216 Va. 514
SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE

SUPREME COURT OF VIRGINIA

AT RICHMOND

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RECORD NO. 741090

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CLAUDE W. NEIGHBORS,

APPELLANT,

V.

JAMES DOUGLAS MOORE,

APPELLEE.

* * * * * * * * * * * * * *

- -

APPENDIX

- -

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IN THE

SUPREME COURT OF VIRGINIA

AT RICHMOND

RECORD NO. 741090

CLAUDE W. NEIGHBORS
Appellant

v.

JAMES DOUGLAS MOORE
Appellee

APPENDIX

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MOTION FOR JUDGMENT

Filed October 12, 1973

Plaintiff, Claude W. Neighbors, moves the Court for judgment gainst the defendant in the amount and for the reasons hereinafter et forth:

1. On July 2, 1973, plaintiff was operating a 1965 Chevrolet mpala Station Wagon in a northerly direction on U. S. Highway 29 n Nelson County near its intersection with State Route 6; at approxiately the same time and at a point immediately to the rear of said laintiff, the defendant did then and there so carelessly and negliently run and operate a vehicle subject to his control so as to ause the same to strike the rear of the vehicle being operated by aid plaintiff.

2. As a direct and proximate result of such negligence of efendant, plaintiff sustained medical and hospital expenses, grievious nd permanent bodily injuries, has suffered and will continue to suffer reat pain of body and mind, has suffered loss of wages and has susained permanent disability, deformity and loss of earning capacity.

WHEREFORE, the plaintiff moves this Honorable Court for judgment gainst the defendant for $100,000.00, together with the cost of this ction.

DEFENDANT'S RESPONSE

Filed October 31, 1973

(1) The defendant, James Douglas Moore, admits that he was operating a 1966 Chevrolet Impala motor vehicle in a northerly direction along U. S. Highway No. 29 when the plaintiff, Claude W. Neighbors, who was operating a 1965 Chevrolet Impala station wagon, in a northerly direction along U. S. Highway No. 29, suddenly, without signal or notice of any kind, turned his motor vehicle to the left, toward a private drive on the west side of the highway, immediately in front of the motor vehicle operated by the defendant, thereby blocking the highway and the defendant, while operating the motor vehicle in a lawful manner, in the sudden emergency, created by the negligence of the plaintiff, without fault of the defendant, was unable to avoid the collision with the motor vehicle operated by the plaintiff, by the use of reasonable care, on July 2, 1973, in Nelson County, Virginia;

(2) The defendant denies that he was guilty of any negligence which proximately caused or contributed to the injuries alleged by the plaintiff;

(3) The defendant denies that he failed or omitted to do any act required of him by law and further denies that he was guilty of a breach of any duty or obligation which he owed the plaintiff;

(4) The defendant denies that there is any causal connection between the alleged injuries of the plaintiff and the alleged breach of duties charged against the defendant;

(5) The defendant denies that he was guilty of any negligence, but if he

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were, the plaintiff was guilty of negligence which proximately caused or contributed to his injuries;

(6) The defendant avers that the negligence of the plaintiff was the sole proximate cause of the collision;

(7) The defendant avers that the collision was due to a sudden emergency created without fault on his part;

(8) The defendant denies that the plaintiff was injured to the extent alleged in the pleadings;

(9) The defendant denies that the plaintiff suffered the expenses, financial loss and damages to the extent alleged in the pleadings;

(10) The defendant denies each and every allegation contained in the pleadings filed by the plaintiff, except those specifically admitted herein.

[Tr. pp. 4 l. 2 - 37 l. 10]

TESTIMONY OF DR. FRANCIS R. WHITEHOUSE

4 Q Dr. Whitehouse, will you state your full
5 name, please.
6 A Francis R. Whitehouse.
7 Q And where do you practice medicine?
8 A Lynchburg.
9 Q What is your area of practice?
10 A Specialist in internal medicine.
11 Q Will you tell us what your training and
12 background in this field is, Dr. Whitehouse?
13 A I graduated from the University of Virginia
14 and received a MD. And then I trained at McGuill Uni-
15 versity Hospital in Montreal, Canada; Charity Hospital
16 in New Orleans; Mayo Clinic three years; four years in
17 the army; and have been in practice since 1947 and certi-
18 fied as a specialist in internal medicine.
19 Q And have you been in Lynchburg since 1947?
20 A I have.
21 Q Now, Dr. Whitehouse, in the course of your
22 practice of internal medicine have you had occasion to
23 treat Claude Neighbors?
24 A Since 1959.
25 Q All right. Would you tell the jury briefly,

just in your own words give them a summary of the background of his medical history.

A Your Honor, this is a rather lengthy report but I think in general it is pertinent to the problem as it exists. Mr. Neighbors was born on March 9, 1918 which would next month make him fifty-six years of age. I first saw him in 1959 at which time he was forty-one years old, and at that time I made a diagnosis of heart disease based on rheumatic fever which had damaged the aortic valve and this was the first time he had known about that. He had had rheumatic fever when he was fifteen and he had a flareup in 1945. At the time I saw him he was hospitalized for acute infection of the kidney. I then saw him in 1961, in 1962 because of some arthritis in his knee which caused fluid to form. That was treated and hasn't really been a problem since that time. Then again in February 1965 he had infection of the kidney again, he was found to be a mild diabetic. In 1967 he was hospitalized because of chest pain. In 1968 he had a hospitalization, at this time his appendix was removed, he had acute appendicitis and he had inflamed pockets of his colon. And then in November 1967 he had problems with his right arm, he had numbness and weakness and discomfort and at that time I had him seen by a neurosurgeon, Dr.

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2 Botton, in Lynchburg at that time. And his findings at
3 that time were changes in his neck, by x-ray, and he felt
4 he was having pressure on the nerve roots from his neck.
5 He did seem to recover from that and within about two
6 months he seemed to be all clear but then in January
7 1968 a truck hit him and he saw Dr. Botton again and was
8 again treated but this was cleared up rather promptly and
9 didn't present any real problem. Then in February 1969
10 he again had kidney infection and had to have a prostate
11 operation, and at this time for the first time he had a
12 disturbed rhythm of his heart, the name for this would
13 be atriafibrillation, and this does decrease the ability
14 of the heart to function and created a definite increase
15 in his problems. Then in December 1969 I saw him for
16 the first time with heart failure based on his rheumatic
17 fever damaged heart valve. In July 1970 he had to be
18 hospitalized in Arlington, Virginia for heart failure,
19 hospitalized in January 1970 for heart failure, and
20 hospitalized March 1970 for heart failure, and hospitalized
21 October 1970, again for heart failure. And at this time
22 we decided that he no longer could manage with just medi-
23 cal care and he was referred to Duke University Hospital
24 for potential replacement of this damaged heart valve.
25 The heart valve that was damaged was the one that led

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2 from the heart and had narrowed down so that it was
3 just imcompatible with ordinary living. He had a
4 replacement of this heart valve by an artificial valve
5 on December 1, 1970. He came back to the office for
6 follow-up and in two months had returned to fulltime
7 work.

8 Q Dr. Whitehouse, let me stop you at this point.
9 During the course of your treatment of Mr. Neighbors
10 do you know where he was working?

11 A Yes, at Conner Produce.

12 Q All right. During the period of time you have
13 described from 1959 through 1970 did he continue to work
14 at Conner Produce during the times when he was not in
15 the hospital?

16 A Actually he worked a lot of times when I didn't
17 see how he could. He liked his job and he was very
18 faithful in his job and he did more to keep going than
19 anyone I have ever seen. He did maintain his job in the
20 majority of that time.

21 Q All right, sir, go ahead and pick up where you
22 were.

23 A He did make -- when he came back from Duke, I
24 have known him since 1959 and a person you have known
25 that long you develop a personal relationship, and I said

1

2 "Claude, how was that operation?" This is a tremendous
3 operation, they split the chest wide open and put a
4 pump in and it was a real major thing, and he said
5 "Doc, it wasn't nothing, I didn't have to even take an
6 aspirin." It was typical, he was cheerful and opti-
7 mistic and tried to play down the problems he did have.
8 Then in April 1971 a hernia he had became so enlarged
9 it had to be repaired and he went through that without
10 any particular problem. But from November 1970 or
11 December 1970 until March 1973 he basically had routine
12 checkups and did, I thought, surprisingly well and did
13 well in the follow-up. Then in the spring of 1973, less
14 than a year ago, in March he had a series of colds and
15 sinus trouble and bronchitis and unfortunately developed
16 an infection on this artificial valve and this is called
17 bacterial endocarditis, it is a serious kind of infection.
18 It responded promptly to treatment and other than a rather
19 lengthy hospitalization, he had to have I.V. penicillin
20 for three weeks -- he did develop one thing as a result
21 of this. The valve is sewed in and it was slightly
22 damaged where it was sewed in and there was a slight
23 leak and I sent him back to Dr. Floyd at Duke and he
24 thought it was a leak that had developed from the endo-
25 carditis and it did not, however, make a significant

1
2 difference and we had come out of it lucky; in other
3 words, he had a cure of this serious infection.
4 Q When was the cure complete, when was his
5 treatment over for the endocarditis?
6 A It took five or six months. In other words,
7 with bacterial endocarditis, without a false valve in
8 there it is a short recovery but this sets up a foreign
9 body and you set up a much longer treatment to make sure
10 you have everything right.
11 Q When was he able to return to work after the
12 endocarditis?
13 A May 14th.
14 Q All right. Was he essentially over the endo-
15 carditis before the automobile accident in July 1973?
16 A He was presumed cured by Dr. Floyd. In other
17 words, October 1973 he saw him finally and thought there
18 was no question but that he was cured and should stay
19 cured and the presumption of cure is something that is
20 proved by passage of time. In other words, he had his
21 initial episode and subsequent to that you just have to
22 carry on.
23 Q Would you briefly describe his condition for
24 the jury and compare his condition before his open heart
25 surgery and his condition after the surgery leading up

1
2 to the accident.
3 A Oh, it was all the difference between night
4 and day. Here was a guy that stayed in the hospital
5 and we couldn't keep him controlled, and after the
6 surgery he was a new man, he bloomed, playing golf and
7 doing well.
8 Q How would you describe his condition before
9 July 2nd?
10 A We were delighted with the results. This
11 was less important -- it worried us more than it did
12 him, to put it that way, and he didn't feel bad, so
13 bad while he was in the hospital. This was just passing
14 the time that we had to have to get this thing done in.
15 Q When did you first become aware that he had
16 been involved in an automobile accident?
17 A July 30th. I had been on vacation the month
18 of July or most of it, and I had known on July 30th
19 that July 2nd he had been in an accident, that he had
20 sustained injuries, that he had been treated by an
21 orthopedist and in that time -- this man has a number
22 of very special problems that medications involve
23 considerable risk and he brought all of his medicines
24 with him and I had to go over some of those, some of
25 which might be detrimental to him and I had to omit a

number of them, which created a handicap to the orthopedic man in a way because he couldn't go on and give him the full treatment he would like to. But as far as his general overall situation is concerned, since that time I have seen him and during that time from my medical standpoint, objectively that is, he has done reasonably well. He did have a mild episode, I think, of heart failure in November 1973 but the basic problem was that he had become tense and depressed, he felt that he couldn't work and he had worried about his job which he ultimately lost.

MR. ROSENBERGER: Excuse me -- Doctor, do you know he lost his job?

THE WITNESS: I understood he did.

MR. ROSENBERGER: I see. All right.

THE WITNESS: I didn't get all the details but the way the job was terminated was a lot of concern to him. In other words, from being an active person he had become completely disabled, unable to work and lost his job and everything else. And, just in summary, I might say here is a man who has had a job, he has kept it in spite of physical problems which would swamp any two people,

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2 in one two-months period he was in the hospital
3 seven times, he had an open heart operation and
4 he had worked many days in the past, and if you
5 know a person you can appreciate it, and he had
6 always managed to work, I thought, when an average
7 person couldn't possibly do so. And now he had
8 completely -- he felt so bad that he just couldn't
9 make it at all.
10
11 BY MR. SACKETT:
12 Q Describing, now, after the accident.
13 A Yes. And apparently -- I didn't get into the
14 orthopedic part but from my observation he has been a
15 completely, totally different person since this wreck
16 in 1973.
17 Q From --
18 A One other thing. I might say that after going
19 over my findings and evaluation and talking to him on
20 September 24, 1973 I wrote a note indicating that I had
21 advised him to apply for Social Security disability as
22 I felt he was permanently and totally disabled and he
23 hadn't worked since August 28th, and then I have a
24 disability determining application which I filed in
25 October 1973 and I listed his multiplicity of problems

1

2 and made the note that he had tried harder to work
3 than anyone in recent years I knew of and now even
4 he agrees he couldn't work, and then I made a note
5 that I didn't see how he worked as long as he did,
6 but he did put in an application for total and perma-
7 nent disability under Social Security.
8 Q Dr. Whitehouse, in your opinion is Mr.
9 Neighbors now able to work?
10 A No.
11 Q In your opinion will he be able to work in
12 the future?
13 A Even an optimist couldn't foresee that.
14 Q I am not sure I understood your answer.
15 A I mean, even if you looked at his situation
16 with the greatest of optimism -- in other words, you
17 said "Golly, I would certainly like to see him go
18 back" and the answer comes out "I just don't see how".
19 Q In your opinion are the conditions you have
20 described since this accident and his present and future
21 inability to work, are they in your opinion caused by
22 the accident of July 2, 1973?
23 A That was the thing that made the big differ-
24 ence, that was the real big change. He had survived
25 up until then.

Q Is it your opinion that his present inability --

MR. ROSENBERGER: Excuse me -- he is leading on a very important part.

THE COURT: Yes. Don't lead the witness.

BY MR. SACKETT:

Q Would you tell us whether or not the automobile accident of July 2, 1973 was the cause of his present condition?

A In my opinion it was.

MR. SACKETT: That is all.

CROSS EXAMINATION

BY MR. ROSENBERGER:

Q You have known Mr. Neighbors since about 1959?

A Yes, sir.

Q Has someone in his family been a nurse of yours? Some relative of his -- a niece?

A Worked in my office?

Q Yes.

A Not to my knowledge.

Q But anyway, you have known him since 1959.

A Right.

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2 Q You gave us a medical background but some
3 things I think you missed. You told us about the
4 rheumatic fever when he was fifteen which caused swell-
5 ing of knees and hands.
6 A Yes.
7 Q He was also struck by a car when he was a
8 teenager, too, wasn't he?
9 A Correct.
10 Q And then in 1949 his right ankle was fractured
11 and he still has problems with his ankles swelling?
12 A That is as a result of his heart.
13 Q It is a heart problem?
14 A Yes.
15 Q What caused the knee problem? I think you
16 said October 31, 1961 that that was traumatic effusion
17 of the right knee. What do you mean by that when you
18 said "traumatic effusion of the right knee"?
19 A My notes reveal October 31st, this was Dr.
20 Torbert's note, who was with me at that time, that he
21 had effusion, that is fluid, in his right knee and he
22 had some mild heart failure and he admitted him to the
23 hospital.
24 Q Doctor, I was trying to get at what did you
25 mean by that note?

1

2 A I don't see the word "traumatic" in my record.
3 I have February 1962 "effusion right knee" --
4 Q Maybe it is on the hospital note.
5 A All right, let me look. Oh, here we go
6 (looking through documents). This was Dr. Torbert's
7 basic record and I dictated the summary -- oh, here
8 it is, "Three days prior to admission the patient spent
9 the evening taking up a linoleum floor. This was
10 generally done in a squatting position rather than on
11 his knees. The following day he noted swelling, some
12 stiffness and soreness in his right knee and this has
13 since persisted". In other words, this was a knee
14 strain due to taking up a linoleum floor -- that was
15 what the trauma was, that was the difference.
16 Q By "trauma" you mean an injury.
17 A Yes, he hurt his knee taking up a linoleum
18 floor and that answers that.
19 Q Now, on November 2, 1962 you recorded he
20 slipped on a snap bean and he fell and broke or hurt his
21 wrist.
22 A November 2, 1962 -- oh, he slipped on a snap
23 bean at the warehouse and fell on his right wrist and
24 also hurt his right chest. "On examination the wrist
25 is o.k. The costal margin" -- the rib area is tender,

1
2 also. And I have down "Treatment, nothing".
3 Q All right, you didn't have him in the hospi-
4 tal at that time?
5 A No, sir.
6 Q Then in November did you recall that he was --
7 had a blackout and hit a parked car? You recorded it
8 February 15, 1963.
9 A Oh, yeah, here we are, "Sense of heat inter-
10 mittent past month in his forehead. Cough and sinus
11 past 2 weeks. Not improved any. Had a blackout in
12 November 1962 and hit a parked car and not" -- something,
13 "since". At any rate, at that time I didn't find any-
14 thing. But incidentally, in regard to the blackouts,
15 with that type heart valve sometimes they don't get
16 enough circulation through and they are subject to that.
17 Q In 1962 did you find anything that would re-
18 late to his heart to cause a blackout? His heart wasn't
19 that bad at that time, was it?
20 A It wasn't too good.
21 Q Did you let him continue in driving a car
22 from that time on?
23 A It was a single thing and it is the only
24 episode I have recorded.
25 Q On December 31, 1963, I think you overlooked

these injuries, he was knocked down by a pickup truck?

A December 31, 1963? Oh, yes, "Hurt his chest when knocked down by a pickup truck. Has local tenderness", etc. And it was rather minor and the chest x-ray was all right and I found nothing of any consequence.

Q Didn't Dr. Botton treat him in 1964 for six months for a pinched nerve?

A 8.

Q Eight months?

A No -- 1958.

Q No, it was 1964.

A I don't have that.

Q Don't you have a report from Dr. Botton?

A Yes, sir, that report I have is dated November 19, 1967.

Q 1967?

A Yes, sir.

Q Well, what time does he refer to in 1967?

A It says "As you know, this forty-nine-year-old white man has been bothered for the past ten days with numbness", etc. in his right arm. So it was ten days prior to the 19th of November, that would date it November 9, 1967.

1

2 Q The record shows in 1964 there was a pinched
3 nerve in his neck. Do you remember treating him on
4 June 1, 1964 when he was weighing 218 pounds, his
5 heart was enlarged?
6 A Yeah, June 1st he came in complaining of
7 shortness of breath, had a cough. At that time I
8 started digitalis on him for the first time since I
9 had seen him because I felt he had some congestion in
10 his lungs and his heart was larger, etc., and then fol-
11 lowed that up and decided it hadn't made all that great
12 deal of difference, and that is beside the point.
13 Q All right, sir. Now, getting back, Doctor,
14 to Dr. Botton, he is the neurosurgeon that you referred
15 this gentleman to because of problems with numbness and
16 weakness in his arms and hands -- right?
17 A Yes, sir.
18 Q And the note that you were reading from of
19 November 19th was when he had been bothered for the past
20 ten days with numbness and slight weakness of the right
21 arm.
22 A Yes.
23 Q And it was because of the narrowness in the
24 vertebrae C-5 and C-6 that caused that?
25 A He had some osteoarthritic spurring. It

1

2 didn't mention narrowing.

3 Q If you will look at that report of Dr.

4 Botton. Your records show he had a narrowing of

5 the space at C-5 and C-6.

6 A It wasn't called narrowing.

7 Q November 24, 1967.

8 A Oh, I have "narrowed disk C 5-6" written on

9 my records.

10 Q That is what I am talking about, narrowing

11 of the disk space in the neck and that is what causes

12 the pain down the arms and the numbness and that is the

13 reason it is important to make a note of it?

14 A Yes.

15 Q And in following down with those problems,

16 he had some problem with those disks?

17 A Yes, he had neck problems.

18 Q And that was before he had the accident of

19 January 6, 1968, was it not?

20 A January 12th he was hit by a truck, according

21 to my record.

22 Q If you will look at your record, I believe

23 it is January 6th, it was a collision with a Sunbeam

24 truck.

25 A Right. It said "He had an accident in which

he hit a truck and hurt his neck, etc. so was seen by Botton on 1-7-68 and had x-rays of neck and arm and no new finding and given a collar and Botton will see him in a few weeks".

Q Will you turn to November 3, 1967 and take a look at your note at that time?

A Yes.

Q Will you read that note.

A (Reading): "For a week he's had a vague band like discomfort at about level of the lipoma of the back" -- that is a little fatty thing on the back here (indicating). " -- the cause of this is quite uncertain but doesn't have it in evening or when lying down. Also had a few episodes of the epigastric pain" -- that is pain in the abdomen -- "but no relation to this" -- I used the word "hypoesthesia", numbness. "Comes and goes without rhyme or reason". I had down "I believe this must be fatigue" and he went to see Dr. Botton.

Q That was a case that you couldn't find any reason for all those complaints, basically stated?

A I didn't really go after anything. I indicated that is what I found.

Q You made it pretty plain when you said it

1
2 didn't make any sense to you.
3 A Yes, but a lot of things don't.
4 Q Physically, you couldn't find it.
5 A No. But let me make one point, this ortho-
6 pedic, this neurosurgical business is not my specialty
7 and when I run out of ideas then I send them to the
8 proper person.
9 Q All right, but now you were dealing with that
10 neck and shoulder on January 5, 1968, the day before he
11 got in the truck accident, weren't you -- January 5,
12 1968, if you will look at that.
13 A I have the note "Neck and shoulder discomfort
14 has gone and only has numbness of left thumb as residual.
15 Now has a root pain in T-9" -- that is the chest area --
16 "mainly on right and not noted if quiet except Wednesday
17 night it bothered him when lying down".
18 Q And then he had the accident of November 6,
19 1968 and did you refer him to Dr. Botton again and then
20 Dr. Bowen?
21 A I don't remember Bowen.
22 Q Do you remember referring him to Dr. Botton?
23 A I don't have it down -- I must have but I
24 didn't write it down.
25 Q But you commented a while ago that after that

collision on January 6th that it cleared up promptly, that neck injury he got. What made you think so?

A Well, let's see --

Q Don't your records show --

A December -- oh, from November 3rd to January 5th I had noted that his discomfort that he had in November had gone.

Q Yeah, that was before the accident of January 6th?

A Right.

Q Now, you said after this collision with the truck that that cleared up promptly and my question to you is didn't you know that Dr. Botton and Dr. Bowen treated him from January to October, then he went to Dr. Keefer and he treated him from October to April 1969?

A I don't have any records of those.

Q You don't have those?

A No.

Q If that be a fact, then his neck didn't clear up very quickly, did it?

A I have no idea.

Q If he got in a collision on January 6, 1968 and he was under treatment until April 1969 and then in

March 1970 just before his trial he was still complaining of his neck that doesn't sound like it cleared up very quickly.

MR. SACKETT: I object to the cross examination of Dr. Whitehouse about something that is not in his notes.

THE COURT: Are you asking him for his opinion whether that is a long time or not?

MR. ROSENBERGER: Yes, and he stated unequivocally that it cleared up promptly and if he can assume that he was under this treatment from January 6, 1968 with two doctors to October 1968 and then changed to Dr. Keefer who treated him to April 1969 and then he had a remission and didn't go back until three days before his trial in March 1970 that doesn't sound like it cleared up promptly.

MR. SACKETT: That is my objection. There has to be a limitation on what he can cross examine him on or some evidence that these things he is asking about can be proved.

MR. ROSENBERGER: Dr. Keefer will be here.

MR. SACKETT: But not Dr. Botton or Dr. Bowen.

THE COURT: He is on the stand as an expert and you can ask him to assume as his opinion --

1
2 THE WITNESS: May I say this, Your Honor.
3 I have records from my medical standpoint,
4 these are the things that I know. As it turns
5 out I have relatively little, if anything, beyond
6 what I have said about any other bone or joint
7 problem. These things that he had treated, I have
8 no report from those doctors; in fact, I am not
9 even certain that I knew that he had seen them and
10 after six years I can only go on what I have in
11 writing.
12
13 BY MR. ROSENBERGER:
14 Q You don't mean for the jury to take from what
15 you said that the collision of January 1968 cleared up
16 promptly, do you?
17 A To put it in another way, from what Mr.
18 Neighbors told me he and I weren't discussing his bone
19 and joint problems and therefore I don't know what
20 transpired or what went on and how much trouble he did
21 or didn't have. I think that is correct.
22 Q Then you are just mistaken about whether it
23 cleared promptly or not?
24 A I can't state anything further than what I
25 have said.

Q Then in 1968 you told us about his appendix being removed and then he had the prostate surgery in February 1969, did he not?

A February 1969 -- February 19th.

Q Right. Now then, on March 25th did you record something for him there? I want to be certain you are the one that did it.

A March 25th?

Q Right.

A What year?

Q 1969.

A Office or hospital?

Q It would be office, I think.

A I have a note dated March 24th.

Q What does that relate to?

A It just stated that he was at the Virginia Baptist Hospital February 3 to February 26, 1969 when he had a TUR which is the operation for the prostate; nocturia, which is getting up at night to urinate. "He feels fine but legs ache and bother some. Had skin reaction which must be due to penicillin". And then it mentions the medicines that I changed and the fact that he looked much better.

Q In December 1969 you had him in the hospital

1

2 for congestive heart failure, again -- December 26th?

3 A Oh, yes, I saw him in the office December

4 26th, "Has congestive heart failure, admit to Virginia

5 Baptist Hospital".

6 Q And he was in there for some time for his

7 heart problem, wasn't he?

8 A Do you want the exact time?

9 Q No, it is not --

10 A Okay.

11 Q I was getting at, was this the second or

12 third congestive heart failure problem he had?

13 A The first in December 1969.

14 Q But then in 1970 it built up to where he

15 had to have the surgery in December.

16 A Yes, sir.

17 Q So at that time he was continuing to function

18 all right even though he had had the neck injury in 1968,

19 right?

20 A He and I just didn't discuss that because if

21 he had it as a problem it was separate from my knowledge.

22 Q You told us about the prosthesis that went

23 into the valve. Was it the aortic --

24 A Do you want the name of the prosthesis?

25 Q No. That really replaced the aortic valve?

1

2 A Yes.

3 Q Because there was a narrowing in it and it

4 didn't get a sufficient blood supply?

5 A Right.

6 Q At that time they also found difficulty with

7 the mitral valve as being markedly diseased?

8 A No, it was not.

9 Q If you will look at the report you got from

10 the surgeon who looked at him and looked at it in

11 December 1970 --

12 A I know what you are talking about but I think

13 you have got the wrong idea.

14 Q All I can say is what it says. Did you get

15 a report from the surgeon?

16 A Let me see. It says the mitral valve was

17 neither insufficient or stenotic. He used the word

18 "diseased".

19 Q He said "The mitral valve is markedly diseased"?

20 A Right, but I was remembering it was neither

21 insufficient or stenotic. "Therefore, we did not have

22 to carry out any procedure on this valve. We were

23 fearful from the preoperative studies that he did have

24 a considerable amount of mitral stenosis". But he didn't.

25 Q The markedly diseased valve was not replaced --

1
2 that is my point.
3 A That is right, because it was causing no
4 problem. In other words, we wouldn't have replaced his
5 aortic valve if it had not caused a problem.
6 Q All right, Doctor, his heart really was in
7 worse condition in 1969 and 1970 than it was after he
8 had had the surgery in December 1970? In other words,
9 that surgery improved his heart you are telling us?
10 A It was tremendously beneficial.
11 Q And otherwise stated, it was in worse condi-
12 tion in 1969 and 1970 than it was after his heart
13 surgery?
14 A That is right. In other words, it is like
15 everything else you treat and correct which results in
16 a good result and he had an excellent result. He went
17 back to playing golf and fulltime work and everything.
18 Q You told us in January 1972 --what did you
19 attribute that dizziness to that you recorded in Jan-
20 uary 1972?
21 A Oh -- I didn't know.
22 Q Was it due to lack of blood circulation?
23 A The only thing that I noted was that when he
24 would get up quickly he would get it and all of us
25 have a tendency to stand up real quickly and feel a

1 little giddy and that, I thought, was probably it.
2 But he also had it when he was quiet so I just plain
3 didn't know.
4 Q He had had some tingling and trouble with his
5 arm and elbow back in 1966 that you dealt with, didn't
6 he -- like April 15, 1966?
7 A Oh, yes -- it was down in the ulna side of
8 his left arm.
9 Q The left hand was numb and tingling in the
10 ulna area?
11 A I thought -- he used the phone a lot and I
12 thought he had leaned on his left elbow and I thought
13 it made his fingers tingle.
14 Q But this must have been prolonged because
15 he was coming to the doctor for it?
16 A Yes, but he had done it for quite a while.
17 Q You didn't think that was related to the
18 problem in the neck that Dr. Botton treated him for?
19 A I didn't.
20 Q You noticed the tingling in different places.
21 What did you ever decide was wrong with his hands and
22 arms to tingle -- just like the dizziness? Did you
23 feel like there was any physical cause for this or was
24 this his nervous condition that he had back in 1967 and
25

1968?

A I had gone into it just about what we have already brought out and no more.

Q In other words, you didn't determine what it was.

A No.

Q Now, in 1973 in March when he was in the hospital so long, actually what the problem was he had a urinary tract infection and an infection from that valvular prosthesis?

A Yes.

Q And that was what you had down to see Dr. Floyd about in October 1973?

A Yes. What we had sent him down for was to see if it had actually set him back any and also to see how thoroughly we had done our job and whether we needed to do anything more and when to quit.

Q You asked the dodtor's opinion and the doctor told you it was when you could let up on the antibiotics?

A Yes.

Q And the doctor who had treated him and examined him thoroughly and saw him before and after the surgery didn't relate any of his heart problems to

1
2 the automobile accident, did he?
3 A No. Nor did I.
4 Q Now, Doctor, was Dr. Keefer keeping up with
5 you or you with him about the treatment of his patient
6 and your patient?
7 A We had no report and no cross-communication.
8 Q Well, when Mr. Neighbors came to you, Dr.
9 Whitehouse, on September 24th, will you read your note
10 to the jury exactly what you recorded September 24, 1973.
11 A Oh, verbatim I said "All tense and depressed
12 and feels he will have to retire. Appointment with
13 Floyd on October 1st. Add pertopane 25 T.I.D."
14 Q On that same date you also wrote for him to
15 retire to get Social Security benefits because he was
16 disabled, did you not?
17 A Right.
18 Q Didn't he tell you that four days before Dr.
19 Keefer had told him that he could begin to do light work
20 and should go to work on that day -- he was sitting in
21 your office?
22 A If he said it I don't have it recorded.
23 Q And you have never checked Dr. Keefer's notes?
24 A I never had any.
25 Q And you haven't talked to him until this day?

