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SUPREME COURT OF VIRGINIA
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IN THE

Supreme Court of Virginia

AT RICHMOND

Record No. 750288

VERNON WATERS
Plaintiff in Error

v.

EDWARD HOLLOMAN
Defendant in Error

JOINT APPENDIX

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VIRGINIA,

IN THE CIRCUIT COURT OF ISLE OF WIGHT COUNTY:

Edward Holloman — Plaintiff

v. #2802

Vernon Waters
325 Holloday Street
Suffolk, Virginia 23434 — Defendant

Defendant is notified that plaintiff moves the Circuit Court of Isle of Wight County for judgment against him in the sum of Fifty Thousand ($50,000.00) Dollars, the same being due from defendant to plaintiff for this, to-wit:

(1) November 4th, 1972, in the night time, plaintiff operated and controlled a vehicle, then and there proceeding eastwardly on U. S. Route 460 approximately one and one half miles east of Windsor in Isle of Wight County.

(2) At said time and place, defendant negligently, recklessly and carelessly drove his automobile into the automobile operated by plaintiff, without keeping a proper lookout, at a high, dangerous and unlawful rate of speed, and in a way and manner likely to endanger the life, limbs, and property of others, particularly the plaintiff.

(3) As the direct result of defendant's negligence, recklessness and carelessness, plaintiff was greatly injured in and about his legs, head, face, limbs, and body,

internally and externally, from which he has suffered, and ever hence will suffer, great physical pain and mental anguish, and has been, and ever hence will be, rendered unable to engage in any occupation for wages, compensation or profit, or engage in the normal pursuits of life.

(4) As a further direct result of defendant's negligence, recklessness and carelessness, plaintiff has been compelled to spend large sums of money in and about medical expenses, hospitalization, nursing care, and creature comforts, already incurred and to be incurred, and will in the future be required to expend large sums for such purposes.

EDWARD HOLLOMAN

By s/ Thomas L. Woodard, Jr.
Of Counsel

Thomas L. Woodward, Sr.
Thomas L. Woodward, Jr.
James L. McLemore, III
153 East Washington Street
Suffolk, Virginia 23434

Counsel for Plaintiff

A COPY TESTE: B. H. PERRY, CLERK
BY: s/ Kathryn R. Wills, D.C.

Filed on February 7, 1973.

VIRGINIA: IN THE CIRCUIT COURT OF THE COUNTY OF ISLE OF WIGHT
April 11, 1974

Edward Holloman — Plaintiff

vs. #2802

Vernon Waters — Defendant

This day came the plaintiff in person and by Thomas L. Woodward, Jr., his attorney and came also the defendant, Vernon Waters, in person and by his attorneys, Bennett L. Stein and Daniel W. Wilkerson. And came also a jury, to-wit: Allen H. Batten, George W. Allmond, Jr., Herbert Rawls, Helen W. Blount, Jerry Stokes, Grace M. Ashby and Alfred R. Cobb who were duly sworn to speak the truth and a true verdict render in the case of Edward Holloman vs. Vernon Waters.

And the jury, having heard the evidence and having heard the argument of counsel and having received their instructions from the Court, retired to consider their verdict, and after some time, returned to Court with the following verdict, to-wit:

> "We the jury, on the issue joined, find in favor of the plaintiff, Edward Holloman, and assess his damages at $35,000.00.
>
> s/ Alfred R. Cobb"
> Foreman

And the jury was allowed to depart.

Whereupon the counsel for the defendant moved the Court grant the defendant ten days from this date in which to file a motion or motions, which motion was granted and the case is continued.

Enter: May 7, 1974

Judge: James C. Gilman

VIRGINIA: IN THE CIRCUIT COURT FOR ISLE OF WIGHT COUNTY

EDWARD HOLLOMAN,	:	
Plaintiff	:	
vs.	:	**M O T I O N**
VERNON WATERS,	:	
Defendant		

Now comes the defendant by counsel and moves the Court to set aside the verdict of the jury and vacate the judgment entered on the verdict on April 11, 1974, and to enter judgment for the defendant and assigns the following grounds:

(1) The verdict is contrary to the law and the evidence.

(2) The verdict is excessive.

(3) The verdict is without evidence to support it.

(4) The Court erred in refusing to sustain defendant's Motion to Strike the Evidence made at the conclusion of the plaintiff's evidence.

(5) The Court erred in refusing to sustain the Motion of the defendant to strike the evidence of the plaintiff made at the conclusions of all of the evidence.

_____
Attorney for Vernon Waters

WEST & WILKINSON
Attorneys at Law
2815 Huntington Avenue
Newport News, Virginia 23607
Counsel for defendant, Vernon Waters

Filed on April 19, 1974.

I certify that on _____
I mailed a true copy of the foregoing pleading
to each counsel of record
_____, p.d

LAW OFFICES
WEST &
WILKINSON
NEWPORT NEWS, VA.

O R D E R

This matter came this day to be heard upon the Motion of defendant to Set Aside the Jury Verdict rendered on April 11, 1974, and was argued by counsel.

On consideration whereof, and after reviewing the transcript of trial and exhibits, it is ORDERED that said Motion of defendant is overruled, to which defendant duly excepts. The Court does further enter judgment for the plaintiff upon the verdict of the jury, with interest from date of verdict to which action the defendant duly excepts.

Enter this 19th day of November, 1974.

Judge

I Ask For This:

Counsel for plaintiff

Seen and excepted to:

Of Counsel for Defendant

LAW OFFICES
WEST &
WILKINSON
NEWPORT NEWS, VA.

A COPY. TESTE: Clerk

VIRGINIA: IN THE CIRCUIT COURT FOR ISLE OF WIGHT COUNTY

EDWARD HOLLOMAN,	*	
	*	
Plaintiff	*	
	*	NOTICE OF APPEAL AND
vs.	*	ASSIGNMENTS OF ERROR
	*	
VERNON WATERS,	*	
	*	
Defendant	*	

TO: Clerk of the Circuit Court of Isle of Wight County
Isle of Wight County, Virginia

The defendant files his Notice of Appeal and lists the following Assignments of Error:

(1) The Court erred in overruling Motion to Strike the Evidence made by the defendant at the conclusion of the plaintiff's evidence.

(2) The Court erred in overruling Motion to Strike the Evidence made by the defendant at the conclusion of all of the evidence and to enter Summary Judgment for the defendant.

(3) The Court erred in failing to set aside the verdict of the jury and enter up judgment for the defendant on the ground that the verdict was contrary to the law and the evidence.

