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SUPREME COURT OF VIRGINIA
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IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NOS. 741177 AND 741188

COLONIAL MOTOR FREIGHT LINE, INC. ANL
GLOSSON MOTOR LINES, INC.,

Appellants,

v.

KATHLEEN L. NANCE,

Appellee.

JOINT APPENDIX

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* * *

(Property Damages Case No. 6187— R. PD 1-2)

MOTION FOR JUDGMENT

Filed August 6, 1973

1. That on or about March 11, 1973, at approximately 5:30 p.m. the plaintiff was operating a certain 1971 Chevrolet Impala four door Sedan and was towing a 1973 Cheetah Travel Trailer in an easterly direction on U.S. Route 360 near Courthouse Road, in Chesterfield County, Virginia, and at that time and place was involved in a collision with a certain 1968 International tractor-trailer truck.

2. At the time and place aforesaid, a certain tractor-trailer truck, which was owned and operated by the defendant, Colonial Motor Freight Line, Inc., was being driven in an easterly direction on U.S. Route 360 by the defendant, Sherman Lee Davis, its agent, servant and employee, who was acting within the scope of his employment at the time and place aforesaid.

3. At the time and place aforesaid, a 1968 International tractor-trailer truck, which was owned and operated by the defendant, Glosson Motor Lines, Inc., was being driven in an easterly direction on U.S. Route 360 and was being driven by the defendant, Dossie Eugene Soles, its agent, servant and employee, who was acting within the scope of his employment.

4. That the said defendants, and each of them, did then and there so carelessly, recklessly and negligently run and operate their respective vehicles that the said tractor-trailer truck of the defendant, Glosson Motor Lines, Inc., was caused to collide with the plaintiff's vehicle with great force.

5. That as a direct result of the negligence of the defendant, and each of them, aforesaid, which negligence was the sole proximate cause of the damage hereinafter complained of, the plaintiff's 1971 Chevrolet automobile and 1973 Cheetah Travel Trailer were damaged and destroyed beyond repair.

Wherefore, the plaintiff demands judgment against the defendants, both jointly and severally, in the sum of Five Thousand Six Hundred and Fifty Nine Dollars ($5,659.00) plus costs expended.

* * *

(Property Damages Case No. 6187—R. PD 10)

COUNTERCLAIM OF GLOSSON MOTOR LINES, INC.

Filed August 28, 1973

Comes now the defendant, Glosson Motor Lines, Inc., and for its counter claim says:

1. That at the time and place alleged in the Motion for Judgment, its 1968 International tractor sustained damage in the amount of Two Thousand ($2,000.00) Dollars as a result of a collision between the vehicle being operated by the plaintiff and that owned by this defendant, which such collision was solely caused by the negligence of the plaintiff.

Wherefore this defendant demands judgment of the plaintiff in the amount of Two Thousand ($2,000.00) Dollars plus interest and costs.

* * *

(Personal Injury Case No. 6188—R. PI 1-3)

MOTION FOR JUDGMENT

Filed July 23, 1973

1. On or about March 11, 1973, a certain Chevrolet automobile, with a trailer attached, which was operated by the plaintiff, was involved in a collision with a certain 1968 International tractor trailer truck, on U.S. Route 360, near Courthouse Road, in Chesterfield County, Virginia.

2. At the time and place aforesaid, said Chevrolet automobile was being driven by the plaintiff in an easterly direction on U.S. Route 360.

3. At the same time and place, a certain tractor trailer truck, which was owned, operated and controlled by the defendant Colonial Motor Freight Line, Inc., was being driven by the defendant Sherman Lee Davis, its agent, servant and employee, acting within the scope of his employment, also in an easterly direction on U.S. Route 360.

4. And at the same time and place, said 1968 International tractor trailer truck, which was owned, operated and controlled by the defendant Glosson Motor Lines, Inc., was being driven by the defendant Dossie Eugene Soles, its agent, servant and employee, acting within the scope of his employment, also in an easterly direction on U.S. Route 360.

5. And the said defendants and each of them, did then and there so carelessly, recklessly and negligently run and operate their respective vehicles that said 1968 International tractor trailer truck of the defendant Glosson Motor Lines, Inc. was caused to come into collision with the plaintiff's vehicle.

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

Wherefore, plaintiff demands judgment against the defendants, jointly and severally, in the sum of Fifty Thousand Dollars ($50,000.00), and costs.

Trial by jury is demanded.

Interrogatories

Plaintiff calls on the defendant corporations Colonial Motor Freight Line, Inc. and Glosson Motor Lines, Inc., through their officers, agents or servants, who have the authority to bind the defendants, and on the defendants, Sherman Lee Davis and Dossie Eugene Soles, to file an answer in writing under oath to the following interrogatories, and to serve a true copy on plaintiff's counsel, within 28 days after service hereof:

1. State the name, address and telephone number of each eye witness to the collision in question known either to defendant or counsel.

2: State the name, address and telephone number of each person (not an eye witness) having any knowledge of any events concerning the collision in question, or each person interviewed on behalf of or known to defendant or counsel.

* * *

ORDER (Consolidating Cases—R. 37)

Entered March 13, 1974

Case Nos. 6187 and 6188

On motion of the plaintiff, by her counsel of record, and with the consent of the defendants, by counsel, it is Ordered the two cases styled above be and they are hereby consolidated * * * .

* * *

ORDER

Entered March 13, 1974

(Non-suiting defendants Sherman Lee Davis and Dossie Eugene Soles—R. 38)

Case Nos. 6187 and 6188

This day came the plaintiff, by counsel, and it appearing to the Court that the plaintiff doth fail to prosecute her suit against the defendants Sherman Lee Davis and Dossie Eugene Soles, it is Ordered that the plaintiff be non-suited as to the defendants Sherman Lee Davis and Dossie Eugene Soles but that the case proceed to trial against the defendants Colonial Motor Freight Line, Inc. and Glosson Motor Lines, Inc.

* * *

TRIAL COURT'S MEMORANDUM OPINION (R. 68-72)

Dated June 25, 1974

June 25, 1974

Cary L. Branch, Esquire
Allen, Allen, Allen and Allen
1809 Staples Mill Road
Richmond, Virginia 23219

Nathan Smith, Esquire
Sands, Anderson, Marks & Clarke
1420 Fidelity Building
Richmond, Virginia 23219

Aubrey R. Bowles, III, Esquire
Bowles and Boyd
901 Mutual Building
Richmond, Virginia 23219

Re: Nance v. Colonial Motor Freight Lines, Inc., et al.
File No. 6187

Gentlemen:

This matter is now before the court upon motion of the two defendants to set aside the verdict rendered in favor of plaintiff against both defendants in the amount of $25,000.00.

Plaintiff, operating an automobile towing a camper trailer, was injured when her rig went out of control, left the hard surface, turned over and was struck by a tractor trailer which had been following her prior to the collision. It is plaintiff's contention that the plaintiff's unit was caused to go out of control and turn over by a sudden burst of wind created when a tractor trailer owned and operated by defendant Colonial passed her at a high and unlawful rate of speed without sounding any warning that he was in the process of passing. She contends that due to following too closely and failure to maintain a proper lookout, that a tractor trailer owned and operated by Glosson Motor Lines, which had been following her, collided with her unit as it was turning over. She says that the combined negligence of the drivers of the Colonial and of the Glosson units was responsible for her injuries and the jury so found.

While other errors are assigned as having been committed during the course of the trial, the two principal grounds for the motions to set aside are lack of evidence to support a verdict and the failure to give an "unavoidable accident" instruction offered by each defendant. These grounds will be considered in this order.

I

Lack Of Evidence

(a)

As To Colonial

There is considerable evidence that the Colonial rig was operating at an excessive rate of speed as he passed plaintiff's vehicle and as this would constitute negligence *per se,* there would have only to be evidence establishing causal connection between the speed and the accident to create a jury issue. Plaintiff testified that as the Colonial unit passed her, she felt her unit swerve, a movement which she had not experienced before that day although there was heavy truck traffic on the road. She was emphatic that she experienced this sensation *immediately* after the Colonial unit passed her. The witness Moore testified that when he first noticed the Colonial unit, it was 80 to 100 feet past plaintiff and plaintiff's unit appeared to be "out of control, jumping, bouncing in the road and in a slide." Soles, the driver of the Glosson unit, testified that he saw the plaintiff's unit begin swaying just as the Colonial unit passed the plaintiff. The expert witness Linville testified that the speed at which a tractor trailer passed a vehicle such as a camper would have a material affect upon the movement of the camper.

This evidence was a sufficient basis upon which the jury could have reached the conclusion that the speed at which the Colonial unit passed the camper (there was testimony that it was as much as 70 miles per hour) caused the plaintiff's unit to go out of control and leave the highway. In addition, the driver of the Colonial unit admitted that he was aware of the possible effect that the passing of a camper by a tractor trailer might have on the camper and whether or not, under these circumstances, reasonable prudence on his part should have dictated that he give a signal of his approach was an additional consideration to which the jury could properly have directed its attention.

Colonial appears to argue that because there were other factors which could have caused plaintiff's vehicle to go out of control, that the jury could not accept plaintiff's theory without violating the rule against permitting a jury to base its verdict upon speculation. Colonial further appears to argue that the burden is upon plaintiff to exclude these other possible causes. That this is not the rule in this jurisdiction is clear. 13 M.J. "Negligence" 58, p. 584-5.

(b)

As To Glosson

Plaintiff urges that the operator of the Glosson vehicle was guilty of negligence which was a contributing cause both of the plaintiff's vehicle going out of control and of the ultimate collision between the two vehicles. She says that her testimony to the effect that just as the Colonial unit passed her that she saw in her rear view mirror the Glosson unit right on top of her[1] is evidence from which the jury could conclude that the Glosson vehicle was following plaintiff at a dangerously close distance and that her alarm at seeing this vehicle "right upon her" contributed with the swaying motion of the camper to cause her to lose control of her vehicle. Plaintiff further argues that if, as she contends, the Glosson unit was "right upon her" at the time that the Colonial unit passed her, he was guilty of negligence in following her too closely and that this was the direct cause of his colliding with her vehicle as she was turning over. On the other hand, she says, and in the alternative, should the jury not believe that the Glosson unit was following too closely, there is credible evidence that the Glosson driver was following at a sufficient distance behind plaintiff to have enabled him to have seen and appreciated plaintiff's predicament in ample time to have avoided colliding with plaintiff's vehicle had he been maintaining a proper lookout and exercising reasonable care in the operation of his vehicle.

With both of these arguments, the court is in full agreement.

There is, of course, evidence from which, if believed, the jury could well have concluded that the Glosson driver was free of negligence and the victim of circumstances over which he had no control which

---

[1] ". . . as the trailer began to swerve, immediately as the first tractor-trailor [Colonial] passed, the camper began to swerve, and I looked in my side view mirror and saw this other tractor-trailer [Glosson] right upon me, and I felt the force. . . ."

placed him in a predicament from which he could not extricate himself. This option was left open to the jury by instruction No. 5 which embodied the doctrine of sudden emergency.

II

Unavoidable Accident Instruction

Counsel for plaintiff has undertaken, in his brief, to review every case where the propriety of the giving of an unavoidable accident instruction has been before the Virginia Supreme Court and from a reading of these cases, it is believed that the court was correct in refusing to grant the unavoidable accident instruction offered by the defendants.

The overwhelming evidence in this case is that the Colonial vehicle was traveling at an excessive rate of speed as it passed the plaintiff's vehicle and the *undisputed* evidence is that the plaintiff's vehicle went out of control immediately upon such passing causing it to leave the hard surface and overturn. Certainly as to Colonial there was no room for such an instruction.

As to Glosson, as heretofore pointed out, the evidence would have supported two theories, (a) that the Glosson unit was very close upon plaintiff when she lost control of her vehicle or (b) that it was a considerable distance behind her at the time. If the jury believed theory (a) it may well have been that the Glosson driver could have been found guilty of following too closely or, on the other hand, have been exculpated under the sudden emergency doctrine and Instruction No. 5 gave the jury this option. If they adopted theory (b) it then became a jury issue as to whether under the existing circumstances he had maintained a proper lookout, operated his vehicle at a proper rate of speed and exercised reasonable care to avoid a collision.

Conclusion

For the above reasons, the motions of both defendants are overruled and judgment entered on the verdict.

Counsel may present sketch for order to this effect preserving all desired objections.

Yours very truly,

/s/Alex H. Sands, Jr.

* * *

JUDGMENT ORDER (Appealed from—R. 73-74)

Case Nos. 6187 and 6188

Entered August 12, 1974

This day came again the parties, by counsel, and argued their motions made after the jury's verdict by written memoranda and oral argument. Upon consideration of such motions, memoranda and oral argument, the Court doth hereby overrule both defendants' motions made after the jury's verdict and doth hereby Order that final judgment be, and the same hereby is, rendered on said verdict. It is accordingly adjudged and ordered that the plaintiff, Kathleen L. Nance, recover against the defendants Colonial Motor Freight Line, Inc. and Glosson Motor Lines, Inc., jointly and severally, the sum of Fifty Thousand and 00/100 ($50,000.00) Dollars together with her costs herein expended, with interest from the 15th day of March, 1974, to all of which action of the Court the defendants Colonial Motor Freight Line, Inc. and Glosson Motor Lines, Inc. objected and took their exceptions.

And the defendant's having indicated their intention to apply by petition to the Supreme Court of Virginia for a writ of error and supersedeas to this judgment, on motion of both defendants, by counsel, it is Ordered that the execution of this judgment against the defendants Colonial Motor Freight Line, Inc. and Glosson Motor Lines, Inc. be and the same is hereby suspended for a period of four months from this date and if such petition is presented within such period, the operation of said judgment is suspended thereafter until such Court shall have acted on the petition, provided that the defendants, Colonial Motor Freight Line, Inc. and Glosson Motor Lines, Inc., or someone for them, within 30 days of this date shall enter into a bond in the penalty of $60,000.00 with surety to be approved by the Clerk of this Court conditioned and payable as the law directs, according to the provisions of § 8-477 of the 1950 Code of Virginia, as amended, provided further that the suspension of execution provided for herein shall expire at any time at which the defendants' right to prosecute an appeal shall expire by virtue to the failure of the defendants' Colonial Motor Freight Line, Inc. and Glosson Motor Lines, Inc., or either of them, to take the necessary steps for appeal as provided by law.

And further on motion of both of the defendants, by counsel, it is Ordered that the transcript of the proceedings held in the Circuit Court of the City of Richmond, Division I, on March 13, 14 and 15, 1974,

and which have now been prepared, become now a part of the record in this case, as provided for in Rule 5:9 of the Supreme Court of Virginia.

* * *

ASSIGNMENTS OF ERROR BY GLOSSON MOTOR LINES, INC.
(R. PD 76, 78)

Filed March 18, 1975

The defendant, Glosson Motor Lines, Inc., assigns as error the following:

* * *

4. The Court erred in failing to strike the plaintiff's evidence and to enter final judgment for the defendant on the plaintiff's Motion for Judgment and on the Counter Claim on motion of the defendant made at the conclusion of the plaintiff's evidence and at the conclusion of all the evidence.

* * *

21. The Court erred in failing to grant defendant's motion made after the jury verdict to set aside the verdict and to enter up final judgment in favor of the defendant, Glosson Motor Lines, Inc., on the plaintiff's Motion for Judgment and the defendant's Counter Claim or, in the alternative, to grant a new trial.

* * *

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR BY COLONIAL MOTOR FREIGHT LINES (R. 79, 80)
Case Nos. 6187 and 6188

Filed September 10, 1974

The defendant, Colonial Motor Freight Line, by counsel, hereby in accordance with Rule 5:6 of the Rules of the Supreme Court of Virginia, files its Notice of Appeal and Assignments of Error in this case. The transcript of the record has previously been made a part of the record by Order of the Court dated August 12, 1974. The assignments of error are as follows:

* * *

4. The failure of the Court to sustain this defendant's motion to strike made at the conclusion of the plaintiff's evidence.

5. The failure of the Court to sustain this defendant's motion to strike made at the conclusion of all of the evidence.

* * *

17. The failure of the Court to sustain this defendant's motions made after the return of the jury's verdict to set the verdict aside and to enter final judgment in favor of this defendant, or in the alternative to order a new trial.

* * *

EXCERPTS FROM REPORTER'S TRANSCRIPT OF PROCEEDINGS

[13] * * *

T. R. Gleason (Tr. 13-37)

was sworn and testified in behalf of the plaintiff, as follows:

Direct Examination

By Mr. Branch:

Q You are Officer T. R. Gleason? A Yes, sir.

Q And you are a member of the Chesterfield County Police Force? A Yes, sir.

Q Are you still? A Yes, sir.

Q Officer Gleason, let me direct your attention back to last March the 11th, 1973. Did you have an occasion to investigate an accident that occurred on Route 360? A Yes, sir, I did.

Q Will you tell us where on 360 it happened? A It happened approximately 1,000 feet west of Courthouse Road in the eastbound lane, approximately five miles west of Richmond.

Q And what time did you arrive on the scene? A At 5:40. I received a call at 5:37. This would be p.m.

[14] Q And do you know what time the accident itself occurred before you got the call? A I can't really say; just in a few minutes.

Q Well, at the time you got the call and arrived at the scene, what were the weather conditions? A I'd have to refer to my notes;

I'm not exactly sure. It was cloudy, it was daylight, and a blacktop road. The road was dry, road was straight and level, and the traffic lanes were marked.

Q What is the speed limit on Route 360 at this place? A At the time of the accident the speed limit for motor vehicle automobiles would be 60 miles an hour, and a truck would be 55 miles an hour.

Q How about a motor vehicle pulling a camper? A It would be the same as an automobile.

Q All right. When you arrived, could you tell us what you found on your investigation, what the situation looked like? A The westbound lane was clear, and the entire eastbound lane was blocked. It was hard to see just what was happening because of the vehicles around the camper and the automobile. But essentially, there was three tractor and trailers; one was partially in the grass. There are three [15] lanes of traffic here, eastbound, the driving lane, the passing lane, and the extra left-hand turn lane.

There was one tractor and trailer into the left-hand turn lane and across the median turnaround. The front wheels were touching the grass, and there was another tractor and trailer behind him on an angle to the left.

There was still another tractor and trailer, with an angle to the right, with, I believe, the right front wheels—with the front off the pavement, and there was a camper-trailer and automobile turned upside down in the roadway, and the camper was—the tail end of the camper would be more or less eastbound and the head of the automobile would be southbound in relationship to 360 as it runs east and west.

Q Of those three tractor-trailers you described, did you feel, in your investigation, any indication any one of them had been involved in any collision? A The No. 1 tractor and trailer, operated by Dossie Eugene Soles, was a Glosson Motor Lines tractor and trailer. All three of the tractor and trailers were at that time Glosson Motor Lines, and the vehicle that did the striking, that actually struck the camper-trailer, was operated by Mr. Soles, and this is the one, the left front wheel would be in the left-hand turning lane.

Q What part of that tractor-trailer operated by [16] Soles had been in contact with what part of Mrs. Nance's car and camper? How

did the two vehicles contact each other? A It's hard to really say. The automobile and camper dropped off the right-hand side of the roadway, and it's approximately an 8-inch shoulder at this point.

Q Excuse me, Officer. Are you saying that from the point of view of marks you found? A Right.

Q Would you tell us about the marks and how you relate them to the vehicle involved? A Would you like me to show you the pictures?

Q Yes, do you have your own pictures? A Yes, sir.

Q All right. Perhaps it would be better to step up and explain each picture to the jury as you identify it. Leaping ahead, you took some photos at the scene, and later you took some photos from a helicopter, did you not? A Yes.

[17] * * *

(Photographs depicting the scene of the accident were received as Plaintiff's Exhibits Nos. 1 through 13.)

By Mr. Branch:

Q Officer Gleason, as you show each of these photos to the members of the jury to explain to them what it shows, would you remember to refer to the number? A All right. 1 through 8 will be photographs taken after the accident, with the vehicles removed from the scene. We have two 8's.

The Court: All right, do you have your pencil there? Mark a half, 8½.

A (Continuing) And from 8½ to 13 will be actual photographs taken at the time the vehicles were on the roadway.

[18] Q If you would first take some of the first group, the layout of the roadway, and where the accident occurred, and then you can show the ones taken at the scene. A This is a straight stretch of highway. It's more or less flat and level, and I will show you, to begin with, this would be P-8, this is an aerial photo taken with a helicopter, you would be looking—this is eastbound looking this way.

Q Officer, I wonder if you can hold it up like this because this gentleman couldn't see as you just held it. A And this would be east-

bound, and this would be westbound. The accident occurred in this area. This would be the skid marks of the accident. The tractor and trailer that I was telling you about that was found across the turning lane would be stopped approximately here. Another tractor and trailer would be here, your automobile would be down across here with a camper, and another tractor and trailer here.

Q Put an "X" on that indicating the approximate position of the camper.

Mr. Bowles: While we're at it, could we designate some symbol on the picture for the record itself?

The Court: He can put anything or "Camper."

Mr. Bowles: "X" represents—

Mr. Branch: "X" represents where he found the [19] camper.

Mr. Bowles: All right.

Mr. Branch: I was going to put an "O" where he found the tractor-trailer.

Mr. Bowles: How about a "G-1" and a "G-2" for the other two?

Mr. Branch: For the other trailers put "G-1" and "G-2" then.

A And also on—this will be P-5—this is a ground shot of what you see from the air, and in a closer area you will see the skid marks of the vehicles themselves, or just the tractor-trailers. In this one you can't see the camper marks.

Q Can you tell which of the tractor-trailers left those skid marks? Can you relate them to any of the vehicles? A I can, yes.

Q Would you do that? A The No. 1 tractor and trailer would be the one that struck the automobile, would be this set of skid marks here. This would be the third tractor and trailer, and I can't remember the man's name—I'll have to refer to the man's name.

Q Another Glosson? A And this is the third of the Glosson trailers, which would be the second one in line. This would be one, two, [20] three tractor trailers, and the camper would be right here.

Mr. Bowles: Can we designate with the same things also? For the sake of assistance, we had "X," "O," "G-1" and "G-2."

A (Continuing) If they have seen the "G-1" and "G-2," they would be self-explanatory.

Q Then you're referring to the six pictures you took of the vehicles at the scene of the investigation as opposed to the ones later on? A Now, these pictures will be—there is no actual series to them. No. 11 will be the eastbound lane looking this way. This is the automobile, this is the camper, this is the tractor and trailer that struck it, and this would be No. 11.

All right, you're looking westbound; this would be the eastbound lanes. This is the left-hand turning lane, and this would be the turnaround, the asphalt turnaround. This is the turning lane, this is the passing lane, and one more would be the right-hand driving lane. You would be eastbound in relationship to the way they point. You are looking westbound. This is the trailer of the camper-trailer. This is the Glosson which would be "G-2," this would be "G-1," and this would be "O."

Mr. Bowles: Can we mark the "O," "G-1" and "G-2?"

The Court: Yes, sir, on any of them that you [21] want.

Mr. Bowles: If you would, please, Officer.

A (Continuing) This would be P-9. You are looking eastbound. You will see the camper-trailer upside down. You will see "O," which would be the first Glosson truck, and you will also see the marks trailing to that tractor and trailer, and you will also see "G-1." This is also the second Glosson tractor and trailer. Do you want me to mark these now?

Mr. Bowles: If you would.

A (Continuing) And P-13 is you're looking eastbound—excuse me, westbound. This is the driving lane, the passing lane and the third lane, which would be the left-hand turnaround. Here you will see "G-2" and "G-1" and "O" where it was struck and driven down the road, more or less, and it came to rest approximately here. This would be looking westbound.

This is the tractor that struck the automobile, and it would be eastbound. This particular lane of traffic would be the left-hand passing lane westbound. You understand?

So the tractor and trailer was eastbound, crossed through—this is a grass plot, which is a turnaround, and there is a passing—excuse me

—left-hand turning lane, a left-hand passing lane and a right-hand travel lane, and goes into the westbound lane, actually, headed east, and this would be the tractor and trailer that actually struck the car and [22] camper.

If you notice, the damage would be to the full front, and this mark in the radiator, after checking the automobile and the truck seems to be the left-hand wheel of the automobile. The car was apparently struck at an angle like this, the tractor and trailer being in position this way, and the camper was broadside and up on its side.

My finger would be the left front wheel, and it was struck on the left front wheel and the undercarriage of the frame. When it was struck, it went up in the air. The car apparently went straight up in the air and went backwards with the car and camper, and this would be the automobile, where the decedent was, and this is the right-hand lane eastbound, and this would be "X."

This is the drop off the roadway, and this is the grass in here, comes in back of the automobile. The back fender would be completely off the roadway; the camper would be behind.

Mr. Bowles: Which one are you referring to—8½?

The Witness: 8½ would be "O."

Mr. Bowles: And the preceding picture you have that have the tires in it—

The Witness: Was 12.

Mr. Bowles: The tire marks in the radiator.

Mr. Branch: All right, Officer, you can take [23] your seat please.

Q Officer Gleason, you have referred to a decedent. Are you referring to Mr. Nance? A Yes, sir.

Q Who was a passenger in the vehicle operated by Mrs. Nance, his wife? A Yes, sir.

Q Now, you've told us about some marks you have noticed off the right side of the road in the direction this vehicle had been going? A Yes, sir.

Q Could you measure, or if not, can you estimate the distance of those marks or for how long did they continue to the point where you found the camper-trailer? A The pictures will indicate more than I

can actually tell you. The camper dropped off the right-hand side of the roadway, and there was a faint trail where the camper went off, and just after it went off it immediately came back on and went back across the roadway at more or less a 45-degree angle.

Q What I'm trying to find out, if there is any way of doing so in your investigation, approximately what distance did the camper, the car with the camper hooked, continue after going off the right side of the road to where you found it [24] turned over. Would that be a matter of—I gather you didn't measure that? A No, I didn't. Just roughly, 150 feet.

Q About 150 feet? A That was pure estimate.

Q Did you measure the length of the skid marks, shown in one of the photos, left by the Glosson truck that hit the camper? A No, sir, I took no measurements whatsoever.

Q Where approximately were those marks? A Which trailer.

Q The one that hit the camper. A He had them tied down intensely—

Q What is your estimate as to the length of the marks? A I would say at least—I'd say close to 150 feet.