1

2 A I haven't talked to him at all.

3 Q Do you agree with the treatment of Myo-

4 chrysine for neck sprains -- the gold?

5 A What you are asking me, do I approve of

6 another doctor's treatment?

7 A I ask you if you approve of the use of the

8 Myochrysine, which is a gold injection, for synovitis

9 or neck sprains?

10 A I think that is a matter of individual

11 opinion.

12 Q Do you mind expressing yours?

13 A In the negative.

14 Q You do not approve of it?

15 A No.

16 Q All right. If Dr. Keefer testifies today

17 that he has recorded during this month that Mr. Neighbors

18 is now ready for light work, do you agree?

19 A No.

20

21 MR. ROSENBERGER: That is all.

22 REDIRECT EXAMINATION

23 BY MR. SACKETT:

24 Q Dr. Whitehouse, Mr. Rosenberger has been

25 through in great detail all of Mr. Neighbors' past history

1
2 and I want to be sure the jury understands one thing.
3 Have you -- is it your opinion that his heart condition
4 has been made any worse by the automobile accident?
5
6 MR. ROSENBERGER: I object to the question.
7 He just said it didn't relate to the heart and
8 it is a leading question.
9 THE COURT: I sustain the objection.
10 MR. SACKETT: I will rephrase the question.
11 BY MR. SACKETT:
12 Q Will you tell the jury from your observation
13 and opinion what has been changed, whether it be heart
14 or otherwise, about Mr. Neighbors since the automobile
15 accident of July 2, 1973.
16
17 MR. ROSENBERGER: Your Honor, he went through
18 that thoroughly on the direct examination --
19 THE WITNESS: I think I can --
20 MR. ROSENBERGER: Excuse me. I have had
21 him on cross examination, I asked the doctor
22 specifically did he relate the accident to the
23 heart and he said he did not and neither did Dr.
24 Floyd and now Mr. Sackett is trying to change it
25 by asking leading questions --

THE COURT: You have been over it.

MR. SACKETT: Your Honor, Mr. Rosenberger has asked all these questions about all these other things and I want Dr. Whitehouse to clarify whether those things or the automobile accident are the cause of his present condition.

MR. ROSENBERGER: The doctor said he didn't go into the bone and joint treatment and hasn't discussed this matter with Dr. Keefer, hasn't even discussed it, so I think under the circumstances the question is not proper and it is not rebuttal.

THE COURT: Rephrase the question, Mr. Sackett, I don't know exactly what you are getting at.

MR. SACKETT: I can't lead him so I can't say that.

BY MR. SACKETT:

Q But, Dr. Whitehouse --

A Do you want to know why I think he is disabled now?

Q I would. That is exactly what I want to know.

A Basically one thing, and that is that since he had this accident he has complained more about hurting

than he has complained in all the time I have ever seen him before. He has lost his job, as a result of that he has gotten a severe depression, he has completely changed personality-wise from a cheerful, ongoing salesman to a person that I think hasn't seen a decent day since. And he is not, I don't think, able to do anything near what he could before.

MR. SACKETT: Fine. That is all I want to know.

RECROSS EXAMINATION

BY MR. ROSENBERGER:

Q You have told the jury twice the gentleman has lost his job. Don't you know he is on Workmens Compensation and being paid his medical bills and salary?

MR. SACKETT: That is entirely outside the scope of the testimony, and I object to it.

MR. ROSENBERGER: It is perfectly proper for me to ask the doctor the actual facts because he has said twice he has lost his job and his medical opinion is based on the fact that he has lost his job.

THE COURT: You can't testify, Mr. Rosenberger,

1
2 and I am going to sustain the objection. You can
3 ask him what he knows.
4
5 BY MR. ROSENBERGER:
6 Q Do you know whether he is now receiving
7 Workmens Compensation?
8 A I have no idea.
9 Q You don't know.
10 A No.
11
12 MR. ROSENBERGER: That is all.

[Tr. pp. 38 l. 3 - 64 l. 7]

TESTIMONY OF TROOPER C. P. BIBLE

2 C. P. BIBLE (Trooper) was called as a witness
3 on behalf of the plaintiff and, having been previously
4 duly sworn, was examined and testified as follows:
5 DIRECT EXAMINATION
6 BY MR. WOOD:
7 Q Will you state your name, please.
8 A C. P. Bible.
9 Q What is your occupation?
10 A Trooper, Virginia State Police.
11 Q How long have you been a trooper?
12 A A little over five years.
13 Q Trooper Bible, did you investigate an ac-
14 cident on July 2, 1973 at the entrance of Earl's Amoco
15 Station on U.S. 29 north?
16 A Yes, I did.
17 Q Will you tell the court and jury what your
18 investigation showed.
19 A Yes, sir. On July 2, 1973 I got a call at
20 1:25 p.m. over the State Police radio of an automobile
21 accident on U.S. 29 in the vicinity of Hickory Creek.
22 I arrived at the scene at 2:00 p.m. and found that the
23 accident had occurred in front of Earl Gormes' Service
24 Station approximately 200 feet south of the creek there
25

itself.

MR. ROSENBERGER: I didn't get the last name?

THE WITNESS: Earl Gormes' Service Station.

MR. ROSENBERGER: G-o-r-m-e-s?

THE WITNESS: Yes, sir.

MR. ROSENBERGER: Thank you, sir.

THE WITNESS: I arrived at the scene and found the two vehicles that had been involved in an accident. The No. 1 vehicle was a 1966 Chevrolet sedan. The driver of this vehicle identified himself as Mr. James Douglas Moore.

BY MR. WOOD:

Q Is he in this courtroom?

A Yes, sir, sitting there (indicating). And his address is Martinsville, Virginia, and this vehicle was registered to a Helen Ann Treadwell Moore of Martinsville. This vehicle had damage to the right front end of the vehicle. The other vehicle was a 1965 station wagon, Chevrolet. The driver identified himself as Claude W. Neighbors of Lynchburg and he was the registered owner of this vehicle. This vehicle had damage to the left rear and rear portion and the right rear fender had damage. The road along at this point is downgrade, fairly straight.

The road was dry, there were no defects in the highway. Traffic lanes are marked on the highway. It was during the daylight hours, it was cloudy and this is a black-top surface.

Q There are lines in the highway there?

A Yes, sir, the traffic lanes are marked.

Q How are they marked?

A The traffic lanes are marked, if you are heading north a broken line until you reach the service station and then it begins a solid line for the north-bound traffic until you pass the intersection of Route 6. I believe it is a solid line all the way up that hill for northbound traffic.

Q Which direction were the parties traveling?

A According to my investigation they had both been traveling north, Mr. Neighbors' vehicle had been in front and Mr. Moore was behind him attempting to pass.

Q Did Mr. Moore give you a statement?

A Yes, sir, he did.

Q Will you tell the court what that is?

A Mr. Moore stated "I was attempting to pass the other vehicle when he turned left in front of me. I did not see a signal".

Q Did he tell you how fast he was moving?

A 55 to 60 -- 60 miles an hour.

Q What is the speed limit there?

A 55.

Q Now, officer, we have here some photographs --

MR. ROSENBERGER: Excuse me. You said 55 to 60 and then you said 60 -- do you know which one?

THE WITNESS: I don't remember if he told me 60 or I just estimated 60.

MR. ROSENBERGER: I move to strike.

MR. WOOD: Do you recall whether or not he said 60?

THE WITNESS: No.

MR. ROSENBERGER: I move to strike the answer.

THE COURT: I sustain the motion, and ask the jury to disregard the statement he made that he was going 60.

MR. WOOD: Where are the pictures?

MR. ROSENBERGER: Your Honor, I have no objection to some of the pictures. They look like they were taken in the rain. This one I can't tell --

MR. WOOD: Why don't we let the trooper identify

1
2 them.
3 MR. ROSENBERGER: The views and positions
4 of them -- I have no objection to this one
5 (indicating). But I think the visibility is
6 different, Your Honor, in these pictures because
7 of the rain, I see the haze. I have no objection
8 to this one and I have no objection to this one
9 (indicating) that I can see clearly.
10 MR. WOOD: Judge, the pictures are introduced
11 solely to show the scene of the accident. The
12 fact that it was cloudy on that particular day
13 I don't think has any bearing or is any particular
14 reason why they should exclude these pictures
15 as evidence in this case if the trooper can
16 testify that this does reflect the scene where the
17 accident took place.
18 THE COURT: Which pictures do you object to?
19 MR. ROSENBERGER: I object to these -- well,
20 I don't care about this one (indicating). These
21 other two I can't see, I object to these because
22 of the haze.
23 MR. WOOD: This one, Judge, is looking south
24 and this is looking north.
25 MR. ROSENBERGER: They don't accurately portray

the situation as it existed that day.

MR. WOOD: These are the other two -- we would like to use these (handing to Mr. Rosenberger).

MR. ROSENBERGER: I think one is a duplicate of the other.

MR. WOOD: It is not a duplicate. There are two entrances to the service station and it will help the jury to understand the --

MR. ROSENBERGER: I don't mind anything helping the jury but I see two pictures and they confuse me, they don't accurately portray it.

THE COURT: I don't know whether it is the haze or the photography. I see no objection to them and I will let them come in.

MR. ROSENBERGER: I respectfully object and except to the distant views that are hazy. But you will have to number them -- Mr. Wood, would you mind numbering them and then I can make an intelligent statement, Your Honor.

THE COURT: It is understood that these pictures were taken on a day when the weather wasn't too good and on the day of this accident it was clear, is that correct?

THE WITNESS: It was cloudy but no rain.

MR. WOOD: Trooper, can you come up here and show the jury what Plaintiff's Exhibit 1 shows?

MR. ROSENBERGER: I have no objection to No. 1.

THE WITNESS: (Leaves stand and goes to jury box). This picture shows the view of Route 29. On the left as you would be traveling north is the service station and you can see the broken line here and the solid line starts here (indicating) directly across from the service station in the northbound lane.

BY MR. WOOD:

Q What does the sign say there?

A This is a "No Passing" zone sign which is just before you reach the entrance to the service station.

Q How many entrances are there to the service station?

A There are actually three, I believe. The first one here and the next one here (indicating) with an island in between them, and then there is another one coming in from the north there you could actually enter.

THE COURT: You said the road was dry at the time of the accident?

THE WITNESS: Yes, sir, the road was dry at the time of the accident.

MR. WOOD: Now, Officer, this is Plaintiff's Exhibit No. 2 --

MR. ROSENBERGER: This is the one that I object to because it doesn't accurately portray the scene as existed at the time and I except for the reasons stated.

BY MR. WOOD:

Q Could you tell the jury what this portrayed?

A This is another view looking north on U.S. 29 with the service station on the left with a closer view of the entrances to the service station. This is the first entrance and this is the second entrance (indicating).

Q And what is the marking in the highway at this point for the northbound lane?

A For the northbound traffic it would be a solid yellow line.

Q This is Plaintiff's No. 3. Can you tell --

1
2 MR. ROSENBERGER: I have no objection to that
3 one.
4
5 BY MR. WOOD:
6 Q Can you tell the jury what that portrays?
7 A In the lower part of the picture is U.S. 29 --
8 Q In which direction?
9 A Going in a northbound direction. Looking
10 at the picture toward the right of the picture would be
11 north.
12 MR. ROSENBERGER: Looking straight at the
13 picture you are looking west?
14 THE WITNESS: That is right, yes. If you
15 are looking straight at it you are looking west.
16 This is the service station of Earl Gormes, this
17 is the entrance to the service station (indicating).
18
19 BY MR. WOOD:
20 Q Could you show the jury where Mr. Neighbors'
21 car was when you arrived?
22 A Yes, sir. Mr. Neighbors' car was sitting
23 partially on this island (indicating) pointing in more
24 of a westerly direction.
25 Q Where was Mr. Moore's car?

A Mr. Moore's car was resting partially in the southbound lane heading north.

Q Now, show the jury -- which is the southbound lane?

A The southbound lane would be the furthest lane you see looking at the picture.

Q Is this a four-way or two-way highway at this point?

A Two-way traffic.

Q And in which position did the Moore vehicle hit?

A Partially in a northerly direction in the southbound lane.

Q Could you determine where the impact took place?

A No, sir -- no, sir, not accurately. The only evidence I had was some skidmarks leading up to Mr. Moore's vehicle and these were in the southbound lane.

Q And where did they stop?

A They stopped at Mr. Moore's vehicle.

Q And where was that on this picture? About where?

A It would be approximately in this area here -- I couldn't say accurately but right in this area here

(indicating).

THE COURT: Which entrance is that to the filling station?

THE WITNESS: This would be the most southerly entrance.

MR. WOOD: As you look at Plaintiff's Exhibit No. 2 it would be this one, Trooper -- this one right here, it would be this one right here (indicating)?

THE WITNESS: Yes, sir, this island, for this island, and you see the newspaper boxes here and the newspaper boxes here (indicating).

THE COURT: Which island was the car on?

THE WITNESS: The one on which the newspaper boxes are placed.

THE COURT: In the righthand side of that picture?

THE WITNESS: Yes, sir.

THE COURT: Which number is that?

THE WITNESS: This is No. 3.

BY MR. WOOD:

Q This is Plaintiff's Exhibit 4 and we will get this right here -- would you tell the jury what island

this is in relation to Plaintiff's Exhibit 2 which shows both islands?

A The island shown in this picture would be the island in the center of the picture.

MR. ROSENBERGER: Let me hold them and you point to them.

THE WITNESS: This island portrayed in this picture would be the same island you see in the center of this picture (indicating).

MR. ROSENBERGER: 4 and 2.

BY MR. WOOD:

Q Maybe this would make it even clearer. This is Plaintiff's Exhibit 3. Where is this island shown in this picture (indicating)?

A This island is right here on the righthand side of the picture.

Q Which is the second island down.

A Yes, sir.

Q Where was the Neighbors vehicle when you arrived?

A In this picture?

Q In 4.

A It would be partially resting on the island

1
2 you see here (indicating). I think the right wheels
3 were up on the curb that you see on the island.
4
5 MR. ROSENBERGER: That has the DAILY PROGRESS
6 sign on it in 4?
7 THE WITNESS: Yes.
8 BY MR. WOOD:
9 Q Do you know what this spot is here, what that
10 represents (indicating)?
11 A No, sir.
12 Q Could you give me Exhibit 3 -- on Plaintiff's
13 Exhibit 3 could you mark where you found the Neighbors
14 vehicle and where you found the Moore vehicle?
15 A Well, now, this will be approximate because
16 I don't have any measurements to show (marking on
17 exhibit).
18
19 MR. ROSENBERGER: For the record he has
20 marked Moore 1 and Neighbors 2.
21 BY MR. WOOD:
22 Q This is Plaintiff's Exhibit 5. Could you
23 show what Plaintiff's Exhibit 5 shows and you might
24 relate it to Plaintiff's Exhibit 3.
25 A No. 5 shows the first island that you get to

if you are going north which would be this island in the lefthand of this picture (indicating) and it shows U.S. 29 and it shows the solid line. That is about all I can tell you.

MR. WOOD: We have one more we will put in for good measure.

MR. ROSENBERGER: Now, this is the one, Your Honor, that doesn't accurately portray --

MR. WOOD: If Mr. Rosenberger objects we will withdraw it. It doesn't add anything to what we want to show.

MR. ROSENBERGER: Sure.

THE COURT: The five photographs numbered Plaintiff's Exhibits 1 through 5 will be received.

BY MR. WOOD:

Q Do these five pictures accurately portray the scene of the accident as you saw it on July 2nd?

A These pictures portray the location of where the accident took place. They do not portray the scene of the accident itself.

Q Of where it actually took place.

A Yes, sir.

1
2 Q Could you identify this picture right here,
3 Mr. Bible (handing to witness)?
4 A Yes, sir, this is Mr. Neighbors' vehicle with
5 the damage that it sustained in the accident.
6
7 THE COURT: What did you say a minute ago
8 that these pictures 1 through 5 portray?
9 THE WITNESS: They portray the location where
10 the accident occurred.
11 MR. WOOD: It does not show where the ac-
12 cident occurred.
13 MR. ROSENBERGER: But they portray --
14 THE WITNESS: The location of the accident
15 itself, it is the general location. It portrays
16 the location where the accident occurred but it
17 does not portray the scene of the accident itself.
18 THE COURT: Were there any changes other than
19 the wet road?
20 THE WITNESS: No changes.
21 THE COURT: From the date of the accident.
22 THE WITNESS: No, sir.
23 THE COURT: To what is shown in the pictures.
24 THE WITNESS: No, sir.
25 THE COURT: Except for the wet road.

1
2 THE WITNESS: Except for the wet road, and
3 of course the vehicles are not in those pictures.
4
5 BY MR. WOOD:
6 Q This is Plaintiff's Exhibit 6 which shows
7 the Neighbors vehicle. Did you have an opportunity
8 to examine Mr. Neighbors' vehicle after the accident?
9 A Will you elaborate, please?
10 Q Did you examine the signal light?
11 A Yes. The left signal light was working when
12 I arrived, it would work. The lens was out but the
13 signal light would still work.
14 Q Was that back or front?
15 A The lens was all right in front but the back
16 lens was out but both lights would work.
17 Q Both lights were working, back and front.
18 A Yes, sir.
19 Q Where were the skidmarks that you testified
20 were put down by Mr. Moore's vehicle in reference to the
21 solid line on the highway?
22 A The skidmarks began before the solid line
23 began and they ended at approximately where it began.
24 His vehicle came to rest approximately where the solid
25 line starts.

Q Let me show you the picture, Trooper -- I think you marked on here on Plaintiff's Exhibit 3 where the Moore vehicle came to rest. Would you show us on the picture what the location of the solid line was.

A The picture defines it more clearly that the solid line starts actually on up the road approximately at the first island.

Q Well, will you look at Plaintiff's Exhibit 1. Does that portray where the solid line starts?

A Yes, sir.

Q Will you show the jury where --

A The solid line starts directly across from where you see this "No Passing" sign which is on the shoulder of the road and where approximately the first entrance would be.

MR. ROSENBERGER: The solid line starts right where that sign is?

THE WITNESS: The solid line starts right where that sign is -- yes, sir.

BY MR. WOOD:

Q Now, where were the skidmarks as shown -- if they were on the picture?

A The skidmarks were leading up to Mr. Moore's

vehicle. They were all contained in the southbound lane.

Q On up to where his vehicle was?

A Yes, sir. (Resuming stand).

Q Do you know of any other people who were at the scene of the accident?

A Mr. Michael Troy Davidson was there when I arrived, and that is the only one I have a record of besides the two drivers.

MR. WOOD: All right, Mr. Rosenberger.

CROSS EXAMINATION

BY MR. ROSENBERGER:

Q Trooper, going north on that highway you top a knoll and then come down a long grade to the service station, don't you?

A Yes, sir, that is correct.

Q From the top of that knoll you have a clear view to the service station for a distance of at least a quarter of a mile, don't you?

A I believe, if I recall correctly, just as you top the knoll there is a very slight curve and I don't believe at that point that you can see the service station real clear because of shrubbery along the shoulder of the road.

1
2 Q But as you look north how far can you see
3 down to that service station? Can't you see about a
4 quarter of a mile?
5 A You can see a right good ways -- yes, sir.
6 About a quarter of a mile.
7 Q About a quarter of a mile?
8 A Yes, sir.
9 Q And from the service station north up the
10 hill you can see a quarter to a half a mile, can't you?
11 A Yes, sir.
12 Q And despite the fact that it was cloudy,
13 this was July 2, 1973 in the middle of the day at
14 1:25 p.m., it was regular Eastern Time -- yeah, we had
15 Daylight Saving --
16 A That is right.
17 Q So by the regular time it would be 12:25
18 but by this Daylight Saving it was 1:25 p.m., wasn't it?
19 A Yes, sir.
20 Q And when you got there there was no obstruction
21 from the service station back up to that curve which is
22 about a quarter of a mile?
23 A No, sir, none whatsoever.
24 Q Right. When Mr. Wood asked you about the skid-
25 marks he didn't ask you the length, I don't believe. If

1
2 he did, I didn't hear you. It was about 100 feet
3 in the southbound lane solid?
4 A Yes, sir, 100 feet.
5 Q Solid mark.
6 A Yes, sir.
7 Q And I understood you to say that that solid
8 mark began and ended before you got to the solid line.
9 A I stated that according to my diagram, but
10 the picture, I believe, shows the solid line going a
11 little bit further south than I show it on my diagram.
12 Q Based on your diagram -- and you don't recall
13 it with all the accidents you have been to. This diagram
14 showed this 100 feet of skidmarks started and stopped
15 before it got to the solid line?
16 A Yes, sir, I believe it does.
17 Q With all the accidents you investigate you
18 don't have any independent recollection of this, do you?
19 A Any independent recollection of --
20 Q Other than your notes?
21 A No, sir, other than my notes I do not -- no,
22 sir.
23 Q Right. And when you talked to Doug Moore,
24 this young man sitting here, he told you "I was attempting
25 to pass the other vehicle when he turned left in front

1
2 of me. I did not see a signal". You wrote that down
3 in your notes?
4 A Yes, sir. That is what he told me.
5 Q The road at that point is 24 feet wide and
6 each lane is 12 feet?
7 A Approximately -- yes, sir.
8 Q Now, you asked Mr. Neighbors, did you not,
9 if he was hurt and he told you he was not hurt, didn't
10 he?
11 A Yes, sir. There was no injuries listed at
12 the time I investigated the accident, no one complained
13 of any injuries.
14 Q And you have a place there where you put it
15 on your report and you ask about injuries, don't you?
16 A Yes, sir.
17 Q Now, Trooper, will you look at this (handing
18 to witness). It is just a rough sketch. See if this
19 doesn't show --
20
21 MR. WOOD: Judge, we have photographs here
22 that show very accurately the location --
23 MR. ROSENBERGER: Judge, I object to that
24 description. I don't think it is accurate at all.
25 THE COURT: Let me see what you are referring to.

1
2 MR. ROSENBERGER: I don't want a statement
3 on the photographs. Do you object to it?
4 MR. WOOD: We object to it. We have photo-
5 graphs to show the location of the terrain and the
6 markings in the highway.
7 THE COURT: It is not to scale?
8 MR. ROSENBERGER: No, sir, it is just a rough
9 drawing, Judge. It might be to scale but I can't
10 produce the guy who put it to scale.
11 MR. WOOD: Our photographs show that.
12 MR. ROSENBERGER: Your photographs don't show
13 three islands, do they?
14 MR. WOOD: I think one of them does.
15 MR. ROSENBERGER: I don't think so.
16 THE COURT: Let me look at it a minute.
17 MR. ROSENBERGER: Do you know, Trooper, who
18 took those photographs?
19 THE WITNESS: No, sir.
20 MR. ROSENBERGER: Does counsel know?
21 MR. WOOD: Yeah, I took them.
22 MR. ROSENBERGER: When?
23 MR. WOOD: January.
24 THE COURT: Well, if it is understood this is
25 not to scale and is just to show a general layout

of the area -- it is difficult to piece the pictures together. It is understood it is not to scale and --

MR. ROSENBERGER: It is not to scale, Your Honor. Richard Spies sitting there did it and he is not any great artist. I wish he could do better.

MR. SACKETT: Can you show the solid line?

MR. ROSENBERGER: It is on there.

MR. SACKETT: I think it should be better.

MR. ROSENBERGER: I have one that has measurements on it that is better. I thought you would object to that. The line is solid, I can't change the line.

BY MR. ROSENBERGER:

Q Trooper, take this thing and study it a little bit and what we want -- it purports to show a solid line going north, this purports to be that "No Passing" sign, it shows this entrance, the center island and those different entrances to the store (indicating). Does that show the location as far as you recall it?

A Yes, sir, as far as I can recall it this portrays about the location of where the store is.

Q Let's stand up here and I will tell the jury what it shows and you can tell me whether it is right or wrong.

A (Witness leaves stand and goes to jury box).

Q This is the store on the west side of the road and where my left hand is is north, and these are the different islands -- this is 1, 2 and 3, actually there are three islands there and right here is a "No Passing" sign and right where this arrow is, this little point is where the solid line starts for northbound traffic and it starts right opposite to that sign, is that correct?

A Yes, sir, that is correct.

Q And here is your gas pump between this island and the store.

A Yes.

Q Just so you get some general idea of the location -- it is not to scale but it gives you the general location. Mr. Bible, will you look at this station wagon here, it is on blocks, and tell us if that shows the damage to the left rear of Mr. Claude Neighbors station wagon (handing document to witness).

A Yes, sir, that looks like the same car.

Q Right. Now, will you read from your notes

1
2 and tell us exactly where you fixed the damage to the
3 Neighbors car.
4 A The left rear and rear portion and there was
5 some on the right rear fender.
6 Q On the left rear -- did you say whether it was
7 the fender, the quarter panel --
8 A I didn't say in my notes -- no, sir. I said
9 left rear.
10 Q Right. Now, will you look at that and see
11 if that shows the automobile driven by Doug Moore
12 (handing document to witness).
13 A I believe that is the same vehicle -- yes, sir.
14 Q So the way those photographs show, the
15 right front corner of the Moore car hit the left rear
16 side of the Neighbors car.
17 A Yes, sir.
18 Q You didn't have to call any ambulance or
19 anything for anybody, did you?
20 A No, sir.
21 Q Did Mr. Neighbors have any crates of produce
22 or anything in the back of his station wagon that would
23 obstruct his view that you know of?
24 A I don't recall.
25 MR. ROSENBERGER: That is all. Thank you,

Trooper Bible.

MR. WOOD: I have one or two questions.

REDIRECT EXAMINATION

BY MR. WOOD:

Q Trooper, what time did you say you got the report of the accident?

MR. ROSENBERGER: Excuse me a second -- I talk so much. I would like to offer this diagram as Defendant's Exhibit 1 and the picture of the Neighbors vehicle as 2 and the Moore vehicle as 3.

MR. WOOD: Are you through, Mr. Rosenberger?

MR. ROSENBERGER: Yes, sir.

BY MR. WOOD:

Q What time did you receive the report of the accident?

A I was notified by radio at 1:25 p.m.

Q And what time did you get there?

A 2:00 p.m.

Q That is thirty-five minutes after the accident -- how long after the accident?

A The accident happened, according to the drivers, at approximately 1:20 p.m.

MR. WOOD: That is all we have.

THE COURT: Can we excuse the trooper?

MR. ROSENBERGER: Are you on duty, Trooper?

THE WITNESS: No, I am off.

MR. ROSENBERGER: All right.

[Tr. pp. 64 l. 16 - 134 l. 25]

TESTIMONY OF DR. CLARENCE E. KEEFER

9 MR. SACKETT: I see Dr. Keefer is here. I
10 think maybe we can finish with him before lunch.
11 THE COURT: You have not been sworn, Dr.
12 Keefer.
13 DR. CLARENCE E. KEEFER was called as a witness
14 on behalf of the plaintiff and, being first duly sworn,
15 was examined and testified as follows:
16 DIRECT EXAMINATION
17 BY MR. SACKETT:
18 Q Dr. Keefer, will you state your full name,
19 please.
20 A Clarence Edwin Keefer.
21 Q And where do you practice medicine?
22 A In Lynchburg, Virginia.
23 Q Will you tell the jury and court what your
24 training and background is.
25 MR. ROSENBERGER: If Your Honor please, I will

1
2 admit the doctor's qualifications as an orthopedic
3 surgeon.
4 MR. SACKETT: Well, I would like for him to
5 tell the jury briefly his training.
6 THE COURT: Well, let him state it.
7
8 BY MR. SACKETT:
9 Q Please proceed, Doctor.
10 A Well, I am an orthopedic surgeon and this
11 requires a medical education before you take your
12 special training. The medical education came at the
13 University of West Virginia, the University of
14 Cincinnati; and the special training I got at the
15 University of Virginia and then I migrated from the
16 University of Virginia at Charlottesville down to
17 Lynchburg, Virginia and I have been here since. During
18 the war we -- of course, I was in World War II and
19 had charge of orthopedic surgery at the various hospi-
20 tals which I was assigned to.
21 Q Dr. Keefer, how long have you been in the
22 practice of orthopedic surgery in Lynchburg?
23 A I came to Lynchburg in 1935.
24 Q Will you tell the jury briefly what the field
25 of orthopedic surgery deals with?

1
2 A Orthopedic surgery has to do with the skeletal
3 system, your bones and joints, and of course the main
4 problems with ligaments, tendons -- any kind of disease
5 or injury of the skeletal system comes under our field
6 of work.
7 Q Dr. Keefer, have you had occasion to treat
8 Claude Neighbors in the course of your practice?
9 A Yes, sir.
10 Q Will you tell us first when you first had
11 occasion to treat Mr. Neighbors?
12 A Well, I saw Mr. Neighbors first in October
13 1968.
14 Q And what condition were you treating him for
15 at that time?
16 A At that time he had a station wagon-bread truck
17 accident, this was a head-on type collision, with an
18 injury to his neck.
19 Q What progress did he make with that condition
20 at that time?
21 A He was lastseen in March 1970 was the last
22 time we saw him, was in March 1970.
23 Q And when was the next time you saw him after
24 March 1970?
25 A The next time I saw him was July 13, 1973.