(4) The Court erred in failing to set aside the verdict of the jury and enter up judgment for the defendant on the grounds that the Court was in error in failing to sustain Motions to Strike the Evidence made by the

defendant at the conclusion of the plaintiff's evidence and at the conclusion of all the evidence.

VERNON WATERS

By_____
Of Counsel

WEST & WILKINSON
Attorneys at Law
2815 Huntington Avenue
Newport News, Virginia
Counsel for defendant, Vernon Waters

1 TROOPER W. G. MASSENGILL, called as
2 a witness on behalf of the Plaintiff, being
3 first duly sworn, testified as follows:
4 DIRECT EXAMINATION
5 BY MR. WOODWARD:
6 Q You are Virginia State Trooper W. G.
7 Massengill?
8 A I am, sir.
9 Q How long have you been a state trooper?
10 A Approximately seven and a half years.
11 Q Trooper Massengill, how long have you
12 been assigned to Isle of Wight County?
13 A Approximately seven years.
14 Q In your capacity as a state trooper, did
15 you have occasion to investigage an accident on November 4,
16 1972, which involved a vehicle operated by Edward Hollomon
17 and one operated by Vernon Waters?
18 A Yes, I did.
19 Q Where was the scene of the accident?
20 A This accident was located in Isle of
21 Wight County on Route 460, approximately one mile, and
22 three tenths, east of the Windsor limits.
23 Q For the benefit of the record, how many
24 lanes to United States highway 460?
25 A Four lane, undivided type highway.

1 Q How many lanes going east, and how many
2 going west?
3 A Two lanes going east, two lanes going
4 west, separated by a double solid yellow line.
5 Q As one would approach the accident scene
6 going from Windsor toward Suffolk, what is the nature of the
7 road, as far as level, hilly, or what?
8 A It is a straight and level road at the
9 particular location of the accident scene.
10 Q And for what distance is it level back
11 towards Windsor back from the accident scene?
12 A I would say from .3 to maybe .5 of a
13 mile.
14 Q All right, what time did the accident
15 occur as you were able to determine.
16 A At approximately 10:40 in the p.m.
17 Q And if you will, tell the Court what you
18 found when you arrived at the accident scene as far as
19 physical evidence?
20 A Yes, sir, I just, through routine patrol,
21 ran up on this accident. I was not dispatched to it.
22 I ran up on it. I found three vehicles; the No. 1 vehicle,
23 as I have it, was a '66 Chevrolet sedan, bearing 1972
24 Virginia registration B-boy, S-Sam, J-John, 239. This
25 vehicle, as my investigation revealed, was operated by

1 Edward Holloman of Ivor, Virginia.

2 Q And where was that vehicle located when

3 you arrived at the accident scene?

4 A This vehicle was located on the left side

5 of the road as you were traveling toward Suffolk, and

6 was pointed back toward Windsor.

7 Q What other vehicles were found there at

8 the accident scene?

9 A The No. 2 vehicle, as I have it, was a

10 '68 Ford Sedan. This vehicle, my investigation determined,

11 was operated by Mr. Vernon Waters of Suffolk, Virginia.

12 This vehicle was located in the eastbound lane of 460,

13 pointed or headed toward Suffolk.

14 The third vehicle I found was a '66

15 Chevrolet sports coupe, operated by Mrs. Martha Savage

16 Foster of Windsor, Virginia. This vehicle was also in

17 the eastbound lane pointed more or less toward Suffolk.

18 Q From your investigation, were you able to

19 determine whether all three vehicles were involved at the

20 same time, or was the third vehicle a later part of the

21 accident?

22 A From what I could determine, the third

23 vehicle came along shortly thereafter, after the accident,

24 and collided with the #2 vehicle which was the Water's

25 vehicle.

Q Trooper Massengill, what were the weather conditions on this particular day?

A My notes indicate it was a clear day, but I have a little notation there was fog in spots. There was no fog at this particular location when I got there.

Q All right, did you have occasion to talk with Vernon Waters there at the accident scene?

A Yes, I did.

Q And what was his condition at that time?

A Upon arriving, I observed Mr. Waters running in a rather hysterical way about 460, around the three injured persons that were laying on the highway around the automobiles. He was crying. He was bleeding profusely from the nose, and he was screaming that the accident was not his fault.

Q Were you able to detect any odor of alcohol at that time?

A Yes, sir, I had to physically restrain him, and because of the close contact, I immediately noted an odor of alcoholic drink about his person, yes.

Q Can you describe the intensity of that in your experience as a state trooper, as to the strength of the odor of the alcohol?

A Yes, sir, it was strong. It was easy to distinguish.

1 Q Did you have occasion to observe Mr.
2 Waters in walking about?
3 A Yes, sir, I placed him against my car
4 and asked him to stay there so that I could attend to the
5 other injured, and when I would leave him unattended, he
6 would walk off from the car. He was very unsteady on his
7 feet. I would have to go back and restrain him, myself.
8 I had to stay there with him, is what I am trying to say.
9 Q Did you have to physically restrain him
10 by putting your hands on him?
11 A Yes, I did.
12 Q On how many occasions did you do that?
13 A Several times. I finally got some of
14 the spectators to call for some other police assistance,
15 and some other officers got there and helped me with the
16 accident scene, and we got things pretty well cleared up.
17 But I had to devote my time to Mr. Waters.
18 Q During the period of your investigation,
19 was Mr. Waters placed in a police vehicle?
20 A Yes, he was, he was placed in the back
21 seat of my police vehicle.
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3 Q Did he remain seated in the vehicle?
4 A No, sir, he fell from the seat into
5 the foot of the vehicle.
6 Q Did he get back up on the seat after
7 falling to the foot of the vehicle?
8 A Not without assistance, no, sir.
9 Q Did you assist him?
10 A Yes, sir, I did.
11 Q Did Mr. Waters, at that time, make any
12 statement to you about the accident, and how it may have
13 occurred?
14 A Yes, sir, he did. Mr. Waters gave me
15 the following statement: He stated he was going toward
16 Suffolk - - "and a car just turned in front of me."
17 Q Did he tell you where he had been before
18 it happened, before the accident happened?
19 A Yes, sir, he did, and I didn't make any
20 notation of it, and I don't remember. I think I remember,
21 but I am not sure.
22 Q Did you inquire of him what, if anything,
23 he had been drinking?
24 A Yes, I did.
25 Q What was his response to that?