Q And they're brake marks, are they? A Some of them are brake marks, and I couldn't tell about the rest of them. He stated, also, that the steering became stiff after impact.

Q What approximately is the distance the Glosson truck that hit the camper went on from the point where you found the camper to that point it was stopped up there at the intersection where you found it? [25] A Roughly, I'd say, 75 feet; a little over the length of the trailer—make that a trailer and a half.

Q Did you see any vehicle owned by Colonial Motor Freight Line at the scene at any time? A I saw the back end of a Colonial. I was very busy at the time, and I saw the back end of a Colonial tractor. and trailer, and it was—I'm not really sure. It wasn't at Courthouse Road; it was 200 yards—it could be a little bit further—from where I was at.

Q Do you have any information in your investigation concerning the Colonial truck? A All three Glosson drivers that I talked to—

Q Don't tell us what they said. I don't want anything as to what Glosson drivers said. I just wondered, did you talk to the Colonial driver? A I talked to Sherman Lee Davis, operating the Colonial tractor-trailer, at approximately 5:37 p.m. on this date, yes.

Q And he identified himself as the driver of the Colonial truck you just mentioned seeing up the road? A Not at this time. This was later on.

Q Later on? A Yes.

Q What did Mr. Davis have to say?

[26] Mr. Smith: If the Court please, is he going to read all the statements that everybody said?

Mr. Branch: No.

Mr. Smith: Mr. Davis is here.

The Witness: I don't have Mr. Davis' statement.

Mr. Branch: That's all right. Mr. Davis is not a party. All right, thank you, Officer Gleason. I don't have any other questions.

Cross Examination

By Mr. Smith:

Q The marks that you find in the pictures there, did I understand you to say they were approximately 150 feet long from the car pulling the camper? A No.

Q 150 feet of distance? A The question was, I think that I answered, was how much distance it is from where I first saw the skid marks to where the camper actually came to rest, where it was knocked to, to where I found it upside down.

Q Did those marks show on any of the pictures that you have there? A Which marks?

Q The marks of the camper. [27] A Right.

Q And showing where it went off the road? A I believe I can show you where it went off the road. I can show you the point of impact.

Q Well, show us on the pictures, if you would, please. A I do have some of Sherman Lee Davis, part of his testimony.

The Court: All right.

By Mr. Smith:

Q You might want to differentiate there with red where the marks went off the road. A Do you want me to mark on these particular ones?

Mr. Smith: He said he could show us where the camper-trailer went off the road.

The Court: All right.

A (Continuing) This one side of it.

Q You've indicated by arrows, pointing to some rather faint marks, is that what you're indicating? A Yes, sir.

Q Did you have anything else to indicate? A This would be the third-tractor-trailer driver; this would be "G-2."

The Court: Now, what exhibit is that?

[28] Mr. Smith: We're referring now to Exhibit No. 6.

Q Is there anything else you wanted to mark on there? A No.

Q Would you indicate now, this arrow—see if you can see here—this arrow here on the roadway is pointing to a rather faint mark coming from the right side of the road, leading across the road to what appears to be your hat over there in the center of the road, and your hat indicating there the point of impact? A Yes.

Q And you have another red arrow, which is off the hard surface of the road. Is that an indication of where it would be the right side of the trailer was coming back onto the road? A Yes.

Q And you can see a faint mark here again going across the road towards your hat? A Yes, sir.

Q This is the side of the road you indicated that is some 6 to 8 inches below the hard surface? In other words, going off onto the shoulder would be a drop of 6 to 8 inches? A Right.

Q Now, did you have any other picture that that [29] shows on? A This is the helicopter photograph. This is P-4. Let me borrow your pen just a second.

Q These marks are very, very faint. Put car, trailer and "O" on this picture. A Yes, sir.

Q Also, show the east and west. A And the tractor-trailer would be "O," the striking tractor and trailer.

Q Okay. And you put a "O" and an arrow to some marks. Those indicate marks left by the Glosson truck that struck the camper? A Yes, sir; and farther on back, I'll put a "T."

Q Let's show the jury what you've done here. This is the helicopter photo here, showing basically the same portion of the road from the air as you have shown in P-6, and you have indicated by an arrow to the edge of the road here where the camper-trailer would have come back onto the road after having gone off and dropped off? A Yes, sir.

Q And then there is some rather faint marks leading from that arrow over to another arrow that you put on the road, also marked "C-T," which is, I assume, car-trailer? A Right.

[30] Q And you indicated by a little "p" the approximate position of the impact, and by "O" some brake marks which had been left by the Glosson truck? A Yes, sir.

Q Thank you, Officer. Oh, excuse me, you have another one here, P-2. Draw a little arrow so we can be consistent to the marks that you're talking about of the car-trailer combination. Is that the car over there?

[31] * * *

By Mr. Smith:

Q This is just another picture, showing a closer-up shot of these same marks that were depicted in the other shots, is that true? A Yes, sir.

Q And you have indicated by similar arrows, "C-T" where the car-trailer marks went across and zeroed in the Glosson truck marks, and the "P" being your hat there where the approximate point of impact. You can resume your seat. Thank you, Officer.

You took a statement, did you not, from Mrs. Nance? A Yes, sir, I did.

Q Was that taken at the hospital? A Yes, sir, it was.

Mr. Smith: I have no questions with regard to that statement now, but I may later.

The Court: Very well.

[32] Cross Examination

By Mr. Bowles:

Q Well, Officer, I have one photograph, which you introduced. I believe it's Plaintiff's Exhibit 12, if I can find it. Yes, Plaintiff's Exhibit 12, if you could come over here a moment, please, sir. I believe your testimony on Plaintiff's Exhibit 12 was that the black marks that you see in the center of the radiator of the Glosson vehicle that actually struck the Nance vehicle— A Yes, sir.

Q Was made by the left front tire of the Nance vehicle? A It looks like the rim.

Q Rim and tire? A Yes.

Q So if that is correct and that's what you found from your investigation, then the Nance vehicle was up on its side, in the process of turning over when it was struck? A Yes, sir.

Q And you testified that it ran off the road to the right on the shoulder, went about 150 feet and cut sharply back at a 45-degree angle and went right across, is that correct, and was struck? A No, it dropped off the right-hand side of the [33] roadway, started back across the roadway again, was struck, and from the time it dropped off to the time it stopped was maybe 150 feet.

Q But it came across at a 45 degree angle? A Yes, sir.

Q Now, I believe if you would take your seat. You referred to the brake marks put down by the Glosson vehicle as he had them tied down. Do you intend to imply to the jury he had everything on to stop that rig? A It appeared that way.

Q From what you saw? A Yes, sir.

Q Now, in the course of your investigation did you have occasion to talk to, interview people that came up and said they were witnesses to

this accident and saw it occur and take the names of the number of people that you talked to? A Yes, I did.

Q Did a Mr. Malcolm Wells tell you that he came on the scene and saw this accident happen from your investigation? A No, he didn't, but since today, I have seen Mr. Wells here.

Q All right. A And I remember Mr. Wells as helping me at the scene of the accident, but we never talked about the accident.

[34] Q So that explains why you didn't have his name in the book? A Yes.

Q But everybody else involved, you got their names in the book? A Yes.

Q I am intrigued that reference has been made to what Mrs. Nance told you what happened. Nobody has asked you so I'm going to do it. What did she tell you now?

Mr. Branch: I'm going to object unless Mr. Bowles will also get from the Officer the Officer's description of Mrs. Nance's condition at the time of his interview.

Mr. Bowles: I have no objection to that.

The Court: Either that, or you will have an opportunity to.

By Mr. Bowles:

Q First of all, tell us where it was and what kind of shape she was in when you talked to her. A This was taken at Chippenham Hospital. I don't know, it might have been—it could possibly have been two, three hours after the accident. I didn't time it. Mrs. Nance was very upset. She was real quiet. Apparently she had been sedated at the time; I don't know this. She was real patient with me, and she was more or less trembling when she talked to [35] me, and I asked her what happened, and I didn't want to infringe upon her any further than a few seconds, and she told me, I quote, "I saw that truck up beside me and I must have jerked the wheel, I remember my husband putting his hand beside me to steady me—it was the second time I had pulled the camper trailer. I pulled last Sunday with no trouble." And that was all at that time.

Q I believe you stated that the skid marks of the Glosson vehicle

that actually did the striking or tied down marks, do they sort of go to the left, like he's trying to cut to the left? A The impact took place in the left-hand lane, extreme left-hand lane. The Glosson tractor and trailer that struck her was continuously from the time—the vehicle had started to waiver in the right-hand lane, and when he understood what was happening, this is what is depicted to me by skid marks.

Mr. Branch: If Your Honor please, I object to the opinions.

The Court: Yes, describe, Officer, just what you—

Mr. Bowles: I am asking him to give the facts as he found them.

The Court: The facts are all right.

Mr. Bowles: Officer, try to stay away from your opinion.

[36] Mr. Branch: I object to the lawyer's speech, Your Honor.

The Court: All right, go ahead.

The Witness: What was your question?

The question was read by the reporter as follows:

"I believe you stated that the skid marks of the Glosson vehicle that actually did the striking, or tied down marks, do they sort of go to the left, like he's trying to cut to the left?"

By Mr. Bowles:

Q (Continuing) I believe you said they were in the extreme left-hand lane. A There was a tendency to the left.

Q They were going to the left? A Yes.

Q And the vehicle ultimately wound up, the nose of it, in the grass? A He traveled—there were three lanes of traffic, the right-hand lane, the left lane, the left-hand turning lane, and also the turn-around portion of asphalt that you swap from one lane to the other. He traveled across the left-hand passing lane, through that little turn-around, and his front wheels came to rest, the left front of the vehicle came to rest in the [37] westbound passing lane.

Q Exhibits P-6, 4 and 2 show the tractor-trailer crossing the marks of the camper-trailer into the Glosson truck lane? A I'm not sure if those pictures are the ones you are talking about, but there are pictures that indicate that.

Q Show them crossing? A Yes, sir.

* * *

Dr. Robert Pilcher (Tr. 37-53)

was sworn and testified in behalf of the plaintiff, as follows:

Direct Examination

By Mr. Branch:

Q You are Dr. Robert Pilcher? A That's correct.

[38]

Q Did you have an occasion to see and take under your care Mrs. Kathleen Nance back there on March 11, 1973? A Yes, I did. I saw her in the emergency room of Chippenham Hospital.

Q And was she admitted under your service? A Yes, she was.

[39] Q Doctor, on the basis of your—well, first, did you get a history of what happened to her? A She said she had been involved in an automobile accident just before coming to the emergency room.

[43] * * *

Q Doctor, how long had she been in the emergency room before she was given anything to help with pain she was in at the time. A You mean before she had any injection for pain?

Q Yes. A She was given pain medication by the doctor in the emergency room, and then when I wrote orders on her chart, she was to have medicine every three or four hours for the pain following admission.

Q What I'm asking, directing your attention to a time about two or three hours after the accident, had she then been given any medication? A I don't have the record right in front of me, but I certainly would think she would have had something.

Q What type of medication? A An injection of some narcotic; most likely, morphine, Demerol.

Q And what effect would that have upon her ability to think and respond to questions? A It would countermand to some degree. She might be a little drowsy, so to speak.

[44] Q During the time while this fractured bone is healing and the sacroiliac joint is also healing—I suppose such an injury heals over a period of time? A Yes.

Q What effect does motion, movement around in the bed have upon the patient? A This would increase pain.

Q How long did you, on your orders, keep her on medication to help her with that pain? A It probably wasn't discontinued while she was in the hospital. She probably got less medication for pain and less strong medication, such as maybe Codeine or ever Darvon, something to lessen pain.

[49] * * *

Cross Examination

By Mr. Smith:

Q Just a few questions, Dr. Pilcher. I understand from your report that you filed, that you sent in to the attorney, the patient did very nicely, in your opinion, while she was in the hospital? A Yes, she did.

[50] * * *

Q Now, let me ask you about the pain medication, going back to the pain medication at the time of hospitalization, right after the accident. I gathered from the way you [51] said, whatever it was, whatever type of medication was used by the emergency room doctor, what you were saying was the effect would be that of drowsiness, but it wouldn't necessarily make someone tell something that wasn't so in answer to a question? A Let me describe. That's hard to answer, but we have routinely, do not try, in medicine, to operate on people, relatively at a time when they're weak, and any papers or anything we want signed by these patients such as an operative permit or any legal devices at all, we use—we cannot—or we do not, because of the pre-operative medication we give them, give them anything to sign or don't try to explain anything to them after they've had pre-operative medication because we can't tell whether this patient or that patient is not going to understand what we're asking or telling.

I would think that a normal person, the average person, let's say, 80 per cent of the people, the vast majority of them would have a feeling of drowsiness, whether it would affect her so she would say something

that was not true or whether she would forget something, there is just no way of telling. I cannot be any more positive than that, but I would not ask her a question 20 minutes or so after the injection and she gave me an answer, and then told me something different the next day, after not having the injection, I would think what she told me that next day more likely to be true than what she [52] told me after the injection. That's as close as I can come to it.

Mr. Smith: I have no other questions.

Cross Examination

By Mr. Bowles:

Q But in this case you don't know what, if anything, was given to this lady when she got to the hospital? A I don't have the emergency room record in front of me, but a patient in an automobile accident, having this fracture, probably before they called me—and I can only say probably—she was given something for pain before I arrived, but I don't know that.

Q Normally, it would be done? A Normally, routinely, she would have had some pain medication.

Q And in this instance, you're unable to say whether it was or wasn't? A That's right.

[81] * * *

Malcolm H. Wells (Tr. 81-91)

was sworn and testified in behalf of the plaintiff, as follows:

Direct Examination

By Mr. Branch:

Q Mr. Wells, would you state your full name, please, for the record? A It's Malcolm H. Wells.

Q And your address? A 9312 Crystalwood Lane.

Q Mr. Wells, taking you back to last year on March the 11th, did you happen to be in the vicinity of an accident that occurred on Route 360 that afternoon? A Yes, I was, yes.

Q Where were you? Were you driving on Route 360? A I was coming into Richmond on Route 360, yes.

Q From where? A From Danville, Virginia.

Q You were heading toward Richmond? A Right.

Q When you were approaching the place where the accident occurred, going near to it, did you notice anything unusual taking place up ahead of you with respect to other traffic? A Well, the traffic was fairly heavy, and there was [82] tractor-trailer trucks passing each other.

Q Where were they relative to you? A I guess I was about 500 yards, or so, behind them at that time.

Q And you noticed them up ahead of you? A Right.

Q And in what lane were you in? A Well, at the time I was in the left lane passing some cars.

Q Now, can you tell us how many tractor-trailers you saw up ahead of you? A Not exactly. At least three, but I don't know exactly.

Q And what were they doing that attracted your attention that you remember today? A The way they were leapfrogging one another, like, I would call it, one would pass, and then another would pass.

Q And you were back that distance behind and noticed that. Could you identify them any way as to the name? A No, sir, I could not.

Q Approximately what was your speed? A I guess at that time I was at 65 or 70 miles an hour because I was in the process of passing some cars myself at that time.

[83] Q These trucks that you saw up ahead leapfrogging, I take it that their speed would vary, sometimes one speed, and at another time— A Yes.

Q What would be the variable speed of those three trucks leapfrogging along that way? A Well, I would estimate that they were possibly between 60 and 65 miles an hour, also.

Q 60 to 65? A Right, sir.

Q Well, leapfrogging, I expect, then, you meant they were in or occupying at one time or another both lanes, right and left lanes? A Well, at the time I was passing, yes, they were in both lanes, and then they pulled back into line, and then they'd slow done, and another would come out to pass.

Q Did you keep those three or more trucks in your view until something else that occurred, which, to you, was unusual? A Yes, they were out ahead of me and I was out in the left lane to pass another slower vehicle, and the trailers were also passing, and I had two trailers in front of me in both lanes.

Q How were they positioned? [84] A They were side by side.

Q Two of them were in front of you side by side? A Right.

Q Well, were they still the same distance ahead of you? A No, I had gained just a little bit on them by that time; it wasn't a great distance, no, but I wouldn't be able to estimate just how far it was.

Q What did those two tractor-trailers side by side in both lanes then ahead of you do that attracted your attention? A I noticed all at once they locked their brakes, evidently, because smoke came up. One truck went to the shoulder of the road, and one truck went to the median strip. I could see the debris flying through the air between the trucks. At the time I didn't know what it was. At the time I got my car stopped in the clear so I wouldn't get hit from behind, I saw a car on its top and a camper on its side. I got out of my car to give assistance to the driver.

Q When these two trucks that had been side by side ahead of you, one veered one way and one veered the other, what could you see then? A I could see this debris flying through the air, and it looked like a car and the house trailer behind it were [85] rolling at the time.

Q Where would you say it was on the roadway at the time? A Well, it was sideways, broadside the road.

Q And did you see another vehicle at that place where you saw the house trailer and camper? A No, I did not. My main concern at that time was getting my car stopped and getting off the road, getting into the clear, so I wouldn't get hit from behind.

Q After you got cleared, did you go up to the scene? A Yes, I did.

Q You rendered aid to the officer, I understand? A I think the driver, the lady that was in the car.

Q Mrs. Nance? A Yes.

Q Well, then, there rendering aid, did you then thereafter take notice of another tractor-trailer that had been involved in a collision with that camper? A I did see another tractor-trailer parked down the road past there after I had given first aid to Mrs. Nance and the rescue squad arrived and I started back to my car.

Q You didn't have any conversation with any of the truck drivers? [86] A No, I didn't.

Q When you saw these two trucks apply its brakes with smoke coming up, would there be any difference in your estimate as to their speed then and the speed you estimate on them earlier? A I couldn't say. I couldn't say because my speed hadn't changed. I was still moving 60 to 65 myself.

Mr. Branch: Thank you, Mr. Wells. That's all I have.

Cross Examination

By Mr. Smith:

Q I have what may be just one question really. I gather from what you're saying is you just saw three trucks in front of you? You only identified three? A At that time.

Q And of those three, you didn't identify any as being a Colonial truck, did you? A I couldn't identify any of them.

Mr. Smith: No other questions.

Cross Examination

By Mr. Bowles:

Q Mr. Wells, you said you were going along there [87] 65 to 70 miles an hour? A Approximately, yes.

Q And you had left Danville? A Yes.

Q What time had you left Danville? A I don't know. We usually had dinner with my wife's people. Sometimes it was between 1 and 2 o'clock, sometimes earlier. I don't really know the time.

Q Well, would you say Danville from Richmond was about a three-hour run? A That's right.

Q You would have left around 1:30? A I don't know what time it was.

Q You really don't know? A I really don't know.

Q Just figuring on three hours, thereabouts, it was probably around 2:30? A It could have been.

Q If you were running the speed limit all the way? A It could have been.

Q Now, how far back before you got to the scene of this accident were you when you first noticed these trucks? A When I first noticed the trucks, it was like I said, it was, according to my estimation, it was about 500 yards [88] or so.

Q 500 yards? A Yes.

Q You weren't following these trucks, they didn't stand out in your mind or anything, so you had to be gaining on them or running faster than they were or you would have been following them all the way from Danville? A They were about the same distance from me for a while. I didn't gain on them.

Q You said you first noticed them about 500 yards back from the accident? A Yes.

Q And at the end of the accident, you were picking up on them, gaining on them? A After I had seen the trucks the first time, I noticed they were passing one another and I was holding pretty much the same speed, and traffic along there had started picking up, too, and I had picked up a little, too, because I wanted to get back to Richmond.

Q So you were gaining on them? A Yes.

Q So the period of your observation is only 500 yards? Prior to 500 yards, you had no thought about what was ahead of you with regard to the trucks? [89] A That's right, I hadn't paid any attention to the trucks. There are a lot of trucks most of the time.

Q Particularly on Sunday? A Right.

Q And your estimate of the trucks' speed ahead of you is based on your estimate of your speed? A That's right.

Q And at one point you said 65 to 70, and then you said 60 to 65? A I'd say at one point I was doing about 65 or 70.

Q And you were, as you say, gaining on them, closing in on them? A That's right.

Q So you were running fast? A That's right.

Q When you talk about leapfrogging or jockeying for position, how often did this happen? A Once or twice that I noticed.

Q In this 500 yards? A As I was coming up to them.

Q Now, how many trucks are we talking about? I believe you said as many as three? A That's all I noticed. That's all I can recall.

Q And you are unable to identify those trucks as to [90] who owned them or anything like that? A No.

Q And was it the first one that passed or the second one that passed the first one or the third one that passed the second one? A I don't have any detail on how they were passing. I wasn't paying that much attention. I know they were there and passing.

Q What you're saying, the only reason you have any estimate of the speed is because you were going faster than the speed limit yourself? A Yes, I was; I was passing, like I said.

Q Were you aware that a couple of miles before you got to this that you went through the radar? A No, I didn't see any radar.

Q You didn't see the radar down the road a couple of miles? A No.

Q You have driven that road quite a number of times? A Yes.

Q And the radar is out there right often? A Yes, and I have seen it a lot of times.

Q And if you go through it at 65 to 75 miles an hour, you know you've got troubles, don't you? [91] A That's right.

Q And you are unable to identify these as being Glosson trucks that you saw? A That's right.

* * *

Robert Moates (Tr. 91-105)

was sworn and testified in behalf of the plaintiff, as follows:

Direct Examination

By Mr. Branch:

Q You are Mr. Robert Moates? A Yes.

Q Mr. Moates, what is your occupation or profession? A Sporting goods dealer.

Q Where is your place of business located? A Chesterfield County on Route 360.

Q Do you have a trade name for your store? A Bob's Sports Shop.

Q Directing your attention back to the day of March 11, last year, '73, late in the afternoon, about 5:30, did you see anything unusual occur out on the highway in front of [92] your place of business? A I saw an accident?

Q You saw the accident. You were inside your place at that time? A Yes.

Q Now, where is your building with references to where the accident occurred? A Almost straight across from it.

Q Straight across Route 360? A Yes.

Q That is, one heading toward Richmond, your building would be on the left side of the highway? A Yes.

Q And looking from inside your building to the outside, you would be looking across the westbound lanes? A Yes.

Q And what were you doing at the time you noticed it, let us say, were you attending customers? A I was talking to two customers, yes.

Q And what attracted your attention out there on the highway? What was the first thing you noticed? A I'm not sure now whether it was the noise or just the sight.

Q Well, what does your memory tell you as to the [93] first thing you saw when you looked across before the accident occurred?

A I may have been looking idly, you know, across the road at the time, and nothing in particular. I can remember why it would stand out looking across the highway.

Q What did you see first, and tell us what you saw take place thereafter. A I saw three trailer trucks and a fairly late model car and a camper being pulled down the highway.

Q All right. And where were the trailer trucks with reference to the camper? A There was two trailer trucks in the same lane, in the outside lane. There was one trailer truck on the inside lane was passing the other tractor-trailer.

Q And the camper, was that on the outside lane ahead of the two that were in that lane? A Yes.

Q About how far ahead of the first of those two trucks on the outside lane was the camper, how much distance separated the camper from the first of those two trucks? A I would say it would be pretty hard for me to judge, you know, exactly, but maybe 50, 100 feet, something like that; I don't know.

Q And the truck that was passing, when you first [94] saw it, was it passing the second of those two trucks on the outside lane or the first of those two trucks? A The second.

Q The second one? A When I saw it.

Q And then would you tell us what you saw take place after that? Your attention has been attracted to the scene. A The tractor and trailer was on the inside lane, proceeded to pass the camper and the car, and after he passed, the trailer began to get out of control.

Q The camper, you mean? A The camper.

Q Now, the one that passed was the tractor-trailer that had been in the right lane? A No, in the left lane, left lane headed east.

Q Mr. Moates, I have some toy vehicles. Could you demonstrate what you saw if I put those up on the table? A I'll try.

Q Would it be a little easier?

Mr. Smith: This makes a lot of problem with the record. I don't know how we're going to handle it.

The Court: It's not the first time it's ever been used. Go ahead.

[95] By Mr. Branch:

Q Let's consider this the camper.

Mr. Bowles: For the record, can we show the camper is supposed to be a red car and a horse trailer.

Mr. Branch: I'm not vouching that it's exactly as to scale. I'm trying to set up a situation so he can tell us what he saw. You can tell how long it's been since I played with toys.

Q (Continuing) And you saw two of those type trailers, or three? A Three.

Mr. Smith: I think the record should show they are set up on a small table, and there is no implication as to scale.

Mr. Branch: No implication as to scale or relative size of vehicles; see how they were positioned as to each other.

Mr. Smith: It should also show the distances can't be implied from the relative location of the vehicles.

Mr. Bowles: Or the closeness of vehicles to one another.

By Mr. Branch:

Q All right. Now, without regard to scale, and we [96] know you're not out there with a tape measure and you are across the road seeing this, but is this generally the situation as you first saw it? A When I first saw it, this is about the way they were positioned. This tractor and trailer, right here, appeared to see the situation, that this woman had slowed down or was traveling at a slower rate of speed, and so did this fellow, and he began to brake, and this fellow went on by him, and after he had passed, this appeared to me—I mean, this is the way it seemed—I mean, it sort of fluttered, and this tractor came forward, and he was trying to avoid, and this fellow had gotton on out of the way. And the air from the front of this cab pushed this trailer down the highway, and then it hit, collided like so, and this twisted the car upside down, and it came back to rest like that.

Mr. Branch: For the sake of our record, can it be stated, Your Honor, that the vehicle he described as passing be on its right, had been the vehicle he had seen in the passing lane, and the vehicle he identifies as in contact with the camper was the first of the two vehicles

that had been in the right-hand lane approximately, he estimated, 50 to 100 feet behind the camper. Is that all right?

The Court: All right.

[97] By Mr. Branch:

Q Mr. Moates, was there any—well, you said this one vehicle in the passing lane was passing the two vehicles in the right lane? A Yes.

Q When you saw it, was there a difference in their speed, one passing the other? A Yes.

Q Does that mean he was going faster than the other? A I would say he was, yes. The reason why I say, the other fellow was slowing down.

Q The one behind the camper? A Yes.

Q What was your estimate as to the speed of the vehicle that passed the camper, approximately, within a range? A About the speed, I would say, of the traffic of the day, 60 miles an hour.

Q And the speed of the camper, you say that was slower than the tractor-trailer 50 to 100 feet behind it? A Considerably slower.