1
2 Q And at that time what complaints --what
3 findings did you make?
4 A Well, the patient advised that he had been in
5 a car accident, this was a two-car accident, on July 2,
6 1973, that he was the driver of his car, that he was
7 struck from behind as he was making a left turn, his
8 car was partially turned over and as it came back down
9 he struck his head against something, he wasn't sure
10 what he struck it on, he felt dazed for a few minutes.
11 For the next few weeks he had discomfort in his back
12 and neck and the discomfort was increasing and he went
13 to Lynchburg General and had x-rays of his neck and
14 back and some pain medicine was given. He came to see
15 me on the 13th.
16
17 MR. ROSENBERGER: What year?
18 THE WITNESS: Of July 1973.
19 BY MR. SACKETT:
20 Q What did you find his condition to be at that
21 time?
22 A We did examinations on his back and neck,
23 neurological examinations for nerve root damage. His
24 back examination, we found he has a normal round shoulder
25 contour with a dorsal kyphosis of one degree and a lipoma,

1

2 which is a fatty tumor, here (indicating), and they
3 have nothing to do with the injury. His muscle spasm
4 was taken bilaterally. We have these patients take
5 off their clothes down to their skin and stand in front
6 of us and you have their back and pelvis looking at
7 them and you can feel this muscle spasm, like you
8 tighten your muscle in your arm. This is a muscle
9 reflex over which the patient has no control and we
10 think it is significant in the interpretation of his
11 complaints and loss of motion, etc. He had marked
12 muscle spasm bilateral, on both sides. Sometimes you
13 can find a defect by these things and he didn't have any
14 palpable defect in his back. He was tender in his mid-
15 lumbar region, that is the lower part of your back,
16 he was tender in the mid-section of that primarily.
17 He had no tenderness over the sacroiliacs, that is
18 the two big joints on each side of your hip, but the
19 jarring did produce discomfort all the way up into his
20 neck and the posterior rib cage, particularly on the
21 left side. His hyperextension was limited 20% with
22 tenderness in the lumbosacral joint. The table the
23 weight sits on is the sacrum here in your back (indica-
24 ting), it is a bone as big as your hand and I have never
25 seen that broken, but it is a table it sits on, this is

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2 where the weight comes through and this is an important
3 area, he has discomfort in this section. His hyper-
4 extension was limited 20%. The side to side motion
5 which is going, as it would indicate, from side to
6 side was limited 50%. Side to side was no pain. And
7 flexion forward produced discomfort in his neck. You
8 ought to be able to touch your fingers to the floor
9 and we try to estimate the percent they are limited
10 and his was limited 15%. There was no bony tenderness
11 in his neck and the bone conformation was normal. He
12 had soft tissue tenderness on both sides, mild. And
13 mild muscle spasm on both sides, more on the left.
14 The trapezius muscle, which is this big one here (indi-
15 cating), was tender on the left more. He was tender
16 in mid-neck on the right side. His motions, we find
17 he can bend his head down normally and no pain. Hyper-
18 extension, when you bend back you squeeze the joints
19 together so if you have anything involving the joints
20 they are going to hurt; but bending forward, this
21 stretches the ligament structure so we can interpret
22 where they complain whether it is a soft tissue damage
23 or involves the skeletal system -- the joints. Rotation
24 to the right, you ought to be able to do that at 90
25 degrees, he was normal and no pain. And going to the

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2 left it was limited 15% and he had discomfort on the
3 right side generally. Abduction was normal with no
4 pain. So my impression at this time was that he had
5 a sprain of his neck and back, we call this a cervical
6 sprain of the neck and a lumbar sprain of the lower back,
7 and this is being complicated by synovitis, he is getting
8 an inflammatory process involving the small joints in
9 the back and that is why his symptoms are getting worse
10 because it flared up and will get worse unless something
11 is done about it. His neck didn't seem too bad that
12 day so we didn't recommend a Thomas collar but we did
13 recommend the fracture board everybody gets, a piece of
14 board or plywood between the mattress and the springs.
15 And we put him on a bone and joint diet. We use this
16 with primarily the orthopedic patients but it is good
17 for the skeletal system and this is to insure that you
18 have all your minerals you need. The food for bones
19 is minerals and many patients don't get adequate
20 minerals in their diet, and we put them on four glasses
21 of milk a day and iron. And on him we used a little
22 thyroid for mineral metabolism. And Myochrysine, the
23 only drug that stimulates the patient to stop inflam-
24 matory processes in joints, whether it is from trauma
25 or started by itself. This man had had heart surgery and

he is taking a drug called Dicumadin that makes the blood thinner so the medicines we use to kill pain in the joint syndrome we couldn't use and it is going to take him longer to get him comfortable simply because those drugs work fairly dramatically and you can't give that to him. We don't even give him aspirin which thins the blood, too. It throws the other medicine off, is what they did. At that time he hadn't lost any time, he was still working. He is a salesman that does about 175 miles of driving and he gets in and out of the car 100 to 125 times each day. We find people in automobiles and trucks, the low backs don't do too well, that position is not a good one for our backs. His next visit was 7-17-73 and we got a sample of blood, told him not to have any breakfast the next time and we found his uric acid was up. The uric acid tends to irritate joints so we started him on the necessary medicine as far as the uric acid was concerned. The next time we saw him on July 17th he was not feeling as well as the day I had seen him before. He had continuous headaches, he was beginning to feel kind of nervous, jumpy with a quivering sensation in his back. And positive physical findings, the muscle spasm is still marked bilateral, loss of motion in his back and

1 his neck is about the same as before. We felt that
2 the headache business, all of our neck patients --
3 and I think neck pathology is the most overlooked
4 cause of headaches in the medical profession, most
5 doctors don't think of necks because they don't deal
6 with the skeletal system -- all of our neck patients
7 seem to have severe headaches. And this time we put
8 the Thomas collar on the patient. This is something
9 we make, it is custom-made and it is stronger than the
10 one you can purchase and we like the home-made one
11 or the ones we make of the Thomas collar. He continued
12 with his fracture board, he got the shot in the hip to
13 stimulate the patient to get rid of the inflammatory
14 process in the joints, that was increased. And put
15 him on Valium, a tranquilizer, and Darvon for pain, Benemid
16 for the elevated uric acid. The next we saw him --
17 Q Doctor, on the second visit on July 17th did
18 you x-ray his neck and low back?
19 A Yes, and, as a matter of fact, I x-rayed that
20 the first time. Since that was all up at the first part
21 I didn't go back to that.
22 Q What did it show?
23 A We x-rayed his neck and back, we find he
24 doesn't have anything broken in the areas. He has
25 osteoporosis of one degree, that is a demineralization

1
2 that takes place in everybody as they get older, and
3 especially in womenfolks after they pass the menopause,
4 and most men get it after eighty and you don't see
5 many men with it because we don't live that long,
6 and this is a real entity. And lipping of margins
7 L-3 and 4, this would be considered an osteoarthritic
8 change of one degree of those things --
9 Q Where is that area?
10 A This is in the lumbar low back area, his
11 lumbar spine. He happens to have six lumbar vertebrae,
12 we see this every once in a while. You are supposed
13 to have five. This is what we call a congenital
14 anomaly with six than five. Actually, it means your
15 back is not as good as with five, mechanically it
16 doesn't do as well. There is narrowing between L-6
17 and the sacral vertebra. These are all weak places
18 which can be aggravated by injury. And in his neck
19 we find that he still has one degree of osteoporosis
20 and an increased bone density in the articular facets
21 of one degree. We have both kinds of arthritis
22 actually affecting the spine and this simply means
23 here this man is, I believe he is fifty-five in March
24 1973 -- we weigh these people and take their blood
25 pressure and age when he comes in -- and we have a

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2 back which has early arthritic changes all the way
3 around and this back would be easier to hurt and take
4 longer to get well than if he had an entirely normal
5 back. Now. the -- shall I go back to his visits again?
6 Q Yes, sir. if you will just follow through.
7 A The last one was what one did I say?
8 Q July 17th.
9 A We saw him on the 23rd and what I will try
10 to do is pick out some of the things that -- many of
11 these things would be the same. I will pick out if
12 there is any change on that. He is still having a
13 great deal of discomfort and he advises that weather
14 changes bother him. Sooner or later the people with
15 joint problems hook that up. We find that his range
16 of motion is some better. He has marked muscle spasms
17 bilateral. The limitation of motion is just about the
18 same. He is having discomfort in his right shoulder,
19 motion is limited to 120 degrees, he can't put it up
20 like he did before. So while he is not -- some of the
21 areas are showing improvement and some showing degenera-
22 tion. The next time we saw him is August 13th, he has
23 had a lot of pain in his back for three days at this
24 time, and the sensation of a weight on his right
25 shoulder. Examination of his back shows some muscle

spasm, a little bit improved. His range of motion is much the same as on the last time. His neck shows a greater limitation of motion and of course we feel this is the reason he is getting his pain in the shoulder, a referred pain down from his neck into the shoulder area. Sometimes this is a little hard to understand. For instance, your last nerve in your spine runs to your little toe and lots of times you can have trouble and the pain will be in your little toe and the doctor says you have something wrong with your back. It stumps you a little bit. And the reason we think he is having trouble with his shoulder is the pressure on the nerve and it is showing up in limitation of motion. His treatment again is very much the same. If he hadn't had this open heart surgery, with this marked flareup we would ordinarily inject cortisone into the area and it works fairly dramatically on the patient but, again, you can't use that on him. He had continued to work and the next time I saw him was August 20th and the primary discomfort had jumped back down into his low back area. This is very typical for it to migrate from area to area with his marked muscle spasm and limitation of motion and what we are suggesting

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2 this time, if that doesn't clear up we could put in
3 novocain. That wouldn't bother the heart surgery
4 and stops the muscle spasm and the pain, and this was
5 injected on the right side at L-4 level. His Thomas
6 collar was taken off for eating and bathing and
7 started him on isometric exercises. The necks are
8 a little different from the rest of the joints, if
9 you have something wrong with your knee or elbow. And
10 your neck, on a program like that we use an old Greek
11 form of exercises called isometrics and you shove on
12 those muscles (indicating) and make them work. We
13 tell them to do that every hour and increase it usually
14 once a week as they go up. And their back, we put
15 them on hyperextension phases of it and then we put
16 them on their stomach and back and these things were
17 done with Mr. Neighbors.
18 Q The August 20th visit, will you look at your
19 notes and tell us whether that was a regularly scheduled
20 visit or whether he came back early.
21 A He came back early because of the increasing
22 discomfort in his back.
23 Q Will you go on.
24 A (Pause). I am looking for changes, is the
25 reason I stopped. And we have already discussed -- the

next time we saw him was August 27th, he is having discomfort in his back with referred pain to the right side of his leg. He is also having discomfort in the right side of the lumbosacral joint, this is the big joint down here (indicating) and you can see why he gets a referred pain to the leg. He shows tenderness over the various joints, both sacroiliacs, more on the right, general on the dorsal, with a greater limitation of motion. So his back examination this time is very poor. We tried a little physical therapy on his back, this is a short-wave machine we use sometimes, particularly when people are sensitive and can't take other medicines. We tried this in the lumbosacral area, we suggested complete bed rest --

Q Up to that point you had said Mr. Neighbors was continuing to work. What was his situation on August 27th?

A Well, that is what I was just saying, he is so bad -- here we are starting on July 13th and we are a little over a month in our treatment and he is worse on the examination, so I think he needs to stop and give his back a chance to get well.

Q Was that your advice to him at that time?

A Yes, sir.

Q Now, when did you next see him after the 27th?

A All the time we are increasing this Myochrisine that I keep talking about all the time and he is getting a larger dose and because he was having so much trouble we told him to come back again in a week's time. We saw him on August 30th this time, still having discomfort in his back and neck. He calls attention to a cracking sensation or popping sensation in his neck. Every time he turns his head he can hear something pop. This is what we call crevices, this comes from the swelling, it is your finger or neck that does it, everybody has that sensation and it simply means that it is sick and there is no special medicine indicated for that. That will gradually clear up as he does better. He complained of aching in his legs, quivering sensation. Examination of his back, still has marked muscle spasm, still has tenderness, greater limitation of motion but not as bad as the last time. His neck is the best we have seen it at this time.

Q Was he able to work as of that time?

A No, I didn't think so. I didn't think he was -- I thought he would flare right back up again if he went back to work. The next time we saw him was on September 4th --

Q What was his condition at that time?

A Still feeling rough, as he said, still feeling rough, still complaining of headaches and pain in his low back and discomfort in his left arm down to his elbow, the pain radiates to his knee, and feels his back is his worst area and that was the worst area before. Marked limitation of motion, marked in his back --

MR. ROSENBERGER: What date was that?

THE WITNESS: September 4th. His neck still has mild muscle spasm and limited motion, just a little better than when we first started.

BY MR. SACKETT:

Q Were you seeing him -- at what frequency at this time?

A Well, at this time when he was so bad we told him to come back in a week and we told him to come back in a week the other time.

Q Did you see him again on September 11th?

A Yes, sir.

Q What was his condition then?

A Still having discomfort in his back. He has been in the bed since we saw him the last time on the

1
2 4th, referred pain into both legs with a tingling
3 sensation, morning stiffness and soreness, takes
4 him about a half-hour to limber up and volunteered his
5 neck feels better. That indicates a cooperation of
6 your patient with you. Examination of his back, he
7 still has marked muscle spasm and generalized tender-
8 ness with marked tenderness on motion. We sometimes
9 strap these patients but that is another thing he is
10 sensitive to and we can't put adhesive on him. Back
11 strapping helps a back as much as a single thing will
12 do and we do put straps on them unless they are sensi-
13 tive to adhesive.
14 Q What was your advice to him as far as bed
15 rest was concerned?
16 A We recommend complete bed rest with only
17 bathroom and eating privileges. In other words, he
18 needs to stay in bed continuously.
19 Q Will you continue and summarize as best you
20 can the course of your treatment with him thereafter.
21
22 MR. ROSENBERGER: I object to any general
23 summarization. That is what you are going to do?
24 MR. SACKETT: All right, let's go through
25 the whole thing.

1
2 THE COURT: He is answering the first
3 questions. Go ahead.
4 THE WITNESS: On the 20th he is better,
5 feeling better, still having intermittent dis-
6 comfort --
7 MR. ROSENBERGER: That is September 20th?
8 THE WITNESS: Yes. Still marked muscle spasm
9 and tenderness, his limitation of motion is not
10 quite as bad as it has been. This is in his back.
11 And his neck shows improvement, too, less muscle
12 spasm and better range of motion. So the complete
13 bed rest seemed to help out. There is no change
14 in his treatment program except to increase the
15 Myochrisine, 50 milligrams weekly. The next
16 time --
17 MR. ROSENBERGER: And the last part of that
18 report?
19 THE WITNESS: The work history, we recommended
20 that he was to go back to work, he and I both felt
21 he could go back to work on September 24th.
22 MR. ROSENBERGER: He did, too?
23 THE WITNESS: Yes, sir.
24
25 BY MR. SACKETT:
Q Did that work out?

1

2 A No, I don't believe it did. When he went
3 back he found out he didn't have a job any more.
4 Q Will you go on with the program of his treat-
5 ment.
6 A On the 28th he, of course, hadn't gone back
7 to work, still felt like he was doing very well,
8 demonstrates a trembling in his hands. He is a little
9 bit more nervous than he has been, I think the termina-
10 ting of his work kind of jarred him a little bit. And
11 still stiff and sore in the mornings. He still has
12 muscle spasm bilateral and it is marked and his limita-
13 tion of motion is not as bad. His neck shows mild
14 muscle spasm and he has greater limition of motion at
15 this time but he is not having very much pain so that
16 he had actually stopped wearing his Thomas collar and
17 this is probobly the reason why he had an increase in
18 the limitation of motion. Still totally disabled.
19 Q Was this -- when you made that comment
20 "Still totally disabled" is that your September 28th
21 report?
22 A Yes.
23 Q And continue from there.
24 A All right. The next time we saw him was
25 October 26th, he is still having discomfort, morning

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2 stiffness and soreness, takes him a half-hour to limber
3 up. Referred pain in his arms, more on his right side,
4 he has shooting pains in his back as well. We find that
5 he still has muscle spasm that is a little bit better
6 for the first time in his back, still about the same
7 amount of limitation of motion and still has tenderness.
8 His neck shows improvement, more range of motion and
9 less muscle spasm. The treatment program is being
10 continued. On November 20, 1973 still has back, neck
11 and leg pain every day, stiff and sore through his
12 shoulders every morning. Moderate muscle spasm in
13 the back, limitation of motion not as good as it was
14 the last time. Neither was his neck as good as it was
15 with mild muscle spasm again. We are suggesting now
16 that he get a little bit more activity and so we are
17 suggesting that he walk outside.
18 Q When did you next see him after the November
19 visit?
20 A The next one was December 27th.
21 Q What did you find his condition to be then?
22 A He is still having low back discomfort with
23 referred pain into the lower legs lateral side. Tingling
24 sensation in his right hand especially in the morning.
25 His back shows marked muscle spasm, he has some general

1

2 tenderness, his range of motion is markedly decreased
3 this time, bending backwards he couldn't bend backwards
4 at all. Side to side limited 50%. His neck shows
5 mild muscle spasm and a normal range of motion in his
6 neck. No change in his treatment program. His next
7 visit was January 4th --
8 Q At the time of his December visit did you
9 feel that he was able to work?
10 A I believe his back was too bad to work.
11 Q Then did you say you next saw him on January
12 4th?
13 A Right.
14 Q Was that a regularly scheduled visit or did
15 he come in early?
16 A No, he came in early with a pain in his hip
17 area and a burning sensation in both legs, that started
18 the day before. His physical findings are not too
19 different from the time before. Hyperextension was
20 zero, still marked muscle spasm. He is unable to do
21 the hyper extension exercise where you lie down and
22 bend back. This sometimes happens when they flare up,
23 they can't do it and when they have good times we rec-
24 ommend to go back and walk to keep up muscle tone. And
25 he does his neck exercises all right, he is up to 19, he

1

2 does them about every hour. He is still totally
3 disabled. He has seen Dr. Whitehouse in the meantime
4 and was put on additional nerve type of medicines and
5 things to help him to sleep and we have recorded that
6 on our chart, too. We next saw him on January 24th,
7 he felt that he was better, doing fair, he didn't feel
8 that his morning stiffness and soreness had been too
9 bad in the last few days. Complains of continued head-
10 ache. Muscle spasm is still marked and greater limita-
11 tion of motion and tenderness in the areas he had and
12 complaining of his knees. His right knee is swollen
13 with mild synovial thickening, and what happens, when
14 you get hurt it stirs up an arthritic process and it
15 can migrate to other areas and this has migrated down
16 into his knee. His Myochrisine has been moved up to
17 60 milligrams weekly. The next time I saw him was on
18 February 4th and he is feeling fair, he had discomfort
19 all week in his back than previous week. It takes him
20 about a half-hour to an hour to limber up in the morning.
21 Still has discomfort with neck motions, mild muscle
22 spasm bilateral and some muscle spasm in those trapezius
23 muscles and rotation to the right is limited 45, to
24 the left limited 10. He can go back up over his head,
25 he couldn't do it before. His back is still marked

1

2 bilateral, general tenderness, bending backwards was
3 zero, flexion was 20%.
4 Q And that visit was last Thursday?
5 A February 21st was what day? Today is the
6 26th so it wasn't very long ago.
7 Q Was that the last time you have seen him?
8 A Yes, sir.
9 Q During the course of your treatment have you
10 prescribed any type of corset or back brace for him?
11 A Yes, when he was sensitive to the adhesive
12 we recommended a lumbosacral belt corset type thing.
13 Q What does that do?
14 A Well, that is just like strapping, if you
15 have any joints that are hurt if you immobilize it
16 it will help it. If you strap an ankle most of the time
17 you can walk on it and it doesn't hurt it. They do
18 better when they are so bad. I would have strapped him
19 but he was sensitive to adhesive and we got a belt for
20 him and he is wearing that.
21 Q All right. Now, Dr. Keefer, can you tell us
22 what further treatment will be necessary for Mr. Neigh-
23 bors?
24 A I thought that probably in another nine months,
25 maybe as long as a year that we might be able to get him

back to where he was roughly before he got hurt. Actually, this time of year all of the patients that I see who have, the arthritic patients I am talking about, most of the time get worse at this time of the year. So once you get started into this thing for the next two or three months there is something about this time of year that seems to make them nervous. All the patients do better in the fall and worse until May. He picked up some in the summer and we think he will pick up in the summer again and maybe next fall we can turn him loose. We may have to carry him through another winter before we can turn him loose.

Q What is the monthly cost?

A It runs $30.00 a month, I looked it up.

Q Can you tell us what the total of your bill for treatment of him to date has been?

MR. ROSENBERGER: Just for this accident.

THE WITNESS: Yes, sir. It is $624.30.

BY MR. SACKETT:

Q And you have estimated $30.00 a month for the future treatments?

A Right.

Q Dr. Keefer, in your opinion, taking into account

1
2 the type of work that Mr. Neighbors was doing before
3 that you had described, is he now able to return to
4 that type of work?
5 A Not now he isn't -- no, sir.
6 Q In your opinion could you tell us what the
7 cause is of the problems for which you have been treat-
8 ing Mr. Neighbors since when you first saw him, I
9 believe on July 13th, and for whatever future treatment
10 will be necessary.
11 A Well, of course, he started off with an
12 injury to his back and his neck and this then started
13 an inflammatory process in the joints and you can get
14 it also in the ligaments and tendons, the muscles
15 become involved, and this whole business, we don't
16 attach a medical name to all that all the time, but
17 these things are all sensitive to weather changes,
18 time of day and that sort of thing, and going to other
19 areas, as we saw it migrated to his knee. And unless
20 you break something we would say his injury would be
21 minor but when this treatment is this long and you can't
22 get well it is not minor as far as the patient is con-
23 cerned. But it will start these things and we haven't
24 been able to get them under control as yet, and a whole
25 lot of it is because for him the medicines we would

1
2 normally use that work much faster, you can't use on
3 him because of the heart surgery.
4 Q When you said "injury", what injury are you
5 talking about so that everybody understands.
6 A This is the injury in the automobile accident
7 where he was jerked around with injury to his neck and
8 his back.
9 Q Was that the injury on July 2, 1973? Is that
10 the one you are talking about?
11 A Yes, sir.
12 Q Dr. Keefer, in your opinion, even after the
13 future treatment is completed will Mr. Neighbors have
14 any permanent disability?
15
16 MR. ROSENBERGER: I object. He is leading
17 and the doctor said in nine to twelve months he
18 can get him back to where he was before the accident
19 occurred.
20 THE COURT: He said that.
21 BY MR. SACKETT:
22 Q Doctor, in your opinion will Mr. Neighbors
23 have any permanent disability?
24 A Every time you go through this you lose some-
25 thing you had before so I would say he would have some

1
2 permanent disability. I would say he would be in the
3 neighborhood of 5%.
4
5 MR. SACKETT: Thank you, Doctor. That is all.
6 MR. ROSENBERGER: Your Honor, I will need
7 some time and it is 1:00 o'clock. I don't mean
8 equal time but I will need some time.
9 THE COURT: Ladies and gentlemen of the jury,
10 we will adjourn for lunch with the same admonition
11 I gave you before, do not discuss the case with
12 anyone or allow them to discuss it with you.
13 (Whereupon, at 1:00 o'clock p.m. there was a
14 recess for lunch).
15
16 AFTER RECESS
17
18 DR. CLARENCE E. KEEFER resumed the stand and testi-
19 fied further as follows:
20 CROSS EXAMINATION
21 BY MR. ROSENBERGER:
22 Q Dr. Keefer, in making a diagnosis and in
23 treating a patient you do depend on prior history, don't
24 you?
25 A Yes, sir.
Q And then, of course, you have to depend on what

1
2 your patient tells you as to where the patient hurts.
3 A Yes, sir.
4 Q Now, did you know that this gentleman had had
5 rheumatic fever since he was about fifteen which re-
6 sulted in swelling of his knees and hands?
7 A No, sir.
8 Q And earlier you were telling us that in this
9 case that this inflammatory process which is a sort of
10 rheumatic -- which is sort of a rheumatism sort of thing,
11 isn't it?
12 A Yes, sir.
13 Q And that this inflammatory process will
14 spread from one joint to the other.
15 A Right.
16 Q And you thought that the accident of July 2,
17 1973 caused a flareup or sort of set that inflammatory
18 process into action, so to speak.
19 A Yes, sir.
20 Q And that it spread, as an example of it
21 spreading you told us about how it went from his neck
22 down to his knee, his right knee in January of this year.
23 A Right.
24 Q January 20, 1974.
25 A Right.

1
2 Q It could spread from his knee to his neck,
3 this inflammatory process, couldn't it?
4 A It could -- yes, sir.
5 Q Now, when Dr. Whitehouse was here today we
6 developed this rheumatic fever and swelling of feet
7 and hands and history and he said on October 31, 1961
8 he had traumatic effusion of the right knee and so he
9 had a right knee problem before you saw him in January
10 1974 -- you didn't know about that, did you?
11 A No, sir.
12 Q Now, going back here a ways, you were telling
13 us about after this accident he had trouble with his
14 shoulder and down to his elbow -- you remember one of
15 those things?
16 A Right.
17 Q And now, when we were going over his history
18 with Dr. Whitehouse it developed that on March 31, 1965
19 he was aching in his shoulders, his back and his legs --
20 did you know about that?
21 A No, sir.
22 Q That Dr. Whitehouse had seen him for that
23 problem?
24 A No.
25 Q Did you know this gentleman also had a history

1
2 of urinary tract infections? He had that and then
3 he had this prostate operation. Actually, urinary
4 tract infections will produce aching in the back and
5 neck, won't it?
6 A No -- in my experience, it hasn't.
7 Q Does it produce it in the back?
8 A It does produce it in the back but it is in
9 a different position in the flank, it is in a different
10 part.
11 Q But it does produce aching in the back?
12 A In the flanks -- yes, sir.
13 Q You recorded the second time you were
14 treating him that Dr. Bowen had treated him for six
15 months in 1964 for the narrowing in his C-5 and C-6 --
16 right?
17 A Yes, sir.
18 Q So he had a degenerative process going on in
19 his cervical spine between C-5 and C-6 as far back as
20 1964?
21 A Yes, sir.
22 Q That was due to an arthritic condition, wasn't
23 it?
24 A Right.
25 Q Now, the x-ray findings, I was interested in

that. You said -- of course, when you took the x-ray findings on July 13, 1973, the first day you saw this fellow for this accident, it showed changes in his neck and lumbar spine, too.

A Right.

Q They didn't occur as a result of this accident.

A No.

Q That is some degenerative process that had been going on for a long time.

A Right.

Q And when the doctor was treating him for a pinched nerve -- do you remember you were telling the jury that these pinched nerves in your neck could cause you to hurt in your feet -- you said in your toes.

A But not from your neck.

Q I thought you said the pinched nerve would go on down and you said it would be unusual to find it hurting in the toe when you had it in the neck.

A No, I said the fifth or last nerve runs to your little toe and if you have pathology in your back you have referred pain to your toe. In your neck they run into your arm but not into your feet.

Q When you have the pinching in the nerves on C-5 and 6 that will go into your hands and fingers, too, won't it?

A Yes.

Q And you spoke of the fact that he had pain on September 4, 1973 down to his elbow.

A Right.

Q Did he tell you that he had been to Dr. Whitehouse on April 15, 1966 with his left hand numb and tingling into the ulna area?

A No, sir.

Q Where is the ulna area?

A Well, you have two bones, the radius and ulna which are on the ulna side -- when you stand up this would be the medial side of your arm (indicating).

Q The ulna would be down here (indicating).

A Right.

Q You didn't know that the doctor thought that tingling and numbness was due to leaning on his arm and using the telephone -- you didn't know about that?

A No. Of course, your ulna nerve runs right there (indicating) so if you press on it -- like people sick in the bed shove on their elbow. Sometimes they get it in both hands.

1
2 Q So the tingling and numbness in his arms was
3 not something new he got in September 1973 -- he had
4 had it back in 1966.
5 A I think the numbness he has now comes from
6 the accident, not from the old things you are talking
7 about.
8 Q You didn't see any change in the C-5 and
9 C-6 -- he had the narrowness in 1964?
10 A Right.
11 Q And that narrowness caused the pressure that
12 would affect his hands and arms?
13 A Mechanically it would tend to do it, plus
14 the inflammatory process which chokes it off.
15 Q And that would account for it in 1966, too,
16 wouldn't it?
17 A Yes, but I think at the present time your
18 accident accounts for it now. It triggered it and
19 started it.
20 Q And you did say the uric acid, when you first
21 saw him this time, was very high.
22 A Right.
23 Q And your uric acid can cause the inflammatory
24 process to start up?
25 A Yes. A lot of times it is triggered by trauma.

1

2 Q Right. But if you have uric acid in there

3 it can be dormant and then start up?

4 A Yes, but it will start with a crisis like

5 an automobile accident.

6 Q But that is the ones you see.

7 A They do it every time.

8 Q But this gentleman had a high uric acid

9 content because you commented on that.

10 A Yes, and it is now normal.

11 Q From 1966 you didn't know, of course, that

12 he had had these other injuries like he had slipped

13 and hurt his wrist at work or that he had been knocked

14 down by a pickup truck in 1963 -- that would tend to

15 upset his arthritic condition, too, wouldn't it?

16 A It could -- yes, sir.

17 Q And then when we went on to this accident

18 of January 1968, January 6th, Dr. Whitehouse had a note

19 that his neck and shoulder discomfort had about gone

20 and his numbness, he still had numbness in his left

21 thumb on the day before that accident -- did you know

22 about that?

23 A No, sir.

24 Q And when he came to you in that year of 1968 --

25 A Let me see, you are asking me about something --

1
2 I didn't look in the whole record.
3 Q Look on October 25th.
4 A Let me look back and see.
5 Q Right.
6 A (Pause). Well, at that time we don't go into
7 a detailed history as you have done there, really I
8 don't think it is necessary from a medical standpoint
9 or we would do that. But let me say we did ask him --
10 this goes back to October 1968, his first accident.
11 We asked him if he had had any previous neck or back
12 trouble and he said he hadn't had any.
13 Q Told you he hadn't had any at that time.
14 A Yes. And we asked him about arthritic history
15 and he advised he had had rheumatism at the age of
16 fifteen, and we asked about infection or not. And I
17 don't believe a detailed thing like that is necessary
18 from a medical standpoint.
19 Q Well, did he tell you he had had arthritis
20 since 1945?
21 A Well, no, we just have here that he had
22 rheumatism at the age of fifteen.
23 Q Now, Doctor, had he come to see you on January
24 7th, as he went to see Dr. Botton and Dr. Bowen, for
25

1
2 injuries he claimed he received on January 6th --
3
4 MR. SACKETT: What year?
5 MR. ROSENBERGER: 1968, he knows.
6 BY MR. ROSENBERGER:
7 Q You didn't see him for that accident until
8 October 25, 1968, is that right?
9 A Let me see here. We have the injury in
10 January 1968 -- I didn't see him until October 1968.
11 Q October 25th, isn't it?
12 A Right -- yes, sir.
13 Q Now, had you seen him the day after the
14 accident you would have been interested in knowing
15 that the day before the accident, January 5, 1968,
16 he had been to see Dr. Whitehouse because of neck
17 and shoulder discomfort and the numbness was still in
18 his left thumb -- you would have been very much interes-
19 ted in that?
20 A Yes, sir.
21 Q That would show he had neck and shoulder
22 discomfort with numbness down into his left hand with
23 nerve root pressure.
24 A Yes, sir.
25 Q And easy to hurt.

