to snowing.

1 Q. When you stopped to gas up?

2 A. Yes.

3 Q. What decision, if any, did you make about whether or

4 not to go to Mt. Airy?

5 A. I said, "We will go up the road, see how it is up

6 that way."

7 Q. How far did you intend to go up the road before

8 you decided what to do?

9 A. I thought I would run up at the top of the hill.

10 Q. Is that the top of the hill that goes out North

11 Bassett, goes by Elmer Dalton's house?

12 A. Yes.

13 Q. I take it you proceeded on up that hill?

14 A. Yes, got to where this car was pulled off.

15 Q. What was your speed going up the hill, approximately?

16 A. I guess twenty-five or thirty miles per hour.

17 Q. As you approached the driveway where this thing

18 happened, what, if anything, did you meet in your lane of

19 travel?

20 A. I didn't meet no cars.

21 Q. What -- did you meet anything in this area of this

22 driveway that was in your lane of travel?

23 A. No.

24 Q. You evidently met a car, did you not, that was

25 stopped in your lane of travel?

1 A. Yes.

2 Q. What kind of car was it?

3 A. It was a late model Cadillac.

4 Q. What color was it?

5 A. Maroon.

6 Q. A maroon, late model Cadillac?

7 A. Yes.

8 Q. When you saw this car, what, if anything, did you

9 do with regard to your vehicle?

10 A. I pulled on up to about two car lengths and stopped.

11 Q. Why did you stop that far away?

12 A. I stopped so if he wanted to come on, he would have

13 room to pull out.

14 Q. This car was in your lane?

15 A. Yes.

16 Q. Which way was he pointed?

17 A. Pointed toward Bassett.

18 Q. So, for the way he was pointed, he was on the wrong

19 side of the road?

20 A. Yes.

21 Q. When you first saw this car, was it moving or stopped?

22 A. Stopped.

23 Q. How long it had been stopped, you don't know?

24 A. No.

25 Q. You stopped about two car lengths away to give him a

1 chance to go around?

2 A. Yes.

3 Q. Did he do that?

4 A. No. He got out of the car, walked around to the

5 right-hand side of it, looked up the road, down the road,

6 motioned for me to come around.

7 Q. Did you do any looking?

8 A. Yes, I looked up the road, behind me too.

9 Q. Did you see any vehicle coming?

10 A. No, not at the time.

11 Q. Was this a straight stretch of road at this point?

12 A. Pretty straight. You could see up to the top of the

13 hill.

14 Q. When there is no snow on the road, is it a broken or

15 solid line?

16 A. Broken.

17 Q. Broken to pass?

18 A. Yes.

19 Q. Did you attempt to go around this vehicle stopped in

20 your lane of travel?

21 A. When he motioned me around, I looked to see if

22 anything was coming.

23 Q. When you got beside him, did you see any other

24 vehicle?

25 MR. MEADE: Objection to the leading questions.

1 Q. Just tell us how the accident happened.

2 A. When he motioned me around him, I pulled over,

3 started around him. About the time I got up even with him,

4 maybe the front end of my car maybe a little bit past him, I

5 saw this other car coming over the hill.

6 Q. How far away from you was this other car, approximate-

7 ly, when you first saw it?

8 A. About one hundred and fifty feet, I guess.

9 Q. When you saw this car, what, if anything, did you

10 attempt to do at this time?

11 A. I was going to back up in that driveway to get back

12 off his side of the road.

13 Q. Were you far enough beyond the driveway to back into

14 it at this point?

15 A. Yes.

16 Q. Why did you not attempt to go ahead, pull on around

17 the Cadillac, rather than back in the driveway?

18 A. I thought with the snow on the road, if I mashed

19 on the gas, it would sit there and spin. I thought I could

20 back up easier than mash down on it, back up, go on back

21 home.

22 Q. You were afraid if the wheels accelerated . . . .

23 MR. MEADE: Objection to the leading question.

24 Q. You had decided at one point or another to back

25 into this driveway anyway, had you not?

1 A. Yes.

2 Q. When you made this decision, was the road clear

3 ahead of you?

4 A. At the time I thought about backing back in there,

5 won't nothing coming. Then this vehicle . . . .

6 Q. Were you able to get into the driveway before you

7 were hit?

8 A. No, sir.

9 Q. What was the John Doe vehicle doing after the

10 collision occurred?

11 A. When the vehicle hit me, I got out of the car, helped

12 my wife out, asked if they was hurt. At the time I got out

13 of the car, the other vehicle was going on down the hill.

14 Q. Do you know approximately what time it started to

15 leave with regard to the collision?

16 A. I don't know whether he started to leave at that

17 time, or when it hit, but when I got out of the car and

18 looked, the vehicle was going on down the hill.

19 Q. Were you able to identify the driver of that car,

20 or anyone who may have been in it?

21 A. No.

22 Q. Mr. Monday, where would you have turned around

23 had the John Doe vehicle not been blocking your land of

24 traffic?

25

MR. MEADE: I object to the question.

THE COURT: I think the question is objectionable the way it is asked.

Q. Is there any place, or at that time was there any place at the top of the hill suitable for turning around?

A. On up on top of the hill on the right there was a service station.

Q. Between the time that you first saw the Ashley vehicle coming toward you, and the moment of impact, how much time elapsed?

A. Just a second or two.

MR. WORTHY: That's all the questions I have.

MR. YOUNG: No questions.

CROSS EXAMINATION

BY MR. MEADE:

Q. Mr. Monday, as I understand, when you left home, it was not snowing?

A. You could see a flake now and then, not to amount to nothing at all.

Q. After you left home it increased?

A. It kept increasing while I was going on down to Bassett, stopped to get gas, it kept snowing more.

Q. As you drove through Bassett it was snowing?

A. Yes.

Q. And as you went out of Bassett on the west side of

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1 Bassett, it was snowing, in fact it was increasing, getting
2 a little bit worse, is that correct?
3 A. Yes.
4 Q. Now, did I understand you were driving about twenty-
5 five or thirty miles per hour?
6 A. About twenty-five or thirty. That's just a guess.
7 About twenty-five or thirty.
8 Q. Did you have to drive this slow because of the
9 snow, or just simply driving slow?
10 A. I didn't have to. I was just driving slow.
11 Q. You could have driven a little faster?
12 A. Yes.
13 Q. When you first saw this Cadillac, you say was stopped
14 on your side of the road, you were going up an incline,
15 weren't you?
16 A. Yes.
17 Q. And you saw the car up there, is that correct?
18 A. Yes.
19 Q. You didn't have any problems seeing it, you saw it
20 and you stopped, didn't you?
21 A. Yes.
22 Q. You stopped some two car lengths before you got to
23 it?
24 A. Yes.
25 Q. When you came to a stop, did you come to a stop with

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1 the left side of your car a little closer to the center line
2 than you usually drive?
3 A. I don't think I did.
4 Q. You stopped about two car lengths back to give him
5 room to pull across in front of you if he wanted to?
6 A. Yes.
7 Q. Wasn't anything coming?
8 A. No.
9 Q. He didn't do this?
10 A. No.
11 Q. Did you wave him on or anything?
12 A. No.
13 Q. You just stopped?
14 A. I just stopped.
15 Q. You didn't wave him on with your hand or anything?
16 A. No.
17 Q. He got out of his car, came around front?
18 A. Yes.
19 Q. Between your car and his car?
20 A. Yes.
21 Q. He stood between his right headlight and the center
22 line? Did you see him look up the road?
23 A. Yes.
24 Q. You looked up the road too, didn't you?
25 A. Yes.