Q What was the speed of the tractor-trailer behind the camper? A I don't know as I could answer that.

[98] Q You don't have an estimate on that one? A He was approximately doing the same speed, about 60 miles an hour.

Mr. Branch: Thank you, Mr. Moates. That's all I have.

Cross Examination

By Mr. Smith:

Q Mr. Moates, I understand the truck that passed that was in the passing lane, or you call it the inside lane next to the median strip, I take it you don't identify that by the type of vehicle it was, what name was on it or anything like that? A No.

Q So you don't know what that was? A No.

Q And when you say it was going at the speed of the traffic of the day, I take it by that it wasn't anything about the rate at which it

was traveling in and of itself that attracted your attention? That was usual for you in the location where you were there on 360 to see trucks go by at that speed, I take it? A Yes, sir.

Q You estimated, roughly, 60, and is it just as [99] likely it was 55 miles an hour, 5 miles an hour slower? A It could be.

Q So it could be 60 to 55, or maybe even a little slower than 55?

Mr. Branch: If Your Honor please, when a witness makes it clear that he's making an estimate, in fairness to the witness, if he's suggesting that it's possible it could be less, shouldn't he, in fairness to him, say that it could possibly be more?

The Court: You're going to be able to take him back, Mr. Branch. Go ahead.

Q (Continuing) Isn't it possible that the speed limit for trucks out there is 55 miles an hour? You said you thought it was going about the speed limit. By "speed limit," you mean speed limit for trucks, 55 miles an hour? That's what I'm driving at, Mr. Moates. A It's possible it was doing 55, yes.

Q Now, you say it was after the truck that passed and got on down the road that the camper seemed to flutter and go out of control? A Yes.

Mr. Smith: I have no other questions.

[100] Cross Examination

By Mr. Bowles:

Q Do I understand that when you are over there messing with the toys, that the driver that actually struck the camper-car is the one that he apparently saw the situation developing ahead of him and was slowing down? A Yes, yes.

Q And that was the Glosson truck? A Yes, he did everything in the world he could to slow down.

Q To avoid hitting him? A To avoid hitting him.

Q And at that point it had come sideways in the road at him, had it not? A Yes.

Q So actually he ran over the side of it as it turned over in front of him, didn't he? A Yes.

Q And you said he was doing everything he could do to avoid striking it? A Yes.

Q And he was running at a slower rate than the truck that was passing? A Yes, he had to slow down.

[101] Q Well, I mean, he was being passed by the other truck? A Yes.

Q And all you know, it was a Glosson truck because after everything happened it had "Glosson" written on it? A That's correct.

Q At the time you didn't pay attention to whose truck it was, did you? A No.

Mr. Bowles: I have nothing.

Redirect Examination

By Mr. Branch:

Q Did you have a chance to notice by the sign the name of the truck that did the passing first that caused this fluttering of the camper?

Mr. Smith: Just a minute. He used the word "caused," Your Honor, and I think Cary Branch knows better than to do that.

Mr. Branch: I thought he said it did.

Q Well, when you noticed the truck go by and then noticed the camper at that time start fluttering, did you notice the name of the tractor-trailer that went by at that time? [102] A No.

Q Now, Mr. Smith took your estimate, knowing you were across the road in your building and weren't sitting in a cab looking at the speedometer and went into the possibilities that you were off in one direction, so I'll ask you, is it equally possible that the tractor-trailer could have been going faster than the 60 you estimated? A It's possible.

Q So 60 is your estimate, and you could be off either way, is that what you're saying? A Yes.

Q When you told Mr. Bowles that the Glosson tractor-trailer

did everything he could, are you saying he did everything he could considering the distance he was or had to work with?

Mr. Bowles: That's objected to.

Mr. Branch: He is the one that opened this up and asked him as his witness.

Mr. Bowles: This is his witness.

Mr. Branch: He took him as his witness, seeking that opinion, and I think I have a right.

The Court: I don't think he went into it on direct examination.

Mr. Bowles: I gathered the witness volunteered [103] it, but I was very happy to hear it.

The Court: I'll overrule the objection. Go ahead.

By Mr. Branch:

Q When you told Mr. Bowles and the rest of us the Glosson truck driver was doing everything that he could, did you mean everything that he could with the distance behind the other vehicles? A Yes, I would say.

Q Did you see when the camper first started fluttering, did you see any smoke or such evidence indicating the Glosson truck had applied brakes hard? A No, I didn't.

Q At the time the Glosson truck hit this camper and its car, was there any real difference in the speed of that Glosson truck from that moment in time compared to the speed it was traveling when you first noticed it? A Yes.

Q About what was its speed when it hit the camper would you estimate? A Maybe 45, 40.

Q Now, how was it reducing its speed—suddenly like brakes applied hard, or gradually? A He started slowing down gradually before, because, [104] I mean, just putting myself in his place, he saw the vehicle was moving at a slower rate of speed, and he slowed down.

Q That's what he was doing as he first approached the rear of the camper? A When he approached the rear.

Q Before anything unusual happened? A Yes.

Q He was just approaching. What did he do after that camper started waving from side to side? A He put on brakes then.

Q How do you know? A Well—

Mr. Branch: That's all I have. Thank you.

Mr. Bowles I've just got a couple of things since we've gone into that.

The Court: Mr. Smith, I believe, is next.

Mr. Bowles: I just asked him, and he said, "No."

Recross Examination

By Mr. Bowles:

Q The estimate you're talking of the distance that was available to him, that's acceptable of both situations, as an estimate either way of 60 miles an hour, it's just what you thought the distance looked like? [105] A That's right. I couldn't say for sure.

Q What you're really saying, Mr. Moates, isn't it, that if a camper and a car hadn't turned over in front of him, he wouldn't have hit them? A That's correct.

* * *

Forrest Moore (Tr. 105-117)

was sworn and testified in behalf of the plaintiff, as follows:

Direct Examination

By Mr. Branch:

Q You are Forest Moore? A Yes, sir.

Q Mr. Moore, where do you live? A 5501 Bondsor Lane, Richmond.

Q On March the 11th, 1973, were you in Bob's Gun [106] Shop or Bob's Sporting Goods? Do you know where we're talking about? A Yes, sir.

Q Were you in his shop at the time an accident occurred out on 360? A Yes, sir, I was.

Q Did you happen to see anything that took place out there at

the time of this accident? A Yes, sir, I practically saw the whole thing.

Q You did. Would you tell us what you saw, and if it's easier to do it, we have some toys up here. You can position them and demonstrate what you saw took place. Would you do that? A Yes, sir.

Q If we've got too many, you can discard one, or show what you saw. A The tail end of this tractor here—

Mr. Smith: Could you speak up a little? I am having difficulty hearing.

Mr. Branch: For our record, let the record show he has positioned two tractor-trailers in what we understand to be the left-hand or passing lane, and he has positioned the car and the camper-trailer in the right-hand lane. Is that generally what you're showing us?

[107] Mr. Smith: You should also show one of the tractor-trailers is ahead.

By Mr. Branch:

Q The first of these tractor-trailers, where was that with reference to the car and camper?

Mr. Bowles: The same general objection because there is no way this can go into the record to demonstrate.

The Court: All right.

By Mr. Branch:

Q This first tractor-trailer, in the way you have got it set up, when you first noticed it, where was it with reference to the automobile and the camper-trailer? A This was in the left lane, and all I could see was the rear of it.

Q Was it already by the car like you have positioned? A Yes, sir.

Q About how far ahead of the automobile in the right lane was it when you first saw it? A Looked like it was 80 or a hundred feet.

Q Ahead of it? A Yes, sir.

Q The other tractor-trailer, how close behind the rear of the first one was that second one you have positioned? [108] A Maybe 120 feet.

Q The second one was about 120 feet behind the first tractor-trailer? A Yes, sir.

Q Both in the passing lane? A Yes.

Q All right. Then what did you see happen? Tell us in your own words. A Well, I heard the whaling sound of this trailer here, I believe, blowing his horn, and the white trailer and the black car going out of control on the highway, and looked like it was jumping, bouncing in the road and in a slide. It was still going in an easterly direction; and, of course, I was standing on the north side of the highway in the shop, and when this trailer came up to it, it blocked out the view, so I didn't see where the impact was on it, whether it hit the back of the trailer or the car.

Q Before the second tractor-trailer that was about 120 feet behind the first one got up beside the camper, you saw the camper bouncing up and down? A Yes, sir.

Q Is that your phrase? A Yes.

Q Where was it on the roadway, in the right lane, [109] or where? A It was in the right lane.

Q And did it stay in the right lane until this No. 2 got up alongside and obscured your vision? A No, it was coming over. The car and trailer was coming over.

Q Into the left lane? A Yes.

Q Could you tell whether the car was coming over first or whether the camper was swinging it around? A The camper was swinging to its left. The momentum was swinging to its left, was giving the car like this, motion.

Q Approximately what was the speed of this second tractor-trailer about 120 feet behind the first one in your estimate? A I'd say just about 65, I guess.

Q About 65? A Yes, sir, my estimate was 65.

Q Judging from what you could see of this No. 1, was there any difference in the speed of this No. 2 following as compared to No. 1? A Yes, it looked like this one was going faster, because he had already started to slow down and apply his brakes.

[110] Q So the second one that obscured your view of the camper was going about 65, and you say he seemed to be slowing down? A Yes.

Q And so what was your estimate as to the speed of the first one that had already gone by? A 65, maybe 70.

Q Maybe 70? A Yes, sir.

Mr. Branch: Okay, do you want to have a seat.

Q Well, after the accident had happened, did you go over to the scene? A Yes, sir.

Q Did you have occasion to talk to either of the truck drivers that you told us about? A No, sir, I recognized the man—well, I didn't recognize him, but I saw the man get out of this truck, the one that hit the trailer.

Q Could you identify that? Was it Glosson? A It was a Glosson tractor, that's right.

Q Did you identify the first one that had gone on by in front of Glosson? A No, sir.

Mr. Branch: Okay. Thank you, Mr. Moore. That's [111] all I have.

Cross Examination

By Mr. Smith:

Q I understand you say you couldn't identify the first truck that you have talked about here? A Yes.

Q Now, let me ask you, I understand that Mr. Moates' gun shop is over on the north side of the highway; in other words, you would be looking across one lane of traffic, or, that is, two lanes of traffic at that point, going out away from Richmond? A Yes, sir.

Q And a median strip, and then into the lanes where this accident happened, would that be correct? A That's correct.

Q That would be what—two, three hundred feet, something like that? A 150 feet maybe.

Q About 150 feet? A Yes.

Q And as I understand it, you were talking to Mr. Moates, weren't you? A Yes, sir.

[112] Q What did Mr. Moates say—"Look out there," and then you looked? A Yes.

Q Is that the way it happened? A He said, "Oh, my God, look at that," and that's—

Q That's when you looked when he said— A He said, "Look at that," and then we heard the whaling sound of the horns and the truck.

Q And this whole thing happened just like that, very quickly? A Very quickly.

Q I realize you weren't out there with a stop watch, but the whole thing happened very quickly? A Yes, sir.

Q And the accident occurred very shortly after you looked? A Very shortly after.

Q And I assume you all went out at that time to see if you could render any assistance? A That's right.

Q Now, you estimate speed, particularly, the first truck, based on almost an instantaneous view, aren't you? A Yes, sir.

Q You didn't really watch that truck as it went [113] down the road, you were watching the second truck and the car in the accident, weren't you? A I wasn't paying that much attention to the first truck, no, sir.

Mr. Smith: I don't have any other questions.

Cross Examination

By Mr. Bowles:

Q Mr. Moore, I guess Bob was standing behind the counter? A Yes, sir.

Q And you were on the other side of the counter? A Right.

Q So Bob was actually facing out toward 360, and you sort of had your back out there? A Side.

Q Your side. You were shooting the breeze like people do on Sunday afternoons? A Yes.

Q That's generally what goes on there on Sunday afternoons? A Yes.

Q He called your attention, he said, "My God," or "Look at that," and you turn around, and you come in and tell [114] us what you saw to the best of your recollection? A Yes.

Q The whole business got over right quick, didn't it? A Didn't take long.

Q Didn't take long? A No, sir.

Q Now, in your testimony in answer to Mr. Branch's question, you said the first one had gone by about 100 to 120 feet, is that what you said, 80 to 100 feet? A It wasn't too much distance between them, no, sir.

Q And that was before the second one ever started by, is that right? A Yes, sir.

Q How far back was the second one from the end of the camper at that point? A I couldn't really say.

Q At the point that he was blowing his horn? A I'd say maybe 30, 40 feet.

Q But it was back some? A Yes, sir.

Q So you've got 80 to 100 feet in front at the end of the other truck that has passed and 30 to 40 feet behind the camper and the truck, this other truck; and the camper, I [115] think, is already been testified is 19 feet, and the car—what was the car like? A 20 feet.

Q So instead of 100 feet, we're talking about closer to 200 feet, if you add it up that way, aren't you? A Well—

Q If you've got 30 to 40 feet behind and 80 to 100 feet ahead and you've got a 20-foot car and a 19-foot camper in there, it's close to around 200 feet? A Yes, sir.

Q I'm not trying to give you a hard time about distances; it's difficult. A Right, it sure is.

Q Since you were out at Bob's that day, I assume you are interested in guns? A Yes, sir.

Q You shoot? A Yes.

Q Target shoot? A I go to the state tournaments.

Q And basically, that's how you know Bob; and the same thing goes to speed, it's all instantaneous? A What I've got in my mind, what I saw, it was going a whole lot faster than the automobile, and I judge the [116] automobile to be going 40, 45.

Q All right. And these two trucks, the front one going faster than the one behind is sort of like the shutter on the camera, showing you a view of the camper and trailer, and the first one that goes by, you wouldn't see through it; then you've got an interval between the two of them, and it gets closed off as it strikes, and it was during that period of time that you saw the camper and car go out of control and just lose it in the road and come over into the road that the Glosson truck was in. Did you see it actually in the process of turning over when it was struck? A Yes, sir, it hit it hard. It went up in the air and sort of went down.

Q Did you see the fact it was partially turned over and it was struck from underneath? A No.

Q All you know is you just saw it get hit? A Yes.

Mr. Bowles: I don't believe I have anything else.

Redirect Examination

By Mr. Branch:

Q Mr. Moore, without regard to Mr. Bowles' mathematical computations—you're not over there with a tape measure— [117] tell us again what is your best estimate as to how close behind the first tractor-trailer was the second one when you saw it, the distance approximately when you first saw it? A 120 feet.

* * *

Q You said the auto was going 40 to 45. What auto were you referring to? A Mrs. Nance.

Q The one pulling the camper? A Yes, sir.

* * *

Thomas Theodore Mabe (Tr. 120-134)

[120] was sworn and testified in behalf of the plaintiffs, as follows:

Direct Examination

By Mr. Branch:

Q Mr. Mabe, what is your complete name? A Thomas Theodore Mabe.

Q And what is your occupation? A I am the owner and general manager of the Honeybear Camper Sales.

Q And did Mr. Thomas Nance, the husband of my client here today, deal with you in the purchase of a camper? A Yes.

Q Were you personally familiar with that contract? A Yes, sir.

Q I hand you Invoice No. 73037. Does that invoice cover the purchase from your company of the Cheetah camper by Mr. Nance? A Yes, sir, it does.

Q And what's the date of that sale? A Date was February the 24th, '73.

Q And I see by the invoice that price includes or come equipped, or how is it phrased? A Complete hookup.

Q Complete hookup. What does this mean, Mr. Mabe? [121] A Complete hookup means hitch installed on the customer's vehicle, mirrors installed on the vehicle because the campers are a little wider than an automobile and just gives him the view to see behind the trailer. It comes with safety chains, it comes with leveling jacks, et cetera. In other words, it's completely equipped, ready for him to tow away from our lot.

Q And a Cheetah trailer is 19 feet according to that invoice? A Yes.

Q Is the trailer— A The overall length of the trailer is 19 feet. You have approximately 3 feet in the trailer is tongue; it's not living quarters. In other words, the actual living part of the trailer is 16 feet.

Q And approximately, if you know, what does one of those

trailers empty way? A According to the manufacturer, approximately 3500 pounds.

Q Now, you say it's wider than a car? A Yes.

Q How about the height, is it taller than a car? A Definitely, yes.

Q How much wider than a car is this trailer? [122] A Approximately a foot wider than the car overall.

Q So you have about 6 inches on each side? A Yes.

Q In this hookup you had it equipped with, how is the braking assembly rigged? In other words, I'm driving a car, pulling a trailer, I put my foot on the brake— A This travel trailer was equipped with electric brakes, which means it has an electric brakedrum on the trailer. When you hook it up to the car, it's hooked up to an electrical plugging on the rear, goes to the front and hooking to a hydraulic lever, which is hooked into the master cylinder of the automobile. Therefore, when you brake your automobile, it automatically brakes the trailer with the automobile simultaneously.

Q Simultaneously? A Yes, sir.

Q Mrs. Nance is going to tell us that her husband was teaching her and stressed that she should not apply brakes hard or sudden or make any sudden stops. What happens if she does? A Well, when you apply your brakes hard, this throws your lever all the way over as far as the mechanism that's going to throw the electricity to the trailer. When you apply your brakes hard, it would give all your voltage at [123] one time and lock up your brakes on your trailer.

Q Would that be bad? A Yes, sir.

Q How many axles does this trailer have? A Tandem axle. It has two axles.

Q Are all such trailers equipped with two? A No, sir, we have single axle and tandem axle trailers.

Q Tandem axle cost more than single axle trailers? A Definitely.

Q What's the advantage of the more expensive one Mr. Nance bought? A A tandem axle gives you a load distribution and a little

better chance. It doesn't throw as much load on your vehicle. It's easier to control on the road versus a single axle underneath a 19-foot trailer. This is more load to the automobile, keeps it out of balance. Therefore, anything any larger than 18 feet usually has tandem axles; in other words, 19 foot on up. There are a few 19-foot trailers on the market with single axles.

Q Now, you, I take it, are in the business. You drive and pull these trailers yourself? A Yes, sir.

Q When pulling one of these trailers along the [124] highway, is a warning to you by a passing tractor-trailer of any benefit? A Definitely. If the tractor-trailer is approaching me and I hear him coming or I hear him blast on his horn, I immediately, you know, react to this by taking a firm hold onto the steering wheel and increasing my speed. I'm not trying to keep him from passing; what I mean here, I'm stretching my rig out. What I mean, I could be running along normally, not prepared for him to come by me, and by stretching my rig out, it doesn't give him the chance to cause me to lose control of my vehicle as he comes by me.

I have been pulling trailers for quite a few years, and I have found accelerating helps to keep him from coming up on me so suddenly and giving me that sudden gust that makes me lose control.

Q When you're driving and pulling your trailers on the roadway, do you usually get a warning of that type from passing trucks?

Mr. Bowles: I object.

The Court: Yes, objection sustained.

By Mr. Branch:

Q What kind of hitch did you put on, the brand name? A It's a Reese equalizer hitch.

Mr. Branch: That's all I have. Answer the [125] gentlemen's questions.

Cross Examination

By Mr. Smith:

Q I'm interested in the business about increasing your speed when a tractor-trailer passes you. I'm sure you must have told your

customer about that. A I can't answer that yes or no. I have a lot of transactions, and when a customer asks me any questions on this matter, yes, sir, I do answer them to the best of my knowledge.

Q You seem to think it's so terribly important, I gather you thought this is something you really ought to warn your customer about. A No, sir, there is nothing to warn a customer about if a customer is familiar with towing any trailer at all.

Q You understood, I gather, that Mr. and Mrs. Nance knew all about handling and towing trailers? A No, sir, I explained to Mr. Nance when I showed him how to hook the hitch up, and so forth, on the trailer, I showed him how to hook up his equalizer hitch, and I explained to him at that time that the hitch would only keep him from bottoming out. In other words, it equalized your distribution of your weight. Do you following what I'm saying?

It doesn't make the rear end of your vehicle sag. [126] An equalized hitch brings up your vehicle level; therefore, when you hit dips in the road, it doesn't cause your vehicle to bounce and lose control.

Q Attaching the trailer to the hitch is of some importance? A Oh, definitely.

Q Each time you put it on? A Oh, yes, sir, it has to be hooked up correctly.

Q If it's not hooked up correctly, you're in serious trouble? A You're in difficulty, yes, sir.

Q The hitch that you were talking about, this Reese hitch equalizer, did you tell me the other day, I thought you said something about it being equipped, to the best of my recollection, for 400 to 420 pounds tongue weight, something like that? A No, sir, you have what you call a 550 Reese hitch and 650 Reese hitch, comparison. A 550 Reese hitch was put on the Nances' vehicle because the trailer they bought only had a 355 tongue weight, and this is what you base the capacity of your hitch, and all this means is the center tongue of your hitch is stronger; in other words, the tongue piece that goes underneath the automobile.

Q From what you just said, then, the Cheetah trailer [127] is designed to put 355 pounds on the bar. A On the bar of the tongue.

Q And, I believe, it's also true that you did not, that is, your own business did not install the hitch? A No, sir. Red's Hitch & Trailer Service does all my hitch work.

Q So you don't know anything about the installation of the hitch other than they installed it? A All I know, he had not had any complaints on his work, and every major dealer in Richmond uses him.

Mr. Smith: I don't have any other questions.

Cross Examination

By Mr. Bowles:

Q When you say "Complete" on that invoice, you are selling Mr. Nance the installation on the car as well? A Yes.

Q And that's what you're selling. Now, were any heavy-duty shocks put on the Chevrolet Impala? A I have no idea.

Q Did it have a sway bar, like padded rod, or something like that? A On the automobile?

Q Yes. [128] A I don't follow you.

Q Well, there are available anti-sway bars that go from the center of the differential over to a side member— A I follow you.

Q —known as a padded rod. A No, sir, I don't know whether that was installed or not.

Q If that type of device is installed with heavy duty shocks, your stability factor increases? A It has to, yes, sir.

Q And in this particular instance, you don't know whether it is or not? A No, sir, I do not.

Q How about looking at your price, whether it's likely for that amount of money? A No, sir, I do not do that type of work; that's automotive-type work.

Q How about Mr. Britten? A Mr. Britten doesn't do automotive-type work.

Q So as far as you know, you've got a standard Chevrolet Impala on which a trailer hitch was put? A Yes, sir.

Q Who hooked up the braking mechanism on the vehicle itself, the car itself? [129] A Mr. Britten.

Q Do you know whether he installed one of these rear sag devices with the bridges over coils? A No, sir. This is only used if the brakes are so sensitive that it needs to be reset is the only time they are applied and the trailer is with Mr. Britten when he puts the hitch on.

Q You are sure no such device was on? A No, sir, I'm not sure whether it was or not. Like I said, one vehicle may have it; the next may not.

Q Depending on the sensitivity of electric brakes? A That's right; on the manufacturer of that trailer.

Q And on the hookup for electric brakes, that little box is generally located under the steering column? A Yes.

Q And it has a lever to which you apply the foot brakes; you can see the lever move? A Yes.

Q And you can also take that lever and turn it left or right, clockwise or counterclockwise, and increase or decrease the amount of braking you get on the trailer? A Yes.

Q And did you tell Mr. Nance all this? A I explained to Mr. Nance he could change the [130] sensitivity of his brakes.

Q At the time this accident occurred, you have no idea how the brakes were set? A No.

Q To come on hard or come on soft? A No.

Q And it could have been any one, depending on where he put it? A That's right.

Q And as far as hooking up your Reese hitch, I believe the procedure is you hook up and lock onto the car and you jack your trailer up, you put the Reese bars on and you hook your chain so you've got a certain amount of tension, and you let it down so the two are level, right? A Right, and you try to get your trailer to tow level, completely level.

Q You told him to do that? A Yes, sir.

Q On this particular occasion when they were towing, you don't

know? A No, sir, I don't know how they set it up. Only thing I can tell you, I heard hearsay, and I can't testify on hearsay.

Q In any event, that is fairly important in towing [131] trailers to equalize the load and set it up? A Definitely.

Q And the conditions that might prevail as to getting it level is determined to some measure what is in the the camper? A This is true your weight distribution would change with loaded versus empty.

Q So in order to have as secure and good of rig as you could have going down the road, it's got to be set up right, brakes have to be adjusted right and load has to be equalized properly; and if all of those things are right, you've got a good stable unit. A Yes.

Q If any one or more are out, you can have a unit that's difficult to control stability-wise, can't you? A I've pulled with the Reese hitch and without the Reese hitch, but my vehicle is a heavy-duty vehicle to start with, so—

Q This Chevrolet was not a heavy-duty vehicle to begin with? A Not to my knowledge.

Q It was a standard Chevy Impala? A Yes.

Q It makes a difference if you have a heavy-duty [132] vehicle, too, on ease of towing? A Yes.

Q And safety? A They sell towing packages for vehicles, which is for heavy duty and heavy-duty shocks.

Mr. Bowles: I have nothing.

Redirect Examination

By Mr. Branch:

Q Mr. Mabe, when you got this trailer and the car back from Britten and the work had been done for making the brakes work and your Reese hitch put on, you did check it out, did you not? A Yes, sir, I did.

Q Did you find that it was installed improperly in any way? A No, sir, it was not.

Q Mr. Bowles asked you about some device, and you were telling us about differentials, and all that sort of thing. There are products

made by Reese called sway bars, are there not? A Yes, sir, there are.

Q Was that put on this trailer? A No, sir, it was not.

[133] Q And would you tell us why you didn't have that installed? A Well, through knowledge of Mr. Britten and myself—Mr. Britten has far more knowledge than I have—I learn knowledge every day—any trailer no longer than 21 feet—

Mr. Smith: Is this Mr. Britten?

The Deponent: I said through my knowledge with Mr. Britten.

A (Continuing) —any trailer any longer than 21 feet, we tell the customer that he should put a sway control bar on his trailer. In other words, you are getting to the length now that you're equally or exceeding the length of your vehicle, and we feel like the longer your trailer the more tendency it will have to sway. Sway control is nothing in the world but a type of shock absorber. It doesn't prevent you from swaying; it limits the amount of swaying.

Q But you did not recommend that for this trailer, which was only 19 feet? A No, sir, because the trailer was not large enough.

Q Generally, Mr. Nance had his vehicle equipped in the manner you recommended? A Yes.

Mr. Branch All right, that's all I have.