A He stated he had had two beers.

Q That he had had two beers?

A Yes, sir.

Q Trooper Massengill, did you, after the accident had occurred, take Mr. Waters to the hospital?

A Yes, I did, I took him to Obici Hospital in Suffolk.

Q And I believe you mentioned he was bleeding from the nose at the time. Was he examined there by a physician?

A Yes, sir, he was.

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6 Q Trooper Massengill, was Mr. Waters admitted
7 to Obici Hospital?
8 A No, sir, he was not. He was released back
9 in my custody.
10 Q Were you observing him during his examina-
11 tion by the physician?
12 A The entire time, yes, sir.
13 Q Were any stitches taken in any part of
14 his body?
15 A No, sir.
16 Q Now, Trooper Massengill, at the scene of
17 the accident, did you investigate on the night of the
18 accident as far as any marks on the roadway?
19 A No, sir, not like I would have liked to.
20 There was quite a bit of debris. I more or less placed the
21 vehicles in the position they were, and came back the
22 following morning, during daylight hours, and after the
23 debris had been cleared up, and looked for skid marks and
24 that type physical evidence.
25 Q Did you notice any marks on the roadway

on the night of the accident?

A No, sir, I can't say as I did.

Q So your investigation was the next day as far as whatever marks were there?

A That is correct, sir.

Q Are you able to say whether any marks were on the roadway at the time of the accident from your investigation at that time?

A I am certain I noticed some of them, but I didn't make any notation of them, I didn't measure them, and all this, until the following morning.

Q Trooper Massengill, did you also take a statement from Edward Hollomon?

A Yes, sir, I did. I took the statement, if my memory serves me correctly, the following day, the next day, from him at the hospital at Obici.

Q And where was he when the statement was taken?

A In a room at Obici Hospital.

Q And what was his appearance at that time?

A He had been treated for his injuries received in the accident, and it was apparent that he was in pain, or uncomfortable, to say the very least, I guess.

Q Was he elevated? In a bed? In a chair?

A He was in a bed. I can't recall whether

1 he was elevated in any manner or not. I do recall he
2 talked without any confusion. His speech was coherent.
3 Q Did you question him as to his version, or
4 as to what he recalled of the accident?
5 A Yes, I did.
6 Q Would you tell us about the conversation
7 between you and Mr. Holloman?
8 A Yes, sir. This is the statement he gave
9 to me at the hospital:
10 "I was in the center lane going towards
11 Suffolk. Something happened. I think a tire blew. I
12 don't know anything else, it was done so quick."
13 My question: "The car that hit you, did
14 he come from behind you?
15 "Answer: I don't know, I just lost
16 control of the car and got hit.
17 "Question: Had you been drinking?
18 "Answer: Yes, one beer.
19 "Question: Were you turning around in the
20 road?" - - correction on that - - "You weren't turning
21 around in the road, were you?"
22 "Answer: I just don't know, I don't
23 think so.
24 "Question: You don't know what you
25 were doing?

1 "Answer: Yes, I was turning around in
2 the road. We decided to go back to Ivor.
3 "Question: Did you see any cars coming?
4 "Answer: No, sir.
5 "Question: Did you look?
6 "Answer: Yes.
7 "Question: Did you turn around in the road
8 or did you use a driveway?
9 "Answer: I was turning around in the
10 road."
11 Q Over what period of time did this question
12 and answer take place between you and Mr. Holloman?
13 A I would say I was in his room no more
14 than five minutes.
15 Q Do you know whether Mr. Holloman had been
16 taking any drugs or been given any drugs from the time of
17 the accident to that time?
18 A No, sir I don't know that, no, sir.
19 Q Have you talked with Mr. Holloman
20 subsequently about the accident, or was this your only
21 conversation with him?
22 A I think I have talked to him maybe once
23 or twice about it. I don't know as we went into detail
24 about it, but I know I have seen him once or twice.
25 Q Now, Trooper Massengill, you testified, I

1 believe, that the road was straight and level, for what
2 distance?
3 A As you are traveling eastbound going
4 towards Suffolk, the sight distance is from .3 to maybe .5
5 on a line to where the accident happened. You can see on
6 beyond the accident, you can see probably three-fourths of
7 a mile; but from the first point where you could see to the
8 accident scene, I would say it was between .3 and .5 of
9 a mile.
10 Q Did Mr. Waters make any statement to you
11 about anything obstructing his vision of the highway prior
12 to the accident?
13 A No, sir, he did not.
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20 Q Trooper, if I may, before I begin to
21 ask you a few questions, I wonder if I could give you a
22 piece of paper and have you draw a scene - - a little sketch
23 of what you found at the accident?
24 A I have already got one here if I could
25 use it. It is a large copy of the diagram as I found
the accident scene.

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9 Q You have got sketched on this piece of
10 paper a roadway with two lanes in either direction?
11 A Yes, sir.
12 Q If you would, would you write on your
13 diagram which direction is toward Suffolk, and which
14 direction is toward Ivor?
15 A Yes, sir, I have east indicated which
16 would be toward Suffolk, and of course, west would be
17 back toward Ivor.
18 Q Now, you have two lines down the middle
19 of this diagram, is that the two solid lines down the
20 middle of the road?
21 A Yes, it is.
22 Q You have indicated - - you have these
23 little boxes drawn with a little point on the front of
24 each of the boxes, is that the direction the cars were
25 facing in?

1 A That is correct, sir.

2 Q When you arrived at the accident scene?

3 A Yes, sir.

4 Q You have numbered the cars one, two, and

5 three. I wonder if you would put - - would you initial

6 #1 whatever driver that was, whatever vehicle that was?

7 A Yes, sir. #1 is the Holloman vehicle;

8 #2 was the Waters vehicle; and #3 was the Foster vehicle.

9 Q Now, if you would also, if it is not

10 too much trouble, would you write at the top, Suffolk? - -

11 Is that the direction toward Suffolk?

12 A Yes, sir.

13 Q And if you would write down here, the

14 little arrow, the direction toward Ivor?

15 A Yes, sir.

16 Q I believe you testified that, of course,

17 when you arrived, the Foster Vehicle, this vehicle you

18 noted as #3, was at the accident scene, but from your

19 investigation, that impact with the Foster and Waters

20 vehicles had nothing to do with the accident we are here

21 about today?

22 A That is correct.

23 Q You have noted that - - you placed Mr.

24 Waters' vehicle in the middle, approximately, of what would

25 be the dividing lines between the inside eastbound lane

1 and outside eastbound lane, is that right?