1 Q. He motioned you to come by?
2 A. Yes.
3 Q. You looked up the road too, didn't you?
4 A. Yes.
5 Q. Wasn't anything in sight?
6 A. Wasn't anything in sight.
7 Q. You started to go around him, didn't you? Before
8 you started to go around him, you made the decision to back
9 into this driveway and turn around?
10 A. I thought about it before I went around him.
11 Q. So, before you started around John Doe, you had
12 thought of getting over there and backing into that driveway,
13 is that correct?
14 A. Yes, sir.
15 Q. You pulled into the left lane and started as if you
16 were going around the Cadillac, is that correct?
17 A. Yes, sir.
18 Q. You got completely in the wrong lane, didn't you?
19 A. I had to to get around him.
20 Q. But you did get completely on the other side of the
21 broken lines, didn't you?
22 A. Yes.
23 Q. And you passed him, or got just about opposite him,
24 maybe a little past him?
25 A. The front end got maybe a little ways by him.

1 Q. Your front bumper was maybe beyond his bumper? Your
2 front bumper had gotten past his rear bumper about how far?
3 A. I don't know. Not much. Half the hood, maybe.
4 Q. You had already made your decision to turn around?
5 A. I hadn't for sure until I seen this other car coming.
6 Q. That was your plan, wasn't it, to pull into that
7 driveway?
8 A. I thought about backing into the driveway, then I
9 thought about going on up to the top of the hill and turning
10 around.
11 Q. You testified in Mr. Worthy's office in a deposition
12 about a week ago in this case?
13 A. And when I saw the car coming . . . .
14 MR. MEADE: He is not being responsive to my question.
15 MR. WORTHY: I don't know whether it is responsive or not
16 until he says it.
17 THE COURT: Go ahead and ask the question.
18 Q. Mr. Monday, you did testify on February 8th in Mr.
19 Worthy's office, didn't you, with this young lady here taking
20 down what you said?
21 A. She was writing.
22 Q. You testified, your wife testified, Mr. Oliver
23 testified, Mr. Ashley testified. You were under oath, sworn
24 to testify to the truth, weren't you, is that correct?
25 A. Yes, I reckon so.

1 Q. Isn't it true that before you started around this
2 car, you had made your decision to back into this driveway?
3 A. I had thought about backing into it.
4 Q. Sir?
5 A. I thought I would back into it.
6 Q. You started around the Cadillac, didn't you?
7 A. Yes.
8 Q. Over in the wrong lane.
9 A. I had to to get around it.
10 Q. Once you did that, you decided to back into the
11 driveway, didn't you?
12 A. That's what I thought about.
13 Q. Do you know whether your car was moving or stopped
14 when this Ashley car came over the hillcrest? You don't know,
15 do you?
16 A. I don't know whether I had started backing, or
17 whether I was just getting up even with it.
18 Q. My question is this, Mr. Monday. Do you know whether
19 or not you had stopped your vehicle when you first saw Mr.
20 Ashley's car come over the hillcrest?
21 A. I don't think I had plumb stopped until I seen the
22 car coming.
23 THE COURT: He says he didn't think he was plumb stopped until
24 he saw the car coming. Wasn't that your question, Mr. Meade?
25 MR. MEADE: I am not sure it was being responsive. Let me

1 reword it for him.

2 Q. Did you have any trouble pulling out to go around

3 this car?

4 A. No.

5 Q. Didn't have any trouble at all?

6 A. No.

7 Q. Your car started right on up, you started to go

8 around, is that correct?

9 A. Yes.

10 Q. Mr. Monday, when we took these deposition, didn't I

11 ask you, "Where was Mr. Ashley's car when you first saw it?"

12 And didn't you say, "He come over that . . . .", and I asked

13 "Didn't you see him come over the hillcrest?" Didn't you

14 answer, "He was over the hill by the time I noticed it. I was

15 going to back up in the driveway and turn around, go back down

16 the hill." Didn't I ask, "Weren't you in the process of

17 getting ready to turn around when this accident happened?"

18 Didn't you say, "I was just past his car far enough where I

19 could back up in the driveway." Didn't you say that?

20 A. When?

21 Q. When we took your deposition on February 8th?

22 A. I don't remember whether I said that or not.

23 Q. When you gave the deposition you were telling the

24 truth?

25 MR. WORTHY: I don't see any inconsistency between what he said

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1 on the witness stand and what has been read to him.
2 THE COURT: I think there is, Mr. Worthy. Let me see if I
3 can clarify this question. Mr. Monday, when you started
4 around the Cadillac, had you or had you not planned to turn
5 around in the Elmer Dalton driveway?
6 A. I had thought of it, yes, sir.
7 THE COURT: Does that answer your question?
8 MR. MEADE: I would assume it would, but I am not sure.
9 Q. Didn't you say on this deposition, didn't I ask,
10 "When you first saw Mr. Ashley, had you completely gotten by
11 this Cadillac? I mean by that had your rear bumper gotten
12 past his rear bumper? Didn't you answer that, "I don't know.
13 I couldn't tell you whether it had or not."
14 A. My rear bumper hadn't gotten past him.
15 Q. Do you recall this? "You say you were preparing to
16 turn around?" "Yes, as soon as I pulled up where I could back
17 up in that driveway. This driveway comes out kind of at an
18 angle." Didn't you say that?
19 A. It comes out at an angle.
20 Q. Didn't I ask you this question? "After you passed the
21 Cadillac, you were going to keep on west until you got to the
22 driveway, then back in the driveway?" Didn't you answer, "I
23 was going to pull up far enough I could get my back end into
24 the driveway. That's what I was intending to do." That's
25 true, isn't it?

1 A. I think so.

2 Q. Didn't I ask, "Were you moving or stopped when you

3 first saw Mr. Ashley's car, or do you know?" And you

4 answered, "I don't know."

5 A. I don't know.

6 Q. "Do you think you had stopped, getting ready to back

7 up to go in the driveway when this happened?" And didn't

8 you answer, "I think so."

9 A. I might did. I don't know.

10 Q. If you did, you were telling the truth, weren't you?

11 THE COURT: The statement was made under oath, Mr. Meade.

12 Q. Mr. Monday, the Cadillac was stopped in your lane if

13 you were going in this direction, and you intended to --

14 started to pull around him, go around him?

15 A. He motioned me on.

16 Q. You looked to see if it was clear before you went

17 on?

18 A. Yes.

19 Q. It was clear?

20 A. Yes.

21 Q. When you started pulling out to go around that

22 Cadillac, you made up your mind to pull out, pass this driveway

23 far enough so you could back into it?

24 A. I was thinking of that when I started up to get

25 around him.

1 Q. That was your plan. Now, when Mr. Ashley came over
2 the hillcrest into your view, when you first saw him, you
3 don't know whether you were in a stopped position or not? You
4 just can't say, can you?
5 A. No.
6 Q. Honestly you can't tell us whether your vehicle was
7 stopped when he came over the hillcrest or not?
8 A. I don't much believe it was. I just don't know.
9 Q. When he struck you, do you know whether or not it was
10 moving?
11 A. Not until he hit me, knocked me back.
12 Q. At the time he hit you, you don't know whether you
13 were stopped or moving?
14 A. I thought I could back up quicker than I could go
15 around the other car and get in the right-hand lane.
16 Q. Mr. Monday, of course, you have talked to various
17 people about this since we took your deposition?
18 A. No, sir.
19 Q. You haven't talked to Mr. Worthy, or your wife, or
20 anybody?
21 A. Haven't talked to anybody.
22 Q. So, when you started around the John Doe vehicle,
23 your plan was to pull up here, back in the driveway, turn
24 around, go home?
25 A. I had thought of that.