[134] Recross Examination

By Mr. Smith:

Q You say you checked out the vehicle when it came back from Britten's Trailer Hitch Service. I take it, by that you hooked it up and checked the electrical system? A I check out the brakes, check out all the wiring, make sure, and test drive it. In other words, we drive it back to Mr. Britten's lot, and in that mile and a half to two miles you can usually tell if everything is hooked up correctly. I don't check every weld that Mr. Britten puts beneath the car, no, sir.

Mr. Smith: That's all.

The Court: Can the witness be excused?

Mr. Branch: I'll file that as an exhibit, Your Honor.

(An invoice submitted by Honeybear Camper Sales for the sale of the camper was received as Plaintiff's Exhibit No. 16.)

[135] * * *

Roy Norman Linville (Tr. 135-163)

was sworn and testified in behalf of the plaintiff, as follows:

Direct Examination

By Mr. Branch:

Q Will you state your full name? A Roy Norman Linville.

Q Mr. Linville, what's your age? A Sixty.

[136] Q What's your occupation? A Consulting engineer in the mechanical design field.

Q You have your biography for me? A No, sir, I don't.

Q Or can you, from memory, take us back through your experience and give us a summary of your background and experience leading up to this occupation, consulting engineer? A Early in 1961 I began to work independently by myself as a consultant. Four years prior to that I was associated with Horace L. Smith, Jr., Incorporated, here in Richmond in the same field of work. Two years prior to that I was with a similar engineering firm in Detroit. Prior to that, since graduating from Ohio State University in 1936, I had worked in a variety of industrial activities as an employee, always in this field of either designing products or designing machinery to make the products. It ranges from aircraft landing gear to automobile generators, lawn mowers, a wide variety of work.

Q What was your major in college? What sort of degree did you get? A Mechanical engineer.

Q All right. Mr. Linville, let me ask you to explain, if you will, to the members of the jury, the dynamics of the air motion or air movement when one vehicle is passing [137] another upon the highway.

Mr. Smith: If Your Honor please, that's objected to. I see no background for this at all.

The Court: Ladies and gentlemen of the jury, I'll ask you to step outside, if you will, for a short while. The Sheriff will call you back.

[153] * * *

(The jury and the witness returned to the courtroom.)

Direct Examination (Continued)

By Mr. Branch:

Q Mr. Linville, I was asking, and I will ask you to explain this to us as in simple terms—we don't need the technical aspects and reasons, but my question was, what effect does a passing vehicle have upon a vehicle being passed in terms of the dynamics of the air motion? I'm thinking in terms of what effect does a passing vehicle have upon the vehicle being passed? A As the passing vehicle approaches, the vehicle it's passing, the displacement, as the passing vehicle moves, has a tendency to push the vehicle being passed away from it. As the passing vehicle completes its pass, that motion, that action is reversed, and the air flowing around the passing vehicle has a tendency to pull the vehicle being passed toward the passing vehicle or into the space that it just recently occupied.

Q All right. In terms of the degree of such action of the vehicle being passed, how does the relative size of the two vehicles affect that? [154] A Well, the larger an object the greater its air displacement. It's probably as much a question of how much does the vehicle passed weigh in its relation to its size that affects its susceptibility to being pushed around by the air current.

Q My question was, if the vehicle passing is a big vehicle and the vehicle being passed is a little vehicle, would you get any difference in that effect as compared to two vehicles of the same size? A The size of the passing vehicle is important.

Q You explained that. A Yes, because it displaces a greater volume of air; and, of course, being a large vehicle, it has to have an appreciable amount of power to propel it, so this power is dissipated, in part, by moving the air. The bigger the object the more air it displaces.

Q How about the relative speed? Does the degree of this effect upon the vehicle being passed vary according to the difference in the speed of the two vehicles? A The difference in speed is much more important than the size.

Q Would you explain that? A Approximately a certain displacement force at 20 miles an hour would be a fourth, a quarter of the displacement [155] force at 40 miles an hour; or to say it differently, at 40 miles an hour you get approximately four times as much displacement force as you would at 20 miles an hour. In other words, the force created by the moving of this air increases according to the square of the difference in speed rather than just proportional. Am I getting too complicated here?

Q A little bit. I'm interested, does the speed of the vehicle being passed, is that of any significance; and if so, is the difference of the speed of the two significant? A It's the difference of speed that makes the difference.

Q That's what I'm asking. A And if that difference, if it's 40 miles an hour difference, it's four times as great as if the difference is 20 miles. The speed doubles, but the force is multiplied by four.

Q Mr. Lineville, what would be the difference in the force asserted on a vehicle being passed if the passing vehicle is in one instance going 5 miles an hour faster and in another instance going 10 miles an hour faster? How does the increase in difference in the speed have an effect upon the vehicle being passed? Is it the greater the difference the more than the effect? A Well, yes, except that it increases more rapidly [156] than the difference. The force increases more rapidly than the difference of speed increases.

Q All right. One final question. Does the shape and size and weight of the vehicle being passed have an effect upon how much of such action it's exposed to? A A distinct effect.

Q We're dealing here with what is called a 19-foot camper.

Mr. Bowles: Unless we go into the specific dimensions of the camper, it's gross weights. He's gone far in excess.

The Court: Let's hear his question first, Mr. Bowles.

Mr. Bowles: Well, he said a 19-foot camper. Thousands of them are different shapes on the market.

Q (Continuing) Mr. Linville, so I won't disturb my friend, would you tell me simply, is there a difference in this type of an effect

upon a camper-trailer and a passenger automobile? A A very distinct difference.

Q Tell us the difference. A Because the automobile is heavier per unit of volume than the trailer. The trailer is lighter. It weighs less per cubic foot or per unit of volume. Therefore, it's [157] easier to blow it around than it is a heavier object that's dense, more compact.

Q And is the design of a camper as compared to the design of an automobile of any significance? A Yes. Well, the closer a trailer comes to looking like an airplane the less effect this would be. The closer a trailer comes to looking like a square box the greater effect it would be. And the same applies to the greater vehicle.

Mr. Branch: Thank you. That's all I have.

The Court: Mr. Smith.

Cross Examination

By Mr. Smith:

Q This air that's displaced goes in all directions, doesn't it, above and below it as well as to both sides? A Very little below; it does go to the sides and above.

Q Very little below? A You have got appreciably less space. You have only the difference between the bottom side of the vehicle and the road, and that's partially occupied by running gear and frame.

Q The effect that you have of the pushing and the attraction vary very greatly depending upon whether you have [158] any breeze at all in the locality, doesn't it? A Well, certainly, a breeze from natural causes does the same thing as the breeze created by a moving object.

Q Exactly. And the stability of the vehicle being passed might have some effect on this buffeting that you're talking about? A Yes. Now, if this breeze effect is blowing in the same direction as the air that the tractor-trailer displaces, you're going to increase the effect on the trailer; it's going to add to it. As a matter of fact, if the breeze is blowing from the tractor-trailer toward the camper, you will get an increased effect on the camper because the breeze will decrease the amount of displaced air that can flow around on the opposite side. It's all going to go toward the camper.

Q The camper is going down the road; it's displacing air, too? A That's right; that's where the relative speed difference comes in.

Mr. Smith: I don't have any other questions.

Cross Examination

By Mr. Bowles:

Q You are just testifying in general? A In general, yes, sir.

[159] Q With no specifics to this particular case? A You have already pointed out I don't know enough about the specifics to give you a distinct value. I could calculate it.

Q They haven't bothered to give you those? A I don't think anybody knows those.

Mr. Branch: If Your Honor please, I don't think Mr. Bowles should suggest what we have bothered to give him or not.

Mr. Bowles: Well, in any event, he doesn't have them.

The Court: Right.

By Mr. Bowles:

Q Now, you don't have any idea what the weight of this camper was? A No.

Q You have no idea how many axles it had? A No.

Q Or how it was hooked to the car? A Well, conventional trailer hitch.

Q Or how it was loaded, how much stuff it had in it? A I don't know how much it had in it. I know you couldn't get enough in it to approximate the density of the automobile unless you loaded it with cast iron or something [160] like that.

Q But you could, if you wanted to. Do you have any idea what the roll center of it is? A No.

Q Or where the center of gravity is? A I have a pretty fair idea of where the center of gravity is.

Q Or the tongue weight? A The tongue weight, if it's properly hung and it's a manufactured, commercially produced vehicle, it

should be built in such a way it's less than a 60 per cent to 40 per cent ratio. You have some weight on the trailer hitch so the trailer doesn't have a tendency to lift the car. Beyond that, the closer you can get to a balance, the better rig you've got.

Q If this trailer weighs 3500 pounds, what would be the weight to be applied to the tongue? A Well, now, we're getting into specifics, and I don't know. I've had a lot of experience with a utility trailer, and you usually try to handle between 55 and 60 per cent of the weight forward of the axle; if you have tandem axles, forward of the center, between the two axles. That leaves 40 to 45 per cent of the weight back of the axle, and it gives you the majority of the weight riding on the trailer hitch, but not a staggering majority. Now, details, numbers, [161] specifics, I don't know; this is up to the trailer manufacturer.

Q And they vary? A And they vary.

Q Within certain applicable laws to the automobile and trailer combination? A Right. Unless, if you have a trailer that you have been using for a while and you're loading it up and go someplace you may upset this ratio. If you have a trailer as it came from the manufacturer, you would be using his weight distribution. It's possible to upset this ratio.

Q By putting more weight behind the axles or out in front of the axles? A That's right. They're built according to the manufacturer's preference for weight distribution.

Q But the manufacturer has no control over the owner as to what he puts in there and what he puts in there weighs? A Of course not.

Q And putting it the wrong place can upset the entire stability of the overall rig? A It could, if this thing is apt to happen after you have been using it for a while. You don't do this to a new one usually; it depends.

Q You mean after you've had it for a while? [162] A If I had it after I had had it for a couple of years, I'd be doing things with it that I wouldn't have done when it was new.

Mr. Branch: If Your Honor please, considering the nature of my direct examination, the only point I was seeking was to explain to the

jury, so I'm interested in Mr. Bowles. I'm not sure what he's trying to prove on subjects that I didn't press upon in my direct.

By Mr. Bowles:

Q What I'm getting at, Mr. Linville, you have testified as to the laws of physics with regard to objects moving through the air. You are not in a position to say what effect, without exhaustive studies, it would have on a given object. One object passes another, and without making an exhaustive study, all you can say is it would have some effect because this is the basic law of movement of bodies of air, but you can't say whether it would be great, little, or what, can you, unless you've got all the other elements in the fish pond? A I think perhaps the best way to answer that is to suggest that any one of us has had experience with sway when we got passed by a rapidly moving object. My testimony can't go into numbers. I don't know the input numbers from which to calculate a result. I am certain about the general effect of the condition we are talking about here.

[163] Q But if you wish, that would be in your field of expertise, given the input numbers? A I could calculate it so close there would be no doubt.

Q Right. But you haven't been asked to do that for this case, have you? A No.

Q You are just talking about generalities? A My only purpose in testifying here is to explain the generalities of air displacement.

Q And if you do that (waving hand over paper cup), it's going to blow the cup on the table? That's about what that testimony amounts to? A Yes.

[165] * * *

Sherman Lee Davis (Tr. 165-169)

was sworn and testified in behalf of the plaintiff, as follows:

Direct Examination

By Mr. Branch:

Q Mr. Davis, you were sworn this morning, were you not? A Yes.

Q For my record, will you state your full name? A Sherman Lee Davis.

Q And what is your present home address? A Route 4 Box 256-A, Mabane, North Carolina.

Q Mr. Davis, I want to question you very briefly on one subject, taking you back to March 11, 1973. Who then did you work for? A Colonial Motor Lines.

Q You're no longer employed by them now, are you? A No.

Q Late on the afternoon on that day, March 1973, were you operating a vehicle for your employer in the course of your employment? A Yes, sir.

Q And were you operating—it was a tractor-trailer was it? A Yes.

[166] Q What kind? I mean, describe it; open body, closed body, 40 foot, 20 foot? A It was a closed van. To the best of my memory, it was a 40-foot trailer.

Q Closed like one of those generally like a big box A Yes, sir.

Q Were you in the vicinity of an accident that occurred involving Mrs. Nance, who is here with me today, on that afternoon of March 11? A Yes, sir.

Q Mr. Davis, had you operated your tractor-trailer past Mrs. Nance, pulling a little camper-trailer before her accident? A You say did I pass?

Q Did you pass her before her accident? A Yes, sir.

Q And after you passed her, how did you know she had an accident? A I seen it in my mirror.

Q What kind of vehicle was immediately behind you as you were passing her. We understand you passed her. Was a Glosson Motor vehicle—

Mr. Bowles: That's leading, Your Honor.

[167] The Court: Yes.

By Mr. Branch:

Q What vehicle was behind you as you passed her? A There was a Glosson Motor Lines vehicle behind me.

Q And when you got up the road after you passed her, you saw in your rear view mirror an accident? A Yes, sir.

Q What vehicle was involved in that accident with Mrs. Nance? A Which one, I don't know. There was a Glosson truck sitting on the—

Q I'm not asking you to describe the whole thing. You passed her? A Yes.

Q Behind you was a Glosson? A Yes.

Q And you saw the accident or saw an accident had occurred in the rear view mirror? A Yes.

Q And you saw it involved Mrs. Nance and a camper, and what kind of tractor-trailer? A Glosson.

Q Glosson. One final question. Before you undertook to pass Mrs. Nance's camper, approximately how far behind [168] you was the Glosson tractor? A I don't know exactly.

Q Approximately? All right, Mr. Davis, there was a Glosson behind you as you went by her? A Yes.

Q And there was no vehicle between you and the Glosson truck as you went by her? It was you and the Glosson truck? A Yes.

Mr. Bowles: You don't want him to answer the questions; you want to give them.

Mr. Branch: He didn't seem to know. I assume you're going to put him back on later. That's all I need for now, Your Honor.

Mr. Bowles: I think if we had a little more time he could answer the questions. He answered the questions, and you cut him off.

The Court: I don't think he cut him off. Can you give an estimate?

The Witness: I'm guessing, of course. I'm going to say he was somewhere, like, two, maybe three truck lengths behind me, having to guess.

By Mr. Branch:

Q Two, three truck lengths. And when you say, [169] "truck lengths," are you thinking in terms of your truck that you told us was a 40-foot rig? A Yes.

* * *

[171] * * *

Sherman Lee Davis (Tr. 165-169, 171-191)

having been sworn, testified in behalf of Defendant Colonial Motor Freight Line, Inc., as follows:

Direct Examination

By Mr. Smith:

Q Mr. Davis, you had testified yesterday in answer [172] to questions of Mr. Branch, and I'm going to ask you some questions now. Tell us, first of all, how long you had been driving tractor-trailer trucks at the time of the accident. A Approximately three months.

Q Had you received training for driving trucks of this type? A Yes.

Q Where had you received your training? A Revco Tractor Trailer Training herein Richmond.

Q Do you get a certificate when you pass a course such as that? A Yes.

Q Do you have to take any exams? A Yes, sir.

Q What type of exams? A You have to take several road tests driving different types of tractor-trailers, and you also have to pass ICC tests.

Q Do you take any other tests after you get a job after you graduate? A You have to take a road test, plus you have to take the ICC test again.

Q And was Colonial the only company you worked for during that approximately three months? [173] A Yes.

Q Now, you testified yesterday about the passing of Mrs. Nance's vehicle. Would you tell me now what speed you were operating your tractor-trailer unit as you went by or past Mrs. Nance's vehicle? A Somewhere between 50 and 55.

Q Had you increased you speed any as you went past her? A No, sir.

Q Was it then a steady speed that you were maintaining as you went around her? A Yes.

Q Now, as you approached Mrs. Nance's camper-trailer combination, did you notice any wavering or movement or the trailer wavering behind? A No, sir.

Q How far would you say approximately you were in front of Mrs. Nance's unit, the car and trailer combination, when you noticed some movement in the combination? A I really couldn't say, sir.

Q Well, can you say, based on anything you saw in your rear view mirror; that is, could you see both headlights or just one headlight, or what? A Yes, sir, I could see both headlights.

[174] Q Then your entire truck at that point was beyond her? A Yes.

Q How much beyond, do you think? A That, I really couldn't say. I would make sure that I could see both of the vehicle's headlights before I attempted to pull back into the lane. I was taught in school not to pull back into the right lane until you could see the two lights of the vehicle behind you.

Q On this particular occasion, did you attempt to pull back into the right lane? A No, sir.

Q Was there some reason for that? A Yes, sir. I could see her trailer was swaying, and so I continued on in the left lane, leaving her room to straighten up if she needed to speed up or pull her trailer out of the sway.

Q And at some time after that you pulled over and stopped and went back to the scene? A Yes.

Q What can you tell us about the speed of the camper and car combination as you went by? Can you estimate that for us or tell us what it was in relation to your speed? A It was somewhat slower than mine, but how much, [175] I don't know.

Q Was it a great deal slower, or did you go by it slowly? A I went by it slowly.

Mr. Smith: I have no other questions.

The Court: All right, Mr. Bowles.

Cross Examination

By Mr. Bowles:

Q Mr. Davis, I believe that you had been in the right-hand lane closing in on this camper-car, is that correct? A Yes.

Q And Mr. Soles, as you found out later, or the Glosson driver, was in the left-hand lane, is that correct? A Yes.

Q And apparently he saw that you were getting boxed in because the vehicle in front of you was moving slower, and he gave you a signal to come out, like a courtesy of a friendly gesture? A He flashed his lights for me.

Q And you put your blinker on and went to the left and came out and went by? A Yes.

Q In a perfectly normal, natural manner? [176] A Yes.

Q Now, yesterday, you stated in response to a question by Mr. Branch, after some delay, that you observed the Glosson truck behind you two or three tractor-trailer lengths behind you? A Yes.

Q That's an estimate on your part, of course? A Yes.

Q Made in your rear view mirror? A Like I say, it's just strictly guess. I know it was a good safe distance behind me for me to pull out.

Mr. Bowles: I have nothing else.

The Court: Mr. Branch.

Cross Examination

By Mr. Branch:

Q Mr. Davis, let me take you back up the road a ways before any of this happened. On your approach to the scene of the accident, you had been passing Glosson trucks, and Glosson trucks had been passing you, isn't that true? A Yes, sir, we passed each other.

Q Why were you doing that? Would you pass a vehicle and get back to the right lane and slow down, and then when he passed you, would you speed up to pass him, is that what you [177] were doing? A I don't know exactly how to put it, but what takes place—in other words, you're driving down the road and your vehicle may pull

a hill a little better than the other fellow's. In order to keep from having to put on brakes and drag up the hill behind him and gear down and go up a hill behind him, then, naturally, you pull out, if you're not breaking the speed limit, keeping your own speed limit, passing, to go back into your proper lane. And maybe at the top of a hill or straightaway theirs then may pull better than yours, and, in turn, he would do the same thing.

Q Well, Route 360 for a couple of miles west of the scene is generally flat, isn't it? A Sir?

Q Route 360 for, say, a couple of miles west of the scene of the accident, there aren't really any real hills, are there? Isn't it generally a flat road? A I really couldn't say, sir.

Q So your answer was, as to why you all were leap-frogging, based on what usually happens when you have hills and things. But if you have no hills, why would you be varying your speed so much?

Mr. Smith: Your Honor, he hasn't asked him where this passing took place. He's implying it was all [178] within two miles of the accident. The witness hasn't said that.

The Court: His questions are directed at an area, aren't they, within two and a half miles of the accident?

Mr. Smith: I think he should ask him specifically if any passing took place there.

The Court: You could cover that on re-exam. I think he has a right to examine him.

By Mr. Branch:

Q Let me leave that and ask you this: You say you had training as a tractor-trailer driver? A Yes.

Q And how long did you have the driving? A 111½ hours.

Q And is your training with respect to any particular type of training? Did they train you in the use of diesel engines or gas engines or use of straight body trucks and semi tractor-trailers, or did they confine themselves to this particular type of tractor-trailer? A They train you with the diesel.

Q Diesel? A Yes.

Q Well, did they say anything to you in your [179] training at what speed those engines are designed to operate most efficiently? A Not to my memory.

Q They didn't say anything to you about that? A Not to my memory.

Q How about from your employer? Has he given you any idea as to what speed the diesels operate most efficiently? A No.

Q How about on your personal knowledge and experience, what speed do you think they operate most efficiently? A Never really said really. I mean, I'm not really understanding exactly what you're trying to—

Q You don't understand? A No, sir.

Q Well, has it been said that the tractor-trailer rigs are designed to operate most efficiently at 62, 63 miles an hour? A Never heard that.

Q You never heard that? A No.

Q You never read that? A No.

Q Now, you were in the right lane, and you were overtaking the camper, is that right? [180] A Yes.

Q And as you were drawing close to the camper, the Glosson truck was about to pass you again, isn't that right? A No.

Q He was overtaking you in the passing lane? A He was in my left lane.

Q Well, he wouldn't be in the left lane and overtaking you unless he was intending to pass you, would he? A I'd be afraid to say, sir. I don't know whether he was in the process of passing someone behind me or what he was doing.

Q Why else would a Glosson truck be in the passing lane unless he was trying to pass you?

Mr. Smith: He just said.

The Court: Let him go ahead.

Q (Continuing) In your experience and in your training, is it

normal for a tractor-trailer to be in the passing lane without preparing to pass? A I have seen some going down the road in the left lane, sir.

Q All right. But then, in answer to Mr. Bowles, or rather in agreement with Mr. Bowles, the Glosson truck apparently saw you were getting up close to the slow moving camper, and he held back and gave you his lights to let you pull in to [181] go on by. Is that what happened? A I suppose so; he flashed his lights, and I pulled out.

Q All right. How close was he to your rig when you saw him flash his lights? A I couldn't really say.

Q Was he up alongside your rig? A No, sir.

Q Was he at the rear end of your rig? A No, sir.

Q He was just some distance behind, and you can't say? A Yes.

Q When you did accept his invitation and you did pull into the passing lane to go by the camper, he was, in your estimate, then, three to four—I mean, two to three—

Mr. Bowles: He did not say that.

The Court: He hasn't finished his question yet, Mr. Bowles.

Mr. Bowles: I had down to a time and place that this witness has never stated.

Mr. Branch: Maybe he's going to state it now, Mr. Bowles.

The Court: Go ahead, Mr. Branch.

[182] Q (Continuing) When you did accept his invitation by his flashing light and pulled into the passing lane to go on by the camper, you did notice somewhere along the way that he then was what you estimated—and I know they're estimates—two or three trailer lengths behind you, and he was still in the passing lane then, is that true? A He was still behind me.

Q In the passing lane? A Yes.

Q And the distance behind you was you estimated for us to be two to three lengths of your trailer?

Mr. Bowles: Of the entire rig, Your Honor. There is a difference between the trailer and the tractor and trailer, and Mr. Branch knows the difference, Your Honor.

The Court: I don't suppose the jury are misled by that, to know that the tractor was in front of the trailer, and they obviously know what he means when he's referring to the whole rig.

Mr. Branch: Yes.

The Court: All right, go ahead.

Q (Continuing) Anyway, that is your estimate as to the distance Glosson was behind you when you noticed he was still in the passing lane and as you were going along by the [183] camper, is that true? A He was behind me somewhere. Like I say, it was a safe distance. Exactly how far or how close, I don't know.

Q You have given us your estimate, two to three lengths of the rig. A Yes.

Q What kind of tractor did you have? Did you have one of these cab-over-engine type? A Yes, it was a cab over.

Q To satisfy Mr. Bowles, how long is that type of tractor? A The complete thing?

Q Yes. A In other words, complete rig?

Q Yes. A To the best of my memory, it's approximately 55 feet long, I think.

Q All right. Mr. Davis, let me ask you, as you were overtaking this slow moving camper, and you say your speed was 50 to 55 overtaking it, right? A Yes.

Q And you say your speed was still 50 to 55 passing it, right? A Yes.

[184] Q How close did you get to the rear of that camper before you pulled into the passing lane to go by? A I'd say I was, roughly, three car lengths, maybe four.

Q Mr. Davis, do you remember testifying on this subject one time before up in my office on depositions? A Not really—I mean, I remember being there.

Q You remember being in my office, don't you? A Yes.

Q And your lawyer was with you, and Mr. Bowles, and all of us? A Exactly what I said, I don't remember that.

Q Well, you told us then it was two to three car lengths and you estimated 30 to 45 feet.

Mr. Smith: Well, read the whole question and answer. It's on Page 69.

Mr. Branch: It's on Page 64.

Mr. Smith: 69, isn't it?

The Court: You ought to follow the customary procedure if you intend to impeach him, lay the groundwork, whether or not he was asked such and such a question, whether his answer was such.

Mr. Smith: 69 it is mine, the last question and answer.

[185] By Mr. Branch:

Q Here was the series of questions.

"And when you said"—you had testified earlier on it—"And when you said you were within two or three car lengths of the camper when you pulled out to pass, are you referring to an ordinary passenger car?", and you agreed you were.

"And what would be your estimate as to the length of an ordinary passenger car?", and you said "Roughly 15 foot. . ."

Is that still your testimony? A Yes.

Q So you got within two to three car lengths—and meaning car lengths to be 15 feet—of this camper when you pulled out to pass? A Yes.

Q So you got within 30 to 45 feet of the camper, and you were still going 55 relative to that slow moving speed of the camper? A Yes.

Q And you had not applied brakes? A No.

Q Well, what would you have done if the Glosson truck had not held back to let you escape? [186] A I would have had to start applying brakes.

Q Could you have avoided hitting the camper within 30 feet? A I think so.

Q You're not sure? A No, sir, I'm not positive, but I think I had plenty of distance between me and the vehicle in front of me if I had to make an emergency stop, I could have without hitting them. Like I said, I was guessing at my distance between them.

Q Well, in your experience in driving this rig and your training, at a speed of 55 how much distance do you need to stop the rig?

Mr. Smith: Wait a minute; I have to object to that. He's obviously not an expert on this. There is a table, as you know, on that; and, in addition, he's already testified that this vehicle in front of him was only slightly slower than he was, so it's an entirely different proposition.

The Court: If he knows from his experience how long it takes, I think he can answer; and if he doesn't know, it's all right.

Mr. Bowles: He's gone outside what either Mr. Smith or I asked him; he's taken him back as his [187] own witness.