2 A Well, the left side of the vehicle was

3 approximately in the center. The vehicle was more in the

4 right lane than in the center lane.

5 Q Let me ask you this, Officer, when you

6 arrived at the accident scene, was there any debris on the

7 highway?

8 A Yes, sir, there was, an excessive amount

9 of glass.

10 Q Can you show us the area in which you

11 found the glass?

12 A Glass all over the road, all this area

13 here was covered with glass.

14 Q Now, at the time you arrived at the

15 accident, of course, it was dark, there are no street

16 lights there of any sort?

17 A That is correct, sir.

18 Q You testified that you noted some

19 skid marks on the road coming across the highway?

20 A Yes, sir, I saw some skid marks, I didn't

21 give them my attention because I didn't have a chance to.

22 Q Can you show us, if you would, when you

23 arrived the next morning, did you know when you arrived

24 the next morning where the Holloman car had been, and where

25 the Waters car had been, and the debris had been the night

1 before?

2 A Yes, sir. There was some road damage

3 at the accident scene, so I went back to the road damage.

4 When I say road damage, I mean the road was scraped or

5 dented. I went back to that, and that is how I found the

6 accident scene.

7 Q Where did the marks you found on the road,

8 where were they in relation to the Holloman vehicle that

9 was stopped over, or parked over on this side facing

10 toward Ivor?

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8 A Your Honor, there are quite a few of
9 these marks, to be perfectly honest with the Court, I
10 did not find until the next morning, I didn't know they
11 were there. I went back to what I knew to be the accident
12 scene and I found these marks. That is about all I can
13 say. -- I can remember seeing one of these skid marks,
14 but some of the marks I didn't see until the next morning
15 in daylight hours. This happens quite often in accident
16 cases.
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11 Q Can you tell us, Trooper, describe to
12 us the marks you found on the roadway, if you would?
13 A Yes, sir. In the eastbound lanes of 460,
14 which go back toward Suffolk, I found one single darkened
15 braking mark, as I call it, which was 20 paces long.
16 At the end of 20 paces, this darkened mark deviated,
17 turning toward the right. At this point I found some road
18 damage. At this point the braking mark became a double
19 braking mark. By that I mean it was tire marks on the left
20 side and right side of the car, and continued for an
21 additional 23 paces. These marks led up to the position
22 the Waters vehicle was in the previous night.
23 Coming out of this impact area, leading
24 back across the westbound lanes, or the Ivor-bound lanes,
25 I found what I always called pressure marks. They are real

1 light tire marks. They came out of the impact area and led
2 back across both of the westbound lanes to the Holloman
3 vehicle, which had been parked on the shoulder of the road
4 traveling back toward Ivor, on the previous night.
5 I also found about ten feet of braking
6 marks which led up to the position that the Foster vehicle
7 was in the previous night.
8 MR. STEIN: We would like to
9 introduce this as well, if your Honor please.
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13 (At this time exhibit drawn by the
14 Trooper was accepted as Defendant's Exhibit 2.)
15 Q At the accident scene, Trooper, were you
16 able to determine the areas of damage to the various
17 vehicles?
18 A Yes, sir, I was. My notes indicate that
19 the Holloman vehicle, Vehicle #1, had damage to the left
20 rear door and rear fender. The Waters vehicle - -
21 Q Excuse me. Do your notes have any
22 indication of any damage to Mr. Holloman's vehicle to the
23 rear end of his car?
24 A If you mean, when you say rear, if you
25 are talking about the rear bumper, that part of the rear of

1 the car, no; but the left rear side, yes, sir.
2 Q The left side of the car toward the
3 rear of the car?
4 A Yes.
5 Q But I am talking about the back bumper?
6 A No, not on the back of the car.
7 Q No damage to the back of Mr. Holloman's
8 car?
9 A No, sir.
10 Q As to the Waters car, tell us where you
11 found the damage to his car?
12 A My notes indicate that Mr. Waters' vehicle
13 had damage to the entire front end.
14 Q Trooper, I show you these photographs . . .
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19 Q I ask if you can identify these three
20 photographs? - - Of course, they were not taken at the
21 scene.
22 A Yes, I recognize these photographs
23 as being the Holloman vehicle.
24 MR. STEIN: May we have these
25 marked Defendant's Exhibit 3?

COURT: Yes, sir.

A These appear to be the same vehicle (indicating other two photographs).

(At this time three photographs identified as the Holloman vehicle were accepted as Defendant's Exhibits 3, 4, and 5.)

Q I ask you if you would take a look at the license plate on this photograph, on this vehicle, and see if that is the same license plate as you found on Mr. Holloman's vehicle the night of the accident?

A Yes, sir, it is.

Q And I show you two other photographs. Do both of those depict Mr. Waters' vehicle?

A Yes, sir, it does, the 1968 Ford, yes, sir.

Q Is that damage as shown on this photograph consistent with the damage found on the night of the accident?

A Yes, sir, it is.

MR. STEIN: We would introduce these photographs.

(Two photographs depicting the Waters vehicle, were accepted as Defendant's Exhibits 6 and 7.)

Q Now, Officer, you stated that when you

1 arrived at the accident scene, I believe you found Mr.
2 Waters was crying, hysterical, and was bleeding rather
3 profusely?
4 A Yes, sir.
5 Q And I believe you testified that - - what
6 did you say he was yelling at the time, or saying at the
7 time?
8 A He was crying that, and shouting that
9 it was not his fault - - the accident.
10 Q Now, when you say he was hysterical,
11 do you mean he was actually crying?
12 A Yes, I do.
13 Q Did you examine Mr. Holloman's vehicle - -
14 or when you examined his vehicle, did you determine whether
15 there were any blown tires on his car?
16 A There was no defective equipment to his
17 car, no, sir.
18 Q And I believe you mentioned at one time,
19 in one of his statements to you, he said something about a
20 blown tire and him losing control? Can you read that
21 statement again?
22 A Yes, sir, he said he was in the center
23 lane, going towards Suffolk. "Something happened, I think a
24 tire blew."
25 Q After that statement, was the statement

1 made to you subsequent to that about him turning around,
2 going back to Ivor?
3 A Yes, that is correct.
4 Q Now, when you were in the hospital and
5 went to visit him, can you tell me - - I believe you testified
6 he was in pain, I can understand that. How was his speech?
7 A He made sense to me, we had no trouble
8 communicating.
9 Q You did not have any problem understanding
10 what he said?
11 A No, sir.
12 Q Did he appear to have any problem under-
13 standing what you said?
14 A I didn't think so.
15 Q Did you have to repeat any of these
16 questions to him?
17 A I may have, I don't remember doing it
18 but I could have.
19 Q But he certainly seemed to understand. Did
20 he ever say he didn't understand your question?
21 A He may have, I don't recall. I know I
22 wasn't in his room very long, just long enough to take
23 his statement.
24 Q The statements he gave you, there is no
25 mistake that he gave you that in his words?