1 Q. Your original plan, before you got up to where this
2 Cadillac was stopped, was to go to the top of the hill and
3 turn around?
4 A. If the road was any worse.
5 Q. When you got to this Cadillac stopped on your side
6 of the road, you changed your mind?
7 A. I didn't know how bad the road was going to be.
8 Q. When you saw this Cadillac, the position he was in,
9 you changed your mind?
10 A. I thought about turning around there instead of
11 going to the top of the hill.
12 Q. You were going to turn around there instead of
13 going to the top of the hill, is that right?
14 A. That's what I thought.
15 Q. You were making preparations to turn around when
16 this accident happened?
17 A. I thought about it, after I saw the other car, and it
18 was snowing, and I had to go somewhere to get out of the way.
19 I had to go around to get out.
20 THE COURT: Mr. Worthy or Mr. Young?
21 MR. YOUNG: No questions.
22 THE WITNESS STANDS ASIDE.
23 *
24 (MR. MONDAY was immediately recalled to the stand by Mr. Meade,
25 continuing his cross examination:)

1 Q. When we took this deposition, do you recall my
2 asking you, "Mr. Monday, Mr. Oliver testified here under oath
3 when they first saw you that you were stopped in the road.
4 You don't deny that, do you? You may have been stopped,
5 getting ready to back into that driveway?" You answered,
6 "I could have been."
7 MR. WORTHY: You started interrogating him about something
8 that was said at the deposition last week. No foundation has
9 been laid.
10 THE COURT: Did you ask him a question, or did you just read
11 from the deposition? Ask the question again you want him to
12 answer.
13 Q. "Mr. Oliver testified when they first saw you that you
14 were stopped in the road. You don't deny that, do you?"
15 MR. WORTHY: Let me object to that on the grounds he did not
16 testify they were stopped. They seemed to be stopped. He is
17 misquoting Mr. Oliver's testimony.
18 THE COURT: Use the exact language in the deposition.
19 Q. "Mr. Monday, Mr. Oliver testified on deposition when
20 he first saw you, you were stopped in the road. You don't deny
21 that, do you? You may have been stopped getting ready to back
22 into that driveway." Didn't you answer, "I could have been."
23 MR. WORTHY: No foundation has been laid for him to interrogate
24 Mr. Monday on the deposition.
25 THE COURT: Is there any inconsistency in the testimony of

1 Mr. Monday on this point from what he is saying now?
2 MR. MEADE: Is it the Court's understanding he can't testify
3 whether he was stopped or not when he came over the hillcrest?
4 THE COURT: I am not sure I follow your questions. You are
5 not asking this witness a question. You are reading a question
6 that was asked him in the deposition. If you want to ask him
7 a specific question, and if his answer is in conflict with what
8 he gave to the same question in the deposition, then you can
9 lay your foundation and contradict him, if the facts permit.
10 Q. It is true, is it not, you can't say whether or not
11 your car was stopped when this car first came over the hill-
12 crest?
13 A. I don't think I was plumb stopped. I was going around
14 the car.
15 THE COURT: He says he didn't think he was plumb stopped when
16 he first saw the Ashley vehicle.
17 Q. On deposition didn't you testify you couldn't say
18 whether you were stopped or not?
19 A. I don't remember whether I did or not, no.
20 Q. Do you deny you said that on deposition, that you
21 couldn't say one way or the other?
22 A. I just don't know whether I said it or not.
23 MR. MEADE: Could the Court give me a minute? This is a bit
24 different than I anticipated on the deposition.
25 MR. WORTHY: Mr. Meade if you are going to testify, I will

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1 ask that you be sworn, too.

MR. MEADE: Let me take up something with the Court in

2 Chambers before we go further.

3 (Court and counsel go into chambers)

4 IN CHAMBERS

5 MR. MEADE: If it please the Court, this witness, who is a

6 party defendant, has testified completely differently than he

7 did on deposition, as the Court can see. The Court has read

8 the deposition.

9 THE COURT: I don't remember every point. I see what you are

10 driving at. He repeatedly said, "I just don't remember."

11 MR. MEADE: What's the Court's procedure about putting a

12 defendant's deposition in evidence? I understand from the

13 rules you can put it in for any purpose.

14 THE COURT: If contradicting or an inconsistency of consequence,

15 you can put that portion in that relates to conflict, if you

16 think it is worthwhile. Really, the inconsistency, I think

17 is quite -- I won't say insignificant -- it is not a matter of

18 great consequence. The jury has heard him answer your

19 question today, you have read the question asked this witness

20 in his deposition. They have heard his answer.

21 MR. MEADE: What I will do, later when it is my turn to put on

22 evidence, I will offer this entire discovery deposition of him

23 into evidence. As I understand the Court's ruling, the only

24 thing that can be read into evidence is that part that is in

25

1 conflict with his testimony. Is that the Court's ruling?

2 THE COURT: Yes.

3 MR. MEADE: When the time comes, page 56.

4 (Court and counsel returned to the courtroom)

5 IN COURT

6 THE WITNESS STANDS ASIDE.

7 *

8 MR. WORTHY: Defendant, Monday, rests.

9 MRS. HATTIE G. MONDAY

10 the next witness, called to testify on behalf of the defendant,

11 John Doe, being first duly sworn, testified and stated as

12 follows:

13 DIRECT EXAMINATION

14 BY MR. MEADE:

15 Q. You are Mrs. Cecil C. Monday?

16 A. Yes.

17 Q. Mrs. Monday, you are the wife of Mr. Monday who

18 sits here at counsel table?

19 A. Yes.

20 Q. Were you with your husband the day of this accident?

21 A. Yes, sir, I was.

22 Q. Where were you sitting in the car?

23 A. On the side next to the door.

24 Q. Front seat?

25 A. Yes, sir.

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1 Q. Now, Mrs. Monday, when you were driving up the road
2 there on the other side of Bassett, did you come on a car that
3 was in the road?
4 A. Yes, sir. It was over on our side of the road.
5 Q. It was on your side of the road?
6 A. Yes, sir.
7 Q. What did your husband do when he came upon that car?
8 A. He stopped. He said, "I have to stop. I can't
9 get by."
10 Q. When he stopped, what happened? Did anybody get
11 out of that car?
12 A. Yes. He stopped. He waited a few minutes. This
13 man got out, looked up the road, hollered, said, "It is clear.
14 Come on up."
15 Q. Did your husband look up the road to see if it was
16 clear?
17 A. Yes.
18 Q. Did you look up the road?
19 A. Yes.
20 Q. Was it clear, nothing coming?
21 A. It was clear as far as you could see.
22 Q. Before you all started out to go around that
23 Cadillac, had you all made any plans about going back home?
24 A. Well, he said, "I will go to this road, turn around,
25 we will go back down the hill, it is too slick", when he saw

1 the car slid out.

2 Q. Do I understand when you stopped for this car that

3 was on your side of the road, your husband said, "We will

4 turn around here and go back"?

5 A. Yes, when we got up there to that road. He said

6 when he got up to that road he would turn around, it was too

7 slick.

8 Q. So your husband started around this car?

9 A. Yes, he went around the car.

10 Q. He got in the other lane to go around it?

11 A. He had done went around it.

12 Q. You mean he had passed it?

13 A. He went around it, was backing in this driveway

14 to turn around.

15 Q. Do I understand your husband, once he started to

16 go around the Cadillac, he pulled into the other lane to go

17 by him, is that correct?