The Court: It's hard to determine where the line is because one or both of you examined him as to the passing procedures, but go ahead; I think the question is proper.

By Mr. Branch:

Q Can you answer the question, Mr. Davis? A No, sir.

Q You don't know? A No, sir, I don't.

Q Let me ask you this, Mr. Davis: Don't you know, and didn't you then know that when a tractor-trailer passes a camper or a house trailer, quite often a swaying effect will be caused on the camper? A I had seen some sway, yes, and I had seen at times a tractor-trailer go by one and not even shake it at all.

Q So you know that sometimes passing them will cause them to start swaying, and sometimes it does not? A Yes.

Q And knowing that, don't you also know that it would be helpful to the driver of the camper rig to have some notice and warning that you are about to pass him? A I really had never thought about it.

Q Never thought about it? [188] A No.

Q Then is that why you didn't sound any horn signal for the benefit of this lady when you started to pass her? A Yes.

Q You did not sound the horn, did you? A No.

Q And we do have it clear that as you overtook the camper, while you were still in the right lane behind it, the camper was not swaying or indicating to you any difficulty? A No, sir.

Q Let me ask you this, Mr. Davis: At the time when you were alongside the camper, had you encountered any problem that would have required you to slam on brakes or experience any difficulty, was the Glosson truck behind you far enough that he could have stopped without hitting you? A When I was beside of the camper?

Q Right. A I couldn't say, sir.

Q Well, referring you again to your previous testimony, Page 59, and you told us then, "Yes, sir, I feel he could have stopped if necessary to have kept from hitting me, if I had to have slammed on brakes or anything."

Did you tell us that then? [189] A Whatever speed I was running—in other words, when I pulled out, he was in the left lane—in other words, he was enough distance behind me that if I would have slammed on brakes, he could have, too.

Q Well, was he the same distance behind you as you were going by the camper? A I couldn't say because I was watching the road in front of me and the vehicle on my right.

Q Well, he either speeded up to overtake you or he maintained the same distance; that would be a fair statement, wouldn't it? A I would think so.

Q If he maintained the same distance behind you when you pulled into the passing lane while you were going by the camper, he was far enough back that he could apply brakes and avoid hitting you or anything else within that distance if he encountered trouble? A This is when I pulled out?

Q Is that what you're saying? A When I pulled out into the left lane to go around the camper, there was enough distance between us that he could have stopped, I feel like if he had have.

Q And there was even more distance between him and the camper within which he could have stopped if he wanted to [190] if the camper got in trouble, isn't that right? A Yes.

Q How do you happen to estimate your speed between 50 to 55? Did you look at your speedometer as you were overtaking the camper? A No, you usually try to keep in the speed limit, and, naturally, every so often you glance at the speed to see that you're doing the proper speed.

Q Mr. Davis, if you were going 50 to 55 as you were overtaking the camper, didn't you increase your speed to pull into the passing lane to go by it and pass it? A No, sir.

Q You're sure? A I'm fairly positive I didn't.

Q Fairly, but not positive? A I couldn't swear to it one way or another, sir.

Q You quite often will increase your speed in a passing maneuver, will you not? A Sir?

Q You quite often will increase your speed on a passing maneuver, do you not? A I would think so.

Q That's why you can't be positive that you did not do so this time you couldn't swear to it? [191] A No, sir, I couldn't swear to it.

* * *

Kathleen Nance (Tr. 191-214)

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

Direct Examination

By Mr. Branch:

Q You are Mrs. Kathleen Nance? A Yes, I am.

Q Mrs. Nance, how old are you? A Fifty-six.

Q Before this accident, how old was your husband? [192] A He was 60.

Q Now, both of you were employed? A Yes.

Q And you were planning a vacation trip? A Yes.

Q And in that connection you bought this camper we heard about? A That's right.

Q Your husband took care of buying and equipping the camper and all that, did he not? A Yes, he did.

Q You didn't participate in any of the negotiations concerning the purchase? A I was there, but he handled all the details.

Q You approved of it as to kitchen facilities, and what have you? A Yes, sir.

Q What were your plans to do with it? Why did you buy a camper? A Well, you mean, right away, or ultimately in the future we had planned to retire and take trips.

Q And what were you going to do? Did you have any immediate plans in the near future? A Yes, we were planning to go to Florida to see [193] our son.

Q How many sons do you have? A Two.

Q Now, during the time when you bought the camper to the occasion of time we're talking about, had you had occasion to drive the camper or drive a car pulling a camper before? A Once.

Q And where and when was that? A The Sunday before this we had taken a short—we called it a trial run up 64.

Q And tell us about that. Did your husband drive? A My husband drove up. He drove across town and up Route 64 to Oilville truck stop, and we had lunch and turned around. I drove back, all the way back.

Q Did you encounter any difficulty on that trip coming back? A No, sir.

Q Did any tractor-trailer pass you on that trip coming back? A I'm sure they did, but—

Q Who gave you some instructions or information about things to do or guard against pulling the camper? A Well, my husband, chiefly, because he was in the [194] car with me when I drove.

Q What was the emphasis of your concentration according to the instructions given you while pulling the camper? A Well, the main instructions I remember was never to slam on the brakes and never to jerk the wheel.

Q And what were you told to do to be sure you stayed in one lane, considering the camper was wider than the car? A I always watched through the side view mirror to be sure that I was within the white line.

Q Well, let's come along to the day of this accident. What day of of the week was it? A Sunday.

Q And where had you been? A We had been to Burkeville to a funeral.

Q And how did it come to pass that you had taken the camper on that trip? A Well, I know it seems unusual, but we only had a couple of weeks before we were going on vacation, and we wanted to get driving experience, so we decided to drive the camper up and just park it and ride to the funeral with my sister and her husband, and then just drive the camper back.

Q Well, who drove the camper up? [195] A My husband drove up.

Q And then after the funeral, then you went back and hooked onto the camper again? A We didn't unhook the camper. We just parked it and rode in another car to the funeral, then came back and got in the camper, and he drove to the intersection of 360, and I drove from 360 on.

Q All right. Did you indicate approximately how far it was from that intersection to where this accident occurred? Burkeville is up in Nottoway County, is it not? A I think it must have been around 40 or 50 miles. I'm not sure of the distance.

Q Approximately? A Approximately.

Q Well, during that distance that you had been driving down 360, had any other tractor-trailers passed you during that time? A I'm sure they had. I didn't take particular notice because they didn't—

Q Did any of them bother you? A Didn't bother me.

Q Did you encounter any difficulty with your camper during that distance to where the accident occurred? A No, we didn't.

[196] Q What was your general speed going that distance? A I was going 45 miles an hour, I know, because I kept check, kept looking at my speedometer.

Q Were you always in the right lane, or did you sometimes pull out to pass? A No, I didn't pass. As far as I remember, I don't think I passed at all. I just stayed in the right lane, let other people pass me.

Q Other people passed you. All right. And then approaching this accident scene, how would you describe the roadway for a couple of miles before you got to it; and I'm asking, were there any hills, or what? A As far as I can remember, it was a straight, flat length of road.

Q And you were just driving along? A Yes, sir.

Q Were you just before this accident, were you noticing what traffic conditions were to your rear? A No, I was just driving along, being careful to stay in my right lane and maintain my speed of 45 miles an hour.

Q And then what happened? A Well, I was driving along, and the first trailer zipped past me. I would say he was going 60 to 65 miles an hour. He passed me like I was standing still, and I felt my [197] trailer swerve, and I looked in my side view mirror and saw this other trailer coming up on me, and my husband reached over and very gently squeezed my wrists, and that's all I remember.

Q That's the last thing you remember? A Yes.

Q Had you ever encountered any swaying of that camper on your trip up to Oilville or during that 40 or 50 miles from Burkeville? A I hadn't noticed it.

Q Is that the first time you had encountered a swaying of that kind? A While I was driving.

Q Can you describe that swaying? Can you tell us whether it swayed to your right or to your left, or how? A I don't know. I just felt a swerve. I don't know whether it was right or left.

Q This tractor-trailer that was zipping by you, where was it when you first noticed the swaying? A He had passed.

Q He had gotten by you? A Yes.

Q That's when you noticed the swaying? A Yes.

[198] Q And the last thing you remember is your husband putting his hand to reassure you on your wrist? A Right.

Q What's the next thing you remember? A After that, I can't remember anything.

Q Well, do you remember being in the hospital? A Oh, yes, I remember being in the hospital.

Q Do you remember being taken to the hospital? A I think I vaguely remember somebody trying to get me out of the car, and then I don't remember anything else until I was in the ambulance, and then I don't remember anything else until I was in the emergency room.

Q If you remember, what did they do for you in the emergency room; and if you don't remember, don't guess. A I think I must have been lapsing into unconsciousness. I remember they gave me injections, and I remember repeatedly asking where my husband was, and I distinctly remember when the doctor told me, and then they gave me some more injections, and that's all.

Q Let's move on to something else. Do you remember talking to the police officer? A Very vaguely.

Q All right. A I know he was there and I know I talked to him, [199] but I can't—that's all.

[201] * * *

Q Did you hear a horn signal? A I can't recall hearing a horn signal.

Q Did you have any notice that this truck was about to pass you before he started zipping by? A No.

Mr. Branch: All right. That's all I have.

Cross Examination

By Mr. Smith:

Q Mrs. Nance, as I understand it, this was the second time you had driven the camper? A Yes, it was.

Q Or towed the camper-trailer? A Yes.

Q And the only other occasion you had towed it before was on a short trip to Gum Springs, the trip back from Gum Springs, you hauled it back? A Oilville, I think it was.

Q I'm sorry; Oilville up on Route 64? A Yes.

Q And that would be what—I'm not exactly familiar where Oilville is. Is that 30, 40 miles up 64, something like [202] that? A It's not too far.

Q Is it closer to 18 miles, you think, 18, 20 miles? A It's farther than that from my house, but it's probably 18 miles up Route 64.

Q And this was a Sunday afternoon, was it? A Yes.

Q And then on this particular occasion you had started driving the trailer, pulling the trailer as you got on Route 360 outside of Burkeville? A The day of the accident?

Q The day of the accident. A Yes, sir.

Q Now, that particular day, and on the other occasion as well, I assume it was your husband that set the trailer up? He's the one that put the hitch and did whatever was necessary to get it ready to go? A That's right.

Q And, of course, you don't have any knowledge of the manner in which he set that up? A No, I don't, but knowing my husband, he did it the way it should be done. He was a very thorough person.

Q But at any rate, you have no knowledge yourself of how that was done? [203] A No.

Q Even if you had watched him, you wouldn't have known particularly what he was doing except putting it on? A I wouldn't have undertaken it.

Q You didn't know anything about it. All right. Now, this vehicle you were driving was equipped with rear view mirrors? A Yes, and we had the side view mirrors.

Q The large mirrors to look around the camper? A Yes.

Q So had you wanted to look in your mirror to see if any vehicle or traffic was behind you, all you had to do was look? A That's right.

Q In fact, I assume, as a safe driver, you would do that from time to time as you drive down the road? A Yes.

Q Now, coming up to the accident itself, I take it you are positive, I'm sure, that you were driving your vehicle at 45 miles per hour? A Yes, I am.

Q Because you checked that from time to time? A I did.

Q And you're also sure you were entirely within [204] your right lane? A I was.

Q There is no question about that. And I take it you were also sure that you felt no movement at all in your trailer until after the first tractor-trailer had passed you? A That's right.

Q And had gotten in front of you? That is, it had not gotten back in the lane in front of you, but had gone on down the road in front of you? A He had passed me.

Q Had the rear of his truck gotten clear in front of your car when you felt this movement? A Yes.

Q And that was the point, as I understand it, that the next recollection you have is your husband pressing his hand on your hand, is that correct? A No, as the trailer began to swerve, immediately as the first tractor-trailer passed, the camper began to swerve, and I looked in my side view mirror and saw this other tractor-trailer right upon me, and I felt the force, and that's when my husband reached over.

Q That's when he reached over and touched your hand, you say? A Yes.

[205] Q And that's the last thing you remember? A That's the last thing I remember.

Q And you remember nothing else? A No.

Q You have no recollection or knowledge of your camper going

off the road? A No, the last thing I remember, I felt this force. The last thing I remember, to my knowledge, the car was in the lane.

Q And you have no recollection of it going off the road and then across the road? A No, I did not know it had done that.

Q You felt no bump as the car dropped—what did the trooper say—8 to 10 inches? A No, I did not.

Q And you can't say whether the swerve you felt was to the right or left? A No, sir.

Q And you say you assume that other tractor-trailers had passed you on these other short trips you had been on, particularly, the one the week before and on the day in question, but that you felt nothing when they passed you, no movement at all? A I didn't notice anything. If there was, it [206] wasn't enough for me to notice.

Q As I understand it, then, you had no recollection of applying your brakes or moving the wheel in either direction? A I did not apply my brakes.

Q You say you don't know because you don't remember anything. A Well—I didn't apply my brakes before—

Q —you don't remember anything? A Right.

Q Mrs. Nance, we heard about your injuries. I didn't hear mention that you got a head injury. A I did; I had a cut up here.

Q Did you get a cut on your head? A Yes.

Q You did say you recall the police officer coming to see you? A Yes.

Q And talking to you? A Yes.

Q That was in the emergency room, wasn't it? A Yes.

Q While you were still in the emergency room? A I wasn't in my hospital room. I was in a room up there; I guess it was the emergency room.

[207] Q You heard him testify that you told him—and I'll quote—"I saw that truck up beside me, and I must have jerked the wheel, and I remember my husband putting his hand beside me to steady me. It was the second time I had pulled the trailer. I had pulled it last Sunday with no trouble."

Do you recall giving him that statement? A No, I do not.

Q Do you deny giving it to him? A No, I don't deny, but I don't remember giving it to him.

Q You just don't remember. And you're telling us that you received several injections— A I don't know how many injections.

Q —during the course? A I don't know.

Q You really don't know about the injections at all? A No, I don't know. I'm sure you could get that information from the hospital.

Mr. Smith: I'm sure we can. Thank you.

Cross Examination

By Mr. Bowles:

Q Mrs. Nance, as I understood your testimony, and [208] I don't want to belabor this, but the instructions, more or less, you received with regard to towing the trailer came from your husband? A Right.

Q And the three primary points apparently he made with you was never slam on the brakes was one; and as far as this accident is concerned, up until you have no recollection, your testimony is that you did not slam on the brakes? A I did not.

Q And you have seen the pictures that are in evidence. There are skid marks from the vehicle, but you don't know how they got there? A No.

Mr. Branch: I'm not sure she's seen the pictures.

A (Continuing) I haven't seen the pictures.

Q Well, take my word for it, there are skid marks in the picture. Now, the next rule, as I understood it, was never jerk the wheel? A Yes.

Q Yet, you heard the police officer say what you told him, you did jerk the wheel?

Mr. Branch: If Your Honor please, she did not say to the officer she did jerk the wheel. She's there, and she's trying to tell the officer what must have [209] happened. When he is going to paraphrase something and leave out the key word—

A If I remember, I thought he said, "I may."

Q "Must have." A I thought he said, "I may." I don't remember what I said, but I thought he said, "I may have."

Q The third rule, as I understand it, was always watch through the side view mirror because the trailer was wider than the car, and that was the way you keep it properly within your lane? A Yes.

Q Now, you have testified that you weren't aware of the presence of the Colonial—what turns out to be the Colonial truck until it zipped by you at 60 to 65 miles an hour, so obviously, you were not obeying the third rule of keeping a watch in your rear view mirror? A I was keeping a watch in my side view mirror to make sure that my trailer was within the lane it should be in.

Q And in keeping that watch, you did not see a tractor-trailer gaining on you? A Well, I may have seen it, but it didn't—

Q What I'm getting at, a great deal has been made about warning, and it would be nice if the tractor-trailers blew their horns so you knew they were coming by, but you have [210] installed on the left front fender a mirror that would give you all the warning you need what is coming over your left shoulder, if you look?

Mr. Branch: The question is argumentative, and Mr. Bowles seems to think in his questions, he suggests she should drive with her eyes glued to the rear constantly. I don't think he should argue with the witness.

The Court: He has her on cross examination. I'll overrule the objection. Go ahead, Mr. Bowles.

By Mr. Bowles:

Q What I'm trying to get at, Mrs. Nance, is that a rear view mirror affords you an opportunity to apprise yourself of what's coming up on you in the outside lane? A Right, but I mean if he was coming up on me, he, as far as I knew, he was within his rights to pass me. I had no indication that he shouldn't pass me.

Q Right. But what I'm getting at is you had available to you a means of determining that he was there? A Well, he wasn't the first one to pass me, I'm sure.

Q And apparently you did not use it because your testimony is that the first you became aware of him is when he zipped by you; in other words, not looking in your rear view mirror, but what you see out of the side of your eye at 60 to 65 [211] miles an hour. You hadn't seen him before that, had you? A If I had seen him, I didn't take any special notice of it because I was just driving and paying attention to my driving to make sure I was doing what I should do. Now, if he came out to pass me, I probably saw him, but I didn't make any mental note of it when he began to pass.

Q Do you recall in Mr. Branch's office—Page 11—when asked the question, "Do you recall whether there were any vehicles in the left —now this is before any action takes place with regard to this accident, I'm talking about, were any vehicles behind you?

"A Well, I don't know what was behind me, other than the trailer. If they—I'm sure there were cars behind me."

Simply taken, you were not looking in your rear view mirror to be aware of what traffic was behind you or gaining on you, were you? A No, I was just simply driving along, trying to be sure that what I was doing was right.

Q All right. Now, you say the truck that zipped by you, that you first saw it as it was coming by you, went on up the road, and then you felt your trailer, or the camper, sway, and then you looked in your rear view mirror? A Side view mirror.

[212] Q Side view mirror. And you testified when Mr. Branch was asking you questions, you said, "I saw another truck coming up on me." Now, in response to some questions that Mr. Smith asked you, you said, "I saw another truck right upon me." A Well, he was up on me.

Q Which is true, coming up on you, or right upon you? You said two things. A Well, he was there.

Q Right up— A When I looked in my side view mirror, the truck, as well as I remember, was right by my camper.

Q Was right beside your camper? A Yes.

Q What portion of the truck—the nose of it? A I guess.

Q And this was at the point the Colonial truck had gone on up the road? A He had passed me.

Q The other truck had gone on up the road? A He had passed.

Q And according to your testimony, he was running at least or a maximum of 20 miles an hour faster? A I didn't say that. I was going 45, and he was [213] going—I would estimate it would be 60 or 65.

Q Well, if he was going 65, he was going 20 miles faster? A If he was going 65, he was going 20 miles faster.

Q And leaving you at a good rate? A But the other tractor-trailer was right close behind me.

Q How close behind you? A I can't say.

Q Now, during, also, the course of your deposition—and I realize you, at a later time, watered this down and said your husband just reached over and put his hand on your arm but in response to a question, I believe Mr. Smith asked you—you did say, first, before we got into that—". . . tell me, in your own words now, your best recollection of exactly how that happened, and what you saw, and what you did." And your response, on Page 13, was, "Well, that's what happened, the tractor-trailer passed me at a high rate of speed, my camper swerved, another trailer came up on me and my husband reached over and grabbed my arm, and that's all I know."

Later you did say it wasn't a grab, it was a touch. A No, it was just a gentle pressure.

Q But when you first described it, you described [214] it as a grab? A I may have, but it wasn't a grab.

* * *

Motions To Strike Evidence (Tr. 214-228)

Mr. Smith: On behalf of the defendant Colonial Motor Freight Line, I respectfully move to strike the plaintiff's evidence really upon two prongs. One is the failure to prove actionable negligence which was the proximate cause of this lady's injuries, and, really, [215] secondly, and they really almost go together, the plaintiff is guilty of negligence, we think, as a matter of law, and the evidence as well, physical and otherwise, by other witnesses, they have convicted her, and she has convicted herself. The key to this case, and what Mr. Branch has done—

The Court: Let me ask you so I can follow you better, what do you contend was the act of contributory negligence on her part?

Mr. Smith: What I contend is, the only evidence in this case of what actually caused this accident comes, really, from the plaintiff herself. She says or told the police officer at the hospital, "I must have jerked the wheel." That's one cause. The other cause comes from her today saying, or in depositions, too, saying that her husband put his hand on her hand, and then she doesn't remember anything.

The only implication that comes from both of these things is a jerk of some nature, either by her or her husband, forced the car off the road, and according to the police officer, going through the skid marks and the fact that the car did go off the road, did drop 8 inches and did go at a 45-degree angle back across the road and turn over, that this has to be the only logical [216] cause of the acident.

And, I think, Cary, in talking about the air motion and the swerve effect caused by air motion, has implied to this jury and to the Court and to everyone here that it's the swerve that caused this accident. That isn't so. The swerve didn't cause the accident, and there is no proof that it did by anyone, not by the first witness in this case is there a proof that the swerve caused the accident. All we know is that there was a swerve because I don't think there is any question about it, there was a swerve, but what did it cause, what happened?

And the Supreme Court has time after said there has to be proof of how and why the accident happened. There isn't that proof here.

In addition, we've got a very unusual case, I would say. I found absolutely no other cases in the United States. That isn't to say there aren't any; I'm human; I may have missed some. I looked diligently for days to try and find some case that was remotely similar to this case in the fact of an air wash from a tractor-trailer unit causing something like a car to literally be blown off the road, because that's what you have to believe in this case.

[217] That's what the jury, who have to speculate about, is did the air wash literally blow this vehicle off an 8-inch drop in the road when it was, according to all the evidence, entirely within its lane by the plaintiff's own testimony, exactly within the lane. She said she looked very carefully it was running right down that lane.

The Court: Isn't all the testimony that the wind created by the—that is, if that situation did exist, but if that caused the vehicle to swerve, and that the swerve was the thing that put it out of control?

Mr. Smith: We don't know.

The Court: I think the jury could infer that.

Mr. Smith: I don't see how, Your Honor. There is nothing to say—they have to guess there was no other wind that day that caused the accident. Remember, the expert testified that the wind had a vast effect on the thing. If it was coming from a certain direction, it would double the effect. We don't know; they'd have to guess about that. They'd have to guess that this lady did not jerk the wheel, as she said that she might have to the trooper. They'd have to guess that her husband, in grabbing her arm, had no effect on her. They'd [218] have to guess that the setup of the trailer had nothing to do with it, and yet everyone says it does.

There is so much guesswork involved in this case that I really fail to see—I think what the plaintiff is trying to make it is a case of res ipsa loquitur. That's the only way I can figure it out, and yet it can't come within that rule. I don't see of any way that it could.

The cases that I've found that seem to apply to this situation, one is—look at the oldest one first—I will furnish these to Your Honor, if Your Honor wishes to look at it—it's a 1918 case; I'm not entirely sure appropriate it is, but I think some parts of it might be, Walker versus Fabler; it's a Kansas case. The case, 171 Pacific 605, and it involves a motorcycle going at a vast rate of speed of 45 miles an hour down the road, which was greatly in excess of the speed limit, which, I believe, was 25 miles an hour, and what happened was that some horses, four horses were over in the field, and the noise of this motorcycle going at such a terrific rate of speed frightened them apparently, and they dragged their owner away with them, and the Court said the motorcycle operater owed no duty to go at a reasonable speed for people off in a field.

[219] Now, I realize that isn't exactly to that point, but it's the only thing I could find, the effect of speed alone, a sole causation, and there they said that this noise caused by the high speed was not a causative factor. In effect—they didn't use that exact language, but I think—and let me make this point while I'm thinking of it—all the expert said was that it's the difference in speed that makes for this buffeting effect, or buffeting at the beginning and sucking in at the end, if I recall the way he testified. And, by the way, while I'm thinking about it, the plaintiff said she only felt it after the thing went by; she didn't feel it at the beginning, which doesn't make much sense with the expert's testimony.

But, nevertheless, what he's saying then, that truck passing that close—suppose she had been going 35 and he was going 35, that would have had the same speed, and it's the difference, he says, that makes the effect. It's not the speed as the difference. So I think that's important to consider, too.

Well, the Virginia cases I would like to draw to the Court's attention, Beale versus Jones, 210 Virginia 519, which is a causation case where the Court says evidence tending to show causal connection must be [220] sufficient to take the question out of the realm of mere conjecture, or speculation, and into the realm of legitimate inference, before a question of fact for submission to the jury has been made out.

I maintain it has not reached that point. There are too many question marks in this case.

The other one is 207 Virginia 616, Wells versus Whitaker, which is the case which applied to "but for" proximate cause. It involved primacord, and the question was whether the primacord exploded before the ammonium nitrate in the case, and it said there was no such showing, but that before the explosion of the primacord, the other explosion would not have taken place.

And I think we've got that situation here. We really don't know and can't know, regardless of all these witnesses that have testified. We still really don't know what caused this accident except that the camper and trailer turned over after going off the road and turned over in front of another tractor-trailer unit, and that's really all we know. That's all we know.

The Court: Mr. Bowles.

Mr. Bowles: If Your Honor please, the defendant Glosson has a similar motion to strike the plaintiff's evidence on the basis that the plaintiff's evidence, [221] taken in a light most favorable to the plaintiff, must at this point show that the plaintiff herself is guilty of negligence, as a matter of law, on two points; one, failing to keep her vehicle under proper control, and more important than that is her testimoney amounts basically to the appearance on the scene of Mr. Smith's tractor-trailer was a surprise to her, and that she failed in her duty to keep a reasonable lookout for traffic conditions both ahead of her and behind her because she is unaware of what's behind her; she assumes much of these things.

The whole evidence, as the case has developed, clearly, I think, shows that the beginning of this tragedy is her sudden shock and surprise at seeing something right at her shoulder. He gave her no warning, but she has failed to avail herself of the warning that is readily available to you by glancing into her mirror, a rule she recognized as being one of the three primary rules she should follow.

In addition to that, I think all of the evidence conclusively shows that the Glosson truck is not guilty of any negligence that was the proximate cause of this situation. He blinked his lights to let the Colonial truck out. The Colonial truck came out and went by. [222] The Glosson truck is then following. There are various different estimates as to the distance separating the two trucks, but taking it in the light most favorable to the plaintiff, which is 120 feet from Mr. Moore, which he finally sticks to even though he admits if you add up the distances what he says, it exceeds 200 feet, that would put him 80 feet short of the required statutory distance of following.