A Yes, sir.

Q And you would wonder if he got it in the accident.

A It could be aggravated by his accident.

Q And that detail would be very important -- right?

A Right.

Q If you will look at the complete record he gave you on October 25, 1968 he told you he was seen by Dr. Botton and referred by him to Dr. Bowen.

A Right.

Q And he came in to see you because he had continued discomfort in his upper back and neck and pain on turning his head.

A Correct.

Q He had the same history there as he did here when he said he was not unconscious but he felt dazed. Is that what you recorded right under "Unconscious History", the fourth paragraph down?

A Right.

Q If you will look at the one for July 13, 1973 he had that same no unconsciousness but he was dazed --

A This is a very frequent complaint of the patient.

Q Yes, sir. He had it both times?

A I think if you get hurt the same way both times, it will hurt you pretty much the same way both times.

Q If he had been treated since January 8th -- or January 7th by Dr. Botton and Bowen around to October that condition didn't clear up promptly, did it?

A No.

Q And then you treated him around until April --

A March.

Q To March 25, 1969 -- right. No, April 15, 1969.

A Yes, you are correct.

Q Now, were you familiar with the Virginia Baptist Hospital note that while you were treating him he was in the hospital at Virginia Baptist on February 2, 1969 and that note showed a disk degeneration between C-5 and C-6.

A No, sir.

Q You weren't familiar with that?

A No, sir.

Q Now, on March 25, 1969, if you will look at your record, that date he was having back and shoulder complaints, wasn't he?

A (Pause) I was just looking back to see if I find anything. We just have at that time that he had been in the hospital for kidney infection, I believe, bladder infection. Now,what is your last question, sir?

Q My last question was on March 25, 1969 you recorded he was having back and shoulder problems -- 1969.

A March of 1969?

Q March 25, 1969. It is your page No. 6.

A Right.

Q And you recorded at that time did you not, Doctor, the second sentence from his complaint "Had some discomfort through back and shoulder today and was relieved with bladder irrigation".

A Right.

Q So then that shows the relationship between his kidney, urinary tract and his shoulder and his back?

A No, I don't think it does.

Q You don't?

A No, sir.

Q But the fact that he got relief from the bladder irrigation, you just think that is just a coincidence?

A That would be my interpretation, yes, because we see so many of these people with the combination and nothing they do as far as the bladder is concerned seems to affect the skeletal system.

Q That same day you record he "has little tingling in fingers". That was in March 1969?

A Right.

Q That refers back to what the history shows that he had it in April 1966 so do you think -- what was it caused by? Did the accident of 1968 have an effect in March 1969 or was it a chronic condition he had that had been going on since 1966?

A I think your latter thing. It is a chronic condition that will flare up under any injury. Now, another reason why his back would be better, to me, after the bladder irrigation was the fact that he had been in bed quite a while before the irrigation. It would be my interpretation it would be the rest that did it.

Q Your note doesn't show whether he was in the bed or how much?

A No, it doesn't.

Q It doesn't show he was in the bed.

A The fact that he wasn't working, I would assume he was in the bed.

Q April 1969 --

A Right.

Q Under complaints he felt better, had no pain, no stiffness and soreness.

A Yes.

Q And that is when you said he was asymptomatic, right?

A Did we use that word? If he said he was better and had no stiffness and soreness, I would say that was asymptomatic.

Q Let's look over to March 27, 1970, a year later, Page 8, and on the last visit you put "April '69 asymptomatic", right? Page 8.

A I don't see where we say it.

Q See where it says "Last Visit"?

A Oh, I see what you mean. This is the last visit, this refers back. We saw him in March here and we read the small summary and the last sentence is his last visit of April was asymptomatic.

Q You started at the top and took the diagnosis and you showed March 27, 1970 the uric acid was 7.5 milligrams and normal is 2.7 milligrams so back at that

time you were very interested in the uric acid content, right?

A Well, men tend to have uric acid, it will irritate the joints.

Q I mean, all I want is you were interested in that.

A Right.

Q Because it will irritate the joints.

A Right.

Q The last line says "Last Visit April '69 asymptomatic".

A That is right, he had no pain, no stiffness or soreness.

Q He hadn't been to see you since April 25, 1969.

A Right.

Q And he came to see you on March 27, 1970.

A Right.

Q Tell us about that complaints, read that paragraph about all his complaints.

A "Having discomfort base of neck and with hyperextension", this means bending your head back. "Has had some intermittent discomfort since last visit. Bothers him when sleep. Spends most of night sitting

1
2 up in chair to rest. Very little referred pain into
3 arms or hands. Some discomfort in left side of chest
4 since fall or pleurisy.. Calls attention to discomfort
5 in dorsal lumbar junction and has a lipoma in same
6 area".
7 Q Now, that lipoma is what Dr. Whitehouse
8 described as a fatty thing he was complaining about,
9 a knot?
10 A Right. That is a fatty tumor.
11 Q This was about the accident of January 6,
12 1968 he was back to see you on March 27, 1970.
13 A Right.
14 Q And if you will look at Page 9 you estimated
15 the length of treatment to be six to eight months at
16 a cost of $20 to $25 a month.
17 A Right.
18 Q The reason you did that was -- and the reason
19 he came back to see you, were you summonsed to court
20 for April 1, 1970 following your examination of March 27,
21 1970? Weren't you?
22 A I don't know.
23 Q Well, if you will look there you have got a
24 copy of the summons.
25 A All right. Could we take your word for it so

1
2 I don't have to look it up?
3 Q No, I would rather for you to see it. This
4 is a copy of it (handing to witness).
5 A All right. I will take your word for it.
6 Q C. E. Keefer was summonsed to court for
7 April 1, 1970 at 9:30 a.m. for the case between
8 Claude Neighbors and Sta-Kleen Bakery, Incorporated.
9 That is this gentleman here, isn't it (indicating)?
10 A Right.
11 Q And you estimated it would take six to eight
12 months to clear him up.
13 A Yes, sir.
14 Q Now, Doctor, you didn't see him from March 27,
15 1970 when he had all these complaints -- he couldn't
16 sleep, spent most of the night sitting up in the chair,
17 that is a complaint he gave to you -- you didn't see him
18 from that date until July 13, 1973, did you?
19 A Right.
20 Q So whatever those complaints were he got
21 over them all right.
22 A I would say so -- yes, sir.
23 Q Now then, on September 4, 1973 -- well, before
24 I get to that, you knew that -- did you know that after
25 this accident happened he said he wasn't hurt? That is

1
2 the accident of July 2, 1973?
3 A No. We see people who feel that they are
4 not hurt to start off with for three or four days.
5 Q Doctor, I just asked you if you knew he
6 said he wasn't hurt.
7 A I did not know that.
8 Q You did not know that?
9 A No.
10 Q You know he continued to work from July 2,
11 1973 around to August 28, 1973, did he not?
12 A Yes, sir.
13 Q And when you saw him and x-rayed him on the
14 13th you found that he had the spurring in the lumbar
15 spine as well as in the cervical spine, didn't you?
16 A Yes, sir.
17 Q You put him back on the same treatment that
18 you had given him following the accident in 1968,
19 didn't you?
20 A Pretty much, I would think.
21 Q You gave him the same Myochrisine?
22 A That was the only drug that stopped it so
23 of course he used it each time.
24 Q Actually, the other things you use are sort of
25

pain easers, aren't they -- relaxants?

A Well, no, we rely primarily on this Myochrisine to stop the inflammatory process and, for instance, I don't use any muscle relaxants. What I try to do is stop what is causing the muscle spasm if I think it is an inflammatory process and so I use Myochrisine. And the other anti-inflammatory drugs that stop them, we couldn't use them on him because of his heart surgery.

Q That is what I am getting at. Between the time you started treating him in October 1968 to 1969 didn't you know he was having congestive heart failure?

MR. SACKETT: I object. There is no evidence he had congestive heart failure in 1968.

MR. ROSENBERGER: In 1969 and 1970 Dr. Whitehouse testified to --

MR. SACKETT: Not in 1968.

BY MR. ROSENBERGER:

Q Did you know in 1969 when you were treating him that he had episodes of congestive heart failure?

A No. We didn't ask him that, I don't think that would affect our treatment or what is happening at the present time. You have asked me that before and the

1
2 things you are running over and we haven't done I
3 don't think they help you a bit as far as the treatment
4 and diagnosis are concerned.
5 Q You are saying that the things you changed
6 following the heart surgery really have no effect on
7 his ultimate recovery?
8 A Surely it does.
9 Q You said Myochrisine was the main thing
10 and you have used Myochrisine all the time in this one.
11 A Right.
12 Q And you have gotten it up to 50 milligrams
13 and you didn't get him up that high on some other
14 occasions.
15 A I really don't know about that part of the
16 thing. I can look and see but, again, we use that as
17 the backbone of the treatment program but I couldn't
18 use the other things this time that speed it up.
19 Q When you look at the records do you find
20 anything you used prior on this same injury, do you
21 find anything that you used then that you don't use
22 now as a regular thing? You put him on a board and
23 gave him a collar, and gave him Myochrisine, you gave
24 him vitamins --
25 A Correct.

1 Q You did all that before?

2 A Right, but I also gave him cortisone before

3 which we couldn't give him that this time.

4 Q Did you know that Dr. Whitehouse, who was

5 dealing with his heart, thought his heart condition

6 was much better after surgery than it was before?

7 A After his heart surgery?

8 Q Yes.

9 A I would think so -- yes, sir.

10 Q If it was much better why couldn't you give

11 him the same treatment you gave him before?

12 A He is on this anti-coagulant --

13 Q Dicumadin?

14 A Right.

15 Q Which is a thinner?

16 A Yes.

17 Q He had been on that before because he had

18 the aortic stenosis and had to have the new valve and

19 you kept on with that same drug.

20 A He wasn't on that regularly as he was the

21 first time.

22 Q You certainly did need for it to be thinned,

23 where it got so thick it needed to be thinned?

24 A Correct, but he was taking a different

25 medicine this last time, a medicine he was not taking

1
2 before.
3 Q Maybe another brand but the medicine was
4 just for thinning the blood each time?
5 A You mean that I used?
6 Q No, that his other doctor was using.
7 A Right.
8 Q And he had a better valve in there that
9 would let the blood go through there after the surgery
10 than he did before.
11 A Yes.
12 Q So he didn't need as much blood thinning
13 after the surgery as he did before.
14 A But he seems to be getting it.
15 Q I see. Now, Doctor, would you refer to your
16 notes for September 20th.
17 A What year?
18 Q 1973. It is No. 23.
19 A Yes, sir.
20 Q As a result of your examination that day you
21 thought he could just use the Thomas collar when he felt
22 the need of it and it wasn't something that he had to
23 keep on -- right?
24 A Correct.
25 Q PRN as necessary.

1

2 A Right.

3 Q You also said "Increase activity at home

4 and can begin to do light garden work".

5 A Right.

6 Q That was your opinion on September 20th.

7 A Right.

8 Q And you said he was to return to work on

9 September 24th.

10 A Right.

11 Q Did you know, Doctor, that he went to Dr.

12 Whitehouse and he was very despondent and thought he

13 should have to retire on September 24th, that he did

14 that rather than go back to work?

15 A I know he saw Dr. Whitehouse but I didn't

16 know what day it was.

17 Q Did Dr. Whitehouse call you or you call

18 Dr. Whitehouse?

19 A No.

20 Q Did Dr. Whitehouse ask you anything about

21 making application for Social Security benefits on

22 September 24th, the day you thought he ought to go

23 back to work?

24 A No, those things are not necessary, either

25 one of those questions. Ordinarily they are not done.

Q I am not finding fault. I was just wondering if you all were exchanging ideas. On September 20th I wonder if Dr. Whitehouse knew you thought he ought to go back to work.

A I don't know.

Q On September 24th the gentleman went to Dr. Whitehouse depressed and upset and thought he ought to retire and came back to you four days later on September 28th, at which time you thought he ought not to do anything.

A Right.

Q So in those eight days your opinion had changed completely.

A The opinion changed because the patient changed.

Q You mean he thought he ought to retire because of this slight sprain?

A No, I don't think of it in those terms as far as that part is concerned. He looked like he had moved along pretty good and was ready to go back to work but we see this many times, it looks like they are ready to go back and they come back in and they are not.

Q Now, did it upset him visibly when you told

him he ought to go to work in four days?

A No.

Q You didn't notice?

A No, sir.

Q Did he say anything about not wanting to work in the garden when you told him to work in his garden?

A No.

Q But when he came back on the 28th you naturally took what he told you to be right and you told us one reason he didn't go back to work was because he didn't have any job on the 24th. That had nothing to do with his physical outlook, did it?

A No, sir.

Q Actually, did you know he was collecting Workmens Compensation and had not lost his job?

MR. SACKETT: I object to that and I think we ought to take it up out of the presence of the jury.

THE COURT: We will take it up in chambers and, ladies and gentlemen, you can be at ease in here. We will call you back when we are ready.

(IN CHAMBERS)

THE COURT: I haven't been following you too well on this Workmens Compensation thing because I don't think the foundation was properly laid. Something was said about him losing his job but the point is, was he fired? You can lose a job and still not be fired -- I haven't got the point.

MR. ROSENBERGER: The point is, as far as I am concerned, is that this man was ready to go to work on the 24th and on the 28th this doctor said the patient had changed and lost his job and that doesn't affect his ability to work. And No. 2, it gives the impression that he was not able to work when this doctor knows he was on compensation. I know he drew compensation --

MR. SACKETT: Whether he drew compensation or not makes no difference. This is a back-handed way to get around the collateral source rule, it is prejudicial to let it in and Dr. Keefer has said he was not able to work when he came back and whether he was on compensation or not would make no difference.

MR. ROSENBERGER: If he was fired he would not be on compensation. And No. 2, if he is on compensation that would affect whether he is able to work and I want

1
2 to know if this doctor told this gentleman he could
3 not go to work. On the 24th when he is supposed to go
4 to work he goes to another doctor and says he is very
5 depressed and tired and he should retire --
6 THE COURT: Could he get compensation if
7 he was not available for work?
8 MR. ROSENBERGER: I don't know.
9 THE COURT: It presupposes the jury knows
10 that.
11 MR. SACKETT: That is the objection.
12 MR. ROSENBERGER: He has still got his job,
13 if he is unable to work because of his problems --
14 MR. SACKETT: It does not mean that and you
15 know that.
16 MR. ROSENBERGER: He is getting paid for not
17 working.
18 THE COURT: Maybe the jury knows more about
19 it than I do, and I don't know exactly what you all are
20 getting at.
21 MR. ROSENBERGER: This doctor says because
22 of his condition he couldn't work. I think he doesn't
23 have any incentive to work as long as he is collecting
24 Workmens Compensation. This doctor says lo and behold,
25

all of a sudden this guy becomes totally disabled, one doctor says "Go to work" and another doctor says he is all through, file for Social Security.

MR. WOOD: That doctor has been his lifelong doctor from 1959 and I think both doctors are competent enough to make decisions whether you are able to work. And secondly, it is terribly prejudicial in this case, they could get the idea he is going to get double coverage. We have to pay back the Workmens Compensation --

THE COURT: You have the point about whether this can be brought out through the doctor and then you have another point if it can be brought out when and if the plaintiff testifies.

MR. WOOD: We don't think it can come out any time.

THE COURT: When the plaintiff testifies maybe the plaintiff can answer the questions "Are you getting Workmens Compensation and does that mean you are able to work".

MR. ROSENBERGER: It means he is unable to work. It means he was injured in the course of his employment and is unable to work.

THE COURT: If he was fired could he draw

Workmens Compensation?

MR. ROSENBERGER: He can if he continues on with his injury but why is he fired if he continues to be paid for compensation for an injury he got while he was working?

THE COURT: Was he fired or not fired?

MR. SACKETT: He lost his job as a result of this because he was unable to work.

MR. WOOD: They had to get somebody to fill in.

THE COURT: Will they take him back when and if he recovers?

MR. ROSENBERGER: It all depends.

MR. SACKETT: The job he had has been filled but we are talking about a question to a doctor, now, about Workmens Compensation and whether or not it affected his diagnosis, and both doctors said in an unqualified statement that he was disabled. And putting Workmens Compensation before this jury is prejudicial because they can very well speculate that even though they return a verdict for the plaintiff it should be a low one because he is getting money from another source, and we ask the court to instruct the jury not

to consider anything about Workmens Compensation.

MR. SPIES: One doctor said his neck was getting better. And in these back cases we all know that the mental state of the patient is very important and I just can't imagine that it wouldn't be important to a doctor making a diagnosis concerning disability "Does he get money in from Workmens Compensation or is he broke?" That is a factor not only the doctor considers but in these cases it is crucial and you have to know about it.

THE COURT: The question is, who determines whether or not he gets Workmens Compensation.

MR. WOOD: He wasn't getting Workmens Compensation at this time.

MR. ROSENBERGER: He got it retroactive.

MR. WOOD: It was a long battle.

MR. ROSENBERGER: Why? They didn't think he was hurt?

MR. WOOD: They asked some of these questions you are asking. He is still getting it because he is permanently disabled.

THE COURT: Who determines that?

MR. WOOD: The Industrial Commission.

THE COURT: I don't think that the decision

of the Industrial Commission should come into this. That is a third party here, they might have made a mistake.

MR. ROSENBERGER: This guy is getting his doctor bills paid and he is getting paid and he is just sitting saying "Oh me" but not because of his back. We haven't totally disabled this guy like Dr. Whitehouse is saying. One doctor says he is ready to go to work and the other doctor says he is totally washed up and he is saying he was all beat up and washed up because of Workmens Compensation.

MR. WOOD: Neighbors didn't know whether he was going to get that.

MR. SPIES: The 24th he knew he was trying to get on that Social Security gravy train.

MR. SACKETT: This all goes back to the collateral source and it is not admissible.

MR. ROSENBERGER: In this case and on these facts we are entitled to show that he is getting compensation because he has no incentive to work and that is the reason he didn't go to work. That is the sole reason I want to bring that in.

THE COURT: I think you would have a better ground to do it -- I am not passing on it now but it

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2 looks like you would have a better ground to go into
3 it with the plaintiff.
4 MR. ROSENBERGER: And the doctor is jumping
5 to the conclusion he lost his job.
6 MR. SPIES: The doctor says he changed his
7 mind in that eight days and he said it was because
8 the patient changed and it is all subjective, and in
9 between that time significant is the fact that he
10 started filling out the applications to get some money
11 from the government to get his free ride and the doctor
12 is going to be subjective in making his diagnosis. You
13 have to be able to interrogate him about these things,
14 you have to let that information in about what is the
15 basis for these subjective changes.
16 THE COURT: What are your objections?
17 MR. SACKETT: The grounds for my objection
18 is this is the opinion of a doctor whose physical exam-
19 ination affected his diagnosis, there was no Workmens
20 Compensation at the time the diagnosis was made. Two,
21 the fact of Workmens Compensation is a very prejudicial
22 fact to the plaintiff and should not be before the jury
23 for any reason. These things are not normally allowed
24 to the defendant whether the benefit, whether it be
25 Workmens Compensation or Social Security, existed at

the time. Both Dr. Whitehouse and Dr. Keefer have testified positively that the man was totally disabled as a result of the automobile accident. Now, whether or not he was getting Workmens Compensation or might in the future get it doesn't have anything to do with that.

THE COURT: All right, I will sustain the objection at this time.

MR. ROSENBERGER: Judge, we respectfully object and except and call your attention to the fact that Dr. Whitehouse says this man worked before and wasn't able to work and this accident was a great blow to him and made him totally disabled when, on the same day, he was filling out the application for Social Security benefits.

THE COURT: But at the time of the doctor's diagnosis he was not getting it.

MR. ROSENBERGER: I don't know about that. All I know is he was getting paid and was paid retroactive, he had the claim and knew of the claim because he had been in accidents before and that he had applied for Social Security.

THE COURT: He had applied for both but he didn't know whether he would get either one of them.

1
2 MR. ROSENBERGER: It is a state of mind when
3 he applied for Social Security and that is the reason
4 I say "Look, Joe, it wasn't because of the accident,
5 it is because you are going to collect on your claims".
6 THE COURT: As between the two, I don't think
7 it is proper. It will be more proper when you get to
8 the plaintiff.
9 MR. WOOD: We will object to that.
10 THE COURT: I know you will.
11 MR. ROSENBERGER: That is the reason I think
12 we should ask about the Social Security and Workmens
13 Compensation. The Social Security is already in with
14 Dr. Whitehouse.
15 MR. WOOD: Mr. Sackett stated the reasons
16 succinctly, and it could very well give the jury the
17 impression he is going to collect twice and his wage
18 loss is the biggest thing in the case. And they will
19 say "We are crazy, he is being paid $80.00 a week or
20 whatever it is and they ask us to give him his full
21 salary". They don't know the insurance company is
22 subrogated in this case and there will be a division
23 of recovery if we get any.
24 THE COURT: Isn't it permissible to show the
25 motive of the plaintiff?

1
2 MR. SACKETT: That is putting the cart before
3 the horse. Both are presumed to be a disability to
4 work and if you put them in just to show he didn't want
5 to work he wouldn't have them in the first place if
6 he was not able to work. But to say he was not disabled
7 because he was getting those things, and they are based
8 on a disability, is not saying he was not disabled
9 because he was disabled.
10 MR. ROSENBERGER: The Social Security was
11 because the doctor says it got him in such a frame
12 of mind he couldn't work because of his previous condi-
13 tion. That is what Dr. Whitehouse said today.
14 THE COURT: That is the point -- you had so
15 much that went on before this accident and the only
16 thing would be whether this accident aggravated that
17 injury. And the man says he does not have anymore
18 incentive to work and yet the doctor recommended that
19 he go back to work.
20 MR. SACKETT: No, he said he thought he had
21 to retire.
22 THE COURT: The question is whether he
23 developed this mental outlook and apparently it is a
24 complete change and Dr. Whitehouse said before he was
25 so energetic and now he won't work. And the defendant

is asking to show that the reason is not because he was disabled, he is attempting to show that he just doesn't want to go back to work because he is going to draw all this money rather than from what happened in the accident.

MR. SACKETT: Both of them are based on the fact that he is disabled.

THE COURT: Disabled from all of it -- not necessarily this accident.

MR. SACKETT: The fact of those things doesn't have any effect on causation and both doctors have testified to that.

MR. ROSENBERGER: He has applied for TPA, I don't know if he has gotten it.

MR. SACKETT: The whole point of the collateral source rule is that any type of disability insurance, Workmens Compensation or Social Security, any collateral source that helps a man get through a hard time -- if that was not the case there would be no collateral source rule because you would have to prove it on the basis of motivation. And the collateral source rule governs and to go behind it you would have to say there is no collateral source rule because it applies in every case.

THE COURT: That just applies to the man with

1
2 the money.
3 MR. SACKETT: I don't think so.
4 THE COURT: It says you can't bring it in
5 to reduce the damage.
6 MR. WOOD: It is not even admissible in
7 evidence.
8 THE COURT: If this man had insurance to
9 pay him for doctor bills, if he gets a verdict here he
10 is still entitled to his full doctor bills -- isn't
11 that the collateral source rule? The amount isn't
12 going to come in --
13 MR. SACKETT: That is right, but it will show
14 he is being paid.
15 THE COURT: You are considering the effect
16 of it on the plaintiff's mind, on his mental attitude?
17 MR. WOOD: At the time Dr. Keefer is talking
18 about right now, Neighbors didn't have Workmens Compensa-
19 tion or Social Security.
20 MR. ROSENBERGER: He had it in mind September
21 24th.
22 MR. SACKETT: It is even further removed here
23 from the time we are talking about that this man did
24 not have another source, he had no income other than
25 his job, he had the possibility of Workmens Compensation --

THE COURT: I have already ruled it out. Now, what we are talking about now is the question that will come up when the plaintiff takes the stand.

MR. SACKETT: That will be that in September --

MR. ROSENBERGER: No, it is going to be down to now "Why aren't you working, Buddy?" I am not through with Keefer yet and I think we will get a difference of opinion yet.

THE COURT: I think all we can do right now is overrule it and I will tell the jury not to consider it.

(IN COURTROOM)

THE COURT: Members of the jury, give me your attention. I have sustained Mr. Sackett's objection dealing with the question of whether or not Dr. Keefer knew there was any Workmens Compensation and I am telling the jury to disregard any comments regarding Workmens Compensation.

MR. ROSENBERGER: I object and except.

BY MR. ROSENBERGER:

Q Going back to March 27, 1970 when you estimated a length of treatment of six to eight months at a cost of $20 to $25 per month, that was following the accident

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2 that had occurred way back on January 6, 1968?
3 A Right.
4 Q At that time when you made that estimate
5 of treatment you didn't know that Mr. Neighbors was
6 not coming back to you for treatment, did you?
7 A No, sir.
8 Q And now when you tell the jury today that
9 you estimate a future treatment to be from nine months
10 to twelve months you don't know whether he is coming
11 back or not, do you?
12 A No, I really don't know whether he is coming
13 back or not. What you do is, people with a similar
14 condition you try to estimate how long it will be
15 before they can go to work.
16 Q I am not questioning you -- you are just
17 giving an estimate of what you think.
18 A Right.
19 Q And don't you find a lot of people in these
20 accidents, you don't see them after the trial?
21
22 MR. SACKETT: We are talking about one
23 particular individual.
24 THE COURT: I sustain the objection.
25 MR. ROSENBERGER: I want to show that the

1
2 doctor's estimate is not always accurate.
3 THE COURT: Well, you can do that by framing
4 another question but I won't let you ask that
5 question.
6
7 BY MR. ROSENBERGER:
8 Q And you find out you don't need to give
9 all that treatment later, don't you?
10 MR. SACKETT: That is the same question. We
11 are talking about one person and he has already
12 said he recommended that in the future for this
13 particular person.
14 THE COURT: Yes, we are dealing with one
15 plaintiff.
16
17 BY MR. ROSENBERGER:
18 Q This plaintiff hadn't been there since 1969
19 and he came back in March 1970 and was estimated an
20 additional six to eight months treatment and didn't
21 come back?
22 A Right.
23 Q And you said very clearly you would get him
24 back to where he was before this accident and you
25 estimated nine to twelve months -- that is based on your

1
2 experience over a long period of time?
3 A Correct.
4 Q If you are going to get him back to the
5 same position he was, how do you give him a 5%
6 disability?
7 A When you go through these things you seem
8 to lose something, like we said before, that you just
9 can't get back again. Anytime this thing flares up
10 you just can't reach that level again. I don't know
11 if I can get him back or not. That is my hope. Every
12 once in a while we miss it at that other end, we can't
13 get them back, and this is an estimate on it. But I
14 think his chances of re-injury, etc., would be 5%
15 greater than if he hadn't had this particular accident
16 or flareup.
17 Q If he had another accident his chances of
18 re-injury would be 5% greater?
19 A Each time he has a re-injury he gets a little
20 easier to hurt and it is going to take him a little
21 longer to get well usually.
22 Q So all these previous accidents he had made
23 him more susceptible this time.
24 A That is correct.
25 Q How do you account for the fact that he worked

until August 28th and then after seeing Dr. Whitehouse he decided maybe he was feeling worse than he had?

A I don't think those are the true things, actually. I think we need to compliment him on the fact that he was trying to work and get well at the same time but he was getting worse. And then we stopped him from working and he began to get better and it looked like he would be able to go back to work and when he reported to work he didn't have any job.

Q That didn't affect his physical condition.

A Right.

Q And actually that is what he told you.

A Yes.

Q He had been off longer times than that for heart problems and heart surgery than he had been off this time. He worked August 28th and you had him ready to go back to work on September 20th, you saw him on September 20th and he was ready to go back to work September 24th.

A Right.

Q And that very same day the evidence is he went to Dr. Whitehouse and said he thought he ought to retire. That is what Dr. Whitehouse's notes said. That doesn't sound like losing a job to me -- does it to you?

1
2 A I don't know anything about that part of the
3 thing.
4
5 MR. ROSENBERGER: That is all right. Thank
6 you very much, Doctor.
7 REDIRECT EXAMINATION
8 BY MR. SACKETT:
9 Q Dr. Keefer, one question. Mr. Rosenberger
10 asked you if you knew whether Mr. Neighbors had told
11 somebody he was not hurt right after the accident.
12 Is it unusual for people in this type of accident
13 to not realize they are injured right after the accident?
14 A We see this frequently.
15 Q Is this a normal situation?
16 A Yes, sir.
17 Q Dr. Keefer, Mr. Rosenberger has asked you a
18 whole lot of questions about other problems that Mr.
19 Neighbors has had in the past, some of which you were
20 aware of and some you were not. Have these things
21 affected your opinion of what the cause of his present
22 problem is?
23 A No, I don't think it is necessary from the
24 standpoint of the normal treatment program and we don't
25 go into that type of detail. That is not necessary

at all.

MR. SACKETT: That is all.

RECROSS EXAMINATION

BY MR. ROSENBERGER:

Q Didn't you on February 21, 1974 -- look at your note of February 21, 1974.

A Right.

Q Didn't you say last Thursday, if that was the date, that he was ready for light work.

A Right.

MR. ROSENBERGER: That is all.

REDIRECT EXAMINATION

BY MR. SACKETT:

Q By "light work" do you mean he was able to return to the type of automobile driving employment that he had been doing as a salesman for Conner Produce?

A No, no -- it would be obvious he would not be able to do that.

Q He would not be able to go back to that.

A No, sir.

MR. SACKETT: That is all.

[Tr. pp. 135 l. 6 - 197 l. 8]

TESTIMONY OF CLAUDE W. NEIGHBORS

6 CLAUDE W. NEIGHBORS took the stand in his own
7 behalf and, having been previuusly duly sworn, was
8 examined and testified as follows:
9 DIRECT EXAMINATION
10 BY MR. WOOD:
11 Q For the record, will you state your full
12 name.
13 A Claude Wilson Neighbors.
14 Q And how old are you, Mr. Neighbors?
15 A Fifty-Five.
16 Q What is your birth date?
17 A March 9, 1918.
18 Q Are you presently employed?
19 A No, sir.
20 Q Where were you formerly employed?
21 A Conner Produce.
22 Q And how long were you employed there?
23 A Roughly twenty-five years.
24 Q What were your duties at Conner Produce?
25 A Salesman -- traveling.

Q And what would you have to do in the performance of your duties?

A Call on grocery stores, restaurants, schools and supply them with food.