1 A That is correct.
2 Q Now, I believe that in the statement that
3 you read to the Jury, and you took from Mr. Holloman in
4 the hospital room, that Mr. Holloman had stated to you that
5 he had one beer, as well?
6 A Yes, sir, he stated he had one beer.
7 Q Did he say where he had that?
8 A No, sir, I don't recall him saying where.
9 Q Did he ever say anything to you about being
10 at a "sitting up" or "setting up"?
11 A I don't recollect, no, sir.
12 Q What was the speed limit at the time at
13 the scene of the accident?
14 A Sixty miles an hour for passenger cars,
15 and I don't have it for trucks, but I am certain it was
16 fifty.
17 Q Can you tell me approximately how wide
18 the road is?
19 A Yes, sir. I didn't measure it, but 460
20 has 12-foot lanes, so you have to allow for the double
21 solid lines.
22 Q So it would be 48 feet plus the width
23 of the solid double lines?
24 A Yes.
25 Q Are there shoulders, dirt shoulders?

A Yes, sir, there is.

Q Going toward Suffolk, from Ivor to Suffolk, there is a dirt shoulder on the righthand side of the road?

A Yes, sir, there is.

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Q Trooper Massengill, you testified there were 43 paces of skid marks which led up to the vehicle operated by Vernon Waters. When you say pace, what do you mean?

A I mean a regular step by me, which is approximately three feet.

Q How many feet would that be, 43 paces?

A 130, 129-130.

Q And they were skid marks that came from the vehicle operated by Vernon Waters?

A Yes, that is correct, and a certain amount of those were after the impact.

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16 Q You are Benjamin Holloman?
17 A Yes, sir.
18 Q Where do you live?
19 A Ivor.
20 Q How old are you?
21 A Twenty.
22 Q Are you a blood kin to Edward Holloman?
23 A No, sir.
24 Q On the night of November 4, 1972, were you
25 a passenger in an automobile that was involved in an

1 accident?

2 A Yes, sir.

3 Q And whose car were you in before the

4 accident?

5 A Before the accident?

6 Q Whose car were you riding in?

7 A Edward Holloman.

8 Q And where had you been before the

9 accident happened?

10 A Gone to a friend of mine's.

11 Q To Raleigh Freeman's?

12 A Yes.

13 Q Where does Raleigh Freeman live?

14 A Windsor.

15 Q Does he live in the town of Windsor or

16 out from Windsor?

17 A Out from Windsor.

18 Q And what were you doing at Raleigh

19 Freeman's house?

20 A His father had died and we were having

21 a sitting-in up there.

22 Q Now, who else went with you?

23 A Estelle Holloman.

24 Q And is Estelle Holloman kin to you?

25 A Yes, sir.

1 Q Is she kin to Edward Holloman?
2 A No, sir.
3 Q How long did you stay at the Freeman's
4 house at the sitting-up?
5 A I don't know, maybe about an hour and a
6 half.
7 Q Was there any drinking there?
8 A No, sir.
9 Q Was there any food to eat there?
10 A I didn't see any.
11 Q All right, when you left the Freeman's
12 house, where did you go?
13 A Left Freeman's, decided to get something
14 to eat, so left there going to get something to eat.
15 Q Where did you go to get something to eat?
16 A We were going to get something to eat - -
17 where we were going to get it at?
18 Q Yes?
19 A After we left there, I dozed off to
20 sleep, so we were planning on going to the Horseshoe Cafe,
21 but I don't remember nothing else, because I fell off to
22 sleep.
23 Q Was there any conversation about going to
24 the Horseshoe Cafe?
25 A We just said we were going to get something

to eat.

Q Where were you seated in the car?

A Where was I seated?

Q Yes?

A On the righthand side.

Q Where was Estelle seated?

A In the middle.

Q Where was Edward?

A On the driver's side.

Q Do you recall the actual impact when this occurred? Do you remember the collision when the vehicles came together?

A No, I don't.

Q What is the next thing you remember after the accident happened?

A That Sunday morning I woke up in Obici Hospital.

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1 Q Did you, at any time from the time you
2 left the Freeman's, hear any conversation, or was there
3 any conversation among the three of you about turning
4 around and going back to Ivor?
5 A No, sir.
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6 Q You are Estelle Holloman?
7 A Yes, sir.
8 Q Where do you live?
9 A Ivor, Virginia.
10 Q Are you related by blood to Edward
11 Holloman, seated to my left?
12 A No.
13 Q Are you related to Benjamin Holloman
14 who just testified?
15 A Yes.
16 Q On the night of November 4, 1972, were you
17 with Benjamin Holloman and Edward Holloman?
18 A Yes.
19 Q And where did you first see them on that
20 particular night?
21 A At my house.
22 Q And did you go anywhere from your house?
23 A No, no more than to my girlfriend's
24 house to a sitting-up.
25 Q Who is this?

1 A Susie Freeman.

2 Q Was Susie Freeman, to your knowledge, a

3 friend of Edward Holloman?

4 A Yes.

5 Q And was she a friend of Benjamin Holloman's?

6 A Yes.

7 Q How long did you stay at the Freeman

8 house?

9 A I would say about an hour.

10 Q What is a sitting-up exactly?

11 A Her husband's father had died.

12 Q Her husband's father died?

13 A Yes.

14 Q What occurred there at the sitting-up?

15 A Nothing, no more than talking.

16 Q Did anybody have anything to drink there?

17 A No.

18 Q Was there any food there?

19 A No, I didn't see any.

20 Q After you left the house there, where

21 did the three of you go?

22 A Back to the Tasty-Treat at Windsor.

23 Q And what type of place is that?

24 A A place that sells food, but it was

25 closed.