Now, to begin with, he was not following; he was off to the left. He is not in the same lane. The other man, when he comes out, that person has created a situation of too close, if it is too close; but in any event, there is no conceivable way on this evidence that closeness or proximity of the one truck to the other has anything to do with this situation.

A vehicle to Glosson's right ran off the road, off the shoulder, hooked to the left and came back across the road at a 45-degree angle, crossing his lane of traffic, coming into his lane of traffic at a point in which nobody could have done anything, from Glosson's standpoint, to avoid what happened, and at that point all the testimony is that the vehicle was turning over at that point, and at most, all we did was hit a vehicle that had turned over that presented us with a situation [223] of virtually a sudden emergency, that nothing could have been done, and whether he is within 20 feet or 200 feet or 50 feet of the other tractor-trailer makes absolutely no difference whatsoever because all the witnesses have said there was nothing he could do. And with the assistance of prodding by Mr. Branch, had he been further back, they all still say he couldn't do anything because that vehicle came across in front of him, just like somebody dropped a curtain down in front of him. And even if he had been 200 feet back from the other, which I submit he was, there was nothing he could do to avoid this.

As to him, it was unavoidable; and as far as the plaintiff is concerned, her operation of this vehicle and the negligence in the operation of that vehicle is a causative factor. I submit at this point that the plaintiff's evidence should be stricken as to defendant Glosson.

Now, there are a number of cases that deal with the statute. Following Isenhour against McGranighan, 178 Virginia 365, it says a violation of the statute is negligence, but it says when applying it, it says a violation of the statute is negligence if that negligence is the proximate cause of the injury. And it goes on to [224] say, it's got to be it and only it; and if there is any other areas or anything else involved, then you just can't base it just on this, and I think obvious on the testimony, it cannot be either a proximate cause.

There are other cases that deal with this. It just mentions it casually One that we were involved in, Anchor Motor Freight against Paul in 198 Virginia 480, and all it does is mention the statute, but they are the only two cases I found in Virginia that deal with it.

Even if you got a per se violation of the statute, it is not a proximate cause of what happened here. That's our position.

The Court: Well, gentlemen, I think before the question of the plaintiff's contributory negligence is concerned, of course, whatever her husband did, if in fact, he grabbed her hand or whether or not he was responsible for the movement, if she did, in fact, cut the wheel, his action would not—I would not think would be negligence on her part, but I think that whether or not she was keeping a proper lookout, whether or not she had her vehicle under control would be jury questions, and I would expect to let the case go to the jury as far as the contributory negligence on those two points.

[225] And insofar as Colonial is concerned, Mr. Smith, I don't think that the case rests on speculation at all. I think that his testimony that the speed, the difference in the speed of the vehicles has direct bearing on the effect of the vehicle being passed, there is evidence that that condition is heightened by the fact that the unit being passed is a trailer as distinguished from an automobile.

There is evidence that Colonial was going at a speed considerably in excess of the speed limit, and I think that that would be a question for the jury as to, No. 1, whether, in fact, the Colonial driver was in violation of the speed limit. And now, I notice the instruction now giving of a horn signal. I haven't looked that up; that's not the law now. I didn't think that was any longer required.

Mr. Branch: The statute on that is the way the instruction is phrased. There is a statute that requires horn signal when reasonably necessary.

The Court: Anyway, but aside from that question, which I, of course, will have to go into when the instructions come up, but as to the question to give a signal, even if that were a cause, I think the question of speed, and certainly, I think there is enough evidence [226] that would—if the speed did exist in sufficient amount, that that would have the causal connection on the swaying of her vehicle, and I think that the jury could well find on this evidence that that had been the cause, first, of her vehicle getting out of control, rather than her negligence, in permitting to get out of control for some other reason, and so I would overrule your motion, Mr. Smith, for those reasons.

Now, as far as Glosson is concerned, there, of course, is the testimony of one witness that I did let in, whether I was right or wrong—I believe I was right, but, of course, I could be wrong on that, but I have let it in, and that was the testimony of Mr. Wells, I believe it was—I don't know whether he is the one that I didn't—but anyway, the one that I did let in, the behavior of the vehicles just before they reached the scene of the collision; and while he did not see the actual impact, he saw the action of all of the tractor-trailers, the three involved, or rather the three that were in the picture, and I think he described that behavior as leapfrogging. I think he described the speed, but in any event, I think there is enough evidence, Mr. Bowles, that actually, in addition to perhaps following too closely, that he was not keeping a proper lookout [227] or that he did not have his vehicle under proper control because there is evidence from which the jury could find, and I think the plaintiff would be entitled to that evidence. Although she testified that the vehicle was right on top of her when she looked, I think that she would be entitled on the theory that the Supreme Court has evidenced time and time again that all distances are relative and given in fleeting moments, and that a person is not to be held strictly to the distances that they give.

That's for the jury to consider, and I think there is evidence from which the jury could find that the Glosson vehicle was far enough behind to have taken evasive action when the crisis arose. So I feel that there is evidence on both of those points, sufficient evidence to take the case to the jury, and I'll overrule the motion of Glosson and of Colonial;

and, of course, your objections, both you gentlemen, your objections will be noted to that ruling.

Mr. Bowles: I would like to point out for the record that adequate evasive action from the skid marks were taken by Glosson.

The Court: True, but whether they were taken at the proper time is another question.

Mr. Bowles: You can't by a short interval and [228] then stretch it out another way. You can't have both.

The Court: I think perhaps the jury could.

Mr. Bowles: I know he wants both.

The Court: Your objection is noted, and we will take a short recess now, gentlemen, about 10 minutes.

* * *

Medical Records (Tr. 228-232)

The Court: All right, Mr. Smith, who is your first witness?

Mr. Smith: My first piece of evidence will be the medical records that were summoned yesterday afternoon. I would like at this time to put them into evidence. We summoned yesterday afternoon some records of the Chippenham Hospital into evidence, and at this time we want to place them into evidence for you—

Mr. Branch: Just a moment, Your Honor. I know he has the records, but I don't know what's in it. I don't know what he plans to do. It's not all, every note, every opinion of the body in there is necessarily admissible. I think we should know before he starts talking.

[229] Mr. Bowles: There is a letter in there you requested a copy of, Your Honor.

Mr. Smith: I assume you have a full copy.

Mr. Branch: Of the records.

The Court: Is there anything in there other than the routine?

Mr. Branch: All hospital records, including nurses' notes. Why doesn't he tell us what he's planning to do.

Mr. Smith: I'm going to look at the record and see what shots this lady got.

The Court: That's all right; the shots can be shown. There is no question about any medical opinion of any doctor as to her condition or anything of that sort you're going to rely on?

Mr. Smith: No, sir, not a bit. There is no opinion in there that varies in the slightest from what Dr. Pilcher already says. I'm perfectly—

Mr. Branch: I get nervous when he starts making a speech and I don't know what he's going to say.

Mr. Smith: I will limit my review of the records, Your Honor, only to the shots received by this patient and the drugs received by this paient.

The Court: That's all right.

[230] Mr. Branch: All right.

Mr. Smith: And in doing so, I am looking at the emergency room record of her admission, and under "Treatment and Procedures," we see that she received 1 cc. of tetinus toxin, while apparently in the emergency room.

Then we leaf over to the doctor's order sheet. The first doctor's order sheet is dated the day of the accident, March 11, 1973, and the doctor's order shows that she was receiving codeine for pain. Note by the registered nurse shows that shot was given at 9:35 p.m., and it has the initials of the nurse who gave the shot.

That's the only thing we wish to refer to, but I do wish it to be made an exhibit.

The Court: Very well.

Mr. Smith: Where it shows how much codeine she received.

Mr. Branch: Judge, he can put the emergency room sheet in, if that's what he want, but I think he should fairly, for instance, we got all these little symbols, and you've got something like a thousand cc.'s of something, D_5W, with a little symbol, and I don't think we have any evidence of really what was given her or not given her in the emergency room.

Mr. Smith: I beg your pardon?

[231] Mr. Branch: Unless we have a doctor here to interpret all this stuff—look at that emergency room sheet, where its says "8:40 p.m., 1,000 cc.'s of something designated D_5W," little c. Do you know what all that means?

Mr. Smith: No, sir, but that's what it says.

Mr. Branch: I don't know the relevance; I don't know the proof of it.

The Court: There are a lot of things in there that aren't relevant.

Mr. Branch: I don't want him suggesting tetinus is all she got.

Mr. Smith: All right, look underneath the injections, this 25 milligrams of Vistavil, 7:45 p.m. These are the only injections given apparently in the emergency room, and there are only two listed. Codeine, grII milligrams, 9:35 p.m. Those are the two injections. I think the jury should see these sheets.

Mr. Branch: Sure, put it in. And another part here, for injections, 7:45 p.m.

The Court: Now, are you offering the whole record, or are you offering just the sheet?

Mr. Smith: Either way; I can offer just the sheet. I think the doctor's order sheet should go in, [232] too, if we're only limiting it to two sheets.

Mr. Branch: Let the whole record in.

The Court: That will be Defendant Colonial's No. 1.

(The Chippenham Hospital record of Mrs. Kathleen Nance was received as Defendant Colonial's Exhibit No. 1.)

* * *

Colonial Motor Freight Lines Ex. No. 1 (page 1 only—Tr. 232)

CHIPPENHAM HOSPITAL

7101 JAHNKE ROAD
RICHMOND, VIRGINIA

ER No. 73-04224

EMERGENCY DEPARTMENT REPORT

Hosp. No. –

PATIENT: LAST / FIRST / MIDDLE	AGE	DATE OF BIRTH MO. DAY YR.	DATE	TIME IN
Nance Kathleen	56	4 9 17	3-11-73	6:00 pm

ADDRESS NO. STREET CITY STATE ZIP	SEX	MARITAL STATUS	RELIGION	W	NW	HOME PHONE
1106 W. 42 St. City	F	S ☐ M ☒ W ☐ O ☐	Meth	X		233-1837

RESPONSIBLE PARTY AND/OR NEAREST RELATIVE	RELATIONSHIP	ADDRESS NO. STREET CITY STATE	PHONE
Thomas Nance	son		

OCCUPATION	EMPLOYER	ADDRESS	PHONE
soc.	City of Richmond		

INSURANCE COMPANY	GROUP	POLICY NO.	WORKMANS COMP.	INFORMANT
BCBS thru	☐	Pt. work		self

ACCIDENT	DATE	TIME	AUTO	LOCATION	POLICE NOTIFIED	POLICE SIGNATURE
YES ☒ NO ☐	3-11-73	M		Pt. 360	yes M	TIME

LOCAL PHYSICIAN AND ADDRESS	CONSULTING PHYSICIAN OR MEDICAL EXAM.	NOTIFIED	E. R. PHYSICIAN	BROUGHT IN VIA
Dr. Porter.	Pilcher	M	Grandis	Manchester

DRUG ALLERGIES	LAST TETANUS INJECTION	BY WHOM
none	over a year	self

CHIEF COMPLAINT: Auto accident few min ago.

Previous ER Visit ☐
Previous Hosp. Adm. ☐

HISTORY — Including First Aid Prior to Hospital Arrival:
Apparently ~~co~~ lost conscious.
- Exam - Oriented - T.P.P. - laceration (R) & (L) temporal area - neck supple & full painless ROM - small laceration (R) upper lip - Chest NAP Heart Reg Rhythm S1 S2 -

PHYSICAL EXAM.
BP 180/90 90/60 P 130 R 22
Alert BSM
soft supple. No tenderness
back was painful on pressure over symphysis pain in Pelvis & hip.
Small laceration (R) base of thumb.

X RAY	RESULT
Skull	
(R) lower leg.	
(R) hip.	
Pelvis	+

LABORATORY REPORTS
WBC 18,000 HCT. 38.3 HBG. 13.7
SEGS 79 STAB ___ J ___ L 10 M 10 B ___ E ___
OTHER
URINALYSIS: CHAR. yellow/cloudy P.H. 5.0
SP. GR. 1.021 ALB. 0 SUGAR 0 KETONE 0
WBC 3-7 RBC 50-80 MICRO

TREATMENT AND/OR PROCEDURES DONE
1/2 c Tet Tox
laceration - abrasion (R) lower leg - (R) elbow, (R) thumb
Indwelling Foley - 8:35 90/68 P-100
Type + X-match 11 units
Sign CBC UA
Wash. right antecubital area. tied off 2 Blood vessels then #3 & silk to epithelium x 4 -
Injections: Chromic 2 cc im; Vistaril 25 mg im 7:35 MSM; Cortisone 100 mg IJ 8:35 MSM; Tetanus Toxoid, 0.5 cc MSM

DIAGNOSIS
Orthopedic Consult. 8:40 P 10 cc D5W IV #18 Jelco

DISCHARGE CONDITION: Admit

DISPOSITION	ROOM NO.	FAMILY PHYSICIAN	LEFT WITHOUT TREATMENT	EXPIRED
	208			M

EMERGENCY DEPARTMENT PHYSICIAN
CONSULTING PHYSICIAN [signature]
TIME OUT m
M Martell RN
E.D. NURSE

THIS IS TO CERTIFY THAT I, THE UNDERSIGNED,
1. Hereby acknowledge and authorize such medications, treatments, or consultations considered necessary or advisable.
2. Release the hospital from any responsibilities for valuables, money, personal or other possessions which are not deposited by me with the hospital depository.

X [signature]
WITNESS — PATIENT'S SIGNATURE

DISCHARGE INSTRUCTIONS UNDERSTOOD _____
PATIENT'S SIGNATURE

INSTRUCTIONS: _____

[232] * * *

John L. Ogle, III (Tr. 232-243)

was sworn and testified in behalf of defendant Colonial Motor Freight Line, Inc., as follows:

Direct Examination

By Mr. Smith:

Q Mr. Ogle, would you state your name and address, please, sir? A John L. Ogle, III, 1840 Monument Avenue.

Q What is your age? A Thirty.

Q And by whom are you employed? A Presently by the Richmond City Schools.

[233] Q Are you a schoolteacher? A Yes.

Q What do you teach? A I teach radio, television and dramatic arts.

Q Mr. Ogle, did you see an accident occur on U.S. Route 360 back last year, almost a year ago, March 11, 1973? A Yes, sir.

Q By whom were you employed then? A At that time I was employed by the Southern Broadcasting Company. I was the news director of WRVQ.

Q Tell me what direction were you travelling when you saw this accident. A Into the city, which, I believe, would be east.

Q And tell me, just in your own words, what you saw of the accident? A I was coming over a small rise, just ahead of the area where the accident occurred, and I saw the car and trailer in front of a truck, tractor and trailer, and then very quickly saw the car and trailer begin to gyrate quite wildly, and the next thing I knew the truck was pulling into the left lane; and when the truck had gone all the way to the left and he went all the way to the left onto the median strip, I looked up, and there was the car lying on its side, on its back.

Q Did you see a truck passing the car and the [234] trailer? A Yes, quite some time before that.

Q Can you tell us anything about the speed of that truck that was passing the car or did pass the car? A About that truck, it would

be hard to say because he was considerably in front of me. I thought I was going over the speed limit at the time, and I was going about 50 miles an hour, but I apparently wasn't going over the speed limit. I don't know what the speed was of that truck; it would be hard for me to say.

Q Did it appear to be going a great deal faster than you were? A It didn't seem to be, but its quite difficult to say.

Q What about the car and trailer, can you tell us anything about its speed? A Again, there is a distance of maybe two or three hundred feet.

Q Well, did it pass you at any time? A Only when I was stopped at Winterpock. I got on to 360 at Winterpock, and it passed me as did one or two trucks, and I never did catch up to the car and trailer. I wasn't trying to, but I never did pass it.

Q How far back would you say you were from this [235] accident that developed in front of you? A At the time that it happened?

Q Yes, when you saw it happen. A Perhaps a hundred yards.

Q And do I understand what you say is the truck that passed the camper had done so and had gotten on down the road when this gyration started? A I expect he may have been as far to the other side of the car and trailer as I was to this side.

Q I take it you went up to the accident scene afterwards? A Yes.

Q Did you notice anything with regard to the weather or wind when you got up to the accident scene and got out of your car? A As far as the weather was concerned, it was dry at that time. There seemed to me to be more of a wind where the accident was than there was back where most of the cars were because there is an open field there, and that isn't the case further up the road, and there is also a little valley there, which isn't the case further up the road. I thought the wind was a little stiffer there, but not measurably.

Mr. Smith: I don't have any other questions.

The Court: Mr. Bowles.

[236] Cross Examination

By Mr. Bowles:

Q Mr. Ogle, the road from Winterpock on in is not steep, but sort of undulated, slight rises up and down? A Yes.

Q And were you in a position to be able to estimate the speed of the tractor-trailer that struck the camper and car? A I suspect we were all going within 10 miles of each other, somewhere between 50 and 60 miles an hour.

Q All right. And the distance between the tractor-trailer that actually did the striking and the one that passed and had gone on up the road, could you make any estimate as to how far apart they were? A I would say at least a hundred yards, perhaps more.

Q And there were other tractor-trailers in the vicinity? A Yes, there was one to the right of me and slightly ahead of me, and I believe there was one behind me; I don't know if he was directly behind me.

Q And you were within a hundred yards of where all this happened, sort of right in the middle of it, but not? A Yes, I think if the tractor and trailer wouldn't [237] have struck the car, I probably would have.

Mr. Bowles: That's all I have.

The Court: Mr. Branch.

Cross Examination

By Mr. Branch:

Q Mr. Ogle, do you really mean being a hundred yards from where it was you would have hit a car within a hundred yards at 50? A I know that when I finally stopped behind the tractor-trailer that actually did hit the car—and at that time I did not know that it hit the car—the car itself was still just settling on the pavement. There was a great deal of smoke, and the other tractor-trailers were still stopping, so I think at 50 miles an hour it was very likely.

Q Within a hundred yards? A Like I say—

Q And between you and the camper that got hit by a tractor-

trailer, wasn't there two other tractor-trailers, one in the right lane and one in the left? A There was one in the right for sure, but I believe I was the next thing in line. I don't believe there was another tractor-trailer between me; I don't think so.

Q Wasn't there one tractor-trailer that had left [238] smoke from its tires and skidded off into the median strip to avoid getting involved, and wasn't there another that left smoke from its tires and skidded off to the right side to avoid getting involved? Didn't you see those two? A I saw the one on the right-hand side, and I believe one moved in front of me. That was the one that had been behind.

Q You were in a little Datsun, weren't you? A Datsun, yes.

Q And though you didn't notice the one on the inside lane that skidded off into the median strip perhaps, there was between you and this camper, while the camper was in the right lane, a tractor-trailer, right? A Yes, I believe that's the one that struck it, though.

Q I'm referring to two that did not strike anything. Mr. Ogle, wasn't there four tractor-trailers altogether, starting with the one that had passed the camper, the other that had hit the camper and two others, one that went to the left and one that went to the right? A There were four, yes.

Q There were four. And one of those last two that did not hit anything was in the right lane in front of you, isn't that true? [239] A Yes.

Q And in a little Datsun, you couldn't see anything in the right lane up beyond that big tractor-trailer up in front of you, could you? A I was in the left-hand lane.

Q You were in the passing lane? A I got in the passing lane so that I would not be behind the trailers. With a Datsun, all you can see is license plates, and I wanted to see the road.

Q When you got in the passing lane, there was no tractor-trailer in front of you? A The one that struck the car was there, and another one passed in front of me at the time of the wreck.

Q You mean one swung from the right lane into the left lane in front of you? A Yes. This was at the time the wreck occurred, though.

Q What I'm trying to find out to my satisfaction, and what I think you are telling us, is between that camper before any problem occurred and you were in your car, there were other tractor-trailers, now, isn't that true? A Before any problem occurred?

Q Yes. A No, they were all in the right lane.

[240] Q All of the tractor-trailers were in the right lane? A To the best of my memory, yes—

Q The tractor-trailer that hit this camper—

Mr. Bowles: Let him finish his answer.

The Court: Yes.

A (Continuing) To the best of my memory, I was in the left lane because I didn't want to be behind the tractor-trailers. At that time I did a lot of driving, and I just can't see anything from there in a little car. The first truck passed, came out and passed, and I thought the second truck was going to do the same thing because it flashed its lights; and usually when they do that, they make some move.

Q But the first truck and the second truck, I'm losing— A The first truck, the one that did not strike the car and the trailer, passed.

Q You? A No, passed the car and trailer. I was still back.

Q All right. You've got a tractor-trailer passing the camper? A Yes.

Q That's the first one? [241] A And there was another tractor-trailer well ahead of me, there was another one slightly ahead of me, and there was another one behind me somewhere, either behind me or to the left or right, I'm not sure.

Q There were two tractor-trailers ahead of you? A Three, including the one that passed.

Q Three, including? A Yes.

Q So one had passed, so between you and the camper there were two tractor-trailers, and one of those hit? A But they were both over here. I was in the left lane, and they were in the right lane.

Q Are you saying the one that hit the camper was in the right lane? A It was before anything happened.

Q Was it going by the camper when it hit the camper? A I did not see it hit the camper.

Q What prevented you from seeing it hit the camper? A The body of the truck.

Q And wasn't there a time when the body of the truck also prevented you from seeing the camper going on down the road?

Mr. Smith: At what time?

[242] A There was certainly a time when that occurred, yes.

Q Mr. Ogle, isn't it true that this camper, being pulled by the car, came into your view when one of the tractor-trailers swerved off to the right or to the left? A No, sir. I saw it before that, and coming on down the road I saw it.

Q This camper was at all times in your view and never obstructed from your view by a tractor-trailer, with you in the Datsun? A It was obstructed from my view when the first truck pulled out to pass it, and it was obstructed from my view when the second truck pulled out to what, I assume, was to pass it, and it was a great shock to me seeing it lying upside down when the truck had finished passing.

Q That's what I'm getting at, there was a time when the trucks pulling out, when they obstructed your view of it? A But that's only a matter of seconds.

Q And then when the trucks did go by or pass or do something, it came back into your view, the camper? A Yes.

Q And that's when you saw it at that time wildly gyrating? [243] A There was movement on the part of the trailer previous to the passing of the first truck. I don't know whether that was any—

Q What do you mean, "movement"—its going down the road? A They sort of rock, you know—I don't think—

Q I'm talking about what you told Mr. Smith that you saw the camper and saw it was wildly gyrating. Now, you're not talking about movement then, are you? A This was after the first truck passed it and previous to the second truck hitting it.

Q Right, so we've got a truck passing the camper, a camper

then coming back into your view and your seeing it then wildly gyrating? A Yes.

* * *

[244] Mr. Bowles: For the sake of the record, I would renew the same motion.

Mr. Smith: Well, I would, too, Your Honor, on behalf of Colonial.

* * *

Dossie Eugene Soles (Tr. 244-274)

was sworn and testified in behalf of Defendant Glosson Motor Lines, Inc., as follows:

Direct Examination

By Mr. Bowles:

Q Will you state your name, please, sir? A Dossie Eugene Soles.

Q And how old are you, Mr. Soles? A Twenty-eight.

Q And where do you live? A In Lexington, North Carolina.

Q And by whom are you employed? A Glosson Motor Lines.

Q And at the time this accident happened that we have all been talking about for the last day or so, were you employed by Glosson then? A Yes, sir.

Q And how long prior to this accident had you been [245] driving tractor-trailer? A About four years.

Q Now, at the time in question, would you just tell the jury, in your own words, what you know about this thing and how it happened. A Well, I was headed east on 360 the day it happened, and I started past this—well, I started to pass this truck; and when I started out to pass, I saw this car in front of him.

Q When you started to pass, you mean you moved from the right-hand lane to the left-hand lane? A Right; and when I came out to pass, I saw this camper-trailer and car, and so I backed off to let the truck out, to keep from boxing him up behind him. When I backed off and gave him the light, he came out in the left lane to pass,

and just as he got up side of it, looked like maybe the camper and trailer kind of came over close to the truck but the truck went on by, and I saw the trailer weaving a little bit.

Q What were you doing at this point—slowing down? A I was slowing down, backing away from it, backing off, and then the trailer just weaved, and next thing I knew, the car was on its side over in my lane, and I was trying to go further to the left to get away from it.

Q At any time did you apply your brakes? [246] A Yes, I had meshed the brakes, locked them down.

Q And you say this vehicle turned over? A It turned over.

Q In front of you? A In front of me.

Q In your lane? A Right.

Q And prior to that it had been in the right-hand lane? A Right.

Q And at the point that the other trailer had gone by and you saw it, you backed off to let the other tractor-trailer out? A Right.

Q He had gone by, it started to swerve.

Mr. Branch: If Your Honor please, Mr. Bowles is not under oath, and he taught me some time ago that we shouldn't testify and lead our witnesses.

The Court: Don't lead him, Mr. Bowles.

A The car was in the right lane, the trailer. They were about even, you know, the back of the Colonial trailer and the camper-trailer when they came close to the center line, and then the camper-trailer went to the right, the other truck went on by it, and then it rocked a few [247] minutes. Meanwhile—all that took place in two or three seconds, you know, and then it rocked. That's when I was backing off and give it the whole road. You don't know whether it's going to rock because—and then after it rocked a couple of times, the next thing I knew I saw the bottom of the car was sliding over on its side over in my lane in front of me, and it was kind of like a third lane to make a turn, and that was the lane I was headed for, so I headed like that, and all the brakes.

Q What was your speed when you let the truck ahead of you out, the Colonial truck out? A I'd say I was running about 50, 55 when I came up, when I came up and first saw the Colonial truck, and then backed off from there to let the Colonial out, and from then on I was slowing down all the time.

Q How close at any point did the front of your truck get to the rear of the Colonial truck? A I imagine three, four tractor-trailer lengths.

Q And that was at the point that you let him out? A When I let him out.

Q Did he pull away from you from that point? A He pulled away from me from that point.

Q Do you feel, Mr. Soles, that you did anything to avoid hitting this car?

[248] Mr. Branch: Objection.

The Court: Objection sustained.

A I did do everything.

Mr. Bowles: Don't answer the question.

Mr. Branch: It wasn't a question.

Mr. Bowles: Answer these gentlemen's questions if you would.

The Court: Mr. Branch.