18 A. Yes, he had to to get by him.

19 Q. He got in the other lane?

20 A. Yes.

21 Q. He got past the Cadillac, is that right?

22 A. Uh huh.

23 Q. How far past did he go? Just a little past the rear

24 of it?

25 A. Just a little ways. I ain't much good on guessing.

1 Q. At that point, he stopped his car, was going to back
2 into that driveway?
3 A. He was. He was backing back, looking back when I
4 saw the car come down the road. It hit us.
5 Q. My question is: When you first saw this car that
6 came over the hill and hit you, when he first came over the
7 hillcrest, at that time your husband was backing up, is that
8 correct?
9 A. Yes. He was backing backward, looking backward.
10 Q. When the car came over the hillcrest?
11 MR. WORTHY: It was my understanding she said shen she first
12 saw the other car.
13 Q. When it first came in view did you see it?
14 A. I saw it come down the hill. By the time I hollered
15 to him, it had done struck us.
16 Q. When you first saw this car Mr. Oliver was in, your
17 husband was in the process of backing up to go in this drive-
18 way?
19 A. Yes. He was backing in that driveway to turn
20 around.
21 Q. Of course, before he started backing, he had to
22 stop, didn't he? When he went around the Cadillac he was
23 going forward?
24 A. Yes.
25 Q. He had to bring his car to a stop?

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1 A. Yes.

2 Q. When he stopped his car, he stopped in the left

3 lane?

4 A. Yes.

5 Q. Then he put it in reverse gear?

6 A. Yes.

7 Q. What sort of car was this, automatic or gear shift?

8 A. Automatic.

9 Q. He had to move it from drive to reverse gear?

10 A. I don't know. I don't drive.

11 Q. But he had to change into reverse to go backwards?

12 A. I reckon.

13 Q. When you first saw this car that hit you all, your

14 husband was in the process of going backwards?

15 A. Yes.

16 Q. When that car hit you all, your husband was in the

17 process of going backwards?

18 A. Yes. The motor was running on our car. When the

19 other car hit us, he cut the motor off.

20 Q. Mrs. Monday, to make sure I understand this, you and

21 your husband came on this car that was on your side of the

22 road?

23 A. Uh huh.

24 Q. It was stopped I believe, wasn't it?

25 A. Yes.

1 Q. Your husband stopped and this man waved you by,
2 around?
3 A. Yes.
4 MR. WORTHY: Please, Your Honor, we have been through this.
5 It is Mr. Meade's witness. He has had every leeway to ask
6 every leading question. I will object to going through it
7 again.
8 THE COURT: We have covered this phase.
9 Q. Where was this car that was over on your side? Was
10 part of it off the road, completely in your lane, or what?
11 A. It was part of it in the side we had to go on.
12 Q. Part of it was in your lane of travel?
13 A. Yes. We had to go around. We had to go around.
14 Q. Was part on your shoulder?
15 A. Yes.
16 Q. Was there a guard rail?
17 A. Yes.
18 Q. Was the car near the guard rail?
19 A. I don't know whether it was plumb against it or
20 not. I couldn't tell.
21 Q. What happened to that car, do you know?
22 A. It slid off, I reckon on that slant.
23 Q. Where was that car when the accident happened, do
24 you know, or were you watching the other car?
25 A. The one that slid off? I don't know. It scared me.

1 I grabbed my baby. I don't know where it went or nothing
2 about it.
3 Q. You don't know where it went, or when it went?
4 A. No.
5 Q. When you first saw that car in your lane, it was
6 stopped when you first saw it?
7 A. Yes, it was stopped.
8 Q. It was already there?
9 A. Yes.
10 Q. You don't know how it got there, or when it got
11 there?
12 A. I don't know. It was just slid against the guard
13 rail, is all I know.
14 MR. MEADE: That's all.
15 CROSS EXAMINATION
16 BY MR. YOUNG:
17 Q. If I understand you correctly, your husband had pulled
18 to the left of the Cadillac that was parked there, and then
19 he stopped the car and put it in reverse, and was looking
20 backwards to get into the drive?
21 A. That's right.
22 Q. You saw the other car when it came downhill?
23 A. Yes.
24 Q. Would you give us a proximation of how far that
25 car was from you when you first saw it?

A. I don't know much about it. It was that far, if it wasn't farther. (pointing)

Q. Further than where you can see out there?

A. Yes.

Q. Your husband then continued to look back?

THE COURT: What distance are you talking about?

MR. YOUNG: She said it was that much. I assume as far as you can see.

A. No, I mean across the courthouse to the door there. I don't know whether it was that far or not. I ain't good on that.

THE COURT: You think it was further than that?

A. I said maybe that far or maybe farther. I ain't no good on guessing.

Q. I did understand you to say that far or further?

A. I don't know.

Q. Your husband was looking back?

A. Yes.

Q. He continued to look back until you hollered?

A. I don't know whether he quit looking back then or not.

Q. You think he continued to look back until the car hit?

A. I don't know whether he turned his head or was still looking back.

1 Q. As far as you know, he was still looking back?

2 A. It scared me. I don't know.

3 CROSS EXAMINATION

4 BY MR. WORTHY:

5 Q. I understood you to say you do not drive a car

6 yourself?

7 A. No.

8 Q. You have never driven a car?

9 A. No.

10 Q. You don't even know what you have to do to put it

11 in reverse and back up, except shift gears, or pull a lever?

12 A. I know he was going back.

13 Q. You testified the car, when you first saw it, might

14 have been where the door in the front of the courthouse is,

15 might have been that close to you?

16 A. I don't know whether it was like that or a little

17 farther. I just don't know, like I said.

18 Q. Your husband, at that time, was looking back, was

19 he not?

20 A. Yes.

21 Q. Prior to that time was he looking ahead?

22 A. Up front of him?

23 Q. Yes, Ma'am.

24 A. I don't know.

25 Q. Let me ask you this. All you can testify to is

1 when you first saw the car, your husband was looking back
2 and backing up?
3 A. Yes, he was backing back.
4 Q. Whether he saw the car before you did and started
5 backing up before you saw it, you don't know, do you?
6 A. No, I don't know.
7 REDIRECT EXAMINATION
8 BY MR. MEADE:
9 Q. Mrs. Monday, did you see this car come over the hill-
10 crest up there?
11 A. Yes. I watched it come in sight.
12 Q. You watched the car come in sight?
13 A. I saw it come in sight over the hill.
14 Q. When that car came in sight, at that time your
15 husband was in reverse gear backing up to get in that drive-
16 way?
17 A. He was looking back anyway.
18 Q. Your husband was looking back, in reverse gear
19 going backwards to go in that driveway there?
20 A. Yes.
21 MR. MEADE: That's all.
22 RECROSS EXAMINATION
23 BY MR. WORTHY:
24 Q. Mr. Meade asked you if you saw the car when it came
25 over the hillcrest. You stated you saw it when it came into

1 sight?

2 A. I did. I was looking up the road ahead.

3 Q. When it came in sight, you said it may have been

4 as far as the door in the back of the courtroom?

5 A. It may have been. I don't know for sure.

6 REDIRECT EXAMINATION

7 BY MR. MEADE:

8 Q. You were looking uphill?

9 A. Yes. I was watching uphill because he was backing

10 back.

11 Q. There's a hilltop and it goes over where you can't

12 see anything, right?

13 A. Yes, but you can see a pretty good piece up there,

14 up the road.

15 Q. But there is a hillcrest up there you can't see

16 past?