1 Q It was closed?
2 A Yes.
3 Q Where did you go from there?
4 A Left from there and started to the
5 Horseshoe Cafe in Suffolk.
6 Q Is that a restaurant in Suffolk?
7 A Yes.
8 Q And where were you seated in the vehicle
9 of Mr. Edward Holloman?
10 A In the middle of the front seat.
11 Q Where was Benjamin Holloman seated?
12 A On the righthand side.
13 Q Were you awake all the time before the
14 accident happened?
15 A Yes.
16 Q To the best of your memory, in what lane
17 were you proceeding before the accident occurred?
18 A In the right lane.
19 Q In the right lane?
20 A Yes.
21 Q Is that the inside lane of the roadway
22 nearest the middle, or is that nearest the outside of the
23 road?
24 A Near the outside.
25 Q Do you recall the accident itself?

1 A No, I don't remember.

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9 Q I will repeat the question. Had there
10 been any conversation between the three of you about
11 turning around and going back to Ivor?
12 A No.
13 Q Before the accident, did Edward Holloman
14 slow down the vehicle or stop the vehicle?
15 A No.
16 Q Had he applied the brakes before the
17 accident happened?
18 A No.
19 Q After the accident occurred, were you
20 knocked unconscious or were you conscious?
21 A I was unconscious.
22 Q What is the next thing you remember after
23 the accident happened?
24 A I was in the emergency room at Obici
25 Hospital.

1 Q In the emergency room at Obici Hospital?
2 A Yes.
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7 BY MR. STEIN:
8 Q Ms. Holloman, you say you don't recall
9 anything about the accident?
10 A No.
11 Q You don't know nothing about it at all,
12 O.K.
13 A No.
14 Q What was Mr. Holloman's speed before the
15 accident?
16 A I would say 55.
17 Q Do you recall when we took your deposition
18 in Mr. Woodward's office on May 4, of 1973, do you remember
19 when you came over to Mr. Woodward's office and were asked
20 questions about the accident?
21 A Yes.
22 Q And, of course, at that time you were
23 under oath, were you not?
24 A Yes.
25 Q Do you recall me asking you at that time -

1 and counsel, if you want to refer to it, it is on Page 47 - -
2 as to what Mr. Holloman's speed was before the accident?
3 A Yes, I think I told you I could estimate
4 the speed then.
5 Q And what was your estimate of speed then?
6 A I would say about 60 -- 60 and 65,
7 estimated.
8 Q That is what you testified to on May 4,
9 1973, that his speed was 60 to 65 miles an hour. Is that
10 correct?
11 A Yes.
12 Q Why do you say today that it was 55 miles
13 an hour?
14 A Well, I said it was speed limit. I told
15 you then it was estimated, but I definitely didn't know.
16 Q You didn't know what?
17 A I didn't know what the speed limit was.
18 Q What does that have todo with how fast
19 he was going?
20 A I don't know, I just told you then I
21 estimated it because I really didn't know.
22 Q You mean to say you didn't know what his
23 speed was them, but you know what his speed was now?
24 A I would say about 55.
25 Q Well, when you took your depositions under

1 oath in May, 1973, it was almost a year - - let's see, almost
2 a year shorter than the time we are here today? Closer
3 to the accident, wasn't it?
4 A Yes.
5 Q And wasn't your memory clearer then
6 than it is now?
7 A Yes.
8 Q It was?
9 A Yes.
10 Q And you say that now your estimate is 55
11 anda year ago it was 60 to 65?
12 A That is right. It is an estimate.
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18 Q Before the accident did Edward Holloman
19 leave the righthand lane of travel?
20 A No.
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6 Q You are Edward Holloman?
7 A Yes, sir.
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25 Q On the night of November 4, 1973, were you

1 - - November 4, 1972 - - were you with Estelle Holloman and
2 Benjamin Holloman?
3 A Yes, sir.
4 Q Where did you first meet Benjamin Holloman
5 on this particular night?
6 A Well, I saw Benjamin on that day - - I
7 was headed around my mother's house, she was sick with
8 cancer; and he caught a ride through there, and on the
9 way there, he asked me would I take him and his aunt to
10 the sitting-up that night. I said it depended on how my
11 mother rests, if she rests right good, I would take him over
12 there, but that evening I saw him at Mr. Bracy and Johnson's
13 - - the filling station.
14 Q Is that Bracy and Johnson's Service
15 Station there at Ivor?
16 A Yes, sir.
17 Q Did Benjamin Holloman own a car at that
18 time?
19 A No, sir.
20 Q After you met Benjamin Holloman at
21 Bracy and Johnson's, where did you go from there?
22 A We left there and went and picked up
23 his aunt; and left his aunt's house and went to Windsor
24 for the sitting-up.
25 Q Who is his aunt, Estelle Holloman?

A Yes, sir.

Q Where was the sitting-up being held?

A It was in Windsor, you turn left at the red light in Windsor and go about eight miles down in the country.

Q Had you ever been to the house before?

A No, sir, I have never visited the house before?

Q How were you able to get there?

A We stopped and asked a lady at a house there how to get there, and we made out by asking our way.

Q When you got to the Freeman's house, how long did you stay there?

A Maybe an hour or two hours.

Q Was there any whiskey there, or beer there?

A No, sir.

Q Was there any food there?

A No, sir, no food.

Q What time, approximately, did you leave the house there?

A Something to 9:00 o'clock, maybe a little later.

Q Where did you go after you left the Freeman's house?

1 A Came back to Windsor, and I was hungry,
2 so I turned left in Windsor to the Tasty-Freeze, a little
3 bit right down Windsor, but they were closed, so I asked
4 if they minded riding into Suffolk to get something to eat,
5 and they said, no, not at all.
6 Q All right, as you left Windsor, in what
7 lane of travel were you proceeding?
8 A Right lane.
9 Q When you say the right lane, are you
10 talking about the inside lane or outside lane?
11 A The one closest to the shoulder of the
12 road.
13 Q Closest to the shoulder?
14 A Yes, sir.
15 Q How fast were you driving?
16 A I was doing about 50 or 55.
17 Q Did you stop or slow down before the
18 accident happened?
19 A No, sir.
20 Q Did you see the vehicle which struck you
21 before the accident happened?
22 A No, sir.
23 Q Had there been any conversation among the
24 three of you about turning around and going back to Ivor?
25 A No, sir.