Cross Examination

By Mr. Branch:

Q Mr. Soles, for a couple of miles before you got to where the accident occurred, had you been involved in what's been termed as leapfrogging, passing tractor-trailers, and they passing you? A Well, I wouldn't call it leapfrogging. I mean, it's just natural when you're coming down a road and you come upon a slower vehicle that you go out and pass it—I mean, as long as, you know, if you run up behind him, you either back off or stay behind him, or you just go to the left lane and go on and pass him.

Q Isn't that what you had been doing for a time before you got

to the place where the accident occurred? A Well, I would say somebody passed some; I don't [249] know all I passed.

Q Were they Glosson trucks that you passed? A I don't think it was Glosson. I passed—the best I can remember, I remember passing the Colonial truck, and then I think I started uphill or something, and I think it passed me, and so he was in front.

Q You had passed the Colonial, and then he passed you? A Right. That was really in three, four, five, could have been ten miles, you know.

Q How about the other two Glosson trucks that were there? A No, they were behind me.

Q Did you know that? A No, I didn't know it at the time. Well, I stopped at 76 Truck Stop, which—let's see. Well, one further down on the right; it may be 70 miles from Richmond.

Q I'm talking about within a couple of miles before the accident, didn't you know there were two other Glosson trucks behind you? A There was another truck stop on the right up there. I stopped at the truck stop on the left; and when I was coming by that, there were some Glossons that went by. I didn't pay no attention to who they were. I saw the Glosson [250] trucks; and when I went by, they didn't pull out behind me.

Q You knew that, didn't you? A I wouldn't swear that I knew it, but, you know, you figure with that road on Sunday, the way they were headed, they would be behind me.

Q Well, you are familiar with the other tractor-trailers that are coming along on the same roadway behind you, aren't you? A No, not really. I know they're there, but I don't pay any attention.

Q All tractor-trailers pay attention behind them, don't they, drivers? You're professional drivers? A I mean, why should you—

Q Why did you blink your lights at the Colonial driver if you didn't think he might be looking to you? How did he see the lights if you didn't expect him to be looking to his rear? A Any time you run up behind one, you always check your mirror before you pull out in the left lane. I figured when I came out there, surely he had seen me.

Well that give him, you know, the right of way, a courtesy we use to let the other one out in front of you.

It's your testimony, as far as you're concerned, at least for a couple of miles prior to the accident, you [251] didn't know anything about other tractor-trailers or traffic behind you? Is that what you're saying? A I'm saying I probably knew they were there, but I paid no attention to them, them being behind me.

Q All right. Now, you approached the Colonial, and you were intending to pass him again? A Right.

Q But you saw that he was coming up behind a slow moving camper? A Right.

Q And so you blinked your lights, and you reduced your speed? A Right.

Q Before you reduced your speed, you had been going 50 to 55? A Somewhere around in there, yes.

Q What was your speed after you reduced it for the Colonial? A Well, I don't know exactly—I mean, any time, well, like on a diesel engine, any time you take your foot off the accelerator, probably more than a car would, you know, with gas, and I mean I had plenty—you know, when I blinked my lights for him, he had plenty of room for him to go out. He had plenty of room to pull out. That give him clear right of [252] way because it's not uncommon to see one truck behind a slower moving vehicle and crowd him, keep on going, make him slow down or stop behind the other car.

Q My question was only this: How slow a speed did you get to? You were going 50, 55, and you slacked off you said. What was your speed when the Colonial pulled out in front of you? A It would be hard to say.

Q Well, how can you tell your speed was 50 to 55 at one time and can't tell us anything about your speed at another time? A I estimated that.

Q You estimated your speed at one point, but refuse to estimate your speed—

Mr. Bowles: I think he's arguing with the witness.

Q (Continuing) Is that what you're saying, Mr. Soles? A

Well, when I first saw him, that's when I started slowing back, and it's hard to estimate the exact point, because it would be falling.

Q So you want to tell us only that you slowed up, but you don't know how much? A I started slowing up.

[253] Q And so when the Colonial pulled in front of you, you were going at some speed less than 50 to 55? A Right.

Q Okay. And you were then three to four tractor-trailer lengths behind the Colonial? A Right.

Q How close when he pulled into the passing lane, how close had the Colonial gotten to the camper? A Well, the Colonial was behind the camper, and I was sitting back over here. When I'm blinking the light, he come out in the left lane and was moving by the camper.

Q I see. Let's take us on to that period of time, the Colonial is going by the camper and you see the camper swaying over to the side of the Colonial, didn't hit him, but it swayed over to him, you said, right? A Yes.

Q And then you saw the Colonial go on and the camper swaying, right? A Right.

Q And when you saw that, at least as of the time that Colonial went by and you saw the camper first start swaying, you were three to four tractor-trailer lengths back? A Yes.

Q And you were going at some speed less than 50 [254] miles an hour? A Right.

Q Well, when you saw this camper in trouble, why didn't you then apply brakes? A When I saw the camper in trouble, that's when I was applying brakes.

Q Did you apply brakes when you saw that camper sway over to the side of the Colonial and you were three to four tractor-trailer lengths back? A When I first started slowing down is when the back of the Colonial trailer came close.

Q How did you start slowing down? A From the time I saw it, I took my foot off the accelerator, then Colonial just got by when I put the brakes down. By the time I touched the brakes is whenever the car—the Colonial had then gone by. That's when the car, whenever this

thing rocked, and the car turned on its side, that's when I locked everything down, and this small lane, I went that direction.

Q You just told us that you didn't apply brakes until this car actually turned over in the lane in front of you, isn't that true? A No.

Q Did you apply brakes before that car turned over [255] in front of you? A When that camping trailer was over to the white line, you know, when it came over to the middle of the road, there would have been no way I would have passed while it was over there and while it was rocking.

Q You understand me when I say "apply brakes," not just taking your foot off the gas? Do you know the difference? A I know the difference.

Q All right. Did I understand your earlier testimony correctly when you said you didn't apply brakes until the car turned over in the lane in front of you?

Mr. Bowles: That's your testimony, I believe, Mr. Branch.

Mr. Branch: Mr. Bowles, I'll ask the reporter to read his testimony back at a certain point.

The Court: Yes, Mr. Bowles, if you have an objection, make it, but otherwise, let the witness complete his testimony.

Mr. Branch: Would you go back and read his long statement that I think he said, if I understood him correctly, the car turned over in front of him, and he then applied brakes.

(The record was read by the reporter as follows):

"A From the time I saw it, I took my foot [256] off the accelerator, the Colonial just got by when I put the brakes down. By the time I touched the brakes is whenever the car—the Colonial had then gone by. That's when the car, whenever this thing rocked, and the car turned on its side, that's when I locked everything down, and this small lane, I went that direction."

By Mr. Branch:

Q When the car turned on its side, that's when you locked down brakes? A I started before then.

Q Let's start all over again, Mr. Soles, and let's remember there is a difference between merely taking your foot off gas and applying brakes. A I realize that.

Q The Colonial went by this camper, and you saw the camper sway over to the Colonial truck, towards it. Did you then apply brakes? A That's when I started slowing down.

Q All right. Did you then apply brakes? A No.

Q All right. And then the camper was swaying out of control and you were sitting back there and could see that, right? [257] A Right.

Q What were you doing during that time before the car actually turned over in front of you? A I was slowing down.

Q How? A Well, I was on the brakes.

Q When did you apply brakes? A When I saw the trailer rocking.

Q How far back were you then when you saw the trailer rocking and you applied brakes? A That would be hard to say because I was in the left lane, and the trailer was in the right lane rocking; and when I was slowing down, I had my foot on the brake. I hadn't exactly locked my wheels up, but with brakes on, but getting closer to it while it was rocking.

Q You were not getting any closer to it? A No, I was going that way.

Q While that camper was rocking, were you still three to four tractor-trailer lengths back? A No, I was about maybe—yes, I would say four to five, at least.

Q Now, you're four to five tractor-trailer lengths back—

Mr. Bowles: Back from what, Your Honor? The [258] three to four was back from the Colonial truck, and I think Mr. Branch ought to be fair about it.

The Court: Don't tell the witness what to say.

Mr. Bowles: I'm not telling the witness what to say, Your Honor, but he is confusing, deliberately trying to confuse him between three to

four back from the Colonial truck and distance back from the camper, Your Honor.

The Court: Go ahead.

By Mr. Branch:

Q When you were three to four tractor-trailer lengths back from the Colonial truck, you were also three to four tractor-trailer lengths back from the camper while the Colonial was passing it, were you not? While they were side by side, you were the same distance back from one as you were the other, isn't that true? A Yes, that's right.

Q Okay. That's when you saw the first sway of the camper? A Right.

Q Then the Colonial goes on, and you see the camper swaying more so, right? A Right.

Q And when that camper is swaying more so, you say [259] you were four to five tractor-trailer lengths back from the camper. Had you dropped further behind? A That would be hard to say.

Q Mr. Soles, my question is very simple. Did you continue to overtake this camper, or did you drop further back from the camper? A No, I was dropping back from it.

Q So when that camper is out of control, violently now, you were further back than three to four tractor-trailer lengths, is that true? A It would still be hard, it would be hard to—

Q If you were dropping back all the time, didn't you increase the distance between you and the camper? You either increased the distance between you and the camper or you closed on it. A I went behind it.

Q Then you stayed the same distance behind the camper? A I was behind the camper, that if it took the whole road, it wouldn't bother me a bit.

Q Why did you hit it? A It turned over and took the whole road.

Q It took the whole road, and if it didn't bother you, why did you hit it? [260] A Twenty more foot, I would have never touched it.

Q What I'm interested in, Mr. Soles, is what did you do to let

Mrs. Nance get her camper under control when you saw it out of control and you were three to four to five tractor-trailer lengths behind her? A I gave her the whole road.

Q What did you do about your brakes? A I was stopping.

Q Pardon? A I was stopping.

Q You were stopping? A Right, and until I was locking it down, whenever it turned over, the foot lock.

Q If that was, why didn't you do that when you first saw the lady out of control? A You can't come down the road just automatically just lock one down when you see a trailer wiggling.

Q When you see a camper just plain wiggling out of control? A I didn't say it was out of control. It wasn't out of control to begin with.

Q It was weaving, weaving and wiggling, and you planned to go on by? A That's when I was slowing up to let her straighten [261] it up.

Q How far were you away from this car when it turned over in front of you? A I don't remember. I remember seeing the bottom of the car turning up.

Q How far were you away from the car then? A I don't remember when it turned over in front of me. All I know is it turned over, and it was hit. It was all during a matter of two or three seconds. I didn't have time to think or nothing.

Q You were right there? A When it turned over.

Q So had you gotten closer to it then than you had been? A I wouldn't say—well, I had to get closer or I wouldn't have hit it.

Q And so with this camper swaying up there in front of you, you were still overtaking it, planning to go by it? A No, I was not planning to go by it. I was stopping.

Q Mr. Soles, you hate campers with a passion, don't you? A I never liked them.

Q Your phrase in deposition was—

[262] Mr. Bowles: I think he should go—

The Court: Wait a minute.

Mr. Branch: On Page 45.

Mr. Bowles: If he's attempting to impeach the witness—

By Mr. Branch:

Q I said, don't you hate campers with a passion?

Mr. Bowles: He said he doesn't like them.

The Court: He says he doesn't like them.

By Mr. Branch:

Q I'm saying, didn't you testify on deposition, . . . "I hate them with a passion?," top of the line. A I don't have any love for them, if that's what you're getting at.

Q You hate them with a passion, don't you, Mr. Soles? A I don't like to run with them, but that doesn't make a sign I'm going to run over them.

Q But when you see one up there in front of you swaying out of control, you still plan to go on by them? A No.

Q You did not plan to go on by them? A No.

Q How did you get so close to this car as you were when it turned over into your lane? During all that time now [263] the camper is swaying. A All that time, two seconds, three seconds at the most.

Q All right. Now, how did you get so close to the car? Were you overtaking it, planning to go by? A No, I wasn't planning on going by.

Q Were you holding back a safe distance? A She was like this, it was wiggling, and the truck—I mean, we was all moving, and whenever it was wiggling out of control, and I was trying to stop.

Q How? A With the brakes.

Q The moment you saw this camper start wiggling out of control, is that when you applied brakes? A That's when I had the foot on the brakes.

Q My question is simple. Did you apply brakes when you saw the camper out of control? A I don't remember the exact second I ap-

plied brakes. When all this happened, normally, you would hit brakes to stop.

Q Well, did you when you saw the camper out of control? A I hit the brakes; I didn't stop on a dime.

Q How long do you think a tractor-trailer rig is? [264] You're telling us you're three to four tractor-trailer lengths at one point, you're four to five tractor-trailer lengths at another point. What's the length of them? A 55 foot.

Q Did you testify earlier for us on Page 41 that you were 100 or 200 feet, somewhere in that area, behind the Colonial truck?

Mr. Smith: Why don't you read the questions and answers?

Q "The other truck was the one I left in front of me, or gave the light to come out." That was your answer.

"Q Were you a hundred yards behind that truck? "A A hundred or 200 feet, somewhere in that area."

Is that what you testified to on your deposition? A Well, I would say that.

Q Well, what happened between the deposition and today to increase that distance? A Well, I mean, it's hard to remember exact figures. You go by a safe distance.

Q Have you been over your deposition with anybody? A Not with anybody; I looked over it.

Q You haven't discussed your deposition with your [265] lawyer? You haven't been over your testimony with your lawyer? A No.

Q You haven't discussed your testimony with your lawyer? A I read it over.

Q My question was have you discussed your testimony with your lawyer? A We saw quite a few things in it.

Q Didn't your lawyer talk to you about what you testified earlier? A What do you mean, talked to me?

Q I'm asking, when did you change these distances from a distance of 100 to 200 feet?

Mr. Bowles: I resent that. He hasn't changed the distance. One time he says 100 to 200 feet. Fifty-five times the number he's given, there is no difference. The implication of the question—

By Mr. Branch:

Q Do you agree, then, you distance you're telling us about is 100 to 200 feet, somewhere in between? A Well, the distance on what? What are you talking about?

Q Behind the Colonial. After the Colonial pulled in front of you, you were 100 or 200 feet, or somewhere in [266] between, behind him? A I was a safe distance behind him.

Q Between a hundred and 200 feet, were you? A It should have been.

Q What do you mean by that? A I was a safe distance before.

Q Could it have been more? Could it have been less? A If he had have stopped, I could have safely stopped.

Q If he would have had to stop? A Yes.

Q Why didn't you stop when this camper-trailer did? A If it stopped?

Q Why didn't you? A It didn't stop; it turned over in front of me.

Q I'm asking you again, when it got in trouble, it was swaying, it was out of control, if you could have stopped, why didn't you?

Mr. Bowles: He didn't say he could have stopped. He's talking about the other truck, Your Honor. The implication of Mr. Branch's testimony is highly unfair. He interprets what the witness says, he tries to put words in his mouth, and he doesn't stick to the testimony.

[267] The Court: The last question, I don't think you did, but go ahead.

By Mr. Branch:

Q If I understood you, Mr. Soles, you were far enough behind the Colonial truck that if he had had any trouble, you could have stopped? Is that what you're saying? A Right. If he had to come to a stop, I could have stopped.

Q Right. Then instead of him coming to a stop, you saw this camper, pulled by this lady, in trouble. Why didn't you stop for her? A I was trying. If it would have stopped, I could have stopped.

Q But it did stop, didn't it, when it turned over? A It turned over; it didn't stop. It turned over.

Q There is a difference? A You better believe there is a difference.

Mr. Branch: I don't have any further questions.

Cross Examination

By Mr. Smith:

Q Going back a little bit, Mr. Soles, back before the accident occurred, some distance down the road, did you go through a radar station? [268] A I went through radar.

Q About how far from the accident scene would you say that was? A Roughly, two or three miles.

Q And how did you know it was a police radar setup? Could you see it? A Yeah, you can see them sitting on the side of the road or just off the side of the road with the radar out on the side of the road.

Q You saw it as you came up to the radar station, did you? A Well, we run through there enough, we know where most of them is. You can bank on them being there.

Q They often set up there on Sunday, you mean? A Right, they're there just about every Sunday.

Q And you wouldn't be likely to be running at excessive speeds through a radar station set up by the police, would you? A Not hardly.

Q Coming up to the accident itself—and you said that Colonial went out to pass and did pass—you mentioned that you were coming up on the Colonial truck and you were going 50 to 55. Can you say about how much—obviously, then it was going a little slower than you were at that point. Can [269] you say how much slower? Was it just a little bit slower? A Well, I figured just a little bit, just enough for me to be coming up on him because of the camper up in front and him up here,

and I figured at that point maybe both of us were running about the same. When I backed off, that gives him room to come out without having to apply his brakes.

Q He would have been, as you came up, slightly slower, just slightly? A That's right.

Q Then you let him come out in front of you. Did he go out and pass at the same speed he had been going, or did he increase his speed, the Colonial truck? A Well, you can't tell that much about one when you're going around it whether it increases speed that much; it's not like a car, your going around one. He moved out and moved on around.

Q Well, would you say he was still going under 55 as he went around the camper? A I would say so, right at 55.

Q And as he went around the camper, did he give the camper adequate distance? In other words, were both each well within their lanes when the truck went around up until the point—I realize you say the camper swayed over at the end, that both vehicles got near each other at the rear. I [270] mean before that, were both vehicles each well within their lane? A Yes, they were both in their right lanes, yes.

Q So there was plenty of distance between? A Yes.

Q When you say the camper swayed, you mean the camper was the one that swayed over toward the rear of the truck? A I couldn't see the car at that point; I seen the back of the camper.

Q The camper came over toward the truck? A The camper came over toward the truck, so you put a truck and camper on that road, there is not much distance between them anyway, a narrow road.

Q And the Colonial went on? A Right.

Q Now, after the accident occurred, did any other Glosson trucks come up, other than the ones—we've all heard about the Glosson trucks that were there that skidded, and that sort of thing, as you did, the two trucks beside yourself. A Yes.

Q Were there any Glosson trucks that came up after that? A Yeah, there was—well, after I had went and [271] called Indianapolis

to get their suggestions and all and call the company, and then when I came back over to it, there might have been five or ten there then.

Q Glosson trucks? A Glosson. I saw the drivers. The trucks was probably parked down the road somewhere, but I saw people that I recognized.

Q How long have you been driving tractor-trailers? A A little over four and a half years.

Q Mr. Branch mentioned about the campers. Have you ever noticed them swaying or pulling the way this one did before when you passed them or when other trucks passed them? A Well, I saw a lot of them on the road. I never liked, never been crazy about passing them because of a lot of them doing it, but that's the first one that ever turned over. Some of them come apart in front of you and everything else.

Q Do they sway with or without passing? A Well, I don't know. I think maybe—they don't realize what they're doing, and they get on the interstate and they kind of drift over when a car is trailing off, and they, you know—

Mr. Smith: Okay, I don't have any other questions.

Mr. Bowles: Just a couple, Your Honor.

[272] Redirect Examination

By Mr. Bowles:

Q Mr. Soles, do you have any idea on a Sunday afternoon how many trucks Glosson dispatches going north along 360 from Lexington, North Carolina? A It could be anywhere from 75 to a hundred.

Q And that would be normal on every Sunday afternoon and this Sunday afternoon? A Right.

Q Now, two or three other questions. Prior to this case beginning I gave you your deposition to read over to refresh your memory, didn't I? A Yes.

Q And you and I sat down and generally talked about what your testimony would be, and whatnot, didn't we? A Yes.

Q And I told you to tell these people the truth, didn't I? A Yes.

Q And that's what you've done? A That's what I've done.

Mr. Branch: If Your Honor please, I didn't mind Mr. Bowles testifying to a point, but I object to that last comment.

[273] The Court: Maybe the door has been opened for him.

Mr. Bowles: Wide open.

The Court: Anything further?

Mr. Branch: Yes, I have something further. I got interested in something Mr. Smith brought out.

Recross Examination

By Mr. Branch:

Q We have heard about a radar station. You went through a radar station or radar setup, whatever you call it? A Yes.

Q Do you know where they are? A I know about where most of them, not pinpoint.

Q Why does the presence of radar setups interest you? A Why do they interest me?

Q Yes. A Well, you always watch out for radar setups.

Q If you're not speeding or don't intend to speed, why are you concerned about going through radar? A Well, you can get tickets when you're not speeding.

Q Is that why you watch the radar because you [274] think they're going to ticket you even though you're not speeding? A It's been done before.

Q Is that why you watch for the radar station because they're going to ticket you even though you're not speeding? A You always watch out for radar—I mean, that's just natural.

Q Lots of people don't know how to look for radar stations. Do you watch for radar stations, Mr. Soles, to be sure you don't get caught speeding through them? A Why, sure; anybody does.

Q Does that mean that you sometimes then disregard the speed limit? A I'm not saying I stay right on the speed limit all the time; nobody does.

Q And when you're speeding, you don't want to get caught? A No.

Q So when you get through the radar station, you start speeding again, do you?

Mr. Bowles: He hasn't said that.

Mr. Branch: I have no other questions, Your Honor.

[275] * * *

A. C. Legrand (Tr. 275-281)

was sworn and testified in behalf of Defendant Glosson Motor Lines, Inc., as follows:

Direct Examination

By Mr. Bowles:

Q Will you state your name, please? A A. C. Legrand.

Q And where do you live? A High Point, North Carolina.

Q And how old are you? A Twenty-seven.

Q And, I believe, you are employed by Glosson as a truck driver? A Correct.

Q A long-haul truck driver? [276] A Correct.

Q And, I believe, you were one of the trucks coming down the road when this accident happened in March of last year? A Yes, I was.

Q Can you tell the jury where you were, what you were doing, and what happened? A Well, we were proceeding to leave 360 Truck Stop. Traffic was coming, and we got in the lane, and we proceeded in single file, straight line up the highway. As we approached this vehicle, Colonial truck was to my left—no, he was in front of me. He had pulled back in after we had gotten in line and pulled to the left and let us out, which is customary, and we were proceeding along, and, well, he pulled out and passed the camper, and Mr. Soles was next

at that time. And as he got almost to the camper, it began to sway, and then the brake lights come on, and it went off on the road to the right and lift up and laid on the side and just slid right in front of him.

I immediately began to blink my lights and applied my brakes, and I moved to the left lane so the people behind me could have a clear view of what was going on.

Q You were in the right-hand lane? A Right, at the time of the accident.

Q And you moved to the left? [277] A Right.

Q You didn't run into anything? A No.

Q Did you have to stop pretty quick? A I had enough time to stop. I had to stop quickly, yes.

Q Now, I believe there was another Glosson truck running along with you all? A Yes, we had just left 360 together.

Q When you say "we," you're talking about that truck and your truck? A Yes, the truck behind me.

Q Mr. Soles had not been at 360 with you? A No, he was coming on down the highway.

Q All right. And the other truck was driven by Mr. Wyatt, is that right? A Yes.

Q Do you know anything else about how this accident happened that you can tell this jury? A Other than that it would have just been impossible.

Mr. Branch: If Your Honor please, I object to his opinion.

The Court: Yes.

[278] By Mr. Bowles:

Q What about your speed? A Approximately 50 miles an hour.

Q And were you in a position to observe the distance between Mr. Soles' truck and the Colonial truck that passed the camper? A Yes, I was.

Q What would you say that was? A 250, 300 feet, maybe more.

Mr. Bowles: Answer these gentlemen's questions, please.

Mr. Branch: I have no questions.

The Court: Mr. Smith?

Mr. Smith: Yes, I have.

Cross Examination

By Mr. Smith:

Q You said the Colonial truck pulled out to pass, and you were going 50 miles per hour. I take it from what you said, he was going about the same speed and going around the camper? A He was ahead of me, and I was gearing up; I was building speed. In other words, he was moving possibly faster than I was.

[279] Q How much—very much? A No, not very much, I wouldn't say; 55, maybe, 53.

Q And that would be as it was going around the camper, your best estimate? I realize it's in front of you. A I'd say he was going around the camper accelerating.

Q And that's when you say he got up to the 55, going around the camper? A Yes.

Q And you mentioned that the brake lights, you saw the brake lights go on the camper? A Yes, I did.

Q Just before it went off the road, or as it was going off the road? A After it started shaking like it did. It almost straightened, and then it just went to the right, and the brakes come on, because I remember saying to myself, by having experience with trailers, if you lock your brakes or anything, if you've got enough weight, they will buckle on you, and—well, right then, in my mind, I figured an accident because the brake lights stayed on; they never let go, see.

Q And that's when the car went out of control across the road? A Right.

[280] Q Do you recall two or three miles down the road going through a radar station? A I remember seeing there was a radar setup that day, yes, maybe a little farther back than that.

Q What would you say the distance was? A Approximately five miles, or maybe more; more or less, somewhere in that area.

Q I take it you all travel that road frequently, 360? A Every Sunday.

Q And every Sunday there are right many drivers on that road? A Yes, approximately a hundred of them.

Q And is that the reason why you're familiar with where the radar station is? A Yes, it is.

Mr. Smith: I have no further questions.

Mr. Bowles: I have nothing further.

The Court: Anything further?

Mr. Branch: Just one.

Cross Examination

By Mr. Branch:

Q Did you see the brake lights come on this camper [281] and car after you saw it start swaying? A Yes—well, almost simultaneously. I can't say to the second, but it swayed, and it went to the right, and that's when the brake lights came on.

Q It went to the right, and the brake lights came on? A Right.

Q And in your experience, when you saw it apply brakes, you knew it was going to have trouble? A In most cases you will have trouble if you put the brakes on and hold them.

Q Those brakes were even more apparent to Mr. Soles, as you were further back? A No, I was directly behind them, and Mr. Soles was in the process of passing.

Q You mean he was alongside? A He was almost up to it.

[282] * * *

Howard Wyatt, Jr. (Tr. 282-286)

was sworn and testified in behalf of Defendant Glosson Motor Lines, Inc., as follows:

Direct Examination

By Mr. Bowles:

Q Would you state your name, please? A Howard Wyatt, Jr.

Q How old are you? A Thirty-one.

Q Where do you live? A North Wilkesboro, North Carolina.

[283] Q North Wilkesboro? A Yes, sir.

Q And back in the winter of 1973, March '73, were you employed by Glosson as a long-haul truck driver? A Yes.

Q And what experience do you have driving trucks? A You mean now?

Q Yes. A Seven years up until last June.

Q I believe that since then you have go into business on your own; you are, unfortunately, pumping gas? A Yeah.

Q If you had known what you know now, you might have kept on driving trucks? A I might have.