17 A. Yes, that's right.

18 Q. Did you see this car when it first came into view?

19 Did you see it when it first came over the hill?

20 A. I seen it when it came in sight where I could see.

21 Q, You mean over the hill?

22 A. I reckon over the hill. It looked to me like it

23 was down the hill there.

24 Q. Mrs. Monday, how far did your husband get past this

25 car, the Cadillac, how far did he get past that before he

1 stopped and started going backwards?

2 A. Like I told you, I ain't no good at guessing,

3 Q. Did he get his whole car past the car?

4 A. Yes.

5 MR. WORTHY: Please Your Honor, he is leading.

6 THE COURT: My notes show the question was asked by Mr. Meade,

7 "And you said your husband had gotten a little bit past the

8 Cadillac before he stopped and started backing up?"

9 A. Yes, he got around the Cadillac going there to the

10 driveway to turn around there in the driveway.

11 Q. Your husband had to go past the driveway so he

12 could back into it?

13 A. That's right.

14 Q. Where was the Cadillac with respect to the driveway?

15 A. See, it was on the right-hand side. Where we turned

16 off - was aiming to turn around in the driveway, it is on the

17 left-hand side.

18 Q. What was the position of the driveway and the Cadillac,

19 the car that was stalled?

20 A. They weren't straight along from each other, but

21 they weren't too far from each other.

22 Q. You were going away from Bassett, weren't you?

23 A. Yes. Aiming to.

24 Q. You all had gotten past this driveway when this

25 accident happened, is that true?

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1 A. No, we was fixing to turn around in the driveway
2 to come back down the hill.
3 Q. Was he going to back into the driveway?
4 A. Yes.
5 MR. MEADE: That's all.
6 THE WITNESS STANDS ASIDE.
7 *
8 CECIL C. MONDAY was recalled to the stand.
9 MR. WORTHY: Please, Your Honor, could I approach the bench?
10 (There was an off-the-record conference before the bench)
11 THE WITNESS STANDS ASIDE.
12 MR. MEADE: We rest.
13 THE COURT: John Doe rests. Anything further on behalf of
14 the plaintiff, Mr. Oliver?
15 MR. YOUNG: No.
16 MR. WORTHY: We have no further evidence.
17 (Court and counsel go into chambers)
18 IN CHAMBERS
19 MR. MEADE: At this point, and this was mentioned in chambers
20 earlier, I offered in evidence the entire transcript, the
21 discovery deposition of the defendant, Mr. Monday, and the
22 Court declined to accept the discovery deposition, and I
23 believe the Court's ruling is I could put that portion in
24 where it might contradict the party. Of course, as I under-
25 stand Mr. Monday's testimony, it is completely negative,

1 and he is neither admitting nor denying the content of the
2 deposition and his prior testimony, so there's no reason to
3 putting it in, but I offer the whole thing in evidence.
4 THE COURT: What can you be accomplishing by putting the
5 entire pretrial discovery deposition of Mr. Monday into
6 evidence, if there is no conflict between what he is saying
7 today, and what he said in his deposition? What purpose
8 would it serve?
9 MR. MEADE: There isn't any, if it is the same thing, and if
10 the Court construes it the same way. As I understand, the
11 Court construes it the man doesn't know whether he was stopped
12 or not when the car came into his view.
13 THE COURT: You are concerned about his testimony?
14 MR. MEADE: I may not have any concern if I make a motion
15 and the Court rules properly.
16 THE COURT: Let's get to the nitty-gritty of whether or not
17 John Doe can be kept in this case.
18 MR. MEADE: Please the Court, at the conclusion of all the
19 evidence, defendant John Doe, by counsel, moves the Court to
20 strike the evidence of the plaintiff on the evidence, actually,
21 as it relates to this defendant, and enter summary judgment.
22 At the conclusion of Mr. Worthy's evidence, I renewed this
23 motion, and the Court advised me he was taking it under
24 consideration. That is not in the record, but that is correct,
25 is it not?

1 THE COURT: Correct.

2 MR. MEADE: What you have now is no different than after the
3 plaintiff's evidence, except with respect to one thing. That
4 is, with respect to proximate cause. The additional issue
5 we have now, over and above the question of whether or not
6 John Doe was negligent in being on the other side of the road,
7 whether he was stopped on the road over there, or skidded
8 there has already been covered, but the issue now is one of
9 proximate cause, and this is the evidence at the conclusion
10 of all of it. Mr. Monday had the thought, after he saw this
11 Cadillac that was in its difficulty, he had the thought of
12 turning around in that driveway, and what he did, he pulled
13 completely into the left-hand lane. He didn't just straddle
14 the center line, which he could have done because we've got
15 that Cadillac with its left wheels on the shoulder, he went
16 completely in the other lane, which was unnecessary to start
17 with, but he went there with the thought and with the plan
18 to go far enough up the road so he could stop, put it in
19 reverse, and back into that driveway and go back home. The
20 uncontroverted testimony at this point, and I point to his
21 wife's testimony, is that when the Ashley vehicle came over
22 that hillcrest, or came into view, and there's no evidence
23 to indicate she didn't see to the hillcrest when that car
24 came into view, at that exact split moment, the defendant
25 Monday was in reverse. I assume he was in reverse. He was

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1 going forward, stopped, and he was going backward and had
2 turned around looking backwards, apparently to see where he
3 was going. The point I am making is this. He stopped for
4 John Doe. John Doe, as a good motorist should, helped him
5 around him, and he looked up and down, and the road was clear.
6 This is attested to by both Mr. and Mrs. Monday, the road
7 was clear when John Doe signalled him on. Mr. Monday proceeds
8 into the left lane on the wrong side of the road, and goes
9 some little distance so that he is past the rear of the
10 Cadillac. According to him, a little past, his wife says
11 even more, and stops the car. Now, Mr. Monday knows, he has
12 to know, that that is a potentially dangerous situation he is
13 faced with. He has to get around this stalled car, whatever
14 its difficulty is, and he recognizes the potential danger,
15 if somebody is coming from the opposite direction, there is
16 going to be an accident. So he has to ascertain that the way
17 is clear, and he did, as did John Doe. Now, he starts around
18 to go around a stopped vehicle, and it doesn't take much to
19 go around a stopped vehicle. If you are passing a moving
20 vehicle, it takes considerable distance, but this was a stopped
21 vehicle. Mr. Monday said he had no problems, started up,
22 and was going around him. This is what John Doe expected
23 when he waved him on. Instead of doing that, and pulling back
24 onto the right-hand side of the road, which he obviously
25 could have done, according to his own testimony, he elected

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1 to turn around, so he stops dead center in the plaintiff's
2 lane of travel, stops, blocking traffic. Mr. John Doe is
3 there, and he effectively blocks travel for Mr. Ashley's
4 vehicle, stops, puts it in reverse, looking backwards, looking
5 behind him, and here comes Mr. Ashley. Mr. Ashley tries to
6 avoid an accident, simply couldn't do it, slides down, hits
7 Mr. Monday. There's an instruction on this that talks about
8 intervening cause, and there are some cases. The one I want to
9 mention to the Court is a case not too far different from this,
10 a little bit harder to discern, Wallace vs. Jones, 168 Vs. 38.
11 There were two collisions under facts relatively similar to
12 those in our case. In Wallace vs. Jones, that was a two car
13 accident for the first collision. In our case what we had
14 was a single car accident for John Doe to put him on the
15 wrong side of the road. But in Wallace vs. Jones the Wallace
16 car was being driven too fast, and on the wrong side of the
17 road, struck the Sykes car, pushed it onto the wrong side of
18 the road, so that Sykes was on the wrong side of the road
19 sort of like Mr. Monday is. The Wallace vehicle kept on going,
20 went off the side of the road, down an embankment. Some five
21 to ten minutes after this Mr. Todd came by. He was going in
22 what would be the same direction the Sykes car was going. He
23 stopped on the opposite side of the road to see if he could
24 lend some assistance. The plaintiff in that case was a
25 passenger in the Sykes car, the first car in the accident