1 Q Now, you say you were going to Suffolk to
2 get something to eat. Where in Suffolk were you going?
3 A Horseshoe Cafe.
4 Q Is that a restaurant in Suffolk?
5 A Yes, sir.
6 Q And what hour does that stay open to?
7 A That stays open until about 11:30.
8 Q Was anything else open on that particular
9 night where you could have gotten something to eat?
10 A No, sir, not between there.
11 Q After the accident happened, what is the
12 next thing you remember?
13 A I woke up in the emergency room in the
14 hospital, they had me on the X-ray table, I believe.
15 Q What did they do to you at the hospital
16 on that particular night?
17 A Well, they gave me a lot of shots, and
18 set my leg, but it wasn't exactly right and three days after
19 that, they had to reset it again.
20 Q They had to reset it again?
21 A Yes, sir.
22 Q Did you take any other form of medication
23 other than shots on the night at Obici Hospital?
24 A They gave me shots and pills.
25 Q Do you recall talking to Trooper Massengill

1 who testified here today?
2 A Yes, sir.
3 Q Tell the Court just what the conversation
4 was between you and Trooper Massengill?
5 A Well, he came in there the next morning,
6 and . . .
7 Q Where were you at that time?
8 A I was in bed.
9 Q And what was the situation insofar as
10 your leg?
11 A I was hurting all over; and he asked me
12 what happened, and I told him, "I think I had a flat tire."
13 Q Did you know what had happened, actually?
14 A Actually, I didn't.
15 Q Did you know where your car ended up after
16 the accident occurred?
17 A No.
18 Q All right, do you recall Trooper
19 Massengill's testifying here previously about your con-
20 versation with him about how the accident did occur?
21 A Yes, I remember talking to him.
22 Q And what did you tell him when he asked
23 you how the accident happened?
24 A Well, at first, that is what I told him,
25 I told him I thought I had a flat tire. And he said, "No,

you didn't have no flat tire." He said, "I believe you were turning around in the road."

I said, "No, I wasn't."

And he said, "That is the way it looked to me."

And he kept pressing I was turning around, and I said, "Maybe I was turning around."

Q As you sit here today, were you turning around in the road at that particular place?

A No, sir.

Q Is there any question in your mind about that?

A No, sir.

Q Mr. Holloman, you say you were in some pain there. Can you describe the pain when Trooper Massengill talked to you?

A I was in misery.

Q Had the shots or medicine given you affected you in any way?

A Well, I would go to sleep a little while and wake up a little while.

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17 Q I want to ask you again, Mr. Holloman,
18 so that we are absolutely sure that you are sure, is there
19 any question in your mind you were going straight on
20 U. S. Highway 460 when the accident occurred?
21 A I was, sir.
22 Q Have you ever seen - - or had you ever
23 seen Vernon Waters before the night of the accident?
24 A No, sir.
25 Q Do you know him in any way?

A No, sir.

Q Do you know anything about the accident except what somebody has told you?

A No, sir.

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7 Q You are Vernon Waters?
8 A Yes, sir.
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13 Q At this point, Mr. Waters, I am just going
14 to ask you several questions. Were you driving the automobile
15 which struck the automobile operated by Edward Holloman
16 on the night the accident occurred?
17 A Yes, sir.
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1 counsel, I have the medical report of Dr. Craig
2 A. Ryder, copy of which has been furnished to
3 counsel. Dr. Ryder could not be here today,
4 and I would like to read the report to the
5 Jury and into the record at this time.
6 MR. WILKINSON: We have no objection.
7 COURT: All right.
8 MR. WOODWARD: This is a report
9 dated July 19, 1973, from Dr. Craig A. Ryder,
10 Orthopedic Surgeon, in Suffolk, referring
11 to Edward Holloman:
12 "The above named
13 patient was admitted to Louise Obici Memorial
14 Hospital November 5, 1972, and discharged
15 November 11, 1972, with a comminuted fracture
16 of the left tibia.
17 "He was treated
18 by closed reduction under general anesthesia,
19 and placed in a long-legged cast.
20 "He was seen at
21 intervals between discharge and January 25,
22 1973, when a new long-legged cast was applied
23 after X-rays showed good early healing. This
24 cast was again changed on March 15, 1973, into
25 a long-legged walking cast when X-rays again

1 showed good healing.

2 "On May 3, 1973,

3 the cast was removed, and X-rays showed a

4 good healing, although it was not yet complete.

5 There was no tenderness or instability about

6 the fracture, and the patient was allowed to

7 be full weight bearing, using two crutches.

8 "He stopped in the

9 office June 5th to say he felt fine and wanted to

10 return to work without waiting for him to see

11 me that day. He was allowed to return to work

12 and he was to have been seen July 13, 1973, but

13 did not keep that appointment

14 "In my opinion,

15 this patient now has a well healed fracture,

16 and I would not expect him to have any permanent

17 partial disability.

18 "Very sincerely,

19 Craig A. Ryder, M. D."

20 I would like to

21 introduce this into evidence as Plaintiff's

22 Exhibit 2, I believe.

23 (Statement of Dr. Ryder was accepted

24 as Plaintiff's Exhibit 2.)

25 MR. WILKINSON: We have a motion.

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6 MR. WILKINSON: If it please the Court,
7 on behalf of the Defendant, Waters, we move to
8 strike the evidence of the Plaintiff, and move
9 the Court to enter up summary judgment for
10 the Defendant, on the ground there has been no
11 proof of any actionable negligence on the part
12 of this Defendant.
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18 COURT: I am going to
19 overrule your motion to strike. I think
20 it presents a jury question at this point.
21 I will note your exception for the record.
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6 Q You are David Johnson, are you not?
7 A Yes, sir.
8 Q Where do you live, Mr. Johnson?
9 A Route 4, Box 291, Suffolk, Virginia,
10 Q Were you a passenger in Mr. Water's car
11 on the evening of this accident?
12 A Yes, sir.
13 Q And this accident happened 10:30 p.m.,
14 sometime late in the evening hours?
15 A Yes.
16 Q And it happened in November, on November
17 4th of 1972?
18 A Yes.
19 Q Where were you seated in Mr. Water's car?
20 A On the side of the front seat.
21 Q Was anybody else in the car with you all?
22 A No.
23 Q At the time of the accident, where were
24 you coming from?
25 A Coming from Uno's, we thought there was

1 a dance up there, but when we got there, there wasn't, so
2 we played a little pool, and then we were going back.
3 Q Where were you going back to, towards
4 Suffolk?
5 A Yes.
6 Q What route did you all take? What route
7 did the accident happen on? Was it on 460?
8 A 460.
9 Q How many lanes is that road, do you know?
10 A Four lanes.
11 Q It is two lanes towards Ivor and two lanes
12 towards Suffolk?
13 A Yes.
14 Q What lane of travel was Mr. Waters
15 traveling in?
16 A He was in the lefthand lane going towards
17 Suffolk.
18 Q When you say the lefthand lane, you mean
19 the one closest to the double line in the middle of the
20 road?
21 A Yes.
22 Q Can you tell us generally his speed
23 right before this accident occurred?
24 A Approximately 45.
25 Q Do you recall what the speed limit is, or

1 was at that time?