Q You were one of the trucks going up the road when this accident happened in March of '73, weren't you? A Yes.

Q Would you tell the jury what happened and what you saw, what was going on? A It's really not all that much. There was three besides the Colonial truck that had passed all of us, and Eugene Soles in front, Legrand was pulling me in tow, I was behind, and all of a sudden the truck in front of me went to the left-hand [284] side of the road, and—

Q That's Legrand's truck? A Yes. I really didn't know what had happened when he went left; and when he did, I saw the camper turning over.

Q What did you do? A I applied brakes and stopped as fast as I could.

Q That's basically all you know about it? A That's basically it. I didn't know there was any hit or anything in it, you know, until afterwards.

Q Do you recall the radar being down the road? A Yes, sir.

Q What speed were you all running coming through there right before this accident happened? A 50, 55.

Mr. Bowles: Would you answer these gentlemen's questions, please.

Cross Examination

By Mr. Branch:

Q You were going 50 to 55 when Colonial passed you? A Something like that, yes, 50, 55.

Q I'm not quarreling with your speed. You were going about 50 to 55, and Colonial passed you? A Yes.

[285] Q How quickly did he get by you—I mean, relative to your speed, what was his speed as he went by you? A Not all that fast; not flying.

Q Well, of course, he was going faster than you? A Yes.

Q How much faster? A Three or four miles an hour maybe.

Q He was going maybe 60?

Mr. Smith: Use both figures, was he going 57 to 58?

Q (Continuing) I'm asking relative to your speed, what was Colonial's speed as he passed you? A Two, three, four miles faster; I don't know. I wasn't there watching my speedometer right at that second.

Q I wasn't asking you about your speed; I was asking about how quickly or how much faster than you was Colonial going? A Might have been two, three miles an hour; I don't know. He didn't pass me fast, but he did pass, and that was on back down the road.

Mr. Branch: Thank you. That's all I have.

Cross Examination

By Mr. Smith:

Q You said that was back down the road? [286] A Yes.

Q And I take it you didn't see the Colonial truck go by the camper? A No.

Q So you don't know what his speed was at that point at all? A No.

Q And this passing by the Colonial of you is what—was this a couple of miles down the road? A I really don't know. I'd guess a mile, maybe two; I don't know. I don't remember, to tell you the truth, how far it was, but I'd say a mile or two maybe.

Q Did you say how far you thought the radar station was down the road? A I believe I said to somebody yesterday approximately four to five miles.

[289] * * *

Motions

Mr. Bowles: I think it's a matter of law, Your Honor, and for the record, I will renew the motions made previously at the end of all the evidence and object to the granting of any instructions by the Court on the basis of the motions previously made.

Mr. Smith: We would also, on behalf of Colonial. We didn't do that up to this point, but I would like to reiterate them.

Mr. Bowles: There has been no evidence to whatever the distances have been testified to is a proximate cause of what happened. All the evidence is that the car turned over in front of him and came right across the road in front of him. And how close he was following the other truck, Your Honor, has nothing to do with it.

The Court: But he's actually following—also, he was following the camper, wasn't he?

Mr. Bowles: But in separate lanes. If you apply following, unless you're in the same lane, you could never pass anybody. You would always have to stay 200 foot back, even on I-95, which has four lanes.

[290] * * *

The Court: If he was in the—if he had been in the left-hand lane, certainly, the distance that he was following, Colonial wouldn't have had any causal connection, had he been in the left lane. I don't think that his following Colonial would have been causally connected at all.

[291] * * *

Mr. Branch: Not necessarily. The statutory distance behind Colonial, when Colonial swung her out of control, he would have had that statutory distance under which to bring his vehicle under control and not hit her when she came into his lane.

[292] Mr. Bowles: But that is not the purpose of the statute, Your Honor. The purpose of the statute is to regulate the distance between the two trucks traveling because of their stopping distance to one another.

Mr. Branch: I think the purpose of any statute is to avoid accidents.

The Court: Yes, that's true, but the statute has to have some application to the facts, Cary. * * *

* * *

[294] The Court: What I'm going to do is this: I don't feel there was evidence to support the proper lookout aspect, and I don't think that while this is the statute, I don't think there is any evidence from which a causal connection could be found between—

Mr. Branch: Judge, let me show you a case on that subject. I didn't even know that was being debated.

The Court: I'm going to give you the last half of that anyway.

Mr. Branch: That applies only to Moates' testimony. All the other evidence is that he is in the passing lane.

[301] * * *

The Court: All right, gentlemen, what I'm doing, I'm taking out No. 1 entirely; that is, the lookout; and No. 2, I'm taking out the 200 feet. I'm going to have to read, "Not to follow any other motor vehicle more closely than is reasonable and prudent . . . ."

[302] * * *

Mr. Bowles: The defendant Glosson objects to the keeping in of Paragraph No. 2, "to keep his vehicle under proper control," on the basis that all the evidence disclosed that he did keep it under proper control; and in addition to 3, that all the evidence shows he was operat-

ing at a proper [303] speed at the time, and to 4, on the basis there is no evidence to show he was not operating his motor vehicle at a distance that wasn't reasonable and prudent, having due regard to the speed, and so forth, and the other reasons stated in the general discussion of the instructions generally.

[307] * * *

Mr. Bowles: Your Honor, I think the only reasonable interpretation that can be given to her testimony is through her failure to keep track of traffic behind her in the rear view mirror.

[317] * * *

The Court: On the unavoidable accident, that's LL. I don't see how under any circumstances this could be unavoidable.

[329] * * *

The Court: That leaves us then the unavoidable accident. What have you got to say in addition?

Mr. Bowles: I think it applies to me, Your Honor. It is possible under the evidence for the people to believe that all of this happened right in front of me, and there was nothing I could do about it. There is a point at which if something occurs, or the law in Virginia is right now, it's impossible to prevent it, there is nothing that can be done.

The Court: Then you were not guilty of negligence.

Mr. Bowles: Well, there are cases that give unavoidable accident instruction; and if there ever was one, this is it.

Mr. Smith: I agree.

The Court: I'm going to refuse this. You may well be right; I'm going to run the risk.

[338] * * *

Jury Questions and Rulings Thereon

* * *

(The jury retired to consider of its verdict, and following approximately two hours' deliberation, raised two questions.)

In Chambers:

The Court: No. 1, they have two questions.

1. Is a trucker required to sound his horn before passing, or (b) is it just a courtesy, or (c) is it illegal for the truck to sound their horn when passing?

The second question, "How should we rule if we decide that the 8-inch drop from the right shoulder of the road caused the accident?"

I suppose the answer to No. 1, "Is a trucker required to sound his horn before passing," you have to refer to the instruction on that. The instruction is perfectly clear. As a matter of fact, I think as far as all parts of a, b and c are concerned, I'd have to tell them I could read them the instruction. They could get the answer from that.

As far as No. 2 is concerned, I guess that's the unavoidable accident coming back. If they do decide—of course, the Court can't tell them how they decide anything, but if they do decide that that was the cause of the accident, doesn't that [339] amount to the defendants were not—

Mr. Branch: The question would be why she went over the 8-inch drop.

Mr. Smith: That wasn't the question that he read.

Mr. Branch: The answer to that question would be it isn't, but there was an 8-inch drop that caused the accident.

Mr. Smith: That's your argument, though.

The Court: I can't argue—

Mr. Branch: You can't answer that question except by telling them all the questions why they went off.

The Court: What do you gentlemen have to say about that?

Mr. Bowles: Your Honor, it just strikes me that we should have given the unavoidable accident instruction that both defendants asked for. That's what they're basically asking. They want to know what to do if they believe that the car fell off the road and that the differential in pavement height and shoulder height of 8 inches caused the accident and lost the control. And then the answer to that is nobody is responsible at that point, at least neither of the defendants are.

Mr. Smith: I agree with Bunky on that.

Mr. Branch: I expect you would. But the obvious answer is the 8-inch drop would contribute to her trouble, but the ultimate question is the defendant's responsibility, did they [340] do anything that would be considered a cause of her going over that drop?

The Court: The Court can't argue the case.

Mr. Branch: That's what I say, you can't answer it otherwise.

The Court: I can't answer the question unless counsel can agree on an answer. I have to tell the jury—

Mr. Bowles: I think in view of the Court's having refused two requested instructions on unavoidable accident—I recall the comment of the Court, "I may be committing a reversible error, but I'm going to do it anyhow," and a question like this that goes to this, I think it would be appropriate at this point to instruct on unavoidable accident.

Mr. Smith: I think that's appropriate at this time.

The Court: I don't think the Court can instruct further at this time.

Mr. Branch: Not unless you open argument at this time.

Mr. Smith: Note my objection and exception.

Mr. Bowles: Mine also.

The Court: As far as the first question is concerned, that they will have to determine that—if this instruction covers it, and they're going to reach their conclusion [341] based on language used.

And as to No. 2, I'm going to tell them that was a matter that the Court cannot answer that. If the Court answered that, it would be deciding the case, and that's the jury's function.

Mr. Bowles: Note our objection to the failure of the Court at this point to instruct the jury with regard to unavoidable accident, particularly, in view of the inquiry by the jury.

Mr. Smith: Note ours, too; same reason.

Mr. Branch: Judge, I think you ought to remind the jury of the instructions to the effect that there can be two causes of an accident.

The Court: I'm not going to remind them of anything, call their attention to any instruction.

(The Court and counsel returned to the courtroom.)

In The Courtroom:

The Court: Members of the jury, your first question was divided into three parts. You asked, "Is a trucker required to sound his horn before passing, or is it just a courtesy, or is it illegal for the truck to sound their horn when passing?"

Now, Instruction 3, which the Court gave you, I think has the complete answer to that question, and that [342] instruction—counsel, I understand, have no objection, do you, to my reading this instruction to the jury?

Mr. Smith: No, sir.

Mr. Bowles: Well, that Instruction 3 is relating to the duties on Colonial.

The Court: That's right. "At the time and place of this collision, it was the duty of Sherman Lee Davis to exercise ordinary care, 1, to operate his vehicle at a reasonable speed under the circumstances and traffic conditions then and there existing and in no event in excess of 55 miles per hour, and, 2, to give audible warning with horn or other warning device before passing or attempting to pass a vehicle proceeding in the same direction when reasonably necessary for the safe operation of other vehicles."

So that would be for your determination as to whether, under all the circumstances of this case, you feel that it was reasonably necessary for the safe operation of an automobile for him so to do. And I think that that instruction is plain on its face. It answers your "c" that it was not illegal for the truck to sound the horn certainly, but it's up for you ladies and gentlemen to determine, under evidence in this case, whether you feel that it was or was not necessary for the safe operation of other vehicles. If so, then his duty was to sound it; if not, there was no duty to sound it.

[343] Now, as far as the second question is concerned, the Court can't answer that question, ladies and gentlemen, because if I did, I would be invading your province. It's your function to determine

that, and you'll just have to do the best you can with that question with the instructions that you have. In other words, if I answered that question for you, I would be taking over your function, and the law doesn't allow me to do that. I hate to leave you in that as far as No. 2 is concerned.

There is no problem as far as No. 1 is concerned, your first question, because I think you understand the question as to that.

[345] * * *

(9:00 a.m., March 15, 1974.)

In Chambers:

Mr. Branch: Judge, speaking for the plaintiff and considering the obvious difficulty the jury is having, I think you should explain it to the jury as you have written it out.

The Court: Bunky, I expect probably—and I'd anticipate—an objection from you based on the ground that your man could have had nothing to do with the going off the highway.

Mr. Bowles: Yes.

The Court: But it seems to me that while her testimony was she looked after the first truck had passed her, and there you were right on top of her, and that—

Mr. Bowles: She says, "come up on me," and then "right upon me."

The Court: That's the only way you could be involved in this question, but I think there is enough evidence the jury could find that if she did jerk the wheel, which you all have argued that, there is evidence that she did; and that if she did, it was as a result of being thrown into a state of confusion by not only the passing truck but by looking up seeing this other truck.

[346] Mr. Bowles: I take it, Your Honor is going to do this?

The Court: I want to hear from counsel first. I realize that this is a very unusual situation, but, as between the two, with leaving the jury without any answer to that, I think it is fairly the issue on both sides.

Mr. Bowles: Well, the defendant Glosson would object to the Court so responding to the second inquiry of the jury as set out on the white piece of paper submitted this morning on the basis it has no application to the defendant Glosson in that the cause—

The Court: You can refer to this as "Answer to Jury Question No. 2."

Mr. Bowles: Let that be the answer to jury question No. 2 instead of the white piece of paper, that it has no relationship to the defendant Glosson in that there is no evidence to support a contention that falling off the 8-inch shoulder was in any way caused in any way by the defendant Glosson, the defendant Glosson only being involved in striking the vehicle in its lane after having gone off the road and dropped down to the 8-inch below shoulder and come back across.

And further, if the Court is going to do this, with regard to the third paragraph, in fairness to everybody, you've got to add that Glosson is not entitled to recover its [347] property damage.

(Discussion off the record.)

Mr. Bowles: I again request the Court to give the unavoidable accident instruction to be tendered to the Court prior to the reading of the instructions to the jury, and yesterday the Court was again requested to give it. Somewhere in there, Judge, if you're going to do it, if the plaintiff was guilty of negligence and I was not guilty of negligence, I get my two thousand some odd dollars.

Where the plaintiff is guilty that either contributed to cause or cause doesn't work in that because conceivably both myself and the plaintiff could be guilty of negligence, and she doesn't win, but I have to be free of negligence to prevail on my counterclaim, right?

Mr. Branch: Yes.

(Discussion off the record.)

The Court: I am going to add the language that you suggested in that last paragraph on the plaintiff's claim, and for the plaintiff on Glosson's cross claim, but I have told them three things here; that is, assume they come to the conclusions that the 8-inch drop was the cause, that then they've got to determine what caused the camper to leave the highway, and I'm telling them three situations, that if the plaintiff was guilty of any negligence causing that or contributing to [348]

cause it, then all defendants get off as far as her claim is concerned, that is, as to the plaintiff's claim.

Secondly, I'm telling them that if either or both of the defendants were guilty of negligence and the plaintiff free of any negligence for the cause of leaving the highway, they will have to find such defendant or defendants, as the case may be.

And thirdly, of course, the third is that none of the parties were guilty of negligence resulting in her leaving of the highway by the camper, but that no one—and I believe, Bunky, that would still leave the instruction that that does not shut out in any way or affect the instruction I have already given them on your cross claim because if you fall under number—

Mr. Bowles: It just doesn't specifically mention it, Judge, and my concern, really, is that with the cross claim in there that is between this plaintiff and myself being in the same and knowing perfectly well that I'm going to have the death case coming at me at some point in the future, the existence of the counterclaim gives a fairly good barometer of what this jury thinks happened, and it could conceivably get Cary into an estoppel by judgment situation.

And if you're going to respond to the Question No. 2 of the jury, that certainly ought to be covered in this aspect because, monetarily to my client, I'm not as concerned [349] about the two thousand plus dollars, but the effect of not recovering it should a verdict go in my favor could be conceivably disastrous in the future, and I think it ought to be covered.

The Court: Let me ask you this: Wouldn't any findings you mention, wouldn't the Judge automatically dispose of one or the other of your claims? Suppose, for instance, they find that the plaintiff is guilty of negligence—

Mr. Bowles: And deny me my recovery?

The Court, No, no, but don't say anything. Suppose they just came in and say "We, the jury, find for the defendants." Then I would have to send them back because the plaintiff was guilty of negligence. I'd have to send them back out then on the counterclaim to make a determination on the counterclaim.

Mr. Bowles: Yes.

The Court: If, on the other hand, they find in favor of the plaintiff, say, against—what's your client?

Mr. Smith: Colonial.

The Court: —and in your favor—

Mr. Bowles: You've still got to send them back.

The Court: Because that finding would have determined that the defendant was free of fault. And thirdly, if they should come in and find—

[350] Mr. Bowles: —against both defendants—

The Court: Yes, against both defendants, then the problem of the counterclaim is solved. Then if they come in and find under 3, they would have to find the counterclaim. So it seems to me that it's your counterclaim one way or the other.

Mr. Bowles: I would still like to make it specifically covered.

Mr. Smith: I realize now he's going to give this, but I feel that the necessity for it at all is occasioned by the fact that the jury is now guessing, obviously, about what happened in this accident, and that's exactly what they shouldn't be doing, and I think it goes right back to my motion to strike the evidence at all stages of the proceeding when it is proper that it should have been granted, because I think the jury is guessing here, and this instruction, of course, is going to emphasize that.

Then, again, I join in the objection of Glosson insofar as it refers to the request that the unavoidable accident instruction should have been given because, obviously, the jury felt the need for it, and we felt it was proper at the time, and I still feel it is proper. I had also observed that it really isn't a re-instruction of the jury, and I would ask that counsel be given a few minutes to speak to the jury.

[351] Mr. Bowles: On behalf of Glosson, I would join in the statements made by Mr. Smith in behalf of Colonial insofar as to go further than what I said.

Mr. Branch: I understand the two of you are both still urging that at this stage the Judge give the jury the instruction about unavoidable accident, and you're asking for we would be granted a few minutes to address ourselves.

Mr. Bowles: No, the request was that we be granted time to address ourselves to this, but I think unavoidable accident should have been given before and can be given now.

Mr. Branch: Well, to try to keep the record as—

Mr. Bowles: If that is given, I would not want any opportunity to argue.

Mr. Smith: Unavoidable accident, I wouldn't either.

Mr. Branch: I'm trying to go along with you. I was going to say I would join with you, and by agreement we would be given a chance, briefly, to address the jury on this and on the unavoidable accident. If you're going to give such an instruction, we've got to have time to discuss it from my relative points of view; and if you'll agree to that, I'll agree, and we can do it by agreement.

Mr. Bowles: If we may have a moment, Your Honor.

[352] The Court: I don't know whether it's Greeks bearing gifts or whether or not it's a man in there thinking about reaching for a life preserver.

Mr. Bowles: I withdraw my request that we address the jury in any respect further.

Mr. Smith: I would, too.

The Court: All right.

Mr. Smith: I keep the same objections of my points.

Mr. Branch: You all ask that and I agree, and then you back off.

(The Court and counsel returned to the courtroom, and the jury was returned to the jury box.)

The Court: Good morning, ladies and gentlemen. Ladies and gentlemen of the jury, when we adjourned last evening, you had posed a few questions to the Court, the first question having three parts and relating to the blowing of the horn, and I think I advised you at that time that if you would turn to Instruction No. 3 that I believe you will find your answer in Instruction No. 3, and that's as far as I can go. I indicated to you it was not unlawful to blow your horn; but as

far as your [353] duty to blow the horn, you have to look at Instruction No. 3 and determine that.

I indicated to you that as far as the second question was concerned that what you should do if you determine that the sole cause of the collision was the camper going off the road, what you should do, I indicated to you that that was within your province and that the Court could not encroach upon your province, and that you would have to reach that decision; and that is the situation.

However, I think that I can give you—I think that I can properly give you some direction as to your procedure. I can't make any determination for you, but I can tell you that the issues that would then be raised that you would have to determine, and I have written those out here by way of answer to that second question, and I'll read this to you and also give this to you to take to the jury room with you.

You are told that if you find the camper going off the 8-inch drop of the shoulder was the direct cause of the collision, then you should determine, if you are able to see so from the evidence, whether any party to this suit was guilty of any negligence, as defined in the instructions given you, which proximately caused the camper to leave the highway. If you find that the plaintiff herself was guilty of any negligence which either caused or contributed to cause the camper to [354] leave the highway, you must find your verdict as to both defendants as to the plaintiff's claim.

If you believe that plaintiff was free of any negligence causing the camper to leave the highway but that one or both defendants were guilty of negligence, which either caused or contributed to cause the camper to leave the highway, then you must find your verdict against such defendant or defendants as the case may be.

And finally, if you believe that neither the plaintiff nor either of the defendants was guilty of negligence proximately causing the camper to leave the highway, then your verdict must be for both defendants on the plaintiff's claim and for the defendant on the Glosson cross claim.

Do you all understand that? So I will leave this with you to take along with you to your room with the instructions, and the sheriff will now take you to your room. When you have reached your verdict, knock on the door. If you have difficulty putting your verdict in form, you can come back after you have arrived at your verdict, and I'll help you put the verdict in the proper form.

(The jury again retired to consider further of its verdict, at the conclusion of which it was returned to the courtroom, and the following occurred:)

[355] The Clerk: Members of the jury have you agreed upon a verdict?

Foreman Berwick: We have.

The Clerk: "We, the jury, on the issue join, find for the plaintiff and assess the damages at $50,000. We further find for the plaintiff on the defendant's counterclaim. Albert J. Berwick, Foreman."

Members of the jury, is this your verdict?

The Jury: (Affirmative indications.)

* * *

The Court: Mr. Foreman, could you change this to read "find for the plaintiff against both defendants?"

All right. The verdict now reads, "We, the jury, on the issue join, find for the plaintiff against the defendants and assess the damages at $50,000. We further find for the [356] plaintiff on the defendant's counterclaim." I guess that should be "on the defendant Glosson's counterclaim." The counterclaim was only by Glosson. Is that agreeable with the jury?

Foreman Berwick: Right.

* * *

Instructions

INSTRUCTION NO. EE (R. 45)

The "proximate cause" of an event is a cause which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces the event, and without which the event would not have occurred. It is an act or omission which immediately causes or fails to prevent the event; an act or omission occurring or concurring with another act, without which the event would not have occurred; provided such event could reasonably have been anticipated by a prudent man in the light of attendant circumstances.

INSTRUCTION NO. 2 (R. 48)

It was the duty of Dossie Eugene Soles to exercise ordinary care:

1. To keep his vehicle under proper control;
2. To operate his vehicle at a reasonable speed under the circumstances and traffic conditions then and there existing and in no event in excess of 55 mph;
3. Not to follow any other motor vehicle more closely than is reasonable and prudent, having due regard to the speed of both vehicles and the traffic upon, and conditions of, the highway at the time.

If you believe from a preponderance of the evidence that Dossie Eugene Soles failed to exercise ordinary care in the performance of any one or more of the foregoing duties, then he was negligent; and if you further believe from such evidence that any such negligence was a proximate cause of the collision, then, unless the plaintiff was guilty of negligence which proximately contributed to cause the collision, you shall find your verdict in favor of the plaintiff against Glosson Motor Lines, Inc., in both the suit filed by the plaintiff and on the counterclaim filed against her by Glosson Motor Lines, Inc.

INSTRUCTION NO. 3 (R. 49)

At the time and place of this collision, it was the duty of Sherman Lee Davis to exercise ordinary care:

1. To operate his vehicle at a reasonable speed under the circumstances and traffic conditions then and there existing and in no event in excess of 55 mph;
2. To give audible warning with horn or other warning device before passing or attempting to pass a vehicle proceeding in the same direction when reasonably necessary for the safe operation of other vehicles.

And if you believe from a preponderance of the evidence that the defendant, Sherman Lee Davis, failed to exercise ordinary care in the performance of any one or more of the foregoing duties, then he was negligent; and if you further believe from such evidence that any such

negligence was a proximate cause of the collision, then, unless the plaintiff was guilty of negligence which proximately contributed to cause the collision, you shall find your verdict in favor of the plaintiff against Colonial Motor Freight Line, Inc.

INSTRUCTION NO. IV (R. 53)

The court tells you that even if you believe that the Glosson Motor Lines truck was following the Colonial truck closer than was reasonable or prudent, you cannot find a verdict against Glosson Motor Lines upon this ground unless you believe that such act on the part of Glosson Motor Lines was a proximate cause of the collision.

INSTRUCTION NO. GG (Tr. 51)

The mere fact that there has been an accident and that as a result thereof the plaintiff alleges injuries does not of itself entitle the plaintiff to recover. In order to recover against the defendants, or either of them, the burden is upon the plaintiff to prove by a preponderance of the evidence that the defendants, or either of them, were negligent and that any such negligence was a proximate cause of the collision.

And if the jury are uncertain as to whether or not any such negligence has been thus proven by a preponderance of the evidence, or if you believe that it is just as probable that the defendants, or either of them, were not guilty of any such negligence as it is that they, or he, were, then you shall find your verdict in favor of the defendants, or defendant as to whom you find the case has not been proven.

ANSWER TO JURY QUESTION NO. 2 (R. 64)

If you should find that the camper going off the 8″ drop of the shoulder was the direct cause of the collision, then you should determine, if you are able to do so from the evidence, whether any party to this suit was guilty of any negligence as defined in the instruction given you which proximately caused the camper to so leave the highway. If you find that plaintiff herself was guilty of any negligence which either caused or contributed to cause the camper to leave the highway, you must find your verdict for both defendants as to the plaintiff's claim.

If you believe that plaintiff was free of any negligence causing

the camper to leave the highway, but that one or both defendants were guilty of negligence, which either caused or contributed to cause the camper to leave the highway, then you must find your verdict against such defendant, or defendants, as the case may be.

If you believe that neither the plaintiff nor either of the defendants were guilty of negligence proximately causing the camper to leave the highway, then your verdict must be for both defendants on the plaintiff's claim and for the defendant on Glosson's cross claim.

[357] * * *

Motions After Verdict (Tr. 357-358)

Mr. Bowles: If Your Honor please, the defendant Glosson moves the Court to set the jury verdict aside on the basis that it's contrary to the law and the evidence, and on the basis that it's excessive and on the basis of the errors committed during the course of the trial by the trial court, in particular, with regard to the refusal of the Court to grant the defendants' request an instruction on unavoidable accident, and particularly, the second refusal to grant the instruction on the second inquiry by the jury relative to should they conclude that the 8-inch drop of the shoulder was the cause of the accident. And I would like to have time to make such a motion in writing in addition to the oral motion and be heard by the Court further on that.

Mr. Smith: Defendant Colonial, by counsel, makes the same motion to set aside the jury verdict; or in the alternative, grant a new trial on the ground that the verdict is [358] contrary to the law and the evidence and for the misdirection of the jury in the granting and refusing of instructions. Also, on the ground—I would add an additional ground—this might be an excessive verdict under the circumstances; and also on the same grounds suggested by Mr. Bowles, and in addition to this defendant, Colonial, that the case should never have gone to the jury in the first place. It's very speculative.

Mr. Bowles: I would like to incorporate that position in my grounds.

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