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1 knocked on the wrong side of the road by the Wallace vehicle.
2 That plaintiff got out of the car complaining, when along
3 came a fellow named Woodward, and he was faced with the
4 situation of the two cars. He glanced off, the Todd car hits
5 plaintiff. The Court held the Woodward car was negligent.
6 He held he is negligent of course, he was driving on the wrong
7 side of the road and driving too fast, but they said with
8 regard to the plaintiff's claim his negligence was remote.
9 Hubbard vs. Murray, 173 Va. 448 involved a collision with a
10 bus on the highway.
11 What you have in our case is that Mr. Monday started
12 around the Cadillac. If this was a limited view to the top
13 of the hillcrest, and if Mr. Monday had started around there
14 and something was coming, then you might have a tie-in,
15 because there Mr. Monday is trying to get around a car that
16 arguendo is negligently in his lane. I can see the causual. . .
17 THE COURT: Let me interrupt you, ask this question. Isn't
18 he prima facie guilty of negligence as a matter of law by
19 being on the wrong side of the highway unexplained?
20 MR. MEADE: I don't think so, but assuming, arguendo he is.
21 THE COURT: I think the question is a question of causation.
22 MR. MEADE: That's what I am talking about, proximate cause.
23 What you've got here -- let's assume, arguendo, John Doe is
24 negligent in being over there where he was. Here comes Mr.
25 Monday. He starts to go around him, gets halfway around him,

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1 here comes a car, a collision. I can see you may have
2 causation there, but that's not the case. Mr. Monday didn't
3 do what John Doe expected him to do. He didn't come around the
4 Cadillac. He got around on the wrong side of the road, got
5 a little past him, instead of cutting over in his proper lane
6 and going on, he stopped dead on the wrong side of the road
7 and proceeded to back up in this driveway. This is something
8 he commenced doing and determined to do before Mr. Ashley
9 came into view. The wife pretty well took care of that when
10 she said when this accident happened her husband had brought
11 his car to a stop on the wrong side of the road and was going
12 backwards into that driveway. He was going backwards and on
13 Mr. Ashley's side of the road, not because of John Doe having
14 blocked the lane. The reason he was there was because he was
15 going to take advantage of that lane, back up, going on.
16 (Reads from Hubbard vs. Murray, 173 Va. 448) That's the
17 distinction. If Mr. Monday hadn't made this plan to turn
18 around at this particular point, the accident never would
19 have happened, irrespective whether John Doe was negligent
20 or not. The reason this accident happened was not because
21 of the snow. That contributed. Not because of John Doe.
22 The cause of this accident was Mr. Monday deciding to stop
23 in the wrong lane, deciding to back up, turn around in this
24 driveway, rather than go around the Cadillac, because if he
25 had done that, the accident wouldn't have happened. I say

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1 that's your causation. I don't see how you could word an
2 instruction in this case. This is aside from the question of
3 whether you can presume that John Doe was negligent in being
4 on the wrong side. John Doe was not driving on the wrong side
5 when this accident happened. He was stopped on the wrong side.
6 He had driven over onto the wrong side, but he was stopped
7 over there. He wasn't operating a vehicle over there. So,
8 what difference does it make whether he was stopped that way,
9 or you turn it around, if he had been on the right side of the
10 road going toward Mt. Airy, what difference would it make.
11 Mr. Monday had to go around him anyway. So there goes your
12 presumption about being on the wrong side in the case. What
13 would you do in this case -- suppose John Doe had been going
14 in the same direction as Mr. Monday, slid off, had gotten out
15 to see if it was clear, called Mr. Monday around, Mr. Monday
16 starts around. He says, "I will start around. He's got his
17 problem, I will have mine." He has no snow tires. He stops,
18 starts backing in the driveway. Now, how about John Doe? Is
19 he negligent because he is stopped to see? How does that tie
20 in to being on the wrong side of the road? It is the old law
21 school case about somebody having an accident, hitting a parked
22 car. That's not proximate cause. So that's what disturbs
23 me about your presumption of being on the wrong side of the
24 road. This guy might have been going west for all you know,
25 and turned around in the road. We don't know. It is

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1 conjecture. It gets us back to this whole thing, it is surmise,
2 speculation and conjecture whether John Doe was negligent, and
3 if he was, whether it was a proximate cause of the accident.
4 I think with Monday's own testimony, there's no question he
5 was negligent doing what he was doing, insulate John Doe.
6 MR. YOUNG: We have nothing to say.
7 MR. WORTHY: I would submit Mr. Meade started talking about
8 if the car had been headed up the hill and stopped, it would
9 be one act of negligence in blocking the highway. Here, with
10 John Doe coming the other way, we have two respects in which
11 there was negligence; one, blocking the highway; two, being
12 on the wrong side of the road. He was on the wrong side.
13 There has been no explanation. I submit he was guilty of
14 negligence as a matter of law. Whether this was a proximate
15 cause of the accident, I think inasmuch as it was a case of
16 the road being blocked, regardless of what Mr. Monday was
17 thinking about backing into the driveway, his car on one side,
18 John Doe on the other, Ashley comes over the hill, sees the
19 road blocked, he said he would have gone to the left if not
20 for the John Doe vehicle. There is evidence John Doe
21 remained there until just before the collision occurred. So
22 it is a case of the road being blocked. John Doe is blocking
23 the wrong side of the road. It has to be a proximate cause.
24 As far as intervening cause, Mr. Monday is not bound
25 by the testimony of his wife. At this stage we have to view

his evidence in a light most favorable to him. He comes up, a car is blocking his lane of travel. He gives it plenty of room to pull around. As he is going by, just as the front end of his car had cleared the Cadillac, while he may have been not "plumb" stopped, still moving forward, he sees this car coming down the road. He has the option of going on around, or backing into the driveway. He said he thought he could back into the driveway quicker because that was on the downgrade, whereas if he had to keep on going by the Cadillac, it was on a grade, he may spin his wheels. I would like to cite Dickerson vs. Tabb, 208 Va. 184. The facts are on point in that case. Dickerson, one of the defendants, drove on the wrong side of the road, caused the collision that blocked the highway. Then the second defendant crashed into the automobiles blocking the highway from the first collision. Plaintiff, was a guest in one of the vehicles. The Court held both defendants jointly liable. "The negligence of Dickerson caused both lanes of traffic to be blocked and this situation continued until the time of the second collision. The collision was a natural, foreseeable consequence of the highway being blocked. Dickerson's negligence created that situation and started the chain of events which could occur and did occur." Then they cited the case Hartley vs. Creed, a West Virginia case. One of the defenses in the Hartley case was one lane of traffic was unobstructed. If this had been a case where