Q How would you make these calls?

A By driving and by telephone.

Q Were you involved in an automobile accident on July 2, 1973 on U.S. Route 29 in front of Earl's Amoco Station?

A Yes, sir.

Q All right, where did you start out that morning on July 2nd?

A 1000 Jefferson Street in Lynchburg, Virginia.

Q And what is that -- what is at 1000 Jefferson Street?

A Conner Produce.

Q How were you traveling -- in an automobile?

A Station wagon -- '65 station wagon.

Q And where did you proceed from Conner Produce?

A I proceeded from Conner Produce to Gordon's Drive-In was my first stop on 29 North.

Q And what time did you get there?

A Roughly about quarter to 9:00.

Q Okay. And where did you go from there?

A Well, from there I went to Independent Grocery.

Q Where is that?

A That is the next stop on the road coming on 29 North.

Q And what was the last stop that you had before you were going to Earl's Amoco Station?

A Calvin Thompson's.

Q Where is that?

A That is about six miles from where the accident happened on the left going north.

Q And what time did you leave there, do you remember?

A Roughly about ten minutes to 1:00.

Q And where did you proceed after that?

A I proceeded on down on 29 North on the dual highway until I hit the two-lane, and as I approached Earl's Amoco Service Station and Gormes' Service Station going down the hill --

Q Is Earl's Amoco on your route or not?

A That is the way I wrote it up, as Earl's Amoco.

Q Is that on your route?

A Yes.

Q Tell the jury what happened when you approached Earl's Amoco.

A I was coming down the hill running approximately 50 miles an hour, I looked north ahead of me to see there wasn't anything coming, I turned the signal light on, I proceeded on down the hill slowly slowing down so I could be able to make my turn and as I got to the turn I looked in the mirror and I didn't see anything.

Q You say -- it was your rearview mirror?

A My rearview mirror and I didn't see anything and I started in the driveway --

Q What happened then?

A Just as the front end of my station wagon got to the edge of the driveway I heard tires crying and I gritted my teeth and all of a sudden "Bam" and the car went up in the air on two wheels and then it came back down and landed back on the four wheels and I sat there and had to shake my head because things were blurry in front of me.

MR. WOOD: Judge, may we have the pictures (obtaining from court).

BY MR. WOOD:

1
2 Q I want you to come up here and show the
3 jury --
4 A (Witness leaves stand and goes to jury box).
5 Q This is Plaintiff's Exhibit 3. Could you
6 show the jury approximately where you were when you
7 started to make your turn in.
8 A Roughly right along there (indicating). I
9 always turned in at this center island and pulled over
10 there to be away from the gas tanks and be out of the
11 way to it wouldn't bother them pumping gas.
12 Q Will you show the jury the approximate
13 position of your car when you were struck from the
14 rear?
15 A The car was at an angle.
16 Q Going into here (indicating)?
17 A Yes, sir.
18 Q Okay. Now, referring to Plaintiff's Exhibit 4
19 could you show the jury where your car ended up?
20 A The back end of my car ended up there, the
21 front end of it was over there (indicating). This is
22 where there was a hole in the gas tank and it leaked
23 out and killed the grass right there (indicating).
24 Q Okay. Now, referring to Plaintiff's Exhibit
25 No. 1 do you know approximately where you turned on your

1
2 blinker signal.
3 A Roughly 150 to 200 feet back.
4 Q Before you got to this intersection?
5 A Right. (Witness resumes stand).
6 Q This is Plaintiff's Exhibit 6 which has been
7 introduced in evidence. Does that show your automobile?
8 A Yes, sir.
9 Q Was the damage shown on there incurred as
10 a result of this accident?
11 A Yes.
12 Q Now, could you tell the jury what happened
13 after the impact and after you came to rest?
14 A Well, when the car came back down on the
15 wheels I sat there and had to shake my head because
16 things were blurry in front of me. Mrs. Gormes came
17 out and asked me if I was all right. Excuse me, let
18 me back up -- when he hit me my head there (indicating)
19 went up and hit the ceiling of the car. The steering
20 wheel hit me on my leg right here (indicating) and there
21 was a bruise there approximately that big (indicating)
22 where the steering wheel hit when I went up. And then
23 that is when I straightened up and was shaking my head
24 to get my vision back. And Mrs. Gormes came out and
25 she said "Are you all right?" and I said "Give me a few

1
2 seconds longer, I still can't see too good" and I sat
3 there and shook my head a little while longer. And
4 thenwe tried to get the door open and the door was
5 jammed and between herself and me we got the door open
6 and I got out and as I stepped out she had to catch me
7 by the arm and she led me in the service station and
8 sat me in a chair.
9 Q And how long were you in there?
10 A Roughly -- inside the station?
11 Q Yes.
12 A Roughly an hour-and-a-half.
13 Q How long did it take the trooper to get there,
14 do you remember?
15 A Right off I don't. It took him a little
16 while because he was across the county.
17 Q By the time that the trooper got there how
18 did you feel? Did you feel any differently than you
19 did upon impact or not?
20 A A little better, yes. I had a tremendous
21 headache in the beginning from this knot I had on my
22 head and Mrs. Gormes gave me some Tylenol -- I guess I
23 am saying it right. Aspirins, I can't take that.
24 Q Who is Mrs. Gormes?
25 A She runs the service station.

1
2 Q Is that Earl's Service Station?
3 A Yes.
4 Q Did you know her before the accident?
5 A Other than selling her produce and merchandise.
6 Q Do you know approximately how long you were
7 at the scene of the accident?
8 A Well, I don't think I left there until
9 roughly around 4:00 o'clock.
10 Q How did you leave?
11 A I rode the wrecker back to Lynchburg.
12 Q And then where did you go?
13 A I had to go back to the office and finish some
14 paper work and write up my reports, commissions.
15 Q Where did you go after work?
16 A I went home.
17 Q Can you describe to the jury how you felt
18 when you got home, what your physical condition was.
19 A Well, I was really still in shock or just
20 nervous and all. I don't know exactly how to explain
21 it but mostly in shock.
22 Q I see. And did you go to work the next day?
23 A No, I didn't. I had to buy another automobile
24 for transportation because I didn't have any transporta-
25 tion, to travel on.

1

2 Q That was July 3rd, is that correct?

3 A Yes, sir.

4 Q Did you work on July 4th?

5 A No, July 4th we were off.

6 Q When did you first seek medical attention?

7 A Well, I started on the 5th, I went to

8 Dr. Platt's office to see if I could get an appointment

9 but the nurse said it would take two weeks so she

10 referred me to Fitzgerald and Blackburn and about six

11 or eight down Thomson Drive. And I went to all of

12 them and they all told me the same thing and it would

13 take two weeks. And I told them I was in a wreck and

14 needed attention and they all said two weeks. And in

15 a day or so I called my niece at Dr. Platt's and she

16 said "I refer you to the emergency room at Lynchburg

17 General Hospital if you can't get an appointment" and I

18 went to the emergency room at Lynchburg General Hospital.

19 Q When was that, do you know?

20 A Roughly -- I don't remember, it was around

21 the 7th.

22 Q And when did you first see Dr. Keefer?

23 A The 13th.

24 Q And what did you tell Dr. Keefer as far as

25 how you felt at that time?

1
2 A Well, I told him I was having tremendous
3 headaches and my neck was hurting, I felt like I had
4 100 pounds of weight on each shoulder, just pressure
5 down on my shoulders. And my back and leg was hurting.
6 Q When did you first contact Dr. Whitehouse,
7 do you remember?
8 A As soon as Dr. Whitehouse came back off his
9 vacation which was on the 30th of the month.
10 Q Of course, Dr. Whitehouse has been your
11 family physician for how long?
12 A Fifteen or sixteen years.
13 Q And during that period of time do you know
14 how many times you have seen him or would you be able
15 to estimate it? Was it regularly or irregularly?
16 A Roughly I would say 150 times, roughly.
17 Q Now, during this time did you work? Were you
18 trying to work?
19 A Yes, I was trying to work.
20 Q Was there any change in the way you were
21 performing your work during this time or not?
22 A Yes, I didn't travel all the mileage I usually
23 traveled. The customers were nice enough to let me
24 use the phone and I did a lot of calling by phone.
25 Q How did you feel when you got into your auto-

1
2 mobile when you had to use it? Did it have any effect
3 on your physical condition?
4 A Yes, my back hurt me all the time I was
5 driving.
6 Q Were you able to travel your route as you had
7 before or not.
8 A No.
9 Q Did you feel like you wanted to continue to
10 work at this time?
11 A I would give anything today if I could be
12 working. I would rather be working than anything I
13 know of.
14 Q Okay. When did you stop work?
15 A I stopped work on August 27th.
16 Q Why?
17 A On account of my back.
18 Q And what was wrong with your back?
19 A Well, driving 175 miles a day calling on
20 59 stops a day getting in and out of the car, station
21 wagon twice, getting in and out and back, that is
22 approximately 120 times a day getting in and out of
23 the station wagon.
24 Q You did that every day?
25 A Yes.

Q Was that a daily routine for you?

A Yes, six days a week.

Q The jury has heard Dr. Whitehouse testify but could you tell the jury about your open heart surgery -- when was that?

A That was December 1, 1970.

Q Could you relate to the jury some of your history for a year prior to your open heart surgery -- had you had any heart problems in the preceding year?

A Well, when I was fifteen years old they put me in Lynchburg Hospital, my mother put me in Lynchburg Hospital in the old hospital on Federal Street. They kept me there for a week, the nurse stood in the door continuous and she asked me what was wrong with me and I said "I don't know what I am over here for, I would like for you to tell me what is wrong with me". But at that time nobody knew anything about rheumatic fever.

Q But I am more interested in your recent history before the open heart surgery. Had you been hospitalized many times before?

A Yes, sir.

Q From what?

A Fluid forming.

Q And what symptoms did you have before your heart operation in December 1970? Could you describe to the jury how you felt and what problems, if any, you would have from your heart?

A Well, I just couldn't get my breath, I felt like I was breathing my last one and they would rush me to Intensive Care and give me oxygen and I stayed in Intensive Care approximately four or five days.

Q How often would that happen?

A Quite often, I was in Intensive Care at least five or six times. Even in Alexandria they had me in Intenstive Care in Alexandria when I was in the hospital up there.

Q What were you doing in Alexandria?

A Vacationing at my sister's.

Q Were you working -- during 1970 when you had these difficulties would you work?

A I would work until I got sick and had to wind up in the hospital, yes.

Q Now, when did you go to Duke University?

A I went to Duke University in November for a checkup to see whether I could stand the operation, whether my blood vessels and things would stand the operation.

Q And do you recall the date on which you had that operation?

A I believe it was November 7th, roughly between November 7th and November 11th that I was down there for seven days for the test.

Q And when did you go back for the surgery?

A I went back on November 26th of 1970.

Q And how long were you hospitalized?

A I was in there from November 26th to December 12th.

Q And where did you go after you left Duke?

A I came back home and recuperated until I went back to work on February 1st.

Q Which was two months after you had open heart surgery.

A Yes, sir.

Q Now, could you tell the jury -- describe for the jury any changes in your physical condition as a result of this open heart surgery.

A Well, sure.

Q What changes, if any, were there?

A Well, I could do most anything I wanted -- I could play golf, I painted my house, my brother and myself, we put a concrete patio on the back of my house

1
2 and it didn't bother me a bit in the world and I
3 enjoyed it.
4 Q How about your breathing -- you said you
5 had shortness. Was there any difference in that?
6 A Not at that time -- no, sir.
7 Q How about the performance of your duties --
8 were you able to drive your car in the performance of
9 your duties?
10 A Yes, sir.
11 Q Did you have any difficulties in doing that?
12 A No, sir.
13 Q Were you continuing to see Dr. Whitehouse
14 during this time?
15 A At all times -- yes, sir. Because I have to
16 go to him, I have to go to Virginia Baptist Hospital
17 for a prothrombin.
18 Q Would you characterize these as regular
19 visits or not?
20 A Oh, yes, they have to be done because if my
21 blood gets too thick it won't go through the valve.
22 Q How did you feel after this operation?
23
24 MR. ROSENBERGER: If Your Honor please, this
25 happened in 1970 and I don't see how the way he
felt --

MR. WOOD: Mr. Rosenberger spent an hour going through the medical history and we want to show after the operation in 1970 he was feeling doggone good.

THE COURT: I think it is material.

BY MR. WOOD:

Q How did you feel after the operation?

A I felt like a million dollars. My son came to get me at Duke, he came with pillows and blankets to stretch me out in the station wagon and I told him I hadn't seen daylight for twelve days and I asked him to let me ride sitting up in the front seat, and I did from Durham to Lynchburg.

Q After this accident on July 2, 1973, subject to the reason we are here today, can you tell the jury whether or not there has been any changes in your physical condition.

A There certainly is. I don't have any get up, my back hurts all the time, I am wearing a corset to help it.

Q Did you have these before the accident?

A No, sir -- no, sir. I was working every day before that, working every day.

1
2 Q Then I believe Dr. Whitehouse testified that
3 you had been hospitalized in March 1973 --
4 A Yes.
5 Q With endocarditis.
6 A With endocarditis.
7 Q Had you gone back to work after that?
8 A I went back to work after that on the 14th of
9 May and worked every day until I had the wreck.
10 Q Again, I want you to tell the jury what
11 changes, if any, there have been in your physical
12 condition since this accident of July 2, 1973.
13 A Well, I have had tremendous headaches, I
14 have felt like I had weights on my shoulders --
15 Q Show the jury where you have this pain.
16 A Well, my back has a corset on it now. That
17 is as far as I can bend back (indicating). It feels
18 like a knife or something running through there. That
19 is as far as I can bend back.
20 Q And you do have a corset on?
21 A Yes.
22 Q How about your neck and shoulders?
23 A Straight ahead I am all right but to that
24 point (indicating) those vertebras right through there
25 hurt when I turn my head right to left real sharp. And

1

2 my legs, I don't know, they are stinging or burning,
3 a sensation, I don't know exactly how to explain it to
4 you but quivering to a certain extent.
5 Q All right. Have you felt any different
6 internally, in particular your heart -- has it felt any
7 different?
8 A Well, yes, spasms of the muscles, I have had
9 a lot of pains. I know I would be lying in bed at night
10 and to turn over -- to turn over, to twist like this
11 (indicating), I have had a lot of pains which shoot up
12 through here. And Dr. Keefer says that when he runs
13 his hands down my back there are spasms of the muscles
14 on the left of my spine, it does something to me there
15 on the left part of my back.
16 Q How does it affect your ability to drive?
17 A As far as I drove is to your office and
18 maybe to the doctor's office. I don't particularly care
19 to drive.
20 Q How does it feel when you get in and out of
21 a car?
22 A It is pretty rough as far as the back is
23 concerned.
24 Q How about sleeping -- any change in that?
25 A I have to take Valium sleeping tablets at

night to sleep and sometimes they don't do any good. I catch myself falling to sleep in the chair in the den.

Q In your household activities is there any change in what you do around the house since this accident of July 2, 1973?

A I don't do anything around the house. I try to spread up a sheet or the spread without bending over, but that is about the best I can do.

Q Have you tried any yard work or anything?

A No, sir.

Q Dr. Keefer testified on August 27th he advised you to lay off from work, is that correct?

A Right.

Q Can you tell the jury what happened at Conner Produce when you went down there?

A Well, the evening that Dr. Keefer told me to take off for a few days on account of my back, I went on down to the place that I worked, I did my paper work.

Q Did you want to try to go back to work? Did you feel like you wanted to give it a try?

A Oh, yes, sir -- I would love to go to work today if I was able.

Q What happened?

A I did my paper work and I went back in the office and told my boss that the doctor said for me to take off several days on account of my back.

Q And then did you go back after that? I think there has been some evidence that Dr. Keefer said around September 24th you wanted to try to go back to work.

A I was going to try to go back to work to see if I could make it.

Q Did you go back down to Conner Produce?

A Yes, I did, on Monday morning.

Q Did they have a job for you at that time?

A No, sir.

Q At that time were you advised whether or not you should work by either Dr. Keefer or Dr. Whitehouse?

A No, sir, neither one.

Q Said you should or shouldn't

A Shouldn't.

Q Do you feel like you are able to work at this time?

A No, sir, I don't think I can work.

Q Have you done anything in the last twenty-five years except drive an automobile?

A That is about it.

Q What did you do before that?

A I drove a truck.

Q So your whole life's occupation has been involved in motor vehicles?

A The biggest majority of it. I worked at Lynchburg Foundry approximately two years and I left the foundry and went to Conner Produce and I was there for the remainder of the tmme.

Q Now, Mr. Neighbors, do you recall what your income was in 1971?

A $5,000 -- I don't know exactly.

Q I hand you a wage and tax statement for 1971, I don't know if you need your glasses, I think it says 5,725 --

A Right.

MR. WOOD: This is our next exhibit.

THE COURT: That is No. 7.

BY MR. WOOD:

Q Do you know approximately how much money you made in 1972?

A 6,700 and some change.

Q Is this your W-2 form?

A Yes, sir.

Q That is 6,725.51.

THE COURT: That is No. 8.

BY MR. WOOD:

Q Now, up through August 1973 how much money did you make?

A $5,131.00.

Q Is that your W-2 form?

A Yes, sir.

Q And that was from January through August, is that right?

A Right -- yes, sir.

THE COURT: That is 9.

BY MR. WOOD:

Q So could you compare how you have done through eight months of 1973 up until the time you were told you should lay off work as to 1971?

A I was doing extra good. If I could have been able to finish the year I would probably have made $8500.00 if I finished the year out.

Q How do you account for that fluctuation?

A By salary and 2.2 commission.

Q 2.2 commission on what you sold your customers?

A Yes, sir.

Q So the more you sold the more money you made.

A Yes, sir.

Q And if you had been able to work the whole year what you contemplated making in 1973 --

MR. ROSENBERGER: I object to that. He said under oath it is $600.00 a month was his loss of earnings in his interrogatories.

THE COURT: Well, I think you are projecting that, Mr. Wood. I will sustain the objection.

MR. WOOD: Projecting what?

THE COURT: You are estimating and projecting it in the future.

MR. WOOD: We are entitled to do that.

THE COURT: You haven't laid a proper foundation.

BY MR. WOOD:

Q If you had continued to work --

A If I had continued to work.

Q Do you know approximately how much money you would have made in 1973?

A 1973?

Q Yes.

1

2 A I would have made 6,725.

3 Q I am talking about 1973, now -- not 1972.

4 A 5,133.

5 Q But if you had projected that through the

6 end of 1973.

7 A Roughly $8500.00.

8

9 MR. ROSENBERGER: I move to strike that,

10 he has already said $600.00 a month.

11 THE COURT: I sustain the objection.

12 BY MR. WOOD:

13 Q What were you making a month?

14 A $400.00.

15 Q Plus 2.2 commission.

16 A Yes.

17 Q And through August 1973 you had made $5,131.00.

18 A Right.

19 Q Which is more than you made in 1971 through

20 the whole year, is that correct?

21 A That is right.

22 Q Now, if you had continued to work the last

23 four months of 1973 on a basis of $400.00 a month salary

24 plus your 2.2 commissions what would you project your

25 income to be?

A Roughly $8500.00.

MR. ROSENBERGER: I am not going to bother with it, Judge. I will read him what he said under oath.

THE COURT: What did you make in the month of June 1973?

THE WITNESS: The month of June?

THE COURT: Yes -- or do you know?

THE WITNESS: I don't know for the month of June.

MR. WOOD: That statement is for the whole eight months.

THE COURT: What was your salary per month?

THE WITNESS: $400.00.

THE COURT: And your commission?

THE WITNESS: 2.2.

THE COURT: And what was the commission for the first six months?

THE WITNESS: 5,131.

MR. WOOD: Eight times 4 is 32 so anything above that is commission.

THE COURT: I think there are enough figures in -- go ahead.

BY MR. WOOD:

Q You incurred certain medical expenses. We can go over them one by one, they are listed --

MR. ROSENBERGER: Let him tell what they are.

MR. WOOD: Could you read these, what these are, Mr. Neighbors.

MR. ROSENBERGER: That is all right if you have them.

THE WITNESS: C. E. Keefer, M.D. $624.30, he has here 30 months at 9 --

MR. WOOD: $30.00 a month for nine months.

THE WITNESS: $270.00. Francis R. Whitehouse, M.D. $133.00; Lynchburg General Hospital $37.50; Radiology Consultants $10.00; Robertson Drug Store $99.86; other drugs $99.83; corset $23.00.

MR. WOOD: We mark this Plaintiff's Exhibit 10.

MR. ROSENBERGER: May I see Dr. Whitehouse's bill?

MR. WOOD: Yes, sir. We tried to get him to separate his bill just to what related to this.

BY MR. WOOD:

Q Could you tell the jury whether or not there has been any change in your weight since the accident happened?

A Yes, I weighed 187 before the accident. I weigh 170 now, roughly 170 pounds.

Q Mr. Neighbors, can you give the jury some idea of what your work entailed before your doctor said that you couldn't work any more. Could you describe a route,what your day was like from the time you left Lynchburg from the time you got there in the morning?

A Well, I will take this section. I left Lynchburg in the morning roughly around 8:00 o'clock, I worked my way down 29 to Schuyler, Scottsville, doubled back, came back to Route 6 going north on Route 6,over 151 to Rockfish, Rockfish back down to 151 down to Piney River, Massies Mill and back on in to Thornton's Drive-In on 29 and back into Lynchburg. That was selling and collecting.

Q How many stops would that be?

A Roughly 29.

Q Would you get out of the car when you got to the place?

1
2 A Yes.
3 Q So how many times did you get in and out
4 of your car each day?
5 A Roughly I would say anywhere from 100 to
6 120.
7
8 MR. WOOD: All right, you will answer Mr.
9 Rosenberger's questions.
10
CROSS EXAMINATION
11 BY MR. ROSENBERGER:
12 Q Mr. Neighbors, the state policeman Mr. Bible
13 said you owned the car that you were driving at the
14 time, is that right?
15 A Yes, sir, that is true.
16 Q Did you have to furnish the car?
17 A Yes, sir.
18 Q And you paid for your oil and gas?
19 A Yes, sir.
20 Q In other words, you had your expenses of
21 traveling, didn't you?
22 A Yes, sir.
23 Q Did you forget about that?
24 A I guess I did -- yes, sir. I guess I did.
25

1
2 Q Now, you were driving down the road and did
3 you have the back of your station wagon loaded with
4 crates of cabbages or lettuce or anything like that?
5 A No, sir.
6 Q There was nothing in your station wagin to
7 prevent you from looking in your rearview mirror, was
8 there?
9 A No, sir, there wasn't.
10 Q And did you also have one on the outside?
11 A Yes, sir.
12 Q And you looked in that mirror?
13 A Right.
14 Q And you looked in the one on the inside.
15 A Right.
16 Q And then you looked ahead and didn't see
17 anybody coming.
18 A Right.
19 Q And I take it you looked before you turned
20 on your signal -- did you look before you turned on
21 your signal?
22 A No, sir, I turned the signal on, looked ahead
23 and continued down the hill.
24 Q Are you sure you turned your signal on?
25 A Yes, sir.

1

2 Q Why did you arrive at 150 to 200 feet?
3 Did you take any measurements when you turned it on?
4 A No, sir, I have been doing this roughly twelve
5 years and a man doing something twelve years, he knows
6 what he is doing.
7 Q You are basing this on something you had
8 done before?
9 A No, sir.
10 Q How did you arrive at 150 to 200 feet
11 for turning it on?
12 A I always do it.
13 Q Do you know what the law requires you to do?
14 A Even in Lynchburg I turn the signal on
15 whether there is something behind me or not.
16 Q Always for 150 to 200 feet?
17 A Yes, sir.
18 Q The city blocks are not more than 300 feet,
19 are they?
20 A I don't know.
21 Q Have you discussed with your lawyers how far
22 you are supposed to give this signal?
23 A No, sir.
24 Q Do you know how long you are supposed to give
25 it under the law before you turn?

A No, sir.

Q This was a 55-mile speed limit?

A Yes, sir.

Q And you know at 55 miles an hour an automobile will travel 70 feet a second, don't you?

A I presume so.

Q And you know they travel pretty fast.

A Right.

Q And you could see from the top of that hill down to the service station, couldn't you?

A Yes, sir, you could.

Q And the estimate of visibility along in that space, it is about a quarter of a mile, that is about right, isn't it?

A I would think so -- yes, sir.

Q And are you sure you looked, Mr. Neighbors?

A Yes, sir.

Q And you never did see this car until it hit you.

A Yes, sir, that is right.

Q Now, when you got hit the front end of your car was leaving the west edge of the highway, wasn't it?

A Yes, sir, that is right, sir.

Q And there was no traffic approaching you, that

1
2 is coming south, was there?
3 A No, sir.
4 Q And the automobile left these tire marks in
5 the southbound lane for 100 feet -- you saw those,
6 didn't you?
7 A Yes, sir.
8 Q And then of course you knew it took a while
9 for the man to get his foot on the brake, reaction
10 time?
11
12 MR. WOOD: He testified what he knows.
13 BY MR. ROSENBERGER:
14 Q You know there is some reaction time, if you
15 see something you need to get your foot on the brake,
16 reaction time?
17 A Yes.
18 Q So the man driving the other automobile had
19 to see you for more than 100 feet making the turn
20 before he put on his brake?
21 A More than 100 feet?
22 Q Yeah, he left tire marks of 100 feet.
23 A Yes.
24 Q So he knew you were turning more than 100 feet
25 back up the road because he had to get his foot on the

1
2 brake, it took him some time to do that -- that is
3 all I am saying. You know that?
4 A I don't quite understand you, Mr. Rosenberger.
5 Repeat that again, please.
6 Q Well, my question was he had skidded for
7 100 feet so you knew he saw you turning and his skid-
8 marks were in the southbound lane so he was at least
9 100 feet away from you when he saw you turning, and
10 then for him to get his foot on the brake some time
11 had to elapse called reaction time -- you are familiar
12 with that, aren't you?
13 A Well, I drive with my left foot on the brake.
14 Q Well, I am not talking about what you do. I
15 am asking you if you know the average reaction time --
16 it takes time for your foot to operate from your eyes
17 to your feet, for your brain to work --
18 A I guess so.
19 Q So he must have seen you turning when he was
20 more than 100 feet away. Do you agree with that?
21 A I guess he was.
22 Q And there was nothing in the southbound lane,
23 with you having a mirror on the outside, to keep you
24 from seeing --
25 A Well, when I turned on an angle that throws you

1
2 off.
3 Q You looked before you turned?
4 A Yes, sir, but I didn't see anything back
5 there and making the turn your automobile, your
6 mirrors doesn't show the road back there.
7 Q In making the turn, the trooper told us that
8 highway is only 24 feet wide and to come from the
9 righthand side over to the west side you would only
10 travel 12 feet, wouldn't you, Mr. Neighbors?
11 A Right.
12 Q And the front end of your car was right
13 at the west edge of the hard surface when you got
14 hit.
15 A Right.
16 Q So when you got hit you were broadside of
17 the highway with your front end on the west edge
18 and the back end -- your car is about 16 feet long,
19 isn't it?
20 A Roughly.
21 Q So you were across the highway when you got
22 hit.
23 A No, sir, I was more on an angle --
24 Q Okay, whatever the angle was.
25 Q Because I was hit on the lefthand corner

at more of an angle.

Q You were hit from your left rear fender?

A That is right, sir.

Q You saw this picture this morning, didn't you (handing to witness)?

A Yes.

Q The lawyer showed it to you and you recognize that as your car?

A Yes, sir.

Q And you were hit actually up in front of the left rear fender, weren't you, and extended all the way back?

A No, sir, I was hit -- most of the lick was right there (indicating).

Q What is that dent right there (indicating)?

A All that came from the pressure back here (indicating), it jammed it. The front door was jammed when I tried to get out of it.

Q What about this dent (indicating)? Isn't that the side of your car pushed in, in front of the left rear fender, up above it?

A The chassis and all was bent on my car and caused it to bow up there like that.

Q Right in that area where the door handle is,

1
2 isn't your car dented in?
3 A I wasn't hit up there.
4 Q You didn't have any damage before that,
5 did you?
6 A No, sir, but I wasn't hit up there -- I was
7 hit back here (indicating).
8 Q All right, sir, for you to travel that 12
9 feet wouldn't have taken you over a second, would it --
10 the 12 feet?
11 A No, sir.
12 Q Crossing the road.
13 A Right.
14 Q So then you are sure you looked before you
15 started across that road?
16 A Yes, sir.
17 Q And you admit there was nothing between you
18 and the car that was behind you.
19 A No, sir.
20 Q When you said "No, sir" you mean there was
21 nothing.
22 A Right.
23 Q Now, there was no traffic in front of you
24 coming to you, was there?
25 A No, sir.

Q This accident happened about 1:30 and you stayed out there until 4:00 o'clock?

A I didn't have any way to get home.

Q I am not faulting you, I am trying to get your time. You were out there until about 4:00 o'clock?

A Yes, sir.

Q And then you rode the wrecker home?

A Yes, sir.

Q What wrecker was it, do you know?

A The wrecker there at Madison Heights.

Q Did he take you over there to where you work?

A No, sir, I called from there over to where I work and one of the boys over there came and picked me up.

Q What time did you get home?

A Roughly 6:30 or quarter to 7:00.

Q And you were looking for a car the next day?

A Yes, sir.

Q Your niece works for Dr. Platt?

A Yes, sir.

Q When you had that accident on January 6, 1968 you went to Dr. Botton and you went to Dr. Bowen, didn't you?

A Yes, sir.

1

2 Q They treated you and you wore a collar for
3 about six months before you went to Dr. Keefer?
4 A Yes, sir.
5 Q You didn't tell us why you didn't call
6 Dr. Bowen this time. Why didn't you?
7 A Dr. Bowen?
8 Q If you needed the doctor why didn't you call
9 the doctor that was familiar with you?
10 A I went to Dr. Platt and about six of them
11 right down below him on Thomson Drive trying to get
12 appointments with them.
13 Q My question is, why didn't you go to Dr.
14 Bowen because he had treated you?
15 A Well, I was in this vicinity there and I
16 went to Dr. Keefer.
17 Q And you didn't go to him until the 13th of
18 July?
19 A Well, I didn't have any other doctors to go
20 to. Like I said, I went to six or seven and they said
21 two weeks and my niece told me to go to the emergency
22 room at Lynchburg General Hospital. And they x-rayed
23 me and I talked to Dr. Whitehouse's nurse, thinking
24 she could call some of the doctors and get me an appoint-
25 ment with some of them.