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1 John Doe was blocking the road, and then he pulled off, left
2 his lane open, then Mr. Meade's argument would hold water,
3 but it was blocked up until the accident occurred. I am
4 referring to the testimony of Ashley, both lanes were blocked.
5 He considered going to the left, but he did not do so because
6 that lane was still blocked by John Doe. On the basis of
7 that case, and Elliott vs. Lewis, irregardless of what my
8 client may or may not have done wrong, the negligence of John
9 Doe continued right up until the time of the accident and was
10 a proximate cause thereof.
11 MR. MEADE: The distinction in the Dickerson vs. Tabb case,
12 in that case the original tort-feasor blocked the whole road.
13 He blocked both lanes with his accident. In the case we have
14 here, if John Doe in fact had an accident, if that is what you
15 want to call it, if he was negligent and caused an accident,
16 he only blocked that one lane, and that was the westbound
17 lane, not the plaintiff's lane of travel. The distinction is
18 in the present case the highway was completely blocked, not
19 by John Doe, but by Mr. Monday in negligently attempting to
20 use the wrong lane of travel to turn around from. That's the
21 distinction between the two cases. And so with that, I agree
22 with the Dickerson vs. Tabb case. They did cite the case
23 Hartley vs. Creed, and they pointed out the reason why that
24 case was not applicable in the Dickerson case. The only
25 conclusion I draw from that is, in the Hartley vs. Creed

1 case, which I say inferentially the Supreme Court has
2 approved, where your original tort-feasor only blocked one
3 lane and the highway is still open, then the original tort-
4 feasor is not responsible. I have trouble, even upon
5 plaintiff's evidence, seeing where the proof of negligence
6 against John Doe is, and everybody has conceded if we get
7 anywhere on that it will have to be on the presumption. As
8 I have indicated before, the Cassada case says where someone
9 goes on the wrong side of the road, there is no presumption
10 of negligence unless his driving on the wrong side of the road
11 caused an accident, but the act of his driving onto the wrong
12 side of the road caused an accident. In this case his driving
13 on the wrong side of the road didn't cause this second
14 accident anyway. If anything John Doe did was that he was
15 over there when this accident happened. We don't know how
16 long he had been over there. He could have been there five
17 minutes, ten minutes, thirty seconds. So it is not the fact
18 he drove over there caused anything. It is the fact he was
19 there sets up a condition where Mr. Monday has to go around
20 him, but Mr. Monday didn't elect to go around him, and the
21 accident didn't happen when Mr. Monday was going around.
22 Mr. Worthy said let's look at Mr. Monday's testimony,
23 but I understood Mr. Monday to say he doesn't know. I said
24 if that's the situation, all right, because his wife fills
25 the gap. He didn't know what happened, can't remember, or

1 didn't recollect, or doesn't know, but his wife does, and
2 she testified just like she did on deposition. She explained
3 the situation, and I say so far as the causative factor is
4 concerned, John Doe didn't cause this accident. It wouldn't
5 have happened if it hadn't been for John Doe, but it wouldn't
6 have happened either if it hadn't been snowing. The snow was
7 a condition. Without the snow it wouldn't have happened.
8 Without Mr. Monday's mother-in-law it wouldn't have happened.
9 If Mr. Ashley hadn't been taking Mr. Oliver to Martinsville
10 it wouldn't have happened, but the cause was Mr. Monday's
11 electing to back up, go into that driveway rather than go
12 around John Doe. With that I rest my case again.
13 THE COURT: This is the way I see this case. To summarize,
14 just a bit, the evidence I consider to be material on this
15 question of causation. That was that Mr. Monday approached
16 the Cadillac driven by John Doe twenty-five to thirty miles
17 per hour. He saw the right lane or westbound lane blocked by
18 John Doe. He stopped approximately two car lengths in front
19 of the John Doe vehicle with the thought he would give John
20 Doe ample room to pull out and get in his lane of travel, which
21 would have been he assumed the eastbound lane in the direction
22 of Bassett. John Doe got out of the vehicle, came to the
23 front of his vehicle, looked in a westerly direction, or up
24 the hill, motioned Mr. Monday by. Mr. Monday looked to the
25 left, looked to the right, and my recollection is Mrs. Monday

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1 did the same. The road was clear. Mr. Monday has testified
2 that before he pulled out to pass the stalled Cadillac being
3 operated by John Doe, his plan was to pull up far enough and
4 back into the driveway, turn around, and go home. He further
5 testified that he had no trouble pulling around the Cadillac.
6 He pulled around the Cadillac, as to exactly where he was
7 when he stopped, the evidence is a little vague, and it may
8 or may not be in conflict, but we recognize under those
9 circumstances people can't tell you just exactly where every-
10 body was, but it suffices to say the evidence indicates Mr.
11 Monday was perhaps past the rear of the John Doe Cadillac
12 just a short distance. He stopped. He began to reverse
13 with the idea of going into the driveway in order that he
14 might turn around and go back home. If John Doe was negligent,
15 he was negligent by a result of the presumption that arises
16 when an automobile is on the wrong side of the highway un-
17 explained. There is a prima facie presumption that the operator
18 of that vehicle was negligent. Assuming, but not deciding,
19 that John Doe was negligent, I see no relation between the
20 negligence of John Doe and the accident. I think the accident
21 was clearly caused by the action of Mr. Monday in proceeding
22 around -- not necessarily by proceeding around, but by not
23 continuing forward. I think the crux of the thing is when he
24 stopped and began to back up with the idea of turning around
25 in the Elmer Dalton driveway and going back home to avoid the

(TR 98) snowy road. So the motion to strike the evidence as it relates to John Doe, will be sustained -- rather, the motion will be granted, and to this action please note Mr. Worthy's objection, as counsel for Mr. Monday, and Mr. Young's objection as counsel for the plaintiff, Oliver.

MR. YOUNG: I have a motion. We move -- we are at the instruction stage -- the plaintiff would move, in view of the fact it might have some bearing on our preparing and presenting instructions, we move that summary judgment on the liability point be granted to plaintiff, and this case be presented on the matter of damages alone, the negligence of defendant Monday already having been shown as a matter of law.

(There was an off-the-record discussion)

THE COURT: The motion for summary judgment as to the question of liability, I find as a matter of law that Monday was negligent, and that his negligence was responsible for the injuries suffered by the plaintiff. So we will submit to the jury the one question.

MR. WORTHY: Note my objection and exception to the Court's ruling.

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TWENTY-FIRST JUDICIAL CIRCUIT
OF VIRGINIA

JUDGES
JOHN D. HOOKER
STUART, VIRGINIA 24171

FRANK I. RICHARDSON, JR.
MARTINSVILLE, VIRGINIA 24112

HENRY COUNTY
PATRICK COUNTY
CITY OF MARTINSVILLE

February 7, 1974

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Re: Oliver Vs: Monday and John Doe

Gentlemen:

I have retrieved this case from the bottom of the pile, re-read the portion of Mr. Monday's testimony that was transcribed, re-read all of my notes--in particular the testimony of Mrs. Monday, and read the memorandums of Mr. Worthy and Mr. Meade.

The testimony of Mr. Monday was so contradictory and so vague it really is impossible to determine to any degree of satisfaction just what he was doing or intending to do as he pulled into the east-bound lane along side John Doe. The testimony of Mrs. Monday who was seated beside Mr. Monday very clearly, at least to me, reflects that Mr. Monday was looking back and in the process of backing up when the Ashley vehicle came into sight over the hill. The decision to turn around in the Elmer Dalton driveway, according to the testimony of Mrs. Monday, was completely unrelated and unprovoked by the appearance of the Ashley vehicle.