Q Dr. Whitehouse didn't have a record on your pinched nerve on your neck in 1965. How did you get that trouble?

A The pinched nerve?

Q Yes.

A In Florida.

Q Were you in a wreck?

A No, sir, I was not in a wreck.

Q What happened to you?

A I was on the beach playing in the sand and did a flip and it hit me in my back and in my neck.

Q And that is what Dr. Botton treated you for and found those compressions of those disks.

A In 1965.

Q Right. And then you told us about that in your interrogatories. But in 1963 you got knocked down by a pickup truck where you are on the hospital record.

A Yes, sir.

Q Now, you didn't put that in the answers to other accidents you had and injuries.

A Well, I kept working.

Q You kept working?

A Yes, sir. It just knocked me down on the

ground.

Q We didn't ask you whether you kept working -- we asked you for all your injuries.

A I didn't lose any time from work.

Q How did it happen to get recorded on your charts? It must have been of some significance because it was recorded on your charts.

A I don't know.

Q Yes, sir -- I know. Now then, what caused you to black out in November 1962 and hit a parked car?

A Oh, the muffler, a bad muffler that was on my automobile.

Q And that made you black out?

A The fumes -- yes, sir.

Q Did you tell Dr. Whitehouse that? He thought maybe you didn't get enough oxygen from your heart problem.

A Yes, sir, Dr. Whitehouse knew about it.

Q He didn't seem to know about it this morning.

A It didn't hurt me. I just tagged the car and knocked a piece of chrome off the parked car.

Q What caused your aching in your shoulders and back and legs in 1965?

A 1965?

Q Yes.

A None that I can think of other than my heart, I guess, the slow blood circulation.

Q Well, then in 1966 when you had the trouble with your arm and your hands getting numb --

A They would go to sleep just like you laid on them too long -- slow blood circulation.

Q That was in 1966.

A I didn't have the operation until 1970.

Q I understand. And you had the trouble again in 1967?

A Yes, sir.

Q And Dr. Whitehouse couldn't understand what the problem was -- he never told you it was your heart, did he? He said he didn't know what the problem was.

A Well, I have been through so much it is hard for me to answer that.

Q I agree -- I understand. When you had the accident with Sta-Kleen Bakery on January 6, 1968 the doctors have described it as a head-on accident.

A No, sir, it wasn't. I was traveling on 29 South in front of Cindy's Truck Stop, I was running approximately 55 miles an hour, the speed limit was 60,

1
2 I was running about 55. This bread truck was coming
3 out of Cindy's Truck Stop to cross the dual highway.
4 He came out and almost stopped and I was sure he was
5 stopping. All of a sudden he darted across 29 right
6 in front of me. I put my brakes on, skidded approximately
7 25 feet and couldn't help from hitting him.
8 Q And you hit him broadside?
9 A Right in the middle of the truck, he pulled
10 right out in front of me and I hit him in the middle
11 of the truck.
12 Q And you had a whiplash then?
13 A Yes.
14 Q And it hurt your neck and shoulders and back?
15 A No, sir, I have never been hurt down here
16 (indicating) in my back before.
17 Q And Dr. Botton and Dr. Bowen treated you for
18 that.
19 A Yes, sir.
20 Q And that treatment is for ten months and you
21 had on that collar and then you went to Dr. Keefer in
22 October and he treated you until April 1969, is that
23 right?
24 A I guess it is -- yes, sir.
25 Q Now, you quit going to him in April 1969,

and then in March 1970 you had these symptoms that you told him about according to him, I want you to listen to them real good, "Having discomfort base of neck and with hyperextension. Has had some intermittent discomfort since last visit. Bothers him when sleep. Spends most of night sitting up in chair to rest". This was in March 1970. I understood you to just tell Mr. --

A I spent many a night sitting in the chair before I had my heart operation. I couldn't even lay down, I sat up in a chair from 1:00 o'clock until daylight.

Q That is not explained in this note. You went to see him because of your neck and you told Mr. Wood you had the same problem now, that you sit up in the chair at night.

A I do -- yes, sir.

Q And you told Dr. Keefer the same thing in March 1970, that the discomfort bothers you and you spend most of the night sitting up in the chair to rest. So you didn't relate it to your heart, you related it to your neck, didn't you?

A No, sir, the majority of it came from my heart.

Q I will read it again, "Having discomfort base of neck and with hyperextension. Has had some intermittent

1

2 discomfort since last visit. Bothers him when sleep.
3 Spends most of night sitting up in chair to rest. Very
4 little referred pain into arms or hands. Some discomfort
5 in left side of chest since fall or pleurisy". You had
6 a fall at that time, didn't you?
7 A A fall?
8 Q You say you had some discomfort since you had
9 had a fall or pleurisy.
10 A Does it say anything about me being in the
11 hospital?
12 Q No, sir.
13 A The only time I had pleurisy was when I was
14 in the hospital.
15 Q "Calls attention to discomfort in dorsal
16 lumbar junction and has a lipoma in same area". That
17 dorsal lumbar area is right down here (indicating),
18 isn't it, where you have been pointing to?
19 A I don't know, I am not a doctor.
20 Q Well, the reason I am asking you this par-
21 ticularly is you just told us you never had any trouble
22 with your low back.
23 A No, sir, I haven't.
24 Q This is March 27, 1970 when the doctor recorded
25 that. And you had complained of that lipoma in the low

back to Dr. Whitehouse.

A Not as I recall.

Q Don't you remember me asking him about that lipoma and what it was and he said it was a fatty thing?

A Yes, sir, it is right there.

Q So you had had some trouble up there (indicating) but not down lower.

A Yes, sir. And a lot of times in the hospital I asked them about taking it out and they said "If it is not bothering you forget it, leave it alone".

Q You told him all the problems you had but you hadn't been to see him since April 25, 1969.

A Dr. Keefer?

Q Yes. His last report, you heard him read it, April 29th and he said the last visit you were asymptomatic.

A I didn't need to go to him.

Q The reason you went to him on March 27, 1970 was because you were scheduled to go to court on April 1, 1970?

A From the wreck down at Cindy's Truck Stop down on 29.

Q That is what I am talking about, sir. That

1
2 dizziness you had in January 1972, was anything ever
3 diagnosed as to what that was?
4 A No, sir.
5 Q Now, on September 20th Dr. Keefer recorded
6 that he told you you could do more garden work.
7 A In 19 what?
8 Q September 20, 1973.
9 A I have a small garden.
10 Q You did have a garden?
11 A Very little work I did in it -- 100 feet long
12 and 125 feet wide.
13 Q Did you ever use one of those push plows?
14 A No, sir.
15 Q Don't do it?
16 A I didn't work it out with a hilling hoe. My
17 brother and I planted it and I picked it from there.
18 Q So you and Dr. Keefer were talking about you
19 could do light garden work.
20 A This was in 1970?
21 Q No, sir, that was September 20, 1973 when he
22 told you you could go back to work.
23 A 1973?
24 Q Yes, sir.
25

1

2 A Oh, no, sir -- I haven't had any garden in
3 1973.
4 Q I thought you heard me read it to him.
5 A I am sorry, I misjudged you on your date.
6 Q September 20, 1973 after this accident you
7 heard me read it to him this morning, that he told you
8 you could increase your activity at home and begin to
9 do light garden work.
10 A No, sir, all I did was go pick the stuff
11 off there -- no work, I didn't do any work.
12 Q Did he tell you that?
13 A Yes, sir.
14 Q He did tell you that?
15 A I am pretty sure he did. I am pretty sure
16 I wasn't able to do it, I picked the tomatoes off the
17 vines.
18 Q And he also told you you were able to work on
19 September 24, 1973.
20 A He told me to try it to see if I could make
21 it.
22 Q Instead of going to work you went to Dr.
23 Whitehouse and he reported here he thought you were too
24 depressed and thought you ought to retire, didn't he?
25 A No, sir. Ask that question again?

1

2 Q Instead of going to work that day on September
3 24th you went to see Dr. Whitehouse and that is when you
4 told him you were so depressed you felt like you should
5 retire -- do you remember I read it to him this morning?
6 A Yes, sir.
7 Q You did do that, didn't you?
8 A I went down to check on my job --
9 Q I haven't gotten to that.
10 A All right.
11 Q I am just asking you if that wasn't when you
12 told him you thought you should retire.
13
14 MR. SACKETT: He is talking about that because
15 he said instead of going to work he went to see
16 Dr. Whitehouse and it is the same day.
17 THE COURT: He is getting to that. Let the
18 witness testify.
19 BY MR. ROSENBERGER:
20 Q The doctor read this thing. In the margin
21 September 24, 1973 -- 183 pounds. You told us about
22 losing weight, Dr. Whitehouse and Dr. Keefer have been
23 trying to get you to lose weight for five years, haven't
24 they?
25 A Yes, sir.

1
2 Q They certainly have. And so when you tell
3 the jury about losing weight it is not because of the
4 accident, it is because the doctor wants you to lose
5 weight.
6 A I don't know for what reason I am losing it
7 because I never lost any before. I weighed 218, 197 --
8 Q Before you had that open heart surgery in
9 1970 you had been reduced in weight.
10 A In 1970?
11 Q Yeah. You had the heart surgery in December
12 1970.
13 A No, sir, I hadn't reduced a whole lot.
14 Q June 21, 1971 you weighed 183 pounds. How
15 much do you weigh now?
16 A About 170.
17 Q May 31, 1971 you weighed 172 pounds -- that is
18 right, isn't it?
19 A Yes, sir.
20 Q February 1971 after your operation you only
21 weighed 169 pounds.
22 A No, I weighed less than that. I believe I
23 weighed 149.
24 Q On February 16th it is recorded as 169.
25 A I think before that it was lower than that.

1

2 Q What I am getting at is that all the time the
3 doctors were trying to get you to lose weight. When you
4 saw Dr. Floyd in 1973 he said the problem was getting
5 your weight down because you liked to eat too much,
6 is that so?
7 A That is probably so.
8 Q Getting back to the September 24th time, do
9 you want to tell me about going down there to the job?
10 You went down to the job, you didn't say anybody fired
11 you, did you? You went down to your place of business --
12 A I went down because Dr. Keefer told me to go
13 down and tell my boss I had to take off a few days
14 because of my back.
15 Q No, I am talking about on September 24th when
16 he told you to go back to work.
17 A September 24th?
18 A Yes, on September 20th he said to go back to
19 work on September 24th.
20 A Yes, I went down there and offered to go to
21 work and I was told it was the end of a fiscal year
22 and they couldn't put me back on right at that time.
23 Q They were winding up their year?
24 A That is what I was told -- yes, sir.
25 Q And they couldn't put you on right then.

1
2 A Yes, sir.
3 Q You don't mean to tell me because you had
4 been off for three weeks the guy you had been working
5 for twenty-five years fired you.
6 A I didn't have a job.
7 Q He didn't tell you he was not going to put
8 you on -- he said he couldn't put you on at the end
9 of the fiscal year -- McCraw. Did he ever tell you he
10 was not going to give you a job?
11 A That is what I understood, Mr. Rosenberger.
12 Q What he told you was "I can't put you on now
13 because it is the end of the fiscal year"?
14 A I couldn't figure it out either.
15 Q Have you ever been back since?
16 A Yes, sir. That was on the 24th. I went
17 back down there on Monday morning dressed and told him
18 that I was ready to go to work. He said "I can't use
19 you right now, you come back in a week and we will put
20 you to work in a week".
21 Q Did you go back?
22 A No, sir.
23 Q And the doctor told you to go --
24 A Not at that time.
25 Q September 24th?

1
2 A This was on the following Monday from the
3 24th.
4 Q All right. When he said "Come back and
5 I will put you to work in a week", you went to Dr.
6 Whitehouse and that is when Dr. Whitehouse wrote down
7 what you told him about you thought you ought to retire.
8 A Well, I did.
9 Q And you wanted to retire when you had your
10 job offer in another week.
11 A Well, I don't think I am able to work, Mr.
12 Rosenberger.
13 Q Oh, I see.
14 A I don't think I could do a day's work.
15 Q I am not faulting you -- I want to get out
16 what the facts are.
17 A Yes, sir -- I am sorry.
18 Q And that very day when you told him you thought
19 you ought to retire, that is when he filled out your
20 Social Security application, wasn't it? You heard me
21 ask him that today?
22
23 MR. WOOD: We have been into that. I object.
24 THE COURT: I sustain the objection and ask
25 the jury to disregard anything about Social Security.

MR. ROSENBERGER: Judge, you know we went into that before. I respectfully except.

BY MR. ROSENBERGER:

Q So Dr. Keefer agreed with you that he thought you were unable to work even though Dr. Keefer thought you should. And then you went back to Dr. Keefer and told him what Dr. Whitehouse said.

A No, sir, I didn't go to Dr. Keefer and tell him what Dr. Whitehouse said.

Q Didn't you go to Dr. Keefer on the 28th and tell him how bad you were doing and that you couldn't work?

A Yes, sir -- on account of my back.

Q Did Dr. Keefer tell you, like you told us on February 21st, that you were ready for light work?

A I think you misunderstand Dr. Keefer. I don't think he meant light work, I think he meant a little more activity. I am not able to do anything on account of my back.

Q What do you understand when the doctor says you are ready for light work? That doesn't mean activity, that means light work. You heard him, didn't you?

A Yes, sir.

1
2 MR. ROSENBERGER: That is all.
3
4 REDIRECT EXAMINATION
5 BY MR. WOOD:
6 Q Mr. Neighbors, going back to the accident,
7 you, of course, were familiar with the area in which
8 the accident happened, were you not?
9 A Yes, sir.
10 Q Did you know how the highway was marked at
11 that point?
12 A Yes, sir.
13 Q And how was it marked where you were hit?
14 A Double line.
15 Q A solid line?
16 A A solid line -- yes, sir, that is right. And
17 a "No Passing" sign on the left.
18 Q Dr. Keefer has of course testified to the
19 jury that he recommended the last time you were there
20 that you could do light work. Are you able to get in
21 your car and drive it now the way you did before this
22 accident?
23 A No, sir.
24 Q Would you like to be able to do it?
25 A I would like to if I was able. If you all

would like for me to, I will try it.

Q What sensations do you have when you get in and out of a car? What feelings do you have in your body?

A It is strenuous through here, down through here (indicating), and I couldn't stand on my legs all day long because from my knees down here (indicating) they ache all the time.

Q What do you do during the day now?

A I lay down at home and rest.

MR. WOOD: That is all.

RECROSS EXAMINATION

BY MR. ROSENBERGER:

Q Mr. Neighbors, why did you tell Dr. Whitehouse and Dr. Keefer that you had lost your job when your boss told you to come back next Monday and he would put you to work?

A Give me that again, please.

Q Why did you tell Dr. Whitehouse and Dr. Keefer that you had lost your job when your boss that you had been working for for twenty-five years told you to come back next Monday "and I will put you to work" in September 1973? After Dr. Keefer told you to go back to work, he

1
2 told you that on September 20th, you went down there
3 between that time and September 24th --
4 A I was terminated on September 1st.
5 Q The man told you to come back to work.
6 A I was terminated off my job.
7 Q He told you to come back next Monday and he
8 would put you to work.
9 A This must have been an earlier date. I am
10 sorry, this must have been an earlier date but I do
11 know that I was terminated on September 1st.
12 Q Well, you worked until August 27th --
13 A Yes, sir.
14 Q And you had only been off three days.
15 A Yes, sir.
16 Q Goodness -- you were off for six weeks with
17 your heart problem in March and you went back to work.
18 A Well, I was terminated on September 1st.
19 Q And you went back down there September 20th
20 about going to work September 24th --
21
22 MR. SACKETT: We have been through this.
23 THE COURT: We haven't been through this before.
24 Go ahead.
25 BY MR. ROSENBERGER:

Q After Dr. Keefer told you on September 20th you could go back to work you told me you went back down there to go to work and the man told you it was the end of the fiscal year.

A All I know is that word was out that I was terminated and I didn't have a job as of September 1st.

Q Word was out where? Where was word out? Is that what you heard from someone?

A From Mr. Dave Garmey, the insurance man.

Q He is the fellow at First & Merchants Bank?

A Yes, sir.

Q And he had sold you life insurance?

A No, sir.

Q That is what he sells.

A No, he hadn't sold me any life insurance.

Q You heard that from him. And after the doctor told you to go back to work he said it was the end of his fiscal year, "Come back on Monday and I will put you to work". My question is, after he told you that why did you go tell the doctor that you had lost your job?

A Because I didn't have a job.

Q Well, you and the doctor were talking about going to work on September 20th, that is the date of the report I just read to you --

MR. WOOD: He testified what he knows about this. What the doctor put on the report is another thing.

MR. ROSENBERGER: This is cross examination.

THE COURT: What did you tell the doctors about your job at that time?

THE WITNESS: I told them I would try and go back to work.

THE COURT: Well, did you tell them you had lost your job or not?

THE WITNESS: The doctors?

THE COURT: Yes.

THE WITNESS: Yes, sir, at that time -- I knew at that time I was terminated on the insurance on one date and my hospital insurance, I was terminated on the 27th of August. The same evening that I reported to my boss that Dr. Keefer referred me to take off a few days, I was terminated, my hospital insurance the same day on August 27th.

BY MR. ROSENBERGER:

Q September 20th you and the doctor talked about going to work and you have admitted on this examination that you thought you would try it, September 20th --

A Yes.

Q And you were to go to work on September 24th so your job could not have been terminated before September 20th, could it?

MR. WOOD: He testified what he knows. What is written down on Dr. Keefer's pad, he doesn't know what he is writing down on the pad. He testified what he knows himself, that is all he can testify to, which is what he is doing now.

MR. ROSENBERGER: That is right, and he said on September 20th he and Dr. Keefer talked about him going back to work.

THE WITNESS: There was so much that went on it is hard for me to get it straightened out.

BY MR. ROSENBERGER:

Q I know. And on September 24th that is when you went back down and the man told you he had the end of his fiscal year and come back on Monday.

A The 24th of September?

Q Right -- it was in September.

MR. WOOD: What is the question, Mr. Rosenberger?

MR. ROSENBERGER: I am asking him if it wasn't

1
2 September 24th that the man says "Come back to
3 work, I will put you to work Monday".
4
5 BY MR. ROSENBERGER:
6 Q If you would just answer the question. Mr.
7 Wood doesn't know -- he wasn't there.
8 A I guess you are right, Mr. Rosenberger.
9 Q Yeah, because you just quit work because
10 you were hurting so bad on August 27th so you couldn't
11 have been back down there between August 27th and
12 September 1st to see about going to work on Monday
13 because the doctor told you to come back to work on
14 the 20th.
15 A I got terminated September 1st.
16 Q Despite that, you went back down there and
17 the man told you he would put you to work on Monday.
18 A He said he would let me know.
19 Q Now you have changed it. You said he told
20 you he would put you to work on Monday and now you
21 have changed it and --
22 A Just a minute. I said "Mr. McCraw, I am
23 down here to try to go back to work if I can make it"
24 and he said "I can't let you know anything about it
25 right now, I will let you know later about it". And so

that was roughly on a Friday and I dressed and went down on Monday morning, dressed ready to go out on the road to try to go to work. And that is when he told me, he said that was the end of the fiscal year and for me to come back on October 1st -- October 1st.

Q October 1st, which would fill in with September 24th when you were down there when the doctor told you to go to work.

A He told me that I could go to work on October 1st.

Q That is what Mr. McCraw told you.

A That is right.

Q And he is your boss.

A He was my boss.

MR. ROSENBERGER: All right, that is all.

REDIRECT EXAMINATION

BY MR. WOOD:

Q After September 24th did or did not Dr. Keefer or Dr. Whitehouse tell you that you were unable to work after the 24th and before October 1st when you were to go back.

A Right.

Q That is when you received that opinion from

1
2 them between the 24th, the time he said don't come
3 back until October 1st --
4 A Right.
5 Q So that happened between the 24th and the
6 1st.
7 A Yes.
8
9 MR. WOOD: All right.
10 RECROSS EXAMINATION
11 BY MR. ROSENBERGER:
12 Q It was on the 28th of September when you
13 went back to Dr. Keefer and you told him you had lost
14 your job. Why did you do it when the man told you
15 to come to work on October 1st?
16 A Well, I will answer it to you this way. He
17 said "This is the end of the fiscal year, you can come
18 back October 1st". Then I would be going back as a
19 new hired man losing my seniority, my hospital insurance
20 had been terminated -- I would have to start all over
21 with a fresh start.
22 Q And your only seniority was you were getting
23 $400.00 a month plus 2.2 commissions -- the same job.
24 A My hospital insurance had been terminated,
25 Mr. Rosenberger.

1
2
3 Q Your job hadn't.
4 A I didn't have a job.
5 MR. WOOD: He has testified he didn't have
6 a job.
7 THE COURT: I think you have covered this,
8 gentleman.
9

[Tr. pp. 197 l. 11 - 209 l. 20]

TESTIMONY OF MICHAEL DAVIDSON

11
12 MICHAEL DAVIDSON was called as a witness on behalf
13 of the plaintiff and, having been previously duly sworn,
14 was examined and testified as follows:
15 DIRECT EXAMINATION
16 BY MR. WOOD:
17 Q Will you please state your name.
18 A Michael C. Davidson.
19 Q How old are you?
20 A Twenty-one.
21 Q Where do you live?
22 A Fauber, Virginia.
23 Q Is that in Nelson County?
24 A Yes.
25 Q Were you in Earl's Amoco Station on July 2,
1973?

A I was.

Q And were you there at the time of an automobile accident between Claude Neighbors and Mr. Moore?

A I was.

Q All right. Could you tell the jury where you were at the approximate time this accident happened.

A I was getting ready to pull out of the upper entrance at the service station.

Q All right, will you come here and we will show the jury where you were.

A (Witness leaves stand and goes to jury box).

Q This is Plaintiff's Exhibit 3 which, of course, shows the upper entrance and this is the lower entrance (indicating). Were you down in here (indicating)?

A I was right along in here (indicating).

Q Tell us what you saw as you were positioned right in here.

A Mr. Neighbors was heading north and he was turning off right along in here (indicating).

MR. ROSENBERGER: Nobody can see it.

THE WITNESS: He was turning off.

BY MR. WOOD:

Q You were here (indicating)?

A I was right here (indicating). He was turning off and he started his turn right along in here (indicating) when the other car struck him.

Q Did you see whether or not he made any signal before he turned?

A His left turn front signal was on.

Q Are you absolutely sure about that?

A Yes, the front signal.

Q And how far had you seen him coming down on the northbound side of the road? How far back up had you seen him?

A 12, 15, maybe 18 car lengths up from this top entrance.

Q Did you see a vehicle behind him?

A Well, as well as I can remember --

MR. ROSENBERGER: I object to this sort of question as to putting a location. I have no objection to asking him what he saw.

THE COURT: Don't lead the witness.

MR. WOOD: I don't think I am leading the witness.

BY MR. WOOD:

1
2 Q Did you see another vehicle behind the
3 Neighbors vehicle?
4
5 THE COURT: Of course you were leading him
6 because you put the answer in the witness' mouth.
7 Don't lead him any more.
8 BY MR. WOOD:
9 Q Tell us what you saw behind Mr. Neighbors.
10 A A car came up behind him pretty quick. He
11 was slowing to make his turn, a car came up behind
12 him and turned to pass.
13 Q What happened after that?
14 A They collided.
15 Q Can you show us on this picture where they
16 did collide?
17 A I would say right along in here (indicating)
18 because it just missed me.
19 Q And where were you?
20 A I was sitting here (indicating).
21 Q So you were down there (indicating).
22 A Yes.
23 Q Can you show us approximately where Mr.
24 Neighbors' car ended up?
25 A Right here (indicating).

Q Do you know where Mr. Moore's car was?

A I believe it was turned across the road right along somewhere in here (indicating). (Witness resumes stand).

Q Now, what happened after the impact?

A Well, when they hit the first thing -- I was watching Mr. Neighbors' car, really, the one that took the blow, and he went in the seat like this (indicating) and came back. And naturally I got out to see if he was all right.

Q And what did you do after you got out to see if he was all right?

A I got him out of the car -- at least I think I got him out of the car, I don't remember, but I remember telling him to get out of the car because it bursted the gas tank.

Q What happened then?

A I went to check on the other car and they seemed to be all right.

Q Can you describe how Mr. Neighbors was?

A Well, he was shocked.

Q How did he appear to you?

A Kind of pale and nervous.

Q Did you actually see the impact or not.

1
2 A Yes, sir.
3 Q How far back up had you seen the Moore
4 vehicle -- could you say?
5 A The Moore vehicle?
6 Q Yes, the car driven by Mr. Moore.
7 A I would say about 50 to 75 yards maybe,
8 something like that.
9 Q And could you estimate how fast he was going?
10 A Somewhere between 50 and 60 miles an hour,
11 approximately.
12 Q And do you know how fast Mr. Neighbors'
13 vehicle was going as he was turning in?
14 A As he was turning in?
15 Q Yes.
16 A I would say not more than 25.
17 Q Could you describe how his vehicle was
18 coming down the hill, Mr. Neighbors' vehicle, the manner
19 in which it was coming down the hill in the northbound
20 lane?
21 A His speed?
22 Q Yes, how was he approaching? Was he slowing
23 up?
24 A He was slowing up all the time.
25

Q With his blinker on?

A With his blinker on.

MR. WOOD: That is all.

CROSS EXAMINATION

BY MR. ROSENBERGER:

Q Mr. Neighbors, you were sitting there -- I mean, Mr. Davidson, you were sitting there at the upper turn, that is the south entrance.

A Yes.

Q The closest one to Lovingston --

A No, there is another one.

Q Well, then there is another one closer to Lovingston from where you were sitting?

A Right.

Q So they came right in the entrance you were sitting in?

A Right. I could sit in the truck and look at the wreck almost down --

Q Mr. Neighbors said the front of his car was on the west edge of the hardsurface when he got hit. Do you agree with that?

A He was making his turn and he was almost into the entrance.

1
2 Q Well, he could be almost into the entrance
3 and just be leaving the edge of the hardsurface,
4 couldn't he?
5 A I guess so.
6 Q So you agree with him on that.
7 A Yes.
8 Q From where you were sitting you could see
9 all the way up to the top of the hill?
10 A Not quite.
11 Q You could see a quarter of a mile?
12 A I would say a tenth of a mile.
13 Q Only a tenth of a mile?
14 A Well, maybe a little further. I am not too
15 good on distances.
16 Q I was thinking -- how far is a tenth of a
17 mile?
18 A I don't know.
19 Q There is 5,280 feet to a mile, 5,280 feet --
20 one-fourth of that is substantially more. It is a long
21 distance up that hill, isn't it?
22 A Pretty long.
23 Q Why is it you didn't see the Moore vehicle
24 until it was 50 to 75 yards away?
25

1

2 A Well, I had a passenger in the truck with
3 me at the time.
4 Q There was nothing to prevent Mr. Neighbors,
5 who was sitting out in the road, from seeing all the
6 way up there, was there? There was no other traffic
7 between him and this other car coming down the hill?
8 A No.
9 Q And when you said "I was here" you mean you
10 were in the second entrance to the Gormes Service
11 Station.
12 A Well, the first entrance is to a man's
13 trailer and then the second entrance is to the service
14 station.
15 Q I see. And you were noticing Mr. Neighbors,
16 I take it, more because you saw him 12 to 18 car lengths
17 back. How far is that in yards so I can compare whether
18 you saw Neighbors longer than you saw Moore.
19 A About -- over 100 yards, over 100 yards.
20 Q You saw him over 100 yards and actually you
21 didn't pay enough attention to the Moore car to judge
22 its speed, did you?
23 A Not really, other than the boy with me said
24 the car was flying.
25

1
2 MR. ROSENBERGER: I move to strike out
3 what the boy said.
4 THE COURT: Sustained and I instruct the
5 jury to disregard it.
6
7 BY MR. ROSENBERGER:
8 Q Actually, you didn't pay any attention to
9 Moore until the two cars started coming right together
10 there right at you, did you?
11 A Right.
12
13 THE COURT: Did Neighbors come out of his
14 lane of traffic at an angle and gradually slant
15 across the road until he was into the driveway?
16 THE WITNESS: Not at that much angle. He
17 came at almost a 90-degree angle, not quite.
18 BY MR. ROSENBERGER:
19 Q So the way you describe it he turned from the
20 northbound lane at a 90-degree angle into the driveway
21 where you were sitting.
22 A Not right at a 90-degree angle.
23 Q It was close?
24 A Close.
25 Q It wasn't a long angle turn?

1
2 A No.
3
4 THE COURT: Did you actually see Neighbors
5 when he left the center of the road and crossed
6 the line for the first time?
7 THE WITNESS: Yes, sir.
8 THE COURT: Where would that have been with
9 reference to where you were?
10 THE WITNESS: I don't understand the question.
11 THE COURT: Where was Neighbors when he first
12 crossed the line making his turn coming into the
13 southbound lane with reference to where you were
14 sitting.
15 THE WITNESS: Almost in front of me.
16 THE COURT: Was he south or north of you?
17 THE WITNESS: A little bit south.
18 BY MR. ROSENBERGER:
19 Q In other words, he had gone a little past
20 you when he cut into that driveway.
21 A Right. He was right at my driver's side.
22 Q You were sitting where your truck would be
23 headed more or less east.
24 A Yes.
25 Q And when he came from that righthand lane

1
2 across that road he was about where you were on the
3 lefthand side of your truck.
4 A Right.
5 Q And he had to go a little bit beyond you
6 because when he came into that driveway you thought
7 you were going to get hit.
8 A Right.
9 Q And from the time he pulled from his lane
10 to get over into the southbound lane, when he got
11 in the southbound lane that is when he got hit.
12 A Right, as soon as he started his turn.
13 Q As soon as he started his turn he got hit.
14
15 THE COURT: Where was the Moore car, the
16 other car when you first saw it -- which lane of
17 travel was he in?
18 THE WITNESS: He was headed north.
19 THE COURT: In which lane?
20 THE WITNESS: In the right lane. I looked
21 up and this car came in behind Mr. Neighbors' car
22 and just that quick whipped out to pass.
23 BY MR. ROSENBERGER:
24 Q Did you see that 100 feet of skidmark that
25 the Moore car made in the southbound lane?

A I don't remember.

Q Don't you remember a long skidmark?

A Not really.

Q Well, if he made the 100 feet of skidmark like the officer said, he had been in the southbound lane for more than 100 feet, hadn't he?

A Yes, sir.

Q As good as you are on distances, would you say he had been in there 100 feet before he hit?

A At least.

Q At least. Thank you.

MR. WOOD: You testified there was a passenger in your car. What was his name?

THE WITNESS: Patrick Stevens.

MR. WOOD: Why is he not here today?

THE WITNESS: He was killed in November in a hunting accident.

MR. WOOD: That is all.

TESTIMONY OF MRS. JAMES EARL GORMES

2
3 Q Will you please state your name for the
4 record.
5 A Mrs. Gormes.
6 Q And what is your husband's name.
7 A James Earl.
8 Q Does he run Earl's Amoco?
9 A Yes.
10 Q Or do you run it for him?
11 A I am over there most of the time.
12 Q Were you there on July 2, 1973?
13 A Yes, sir.
14 Q Were you there when an automobile accident
15 occurred between a car driven by Claude Neighbors and
16 a car driven by Douglas Moore?
17 A Yes.
18 Q Where were you there when the accident happened?
19 A I had my back turned toward the road, I did
20 not see it when they hit.
21 Q Were you inside the station?
22 A I was inside the store.
23 Q And what notice did you have that the accident
24 happened?
25 A I heard the bang.
Q And what did you do when you heard that?

A I turned around and looked and the first thing I saw was Mr. Neighbors' car coming through the island.

Q Did you know Mr. Neighbors?

A Yes, I knew him as a salesman.

Q Did you recognize his car?

A Yes.

Q Would you come up before the jury and use this picture marked Plaintiff's Exhibit No. 4 --

A (Witness leaves stand and goes to jury box).

Q Will you show the jury, if you can, on this picture where you saw Mr. Neighbors' car?

A Right there where the grass there is killed on the lot (indicating).

Q Is that what that spot is?

A Yes.

Q And that was caused by what?

A The gas tank bursted and leaked on the grass and killed it.

MR. ROSENBERGER: That is Exhibit 4?

MR. SACKETT: Yes.

BY MR. SACKETT:

Q When you saw Mr. Neighbors' car was it still

1
2 moving?
3 A It had just come to rest when I looked out.
4 Q And which way was it headed?
5 A Toward the store.
6 Q The front was headed toward the store?
7 A Yes.
8 Q Could you observe whether or not at that time
9 the signal light was working?
10 A I didn't pay any attention to the signal
11 light. (Resumes stand).
12 Q Did you go outside later?
13 A I did. I saw Mr. Neighbors kind of slumped
14 in the seat, his neck went over, and I went out because
15 I knew he had a bad heart and had this open heart
16 surgery. And I went over and helped him out of the
17 car and he was kind of shaky and real white.
18 Q What did you do?
19 A I held on to his arm and helped him in the
20 store and offered him a chair to sit in.
21 Q What was his condition?
22 A After he got in the store he was still shaking
23 but he reconciled himself and made a telephone call.
24 Q How long was he in the store then?
25 A Ten or fifteen minutes.

Q Have you had occasion to see Mr. Neighbors since that accident?

A Yes, he has called on me several times I know.

Q Is your store one of his regular stops?

A Yes.

Q How often would he come?

A He come once a week on Wednesday but the 4th of July was Wednesday so he came on Monday.

Q Can you tell us when you next saw him?

A The next week.

Q What was his condition then?

A Well, he looked mighty drooped to me.

Q Could you tell us any difference in his behavior and appearance?

A Yes, sir.

Q What was the difference?

A He wasn't himself because he was asking me about different items to buy, and I didn't think he was like himself and I told him "You had better go see about yourself" and he didn't come back and I inquired about him and I knew he was sick.

MR. SACKETT: That is all I have.

CROSS EXAMINATION

BY MR. ROSENBERGER:

Q The accident happened on Monday July 2nd and then he was back in your store on Monday?

A No, sir, the next week he came back on Wednesday.

Q So he was back about eight days later?

A Right.

Q And then did he come back after that time?

A He may have came back -- I don't remember if he came back two or three times but I could tell each time he was worse than he was the week before.

Q The first time he came back about a week later -- he was working as usual?

A Yes.

Q And you told him he had better go to the doctor?

A Yes.

Q Had he been to a doctor?

A Oh, yes, he had been to a doctor.

Q Within a week?

A He told me something about he couldn't get an appointment with a doctor. I didn't ask him any details about that but I told him he should see one.

[Tr. pp. 223 l. 17 - 228 l. 7]

DEFENDANT'S MOTION TO STRIKE THE EVIDENCE OF THE PLAINTIFF

17 MR. ROSENBERGER: If Your Honor please, the
18 defendant by counsel moves the court to strike the
19 evidence of the plaintiff on the ground that the evidence
20 shows as a matter of law that the plaintiff was guilty
21 of negligence which was a proximate cause of this
22 collision for the reason that he admits in substance
23 that there was nothing to prevent him from seeing, there
24 were no obstructions. He says he looked but he failed
25 to see the defendant's car until it struck him. Under

1

2 the circumstances the plaintiff is guilty of negligence
3 for failing to see, for using reasonable care to see
4 that he could make that turn in safety in violation
5 of the statutory provision which is a bar to his
6 recovery in this case.
7 MR. SACKETT: We, of course, feel that this
8 motion is not well founded. The evidence is that he
9 looked and says he didn't see anything but it is
10 equally clear at the time he made his turn he was in
11 a "No Passing" zone. I think it is a question whether
12 he is going to anticipate whether anybody is going to
13 pass him in a "No Passing" zone and in this case the
14 automobile was obviously in the process of passing him
15 when he looked and he could not see it in his rearview
16 mirror, and there is a question whether the automobile
17 was in a position for him to see it and there is a
18 question whether the car was in a blind spot. But
19 the fact that this accident happened in a "No Passing"
20 zone, there is really a question whether he has a duty
21 to anticipate whether somebody is going to pass him
22 and whether he had a duty to look to see if somebody
23 was attempting to pass him in a "No Passing" zone,
24 and we feel it is a jury question.
25 MR. ROSENBERGER: There is no evidence he was

1
2 in a "No Passing" zone at the time he looked and there
3 is a distance of about a quarter of a mile back
4 that this man could have seen, and he had a rearview
5 mirror outside his car. And the officer said these
6 tire marks began in the southbound lane before the
7 solid line, he actually said they started and ended
8 before but when he was shown the picture he said they
9 ended in the "No Passing" zone, so the whole thing
10 was set up prior to the "No Passing" zone. And under
11 those circumstances if he looked he had to see --
12 nothing in the world could prevent him from seeing.
13 And as the witness Davidson said, he turned from the
14 northbound lane right sharp, not quite a 90-degree
15 angle, right in front of this car which was in the
16 act of passing him, the car had been out there skidding
17 for 100 feet, had to be skidding when he actually left
18 his right lane to block the other lane. And we have
19 nailed it down by his testimony that the front end
20 of his car was at the edge of the highway which would
21 put his car across the southbound lane. How we can
22 get around it I don't know, and if the jury brings
23 in a verdict for him the court will have to set it
24 aside because his own negligence was a proximate cause
25 of his injury.

THE COURT: It is common knowledge we are dealing with a matter of one, two, three seconds even though you are talking about a quarter of a mile up the hill. And I was impressed with Mike Davidson, he said he saw the Neighbors car come up behind -- I mean, saw the Moore car come up behind the Neighbors car and then pull out and tried to pass. The inference was he came up fairly fast and then pulled out when he got behind Neighbors, and of course Neighbors did say he looked in his side view mirror and his rear view mirror which he looked in first, and that car was shifting from lane to lane and there is a blind spot. I almost had an accident the other day -- off the record.

(Off the record)

MR. ROSENBERGER: This car of Moore was in that lefthand or southbound lane for more than 100 feet, he laid down tire marks so we know where he was, and we know that this other car made a fairly short turn because he started to turn when he was opposite the witness Davidson who was in the left front of his truck and the car almost hit him going in the station. And I thought you brought it out clearly with your

1
2 question that he did not make any slanting, gradual
3 turn and here this man turns like that in a 55-mile
4 zone without ever seeing the car that hit him.
5 THE COURT: He says he made quite a sharp
6 turn but the physical facts belie that. I think he
7 made a slanting turn. His car was at an angle and it
8 hit him right straight at a 45-degree on the left
9 rear of that car. If he turned sharp he would have
10 hit him in the side.
11 MR. ROSENBERGER: The damage starts up above
12 the left fender.
13 THE COURT: Those are things for the jury to
14 decide. He hit him with a 45-degree on that left
15 rear corner, but I think it is a jury question at
16 this point. He says he didn't see him but it is up
17 to the jury to decide whether that is reasonable or not.
18 He could have looked in his outside mirror and the car
19 was not there and looked in his inside mirror and the
20 car pulled out. I think those are questions for the
21 jury to decide. And then you have the solid line but
22 that is something for the jury to decide. He saw the
23 "No Passing" sign, I don't think at this point I am
24 going to give assuming instructions, but all this was
25 developed before they got to the sign. It is not like

1

2 it used to be when you had those "No Passing" signs

3 out there that help to warn you to some extent. It

4 is a close question but I think it is a jury question

5 and I will allow it.

6 MR. ROSENBERGER: We respectfully object

7 and except.

[Tr. pp. 232 l. 12 - 246 l. 6]

TESTIMONY OF JAMES DOUGLAS MOORE

12 JAMES DOUGLAS MOORE took the stand in his own
13 behalf and, having been previously duly sworn, was
14 examined and testified as follows:
15 DIRECT EXAMINATION
16 BY MR. ROSENBERGER:
17 Q You are James Douglas Moore?
18 A Yes, sir.
19 Q And you live in Martinsville, Virginia?
20 A Yes, sir.
21 Q And you are sixteen years of age?
22 A Yes.
23
24 MR. ROSENBERGER: Just to get through I
25 am going to lead him along.

BY MR. ROSENBERGER:

Q And you were driving your mother's 1966 Chevrolet sedan the day this accident happened, July 2nd on Monday 1973.

A Yes, sir.

Q And you were driving, your mother was riding on the right front seat and your aunt was riding in the back seat.

A Yes, sir.

Q Where does your aunt live?

A In St. Petersburg, Florida. She works there.

Q Where is she now?

A At her residence in St. Petersburg.

Q And your mother was on the right front seat. Where were you all going?

A We were going to my aunt's in Maryland.

Q To your aunt's in Maryland.

A Yes, sir.

Q And as you were coming down this road do you know what you were doing or what they were doing?

A Well, I was driving and I believe my mother was turned around talking to my aunt.

Q Your aunt in the back seat.

A Yes, sir.

1

2 Q When did you first notice Mr. Neighbors'
3 station wagon in front of you?
4 A I would say maybe a half to maybe three-
5 fourths of a mile before the accident happened. It
6 was before you come to that -- well, before you
7 start the incline of the rise of that hill on 29.
8 Q You saw him before you got to the hill?
9 A Yes, sir. I was behind him, there were
10 several cars between myself and his station wagon,
11 he was traveling right slow and they passed him.
12 And when I got to him I was at the start of that
13 hill and there was a "No Passing" zone and I waited
14 until I got to the crest of the hill and saw the
15 broken line start.
16 Q After the broken line started what did you do?
17 A I signalled, checked the traffic, and pulled
18 out to pass Mr. Neighbors.
19 Q Was there any traffic coming south bound?
20 A No, there wasn't.
21 Q After you got in the passing lane -- how
22 far were you back from where the accident happened
23 to where you first got in the passing lane?
24 A 250 to 300 feet.
25 Q You were that far back?

A Yes, sir.

Q What happened then?

A I pulled out to pass him and he started to turn left into my lane of traffic and I locked up the brakes and --

Q Did you lock up your brakes before or after you got to the solid line on your side?

A Well, I am sure I locked them up before I got there because I was passing on the broken line.

Q You were passing on the broken line?

A Yes, sir.

Q Now, what part of his car did you hit with what part of your car?

A I hit, I believe, the left rear side.

Q The left rear side of his car?

A Yes, sir.

Q With what part of your car?

A With the right front.

Q Where was his car in the road when you hit it -- in the northbound lane or the southbound lane?

A He was in the southbound lane broadside.

Q Broadside of the southbound lane?

A Yes.

Q And where did his car go with reference to

1
2 the service station?
3 A It was knocked up on an island of grass
4 that separates the driveways.
5 Q Where did your car stop?
6 A Partially in the southbound lane at an
7 angle facing roughly northwest.
8 Q Was the front of your car on or off the
9 hardsurface?
10 A Off the hardsurface.
11 Q Where was the back of it?
12 A All but the left of the rear wheel was on
13 the hardsurface.
14 Q All but the left of your rear wheel?
15 A Yes. The corner of the wheel was on the
16 hardsurface.
17 Q Which wheel was that?
18 A The right rear.
19 Q Did Mr. Neighbors make any statements to
20 you when you inquired about whether he was hurt or not?
21 A He made the statement to the officer that he
22 was all right, there was nothing wrong with him.
23 Q The officer that investigated the accident?
24 A Yes, sir.
25 Q You heard that?

A Yes, sir.

MR. ROSENBERGER: That is all. Just one more question -- did he say whether he saw you or he didn't see you?

THE WITNESS: No, sir, he gave no indication whether he saw me or not.

MR. ROSENBERGER: Okay.

CROSS EXAMINATION

BY MR. SACKETT:

Q Doug, as I understand it, you have told us that you got -- did you get behind Mr. Neighbors' car or some cars that were following him about a half to three-fourths of a mile behind him?

A I was behind these cars and as they passed him I got directly behind him.

Q And you said you were in the "No Passing" zone, you were following directly behind him --

A Not directly behind him then. I hadn't caught up with him.

Q How far were you behind him?

A 300 to 400 yards.

Q And you said the other cars passed him?

A Yes, sir, before they crested the hill.

1

2 Q When did you catch up with him?

3 A When I crested the hill.

4 Q Are you talking about the long hill that

5 leads down to the service station?

6 A Yes.

7 Q And you have heard the Trooper and Mr.

8 Rosenberger describe that distance as about a quarter

9 of a mile?

10 A Yes, sir.

11 Q So it was about a quarter of a mile before

12 you caught up with him.

13 A Yes, sir.

14 Q Now, that lane is marked for passing,

15 isn't it?

16 A Yes, sir.

17 Q Now, if that whole quarter of a mile is

18 marked for passing why didn't you pass him at the

19 top of the hill rather than waiting until you got

20 to the service station?

21 A Because it sort of curves around as you crest

22 the hill, you can see down to the service station

23 but there is a part where your vision is blocked

24 and I had to check that.

25 Q When you crested the hill you said you could

1
2 see all the way down to the service station.
3 A Yes, sir.
4 Q Did you see any traffic?
5 A No.
6 Q Why couldn't you go on and pass him then?
7 A Because you couldn't see all the way and
8 if there was anything there you couldn't see it.
9 Q When you got to where you could pass him
10 could you see to the service station?
11 A Yes, sir.
12 Q Did you see the "No Passing" sign?
13 A No, sir, I didn't see it.
14 Q You never saw the "No Passing" sign?
15 A No, sir.
16 Q Let me show you Plaintiff's Exhibit 1
17 which has been identified by the Trooper as accurately
18 portraying the way the scene looked at the time
19 (handing to witness). You see that "No Passing" sign
20 there at the southern-most edge of the service station?
21 A Yes.
22 Q Are you telling us that you didn't see that
23 sign?
24 A No, sir.
25 Q You didn't know it was there?

A No, sir.

Q You didn't know there was a "No Passing" zone in front of the service station?

A No, sir, because I was looking at the road where my car was.

Q When did you become aware that you were on the wrong side of that line?

A After the accident.

Q You were aware after the accident happened that you were on the left of a solid line?

A Yes, sir. I didn't notice when it was a solid line.

Q How long had it been a solid line?

A It had been that way for maybe 15 or 20 feet.

Q And are you telling us that Mr. Neighbors didn't give a signal or just that you didn't see one?

A I didn't see a signal because I checked because of the slow speed.

Q How fast was he going?

A 25 or 30 miles an hour.

Q And he had been traveling slow?

A Yes, sir, and he had been traveling slow prior to that time because the other cars passed him.

Q And you went down that quarter of a mile and

1
2 didn't attempt to pass him until you got to the service
3 station.
4 A Well, I was following him down there all
5 that time.
6 Q Did you blow your horn to let him know
7 you were going to pass?
8 A No, sir.
9 Q No warning you were attempting to pass.
10 A No, sir.
11 Q When did you turn sixteen?
12 A April 1973.
13 Q Two-and-a-half months before this accident
14 happened.
15 A Yes, sir, roughly.
16
17 MR. SACKETT: That is all.
18 REDIRECT EXAMINATION
19 BY MR. ROSENBERGER:
20 Q How far were you south of that solid line
21 which meant no passing when you went over into the
22 southbound lane to pass him?
23 A I expect I was -- the distance I was maybe
24 from Mr. Neighbors and where the accident occurred was
25 about 250 to 300 feet.

1

2 Q 250 to 300 feet?

3 A Yes, sir.

4 Q Can you tell the jury whether or not your

5 brakes were locked up and left any skidmark before

6 or after the solid line on your side.

7 A I locked up my brakes and left skidmarks

8 of 100 feet and roughly between 80 and 90 feet of

9 them were before the solid line.

10 Q 80 to 90 feet before the solid line.

11 A Yes, sir.

12

13 MR. ROSENBERGER: Thank you.

14 RECROSS EXAMINATION

15 BY MR. SACKETT:

16 Q You have said that you caught up with Mr.

17 Neighbors at the top of the hill. How close behind

18 him did you get at that point?

19 A I wasn't real close behind him.

20 Q Can you estimate how close?

21 A Maybe 100 yards.

22 Q 300 feet?

23 A Yes, roughly that.

24 Q And you say you were in the -- did you say

25 you were in the southbound lane for 250 to 300 feet

1
2 before you put your brakes on?
3 A I was in there -- not maybe for that long.
4 The distance from where I started passing to where the
5 accident happened was 250 -- I was in the southbound
6 lane maybe 250 feet.
7 Q Are you telling us that you were 300 feet
8 or 100 yards behind his car when you pulled out to
9 pass it?
10 A Yes, sir. Well, maybe not quite that much.
11 I closed the distance on him before I started passing.
12 Q You came up behind him?
13 A Yes, sir, I closed the distance.
14 Q And how fast were you going?
15 A 55.
16 Q And how fast was he going?
17 A 25 to 30.
18 Q So you were going 25 to 30 miles faster than
19 he was.
20 A Yes, sir.
21 Q And you pulled out 250 or 300 feet before
22 the accident happened and still hadn't gotten up to
23 him before he started making his turn?
24 A I might have let off the gas some. I really
25 wasn't checking it because I was going the speed limit

1

2 because with his slow speed I came up on him and I
3 guess I slowed up with a reflex action.
4 Q Why did you want to slow up?
5 A I was checking for other traffic.
6 Q When are you talking about?
7 A I am talking about when I closed up
8 right behind him.
9 Q I am trying to establish when it was that
10 you got out in that southbound lane --do you know?
11 A Yeah, I got out there about 250 to 300 feet
12 before the accident occurred.
13 Q At that time had you made up your mind
14 you were going to pass him?
15 A Yes, sir. I wouldn't be in that lane if
16 I hadn't.
17 Q And you continued that distance in that
18 lane and at no time did you observe that "No Passing"
19 sign.
20 A No, sir. I was watching Mr. Neighbors.
21
22 MR. SACKEET: That is all.
23 MR. ROSENBERGER: That is all.
24 THE COURT: How sharp a turn did Mr. Neighbors'
25 car take when it crossed over the center line?

What angle was his car at?

THE WITNESS: It was almost completely broadside to me because when he started to make his turn, I looked down and locked my brakes and when I looked up again he was almost broadside to me and I tried to avoid him, and that is when the front of the car hit him.

THE COURT: What angle was your car in when the actual collision took place?

THE WITNESS: My car was at a kind of angle to his sort of -- not much angle but a little one because I turned and tried to avoid it and --

THE COURT: Which way did you turn?

THE WITNESS: Toward the service station.

THE CURRT: You turned left to try to avoid the accident?

THE WITNESS: Yes. I couldn't turn the other way because I was almost over to the line and he was blocking that much of the road. I guess I would have turned over if I tried to go the other way.

BY MR. ROSENBERGER:

Q You made 100 feet of solid skidmark?

A Yes.

1

2 Q Are you a slow reactor or fast in reaction

3 time or how are you?

4 A I guess I am average.

5 Q You are average?

6 A Yes, sir.

[Tr. pp. 247 l. 14 - 250 l. 22]

PLAINTIFF'S MOTION TO STRIKE
DEFENDANT'S EVIDENCE

14 MR. SACKETT: Judge, we have a motion at this
15 time to strike the plaintiff's evidence --
16 THE COURT: Not the plaintiff's evidence --
17 MR. ROSENBERGER: I join in his motion.
18 MR. SACKETT: To strike the defendant's
19 evidence on the ground that his own testimony shows
20 that he is guilty of negligence as a matter of law that
21 was a proximate cause of this accident. His testimony
22 is that he didn't even know that he was going into a
23 "No Passing" zone and the evidence is clear that the
24 sign was there. It is equally clear that the accident
25 itself happened in a "No Passing" zone so that he was on

1
2 the wrong side of the road in a "No Passing" zone when
3 the accident occurred which is in violation of the
4 statute which says you should not drive to the left
5 of a solid line, and there is no contradiction of
6 those facts that the accident happened in a "No Passing"
7 zone where the defendant was on the wrong side of the
8 road and the "No Passing" zone was in clear view.
9 And on the defendant's testimony that he was out in
10 that southbound lane for 250 to 300 feet and didn't
11 complete passing that car until he was in a "No Passing"
12 zone that he was guilty as a matter of law as a proximate
13 cause of this accident and we move to strike the de-
14 fendant's evidence.
15 MR. ROSENBERGER: The evidence shows the
16 defendant locked his wheels up 80 to 90 feet before that
17 solid line and if this car had not pulled in front of
18 him there would not have been any collision. And the
19 point of the statute is you should not cross a solid
20 line on your side, and there is some question why he
21 didn't see a "No Passing" sign but many of them you don't
22 see. But in any event, when he was 80 to 90 feet away
23 this man starts passing him and, as he explained, he was
24 watching that car, he had his brakes locked up so if
25 we had reaction time in there he was more than 100 feet

1
2 away. Often times you get across a broken line into
3 a passing zone and can't get back as soon as you expect
4 and I say he is not guilty of negligence for being
5 in that position.
6 MR. SACKETT: The statute says not to drive
7 to the left of a solid line which is exactly what he
8 was doing when the accident occurred, which is the
9 purpose of having the highway marked. And the statute
10 says you cannot drive to the left of a solid line which
11 means if you are going to pass a car you have to do it
12 without driving to the left of a solid line which this
13 boy didn't do. There is no contradiction in the
14 evidence he started to pass before he got to the "No
15 Passing" zone but nothing kept him from completing
16 his passing before that because of anything that the
17 plaintiff did.
18 THE COURT: The fallacy of your motion --
19 which I will have to overrule at this time -- is that
20 he was guilty of negligence being over the solid line
21 but you have to show more than that on your motion.
22 You have to show that he was guilty of negligence as
23 a matter of law and that the negligence was a proximate
24 cause and I think it is a jury question. Even if I
25 assume for the sake of your argument he was guilty of

1
2 negligence being over the line it is a jury question
3 whether that negligence was a proximate cause of the
4 accident.
5 MR. SACKETT: You can instruct the jury that
6 he was guilty of negligence in driving to the left
7 of that solid line and then still submit the question
8 of cause --
9 THE COURT: To strike the evidence I would
10 have to instruct them that he was guilty of negligence
11 which was a proximate cause.
12 MR. SACKETT: Yes, sir. If he wasn't
13 passing in a "No Passing" zone --
14 THE COURT: That is one of those "if" things.
15 To strike the evidence it has to be negligence and
16 clear that it was a proximate cause. When we get
17 to that point in the instructions that possibly cross-
18 ing a solid line was negligence, being over that solid
19 line was negligence, but they still have to believe
20 that that negligence was a proximate cause and for that
21 reason I will overrule your motion. These motions are
22 interesting and quite close.

[Tr. pp. 250 l. 23 - 251 l. 12]

DEFENDANT'S MOTION TO STRIKE
PLAINTIFF'S EVIDENCE

23 MR. ROSENBERGER: The defendant by counsel
24 moves the court to strike the evidence of the plaintiff
25 on the ground that the plaintiff's evidence shows as a

1

2 matter of law that the plaintiff was guilty of negli-
3 gence in failing to keep a proper lookout and to see
4 that he could make the turn in safety, and that negli-
5 gence was a proximate cause of the collision which is
6 an absolute bar to a recovery in this case.
7 THE COURT: For the reasons already given
8 when you made the motion at the end of the plaintiff's
9 evidence I will overrule your motion. I am going to
10 let the jury decide on it and see what they do.
11 MR. ROSENBERGER: We respectfully except
12 and object for the reasons stated.

[Tr. pp. 7-A l. 3 - 8-A l. 4]

3 Plaintiff's Instruction No. 1 (Given as amended):

4 "The Court instructs the jury that at the time and
5 place of this accident it was the duty of the defendant,
6 Moore, in the operation of the automobile that he was
7 driving to use reasonable care to perform each of the
8 following duties:

9 "(1) To keep a reasonable and proper lookout for ot
10 vehicles using the highway at that point;

11 "(2) To drive in a careful and prudent manner;

12 "(3) Not to exceed a reasonable speed under the
13 circumstances then and there existing.

14 "(4) Where the highway was marked with a solid line
15 immediately to the right of a broken line, not to drive
16 his vehicle to the left of such line;

17 "(5) Before passing or attempting to pass the
18 plaintiff's vehicle proceeding in the same direction, to
19 give an audible warning with his horn or other warning
20 device when necessary to insure safe operation.

21 "The Court further instructs the jury that these
22 were continuing duties to be exercised when they would
23 be reasonable effective; and if the jury believe that
24 the defendant failed to use reasonable care to perform
25 any one or more of the foregoing duties and that such

1 failure was a proximate cause of this accident, then you
2 shall return your verdict in favor of the plaintiff
3 unless you further believe the plaintiff was guilty of
4 contributory negligence."
5 [Tr. pp. 251 l. 21 - 253 l. 6]

OBJECTION

21 MR. ROSENBERGER: The defendant by counsel
22 objects and excepts to the action of the court in
23 giving any instruction for the plaintiff on the ground
24 that the evidence shows that the plaintiff is not
25 entitled to recover as a matter of law. Now, speci-
2 fically, the defendant objects and excepts to the
3 action of the court in giving Plaintiff's Instruction
4 No. 1 on the ground that paragraph designated 4, the
5 statute is not applicable to the facts in this case
6 because the statute says you shall not drive to the
7 left of the solid line, meaning you should not begin
8 to pass over that solid line, and the evidence in
9 this case is that he was driving on the left of the
10 solid line and that is not a violation of the statute.
11 If the statute meant what counsel for the plaintiff
12 contends, then the statute should say that he should
13 not drive on the left of the solid line and that he
14 should complete his passing before coming to a solid
15 line which is on the right of a broken line. The
16 statute doesn't say that but that is what they say his
17 duty is under the statute --

18 THE COURT: Off the record.

19

(Off the record)

20

21 MR. ROSENBERGER: In addition, the defendant

22 by counsel objects and excepts to that part of paragraph

23 designated 5 which makes it his absolute duty to give

24 a signal when it is necessary to insure the safe

25 operation. I think the proper construction of the

2 statute, since this is not a criminal violation charge,

3 is that when it appears in the exercise of reasonable

4 care that it was necessary to insure safe operation.

5 The way it is written makes it an absolute duty as if

6 it were a criminal violation.

[Tr. p. 8-A]

7 Plaintiff's Instruction No. 1A (Refused as offered or as amended):

8

9 "The Court instructs the jury that as a matter of

10 law the defendant, Moore, was guilty of negligence in

11 driving his vehicle to the left of a solid line immedi-

12 ately to the right of a broken line and if you believe

13 that such negligence was a proximate cause of the acci-

14 dent, then you shall return your verdict in favor of the

15 plaintiff unless you believe the plaintiff was guilty of

16 contributory negligence."

7 THE COURT: All right, No. 1-A is refused
8 as offered and as amended.
9 MR. SACKETT: We are not offering it as
10 originally offered, we are withdrawing it.
11 THE COURT: I will refuse it as amended.
12 MR. SACKETT: The plaintiff respectfully
13 objects and excepts to the action of the court in
14 refusing Plaintiff's Instruction 1-A on the ground
15 that the evidence clearly shows that the plaintiff
16 did drive his vehicle to the left of a solid line,
17 that this is in violation of the terms of the statute,
18 that it does constitute negligence in the violation
19 of a statute and leaving for the jury as the only
20 remaining question for the jury whether that was the
21 only cause of the accident, and for that reason we
22 believe the jury should be so instructed. We also
23 state at this point in offering Instruction 1 which
24 included sub-paragraph 4 we were not waiving our
25 objection to the court's action in refusing 1-A. 1-A
2 was offered to show that the defendant was guilty as
3 a matter of law in driving to the left of a solid line.
4 We then offered 1 with paragraph 4 included.

18 [Tr. pp. 8-A l. 19 - 9-A l. 11]

19 Plaintiff's Instruction No. 2 (Given as amended):

20 "The Court instructs the jury that if you believe
21 from the evidence in this case that just before and at
22 the time of this accident, the plaintiff gave a lawful
23 signal of his intention to make a left turn off of the
24 highway into Earl's Amoco Station, which signal was
25 plainly visible to the Defendant, and that the defendant
1 saw or in the exercise of reasonable care should have
2 seen said signal, then it was his duty to use reasonable
3 care to keep his automobile under complete control to
4 avoid an accident resulting from a misunderstanding of
5 such signal. And if you believe from a preponderance of
6 the evidence that the defendant failed to perform the
7 foregoing duty and that such failure was a proximate
8 cause of this accident, then you shall return your ver-
9 dict in favor of the plaintiff unless you further believe
10 from the evidence that the plaintiff was guilty of con-
11 tributory negligence."

[Tr. p. 254 l. 7 - 11]
OBJECTION

7 MR. ROSENBERGER: The defendant by counsel
8 objects and excepts to the action of the court in
9 giving Plaintiff's Instruction 2 on the ground that
10 the plaintiff was guilty of negligence as a matter
11 of law in failing to see that he could move in safety.