John Doe's conduct was in essence this: He was traveling east but was stopped in the west-bound lane. He saw Monday approaching from the east (Bassett) in his proper west-bound lane. Monday stopped approximately two car lengths from Doe "so if he wanted to come on he would have room to pull out." Doe got out of his car, walked around to the right-hand side, looked up the road, looked down the road and motioned for Monday to "pull around." At this point the road was "pretty straight" and marked with a broken center line permitting passing. Monday, too, looked to see if any traffic was coming from the east or west but the road was clear so he began the process of pulling around Doe. Doe must of necessity have gone immediately back to his car, gotten in and driven off because at

the time of the collision he was out of sight. What else could John Doe have done under the circumstances? If he was negligent, was such negligence a proximate or concurring cause of the accident? Or if negligent in being on the wrong side of the road, would not his negligence be insulated by the intervening independent negligence of Monday? Fair minded men would agree that the questions should be answered "no" and "yes" respectively.

This letter had been dictated but not transcribed when I received Mr. Worthy's letter of February 4th. I have read very carefully the case cited, namely: Bronze Corp. Vs: Kostopulos, 203 Va. 66. Mr. Worthy contends that this case is authority for his position that the testimony of the defendant Monday could be considered in passing upon the motion of John Doe to strike. I find no fault with this but, as pointed out, the testimony of Mr. Monday is so contradictory that it is of no help to me.

The motion to set the verdict aside will be overruled, and in preparing the judgment order please note Mr. Worthy's objection and exception. The appeal bond will be $10,500.

Very truly yours,

John D. Hooker

John D. Hooker

JDH:prw

VIRGINIA: IN THE CIRCUIT COURT OF HENRY COUNTY

EDGAR C. OLIVER,	)	
Plaintiff,	)	
vs.	)	JUDGMENT ORDER
CECIL G. MONDAY,	)	
and	)	
JOHN DOE,	)	
Defendants.	)	

The above-styled case came on for trial on the 21st day of February, 1973. After all witnesses were called for both the Plaintiff and the Defendants, counsel for the Plaintiff and counsel for the said Defendants announced ready for trial. Wherefore, the Court called and impaneled a jury, according to law, consisting of the following:

William Edward Washburn
Dewey E. Minter
Leon Edsel Barrow
James E. Draper
Mrs. Clyde Dance
Franklin M. Courley
Thomas H. Padgett

At the conclusion of all of the evidence presented in the above-styled case, counsel for the Defendant, John Doe, renewed his motion to strike the Plaintiff's evidence as to the Defendant, John Doe, on the grounds that the Plaintiff's evidence failed to show that John Doe was guilty of any negligence which was a proximate cause of his injuries. After mature consideration, the Court sustained the motion of the Defendant,

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John Doe, and entered a summary judgment in favor of the Defendant, John Doe, on the grounds that the said Defendant was not guilty of any negligence which was a proximate cause of the Plaintiff's injuries. The Defendant, Cecil G. Monday, objected and excepted to such action of the Court.

After the Court entered a summary judgment in favor of the Defendant, John Doe, thereby dismissing the said Defendant from the above-styled case, the Plaintiff, by counsel, moved the Court to strike the evidence of the Defendant, Cecil G. Monday, as to all issues relating to the negligence of the Defendant Monday, and enter a summary judgment in favor of the Plaintiff as to the negligence of the Defendant Monday, thereby finding that the negligence of the said Defendant was a proximate cause of the Plaintiff's injuries. After mature consideration, the Court struck the evidence of the Defendant Monday, and entered a summary judgment in favor of the Plaintiff on all issues of the said Defendant's negligence, thereby finding as a matter of law that the negligence of the Defendant Monday, was a proximate cause of the Plaintiff's injuries. The Defendant, Cecil G. Monday, by counsel, objected and excepted to the action of the Court.

After the Court dismissed the Defendant, John Doe, from the above-styled case at the conclusion of all of the evidence and after the Court found as a matter of law that the negligence of the Defendant, Cecil G. Monday, was a proximate cause of the Plaintiff's injuries, the Court submitted the above-styled case to the jury on the question of the quantum of damages which the Plaintiff had sustained as a result of the negligence of the Defendant Monday. After hearing the

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argument of counsel, and the instructions of the Court, the jury returned its verdict as follows:

> "We the Jury upon the issue joined find our verdict for the Plaintiff Oliver against the Defendant Monday and fix his damages at $10,000.
>
> Franklin M. Gourley
> foreman"

The Defendant, Cecil G. Monday, by counsel, moved the Court to set aside the verdict of the jury on the following grounds:

1. The Court erred in entering a summary judgment in favor of the Defendant, John Doe, thereby dismissing the said Defendant from the above-styled case.

2. The Court erred in finding that the Defendant, Cecil G. Monday, was guilty of negligence as a matter of law which was a proximate cause of the Plaintiff's injuries and submitting the case to the jury on the sole question of the damages suffered by the Plaintiff.

3. The Court erred in not considering all of the evidence presented by the Defendant, Cecil G. Monday, when the Court considered the motion made by the Defendant, John Doe, to enter a summary judgment in his favor and thereby dismiss him from the above-styled case.

4. That the verdict of the jury was contrary to the law and evidence and for all reasons assigned to the Court which are of record.

WHEREUPON, the Court, after maturely considering the motions made by the said Defendant, doth overrule the said Defendant's motions, to which action of the Court the said Defendant duly objected and excepted.

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WHEREFORE, it is ADJUDGED and ORDERED that the Plaintiff recover from the Defendant, Cecil G. Monday, the sum of Ten Thousand Dollars ($10,000.00), that being the sum fixed by the jury, together with his taxable costs and interest at the legal rate from February 21, 1973.

It being intimated that the said Defendant intends to apply to the Supreme Court of Virginia for a writ of error in this case, it is further ORDERED that execution on the judgment herein shall be suspended for a period of four (4) months from the date of this Judgment Order, provided the said Defendant executes before the Clerk of this Court a proper suspending bond or a proper combination suspending and supersedeas bond in the amount of Ten Thousand Five Hundred Dollars ($10,500.00), with adequate surety conditioned according to law, within twenty-one (21) days from the entry of this Judgment Order.

It is further ADJUDGED, ORDERED and DECREED, that the transcript of the testimony presented in the above-styled case on February 21, 1973, shall become a part of the record in this case when the transcript is hereafter transcribed and filed in the Clerk's Office of this Court pursuant to Rule 5:9(a) of the Rules of Court of the Supreme Court of Virginia.

ENTER this 14th day of February, 1974.

/s/ John D. Hooker
JUDGE

Requested by:

/s/ James W. Haskins
Of Counsel for Plaintiff

Seen by:

/s/ David B. Worthy
Counsel for Defendant, Cecil G. Monday

/s/ Frank O. Meade
Counsel for Defendant, John Doe

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VIRGINIA: IN THE CIRCUIT COURT OF HENRY COUNTY

EDGAR C. OLIVER, Plaintiff, vs. CECIL G. MONDAY, and JOHN DOE, Defendants.	NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

Now comes defendant Cecil G. Monday, by counsel, and hereby gives notice, pursuant to the provisions of Rule 5:6 of the Rules of Court of the Supreme Court of Virginia, of his appeal from that certain final judgment order entered in the above action on February 14, 1974, and sets forth the following assignments of error:

The Trial Court erred in:

1. Striking the plaintiff's evidence as to defendant John Doe and entering summary judgment in favor of defendant John Doe.

2. Striking the evidence of defendant Monday and entering summary judgment in favor of plaintiff on the issue of liability against defendant Monday.

Notice is also given that defendant Monday will hereafter file in the Clerk's Office of this Court the transcript of the evidence and other incidents of trial held on February 21, 1973 to here hereafter prepared by Earline F. Gosney, Court Reporter.

CECIL G. MONDAY

By _____
Counsel

Stone, Joyce, Worthy & Stone
46 West Main Street
Martinsville, Virginia
Counsel for defendant Cecil G. Monday

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