[Tr. p. 9-A l. 14 - 24]

Plaintiff's Instruction No. 3 (Given):

"The Court instructs the jury that the duty to exercise reasonable care to keep a proper lookout requires not only the physical act of looking with reasonable care, but also reasonably prudent action to avoid the danger that a proper lookout would disclose. If a person looks and does not see what a reasonably prudent person would have seen under the same or similar circumstances in time to take the necessary precaution to avoid danger, then he is as guilty of negligence as if he failed to maintain any lookout."

[Tr. p. 10-A]

Plaintiff's Instruction No. 4 (Refused):

"The Court instructs the jury that at the time and place of this accident, the plaintiff had the right to assume that the defendant would not attempt to pass him in a no-passing zone, and to rely and act on such assumption until he knew, or in the exercise of reasonabl care, should have known otherwise."

OBJECTION

[Tr. p. 254 l. 16 - 24]

THE COURT: Yeah, the court refused No. 4.

MR. SACKETT: Plaintiff respectfully objects to the action of the court in refusing Plaintiff's Instruction No. 4 on the ground that the evidence plainly shows that the plaintiff made his turn in a "No Passing" zone and he had the right to assume that no one would attempt to pass him in a "No Passing" zone, and in this instance the instruction correctly states the law.

9

[Tr. p. 10-A]

10 Plaintiff's Instruction No. 4(a) (Refused):

11 "The Court instructs the jury that at the time and
12 place this collision occured, the plaintiff had the right
13 to assume that the defendant would drive his motor ve-
14 hicle as nearly as was practicable entirely within a
15 single lane and would not move from such lane until he
16 had first ascertained that such movement could be made in
17 safety, and to rely and act on such assumption until he
18 knew, or in the exercise of reasonable care, should have
19 known otherwise."

[Tr. pp. 254 l. 25 - 255 l. 7]
OBJECTION

25 THE COURT: 4-A is refused.

2 MR. SACKETT: The plaintiff objects to the
3 action of the court in refusing 4-A for the same
4 reasons as 4, the plaintiff was making his turn in
5 a "No Passing" zone and he certainly had the right to
6 assume that the defendant would not move out of his
7 lane into an improper lane at that point.

[Tr. p. 11-A l. 1 - 7]

1 Plaintiff's Instruction No. 5 (Given):

2 "The Court instructs the jury that if you believe
3 from the evidence in this case that the plaintiff was
4 operating his motor vehicle in a lawful manner and using
5 such care as a reasonably prudent person would have used
6 under the same or similar circumstances, then he was not
7 guilty of contributory negligence as a matter of law."
8

[Tr. p. 255 l. 9 - 18]
OBJECTION

9 MR. ROSENBERGER: The defendant by counsel
10 respectfully objects and excepts to the action of
11 the court in giving Plaintiff's Instruction No. 5 on
12 the ground that it is not applicable to the facts
13 since the plaintiff as a matter of law should have
14 seen the car behind him in the exercise of reasonable
15 care. And under the circumstances in this case the
16 way the instruction is drawn indicates that the court
17 is of the opinion that the plaintiff used reasonable
18 care in the operation of his motor vehicle.

[Tr. pp. 11-A l. 10 - 12-A l. 4]

Plaintiff's Instruction No. 6 (Given):

"The Court instructs the jury that where the defendant relies upon contributory negligence of the plaintiff as a defense, such contributory negligence is not presumed, but the burden is upon the defendant to prove by a preponderance of the evidence that the plaintiff was guilty of such negligence and that any such negligence was a proximate cause of the accident; and unless the defendant proves the existance of such contributory negligence or unless any such contributory negligence appears from the plaintiff's own evidence or can be fairly inferred from all the circumstances of the case, then you cannot find the plaintiff guilty of contributory negligence.

"And if the jury are uncertain as to whether the plaintiff was guilty of contributory negligence, or if you believe that it is just as probable that the plaintiff was not guilty of any such negligence as it is that he was, then you cannot find the plaintiff guilty of contributory negligence."

[Tr. p. 255 l. 20 - 25]
OBJECTION

20 MR. ROSENBERGER: The defendant by counsel
21 respectfully objects and excepts to the action of the
22 court in giving Plaintiff's Instruction No. 6 on the
23 ground that the plaintiff was guilty of negligence as
24 a matter of law and that such negligence was a proximate
25 cause of the collision.

6 [Tr. pp. 12-A l. 7 - 13-A l. 4]
7 Plaintiff's Instruction No. 7 (Given as amended):

8 "The Court instructs the jury that if from the
9 evidence and the other instructions of the Court you
10 find your verdict in favor of the plaintiff, then in
11 assessing the damages to which he is entitled you may
12 take into consideration any of the following items that
13 you believe from a preponderance of the evidence to have
14 proximately resulted from the collision:
15 "(1) Any bodily injuries sustained and the nature
16 and extent thereof;
17 "(2) Any disability caused by the injuries;
18 "(3) Any physical pain and mental anguish suffered
19 by him in the past and any which may be reasonably ex-
20 pected to be suffered by him in the future;

21 "(4) Any expenses incurred for medical treatment
22 and drugs and any medical treatment that will probably
23 be incurred in the future treatment of the injury
24 sustained;
25 "(5) Any loss of earnings in the past by reason
1 of being unable to work at his calling;
2 "(6) Any loss of earnings and/or lessening of
3 earning capacity that he may reasonably be expected to
4 sustain in the future."

[Tr. p. 256 l. 2 - 25]

OBJECTION

2 THE COURT: And Instruction 7 is given as
3 amended.
4 MR. ROSENBERGER: The defendant by counsel
5 respectfully objects and excepts to the action of the
6 court in giving Plaintiff's Instruction No. 7 on
7 damages on the ground that the plaintiff is not
8 entitled to recover damages on the ground that the
9 plaintiff's life expectancy was not 19.1 years and
10 that the jury should not -- or is not 19.1 years
11 and the plaintiff is not entitled to that instruction
12 because it is misleading.
13 THE COURT: That is the correct number.
14 MR. SACKETT: It is in the statute. Are
15 you questioning the expectancy itself?
16 MR. ROSENBERGER: The plaintiff's expectancy
17 is 19.1 years and I also object to the duplication in
18 4.

19 THE COURT: You are objecting to the whole
20 thing?
21 MR. ROSENBERGER: I don't fuss with the
22 number in the mortality table but the gross number --
23 THE COURT: You said that was not his life
24 expectancy?
25 MR. ROSENBERGER: That is right.

[Tr. pp. 13-A l. 7 - 14-A l. 3]

7 Plaintiff's Instruction No. 8 (Given):

8 "The Court instructs the jury that one who is
9 liable for negligently inflicting personal injuries on
10 another is responsible for all the ill effects, which,
11 considering the condition of health in which the plain-
12 tiff was when he received the injury, naturally and
13 necessarily follow such injury. A defendant's liability
14 is in no way lessened or affected by reason of the fact
15 that the injuries would not have resulted had the plain-
16 tiff been in good health, or that they were aggravated
17 and rendered more difficult to cure by reason of the fact
18 that he was not in good health.

19 "And if the jury believe from a preponderance of the
20 evidence that the plaintiff, at the time of the accident,
21 was not in good health or was suffering from a pre-
22 existing disability, and that this condition, if any,
23 made any injuries he may have received in the accident
24 more severe, or more aggravated, or more difficult to
25 cure, then, if he is entitled to recover in this action,

1 he may recover for such additional aggravation and
2 difficulty resulting from the accident, but not for any
3 pre-existing disability."
4

[Tr. p. 257 l. 6 - 18]
OBJECTION

6 MR. ROSENBERGER: The defendant by counsel
7 respectfully objects and excepts to the action of the
8 court in giving Plaintiff's Instruction 8 on the
9 ground that it is not supported by evidence and there
10 is no evidence to show he would not have been injured
11 had he been in good health or as a matter of fact
12 that the sprain could not have been treated properly,
13 because the treating doctor of the sprain said that
14 Myochrisine, which he continued to give the plaintiff,
15 was the same thing he had given him prior to the
16 time of the surgery and there is nothing to show also
17 that he wouldn't have been hurt if he had been in good
18 health.

[Tr. pp. 14-A l. 6 - 15-A l. 2]

Defendant's Instruction A (Refused):

"The Court instructs the jury that at the time and place that this collision occurred, it was the duty of the plaintiff to use reasonable care to perform the following duties:

"(1) To drive the car at a speed or in a manner so as not to endanger the life, limb or property of any person;

"(2) To keep a reasonable and proper lookout for other persons and vehicles using the highway so as to avoid colliding with them;

"(3) To see that he could turn in safety before doing so; and 46.1-216 (1)

"(4) To signal his intention to turn before doing so for a distance of 100 feet by a signal plainly visible to the operator of any vehicle that may be affected by such movement. 46.1-217 (b)

"The Court further instructs the jury that if you believe from a preponderance of the evidence that the plaintiff failed to perform any one or more of his duties and that such failure was a proximate cause of the collision, then you should return a verdict in favor of the defendant."

Von Roy v. Whitescarver, 197 Va. 384, 89 S. E. 2d 346

Brown v. Peters, 203 Va. 382, 117 S. E. 2d 695

Unger v. Rackley, 205 Va. 520, 138 S. E. 2d 1

19 MR. ROSENBERGER: Your Honor, if it pleases, the
20 defendant, by counsel, duly objects and excepts to the
21 action of the Court in refusing Instruction A, by leaving
22 out Paragraph 1, which is the duty of the plaintiff to
23 drive his car at a speed or in a manner so as not to
24 endanger the life, limb, or property of any person and
25 is applicable to the evidence as taken from the statute.

[Tr. pp. 15-A, 16-A]
9 Defendant's Instruction A-1 (Given as amended):

10 "The Court instructs the jury that at the time and
11 place that this collision occurred, it was the duty of
12 the plaintiff to use reasonable care to perform the
13 following duties:

14 "(1) To keep a reasonable and proper lookout for
15 other persons and vehicles using the highway so as to
16 avoid colliding with them;

17 "(2) To see that he could turn in safety before
18 doing so; and

19 "(3) To signal his intention to turn before doing
20 so for a distance of 100 feet by a signal plainly visible
21 to the operator of any vehicle that may be affected by
22 such movement.

23 "The Court further instructs the jury that if you
24 believe from a preponderance of the evidence that the
25 plaintiff failed to perform any one or more of his duties

and that such failure was a proximate cause of the collision, then you should return a verdict in favor of the defendant."

[Tr. p. 16-A l. 6 - 14]

Defendant's Instruction B (Refused):

"The Court instructs the jury that at the time and place that this collision occurred, it was the duty of the plaintiff to use reasonable care to operate his motor vehicle in such a manner so as not to block or obstruct the highway, and if you believe from a preponderance of the evidence that he failed to do so, and that such failure was a proximate cause of the collision, then you should return a verdict in favor of the defendant."

[Tr. p. 3-A l. 1 - 9]

EXCEPTIONS

The defendant, by counsel, objects and excepts to the action of the Court in refusing to give Instruction B on grounds it is the duty of the plaintiff to use reasonable care to operate his vehicle so as not to block or obstruct the highway, and if he failed to do so, and such failure was the proximate cause of the collision, then the verdict should be for the defendant on the grounds that it is supported by the evidence, and it is a proper instruction.

16

[Tr. p. 16-A l. 17 - 24]

17 Defendant's Instruction C (Refused):

18 "The Court instructs the jury that at the time and
19 place that this collision occurred, the defendant had the
20 right to assume and to act and rely on the assumption that
21 the plaintiff would not turn his motor vehicle in such a
22 manner as to impede the use of the highway by others,
23 until he knew, or in the exercise of reasonable care
24 should have known, otherwise."

[Tr. p. 3-A l. 10 - 20]

EXCEPTIONS

10 The defendant, by counsel, objects and excepts to
11 the action of the Court in refusing Instruction C,
12 because the defendant had the right to assume and rely
13 on the assumption that the plaintiff would not turn his
14 motor vehicle in such a manner as to impede the use of
15 the highway by others until he knew, or in the exercise
16 of reasonable care should have known, otherwise. This
17 is nothing more than the presumption that anyone would
18 obey the law, and that it was the obligation of the
19 plaintiff not to impede the highway in front of the
20 defendant.

[Tr. 17-A l. 1 - 15]
Defendant's Instruction D (Refused):

"The Court instructs the jury that if you believe from the evidence that the defendant was operating his automobile in a lawful manner and was suddenly confronted with an emergency, without fault on his part, when the motor vehicle operated by the plaintiff suddenly turned on the hard surface in front of him and that the defendant, in an effort to avoid a collision, acted as promptly and in a manner such as a reasonable person would have acted under the same or similar circumstances, then the defendant was not guilty of negligence, even though you may believe that he did not take the wisest course or make the wisest choice, and even though the course followed actually caused the collision, and you should return a verdict in favor of the defendant."

[Tr. pp. 3-A l. 21 - 4-A l. 7]
EXCEPTIONS

The defendant, by counsel, objects and excepts to the action of the Court in refusing Instruction D on the ground that, based on the evidence of the plaintiff, he was operating his automobile in a lawful manner. He crossed the broken lines in an effort to pass, and

while in that effort, the defendant suddenly turned in front of him; and in an effort to avoid the collision, he acted as promptly and in a manner as a reasonable person would have. It was a jury issue as to whether or not he used the wisest course in slamming on his brakes and cutting to the left rather than cutting to the right in an effort to go back into the northbound lane.

[Tr. 17-A l. 18 - 25]

Defendant's Instruction E (Refused):

"The Court instructs the jury that if you believe from the evidence that it is equally as probable that the collision was proximately caused by either one of two causes, for one of which the defendant is responsible and the other he is not, then the plaintiff has failed to carry the burden of proof and you should return a verdict in favor of the defendant."

[Tr. 4-A l. 8 - 13]

EXCEPTIONS

The defendant, by counsel, objects and excepts to the action of the Court in refusing Instruction E which would have submitted the issue whether the collision was proximately caused by the negligence of the plaintiff or the negligence of the defendant, and the Court should have given such instruction.

[Tr. p. 18-A]

Defendant's Instruction F (Given):

"The Court instructs the jury that the mere happening of an accident places no responsibility on anyone and raises no presumption of negligence. The basis of this action is negligence, which the jury cannot infer from the mere fact that the motor vehicles collided. You should not return a verdict in favor of the plaintiff which is based on conjecture, surmise or speculation as to what you think may have happened to cause the collision, and if the plaintiff fails to prove by a preponderance of the evidence that the defendant was guilty of negligence, or if it appears from the evidence that it is as probable that the defendant was not guilty of negligence as that he was, or that it is as probable that such negligence did not proximately cause the collision as that it did, then you should return a verdict in favor of the defendant."

[Tr. pp. 18-A, 19-A]

Defendant's Instruction G (Given):

"The Court instructs the jury that the defendant is only liable for negligence which proximately caused the collision, and if you believe from the evidence that the defendant operated his motor vehicle in a lawful manner and used that degree of care that a reasonable and prude

person would have used under the same or similar circumstances, then the defendant was not guilty of negligence and you should return a verdict in favor of the defendant."

[Tr. p. 19-A]
Defendant's Instruction H (Given):

"The Court instructs the jury that if you believe from the evidence that at the time and place that this collision occurred, the plaintiff failed to give a signal of his intention to turn continuously for a distance of 100 feet, plainly visible to the defendant, before attempting to turn the car from U. S. Highway No. 29, then the defendant had the right to assume that the plaintiff would continue to operate his car in a straight course, until the defendant knew, or in the exercise of reasonable care should have known, otherwise."

[Tr. pp. 19-A, 20-A]
Defendant's Instruction I (Given as amended):

"The Court instructs the jury that if both parties to a collision have been guilty of concurring negligence which continues to the time of the collision and the damages complained of, the law does not undertake to balance the negligence of the parties to determine who

was most at fault, and if the negligence of both continued to the collision, then neither can recover from the other, even though you may believe from the evidence that the negligence of one was greater than the negligence of the other."

[Tr. p. 20-A l. 8 - 19]

Defendant's Instruction J (Given):

"The Court instructs the jury that you should not infer that the injuries alleged by the plaintiff were caused in the accident, but the burden of proof is on the plaintiff to show by a preponderance of the evidence the injuries sustained in the accident and the duration and extent thereof, and if you believe from the evidence that it is just as probable that the injuries complained of resulted from some causes for which the defendant is not responsible as from some cause for which he is responsible, then you should not award damages for such injuries."

[Tr. pp. 20-A l. 22 - 21-A l. 3]

Defendant's Instruction K (Given):

"The Court instructs the jury that the defendant is not liable for any disabilities which the plaintiff had before the collision in question and it is not sufficient

that he prove that he has suffered or may at some future date suffer from causes which as a mere possibility resulted from the collision."

[Tr. p. 21-A]
Defendant's Instruction L (Given):

"The Court instructs the jury that the average driver reaction time is 3/4 of a second and at the speeds listed a motor vehicle travels feet per second as follows:

SPEED IN		
Miles Per Hour	Feet Per Second	Average Driver Reaction Time In Feet
40	58.7	44
45	66.0	50
50	73.3	55
55	80.7	61 "

[Tr. pp. 21-A l. 20 - 22-A l. 7]
Defendant's Instruction M (Refused as offered or amended):

"The Court instructs the jury that life expectancy may be considered by you as showing the probable duration of life of the average person. You should bear in mind that some persons live longer and some persons live less than the average. Life expectancy does not show the

1 probable duration of the plaintiff's earning capacity.
2 It does not show the probable duration of the plaintiff's
3 life expectancy. In considering life expectancy in this
4 case, you must take into consideration that the plaintiff
5 was not in good health at the time of the collision and
6 life expectancy shows the life expectancy of the average
7 healthy person of the same age as the plaintiff"

[Tr. p. 4-A l. 14 - 24]

EXCEPTIONS

14 The defendant, by counsel, objects and excepts to
15 the action of the Court in refusing Instruction M
16 dealing with evidence of life expectancy for the reason
17 that counsel argued to the jury - plans to argue to the
18 jury - that the plaintiff might expect to work another
19 ten years, and that they might multiply his earnings by
20 ten, which would add up to $84,000; and that was the
21 reason that the defendant thought that the jury should
22 be told that any life expectancy varies when dealing
23 with an average person in good health, and the plaintiff
24 admits that he was not in good health.

4 MR. SACKETT: Your Honor, if it pleases, the
5 plaintiff, first of all, objects to the action of the
6 Court in giving any instructions for the defendant on
7 the ground that the evidence showed as a matter of law
8 that the defendant was guilty of negligence that was a
9 proximate cause of this accident and that the question
10 of liability should not have been submitted to the jury
11 at all.
12 The plaintiff respectfully objects to the action
13 of the Court in giving Instruction A-1, or for the
14 inclusion of Instruction A-1, sub-paragraph 3, which
15 provided that it was the duty of the plaintiff to use
16 reasonable care to see that he could turn in safety
17 before doing so on the grounds that under the circum-
18 stances of this case, there was no evidence from which
19 the jury could conclude that he didn't see that he could
20 turn in safety. There is no evidence that he didn't see
21 that there was no traffic approaching from the south,
22 that the way was clear to turn into the service station,
23 and that, in this case, where he was making his turn
24 from the no-passing zone, that this duty didn't apply to
25 anticipate the negligent act of someone passing or

attempting to pass in a no-passing zone and that the jury shouldn't be allowed to conclude that he had a duty to anticipate the negligent act of someone attempting to pass him from the rear in a no-passing zone.

The plaintiff respectfully objects to the action of the Court in giving Instruction K, offered on behalf of the defendant on the ground that it is repetitive of Instruction J, which is the burden of proof instruction, and that it is a type of comment on the evidence in saying that it is not sufficient that the plaintiff prove that he has suffered or may at some future date suffer from causes which is a mere possibility resulting from the collision, because in this case there was no evidence that these disabilities were mere possibilities resulting from the accident. The evidence conclusively, from the only two doctors who testified, was that the things that Mr. Neighbors was now suffering from or from which recovery was sought in this action were conclusively caused by the accident in this case and to allow the jury to infer from Instruction K that some of them were proven only by a mere possibility was a prejudicial act.

That's all.

[Tr. p. 52-A l. 14 - 22]

JURY VERDICT

THE COURT: Members of the Jury, have you arrived at any verdict?

THE JURY: Yes, Sir, we have.

"We, the Jury, on the issue joined, find in favor of the Plaintiff and assess damages at $45,000.

(Signed) Thomas C. McGarry, Foreman

[Tr. pp. 53-A l. 8 - 55-A l. 2]

MOTION TO SET ASIDE VERDICT

MR. ROSENBERGER: Your Honor, if it pleases, the defendant, by counsel, moves the Court to set aside the verdict of the jury and to render judgment for the defendant non obstante veredicto on the ground that the verdict is contrary to the law and the evidence and without evidence to support it; for the action of the Court in the ~~disability~~ admissibility and refusal of evidence over the objections and exceptions of the defendant; the action of the Court, in refusing to strike the evidence of the plaintiff at the conclusion of the plaintiff's evidence and at the conclusion of all the evidence; the action of the Court in granting the plaintiff's instructions first for granting any instructions for the plaintiff; and the action of the Court in granting plaintiff's instructions 1, 2, 5, 6 and 8; and the action of the Court in refusing defendant's instructions a, b, c, d, e, and ~~f~~ m; and on the

1 further ground that the verdict is an excessive ~~and sole~~
2 ~~object~~ in the case; that the jury misapplied the law and
3 the facts which in part may be due to the argument of
4 counsel that the jury might multiply the ten year
5 expectancy of earnings at the rate of $8400 per year
6 which relates to the Court's refusal to give Instruction
7 ~~B~~ M which dealt with the fact that there is no depth to
8 the life expectancy of this particular person due to the
9 fact that he was in bad health when he was injured. And
10 they are our grounds, your Honor, for that motion.
11 Of course, the motion is in the alternative in the
12 event you ~~can credit~~ conclude that you should not render verdict
13 for the defendant on the ~~verdict~~ evidence then for those gounds
14 the defendant should have a new trial for the reasons
15 stated
16 THE COURT: Will you wish to be heard further on this,
17 Mr. Rosenberger?
18 MR. ROSENBERGER: Yes, I would, your Honor. All right,
19 you know we had some questions that we didn't have time
20 to resolve during the discussion of instructions and on
21 the motions that you struck.
22 THE COURT: Will you wish to have the record typed?
23 MR. ROSENBERGER: Yes, I think we should.
24 THE COURT: If it is going to be heard further, I would
25 want the record typed.

MR. ROSENBERGER: Yes, sir, I think so.

THE COURT: Well, suppose we set up a schedule, then. You have the record typed at once.

ORDER REFLECTING JURY'S VERDICT
Filed March 1, 1974

This day came the parties, by their attorneys, and the defendant having heretofore filed his responsive pleadings, the plaintiff replies generally thereto and prays that the same be inquired of by the country, and the defendant likewise, and thereupon, said parties demanding a jury, there came a jury, to-wit: Shirley S. Harvey, Barry Philmore Cook, Selena H. Delk, Kenneth P. Davis, Thomas Charles McGarry, Anna D. Miles and William E. Rittenhouse, who, having been duly summonsed, selected, tried and sworn, according to law, and having heard the evidence of the plaintiff, the defendant, by his attorney, moved the Court to strike the evidence of the plaintiff on the ground that it is not sufficient in law to support a verdict for the plaintiff against the defendant, which motion the Court overruled, and the defendant, by his attorney, duly objected and excepted; and the evidence having been heard in full, the plaintiff, by his attorney, moved the Court to strike the evidence of the defendant on the ground that the defendant was guilty of negligence which was a proximate cause of the collision as a matter of law, which motion the Court overruled and the plaintiff, by his attorney, duly objected and excepted; and the defendant, by his attorney, moved the Court to strike the evidence of the plaintiff on the ground that it is not sufficient in law to support a verdict for the plaintiff against the defendant, which motion the Court overruled,

and the defendant, by his attorney, duly objected and excepted; and the said jury, having heard argument of counsel and received the instructions of the Court, were sent to their room to consult and consider their verdict and, after some time returned into Court and presented their verdict, written on a blank sheet of paper, in the words and figures following, to-wit: "We, the jury, upon the issues joined, find for the plaintiff, Claude W. Neighbors, and fix his damages at $45,000.00. Thomas Charles McGarry, Foreman."

Whereupon, the defendant, by his attorney, moved the Court to set aside the verdict of the jury and to render a judgment for the defendant, non obstante veredicto or, in the alternative, to grant the defendant a new trial, on the grounds that the verdict is contrary to the law and the evidence and without evidence to support it; for the action of the Court in refusing to strike the evidence of the plaintiff at the conclusion of the plaintiff's evidence and at the conclusion of all of the evidence; for the action of the Court in admitting and refusing evidence over the objection and exception of the defendant; for the action of the Court in granting any instructions for the plaintiff and specifically for granting plaintiff's Instructions 1, 2, 5, 6 and 8 and for refusing defendant's Instructions A, B, C, D, E and R; and on the ground that the verdict is excessive.

The Court, not being advised of its judgment in the premises, takes the motion under advisement.

MEMORANDUM OPINION

Re: Neighbors v. Moore
In Circuit Court of Nelson County

Plaintiff was making a left turn into a filling station on two-lane Route 29, and was struck by Defendant who was in the act of passing him. The trial of Plaintiff's suit for personal injuries on February 26, 1974, resulted in jury verdict for the plaintiff in the amount of $45,00.00. Defendant moved the Court to set aside the verdict and to render a judgment for the defendant, or grant a new trial, on the grounds that the verdict is contrary to the law and the evidence and without evidence to support it, and principally for the action of the Court in refusing to strike plaintiff's evidence on the ground that plaintiff was guilty of contributory negligence as a matter of law. The Court took the motion under advisement, the transcript of the evidence has been filed with the Court, and counsel have filed excellent briefs.

The Court has thoroughly studied this case, and is of the opinion, and so holds, that the conclusion is inescapable that as a matter of law the plaintiff was guilty of negligence proximately contributing to cause the accident. Therefore, the verdict will be set aside and final judgment entered for the defendant.

A Court is not required to believe that which is contrary to human experience and the laws of nature or which is incredible; and where no reasonable men could fail to deem the derelictions of a litigant as negligence and where the causal connection between these derelictions and the injury complained of is perfectly plain, the Court may withdraw these questions from the jury—there is no jury question where reasonable minds may not conflict. Talley v. Draper, 210 Va. 618, 622.

In this case, plaintiff testified (T.138) that as he got to the turn, he looked in the mirror and didn't see anything, and further (T.163) that he looked in both his outside and inside rear view mirrors, and (T.165)

that he never saw defendant's car until it struck him. Defendant left 100 feet of skidmarks in the passing lane immediately prior to the accident; there was clear visibility for about a quarter of a mile back from the scene of the accident to the top of a hill (T.165), and when the collision occurred plaintiff's vehicle was blocking the passing lane of the defendant.

Plaintiff had the duty under Code Section 46.1-216 to see that his turn could be made with reasonable safety. It is plain from the plaintiff's own testimony that he did not use reasonable care to see that his left turn across the road could be made in safety, and about that the minds of reasonable men should not differ. Schools v. Walker, 187 Va. 619, 626.

"Although he testified that he looked in his rear vision mirror and saw no vehicles, a car was not only behind him but was in the act of passing him at the very time when he made his turn to the left. It is therefore clear that he did not look or looked carelessly. In either event the result is the same; he failed to exercise a proper lookout under the circumstances." Matthews v. Hicks, Adm'r, 197 Va. 112, 116.

" When a situation is open and obvious, one will not be heard to say that he looked but did not see." Russell v. Kelly, 180 Va. 304, 309. See also Nehi Bottling Co. v. Lambert, 196 Va. 949, 958, 959; Von Roy v. Whitescarver, 197 Va. 384, 392, 393.

Counsel will submit order so that I can sign it by July 12.

FINAL ORDER OF COURT

Entered July 10, 1974

This day came the parties, by their attorneys, and the Court having maturely considered the motion of the defendant for a judgment non obstante veredicto, or, in the alternative, to grant the defendant a new trial, took time to consider thereof, and counsel for both parties having heretofore filed briefs in this matter and the Court having considered the same, and now being of opinion that it is proper in all respects so to do, for the reasons stated in the memorandum opinion of the Court, which is filed herewith and incorporated herein by reference, the Court doth sustain the motion of the defendant, and it is Considered by the Court that the plaintiff take nothing by his motion for judgment, but for his false clamor, be in mercy, etc., and that the defendant go thereof without day and recover against the plaintiff his costs by him about his defense in this behalf expended, and the plaintiff, by his attorney, duly objects and excepts.

APPELLANT'S ASSIGNMENTS OF ERROR
Filed July 26, 1974

Counsel for Claude W. Neighbors, plaintiff, hereby gives notice of appeal to the Supreme Court of Virginia from final judgment herein entered on July 10, 1974.

Claude W. Neighbors does hereby set forth his assignment of error as follows:

1. The Court erred in setting aside the jury verdict for the plaintiff, Claude W. Neighbors, and entering up a final judgment for defendant, James Douglas Moore.

2. The Court erred in ruling that as a matter of law plaintiff was guilty of contributory negligence which was a proximate cause of the accident.

3. The Court erred in refusing to strike the defendant's evidence and in refusing to rule as a matter of law that the defendant was guilty of negligence which was the sole proximate cause of the accident.

4. The Court erred in granting any of the defendant's instructions on the issue of liability, namely defendant's instructions A-1, F, G, H, I, and L.

5. The Court erred in refusing plaintiff's instructions 1-a, 4 and 4-a.

A written transcript of the testimony and other incidents of the trial is to be hereinafter filed.

APPELLEE'S ASSIGNMENTS OF ERROR
Filed July 29, 1974

TAKE NOTICE, that pursuant to Rule 5:6 of the Rules of the Supreme Court of Virginia, the defendant, James Douglas Moore, by counsel, files his assignments of cross-error to the ruling of the Court in the case of Claude W. Neighbors v. James Douglas Moore, on this the 26th day of July, 1974, as follows:

(1) The admission of the foggy photographs in evidence;

(2) The action of the Court in granting any instructions for the plaintiff and specifically for granting plaintiff's Instructions Nos. 1, 5, 6 and 8;

(3) The action of the Court in refusing defendant's Instructions B, C, D, E and M; and

(4) The verdict is excessive.