2 A At that time the speed limit was 60.

3 Q Now, as you were proceeding up the

4 road, when did you first notice the vehicle being driven

5 by Mr. Holloman?

6 A There is a little short curve. When

7 you get out of the curve is when I first saw the car.

8 It was trying to make a U-turn going back toward Zuni.

9 Q The first time you saw this vehicle, this

10 car, how far were you all away from it, approximately?

11 A Approximately 35 to 40 yards.

12 Q And I believe you testified you were

13 on the inside lane?

14 A Right.

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18 Q Or where was this car located?

19 A His car was located on the righthand

20 side.

21 Q Is that the righthand shoulder of the

22 road?

23 A Right.

24 Q Was there there any lights on that car?

25 A I didn't see any.

1 Q Was there any signal lights at all?
2 A No.
3 Q Now, can you describe the path of the
4 car from the time you saw it on the right shoulder of the
5 road? What did it do?
6 A At the time it was turning, trying to
7 make a U-turn and going back toward Ivor.
8 Q Now, what did Mr. Waters do?
9 A At that time he tried to stop his
10 car, but his car started sliding and hit him in the back
11 of the door.
12 Q On which side of the car?
13 A On the lefthand side.
14 Q I show you these two pictures that are
15 marked Defendant's Exhibit 3, 5 - - and Defendant's Exhibit 4.
16 Take a look at those if you would, Mr. Johnson. Is that the
17 damage to Mr. Holloman's car?
18 A Yes, it is.
19 Q And that is immediately after the
20 accident?
21 A Yes.
22 Q Where did Mr. Holloman's car end up?
23 A His car ended up, he was on the other
24 lane going back towards Windsor after the accident occurred.
25 Q And where did Mr. Waters' car end up?

A He was on the righthand side of the road.

Q Facing which way?

A Suffolk.

Q The same way you were going all along?

A Yes.

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Q Did you and Vernon Waters have anything to drink at Edward's place, or place at Elephant Fork?

A No, when we went up to Elephant Fork, we

1 went to - - we got something to eat at Champs, and we had
2 four Champ Ale, and I drank two and he drank one and had one
3 on the seat of the car.
4 Q You bought four Champ Ales?
5 A Yes.
6 Q What are they?
7 A Beer.
8 Q Where were you when you were drinking
9 the beer?
10 A We were sitting on the - - on the
11 path of Uno's, sitting on the outside, drinking those.
12 Q You weren't drinking beer riding down
13 the road?
14 A No.
15 Q Did you drink any beer at Uno's?
16 A No.
17 Q What was the condition of Vernon Waters?
18 A Normal.
19 Q What was his condition after the
20 accident?
21 A He was - - he seemed sort of upset
22 because he thought one of the girls, he thought she was
23 dead, or something. He was nervous.
24 Q Was he drunk?
25 A No.

1 Q No question in your mind?
2 A No, he wasn't.
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9 Q Mr. Johnson, I am interested in what
10 lane of travel Vernon Waters was before the accident
11 happened? What lane was he in?
12 A In the center lane going toward Suffolk.
13 Q Was there any other traffic on the
14 roadway?
15 A No.
16 Q None, whatsoever?
17 A No.
18 Q Where had you gotten in the center lane?
19 A He had passed a car back, and as he
20 turned the curve, that is when he saw Holloman.
21 Q How far back did he pass the car?
22 A I would say about a mile back.
23 Q So from the time he passed the car until
24 the accident happened, he stayed in the center lane?
25 A Right.

1 Q No reason for him not to get in the right
2 lane, was there?
3 A No.
4 Q No other cars over there?
5 A No.
6 Q You say you were driving 45 miles an
7 hour. Are you sure?
8 A I am sure.
9 Q What was the speed limit?
10 A Speed limit was 60 at the time. They
11 have changed it.
12 Q What type of car was he operating?
13 A Ford.
14 Q What kind of Ford was it?
15 A I can't recall.
16 Q Was it new or old?
17 A It was new.
18 Q Brand new?
19 A No. I think it was a '69, or something
20 like that - - '69 or '70.
21 Q Do you know what kind of motor it had
22 in it?
23 A No.
24 Q What kind of transmission?
25 A No.

1 Q You don't know anything about that?
2 A No.
3 Q You testified there is a curve. I want
4 you to tell me where the curve is from Windsor to where this
5 accident happened?
6 A The curve was - - where we was coming
7 from Uno's, there was a curve up there, a little short
8 curve.
9 Q A curve right where the accident
10 happened?
11 A No, as he turned, coming out of the
12 curve, up here 35 or 40 yards, that is where we saw
13 Holloman's car.
14 Q The question I am asking you at this
15 point, I want you to tell this jury where this curve is
16 on the road, where it is in relation to where the accident
17 happened?
18 A The exact place?
19 Q The exact place that there is a curve
20 in the road from Windsor to Suffolk?
21 A I can't say where the exact place is at.
22 Q There really isn't any curve in there,
23 is there?
24 A It was a short curve.
25 Q A short curve?

1 A Yes.
2 Q What do you mean by a short curve? - -
3 Do you mean one that would block the vision until you got
4 around it?
5 A No.
6 Q Well, you say when you came around the
7 curve, you then saw the other car 35 or 40 yards ahead?
8 A Right.
9 Q Do you know how far 35 or 40 yards is?
10 A Yes.
11 Q How many feet is it, do you know?
12 A No.
13 Q Was anything said when you first saw
14 the car?
15 A No.
16 Q You don't know when Vernon Waters
17 saw the car do you?
18 A No.
19 Q No one said anything?
20 A All I know is when I looked up, all I
21 saw was Vernon who was touching on brakes, and then I saw
22 the car.
23 Q When you looked up?
24 A Yes.
25 Q Where were you looking before that?

1 A I was sitting back in the car listening
2 to the music.
3 Q Listening to the music, driving down
4 the road?
5 A Yes.
6 Q Did he have a stereo? A tape deck in
7 the car?
8 A Radio.
9 Q Had a radio?
10 A Yes.
11 Q You and Vernon weren't talking, just
12 listening to the music?
13 A We were talking and listening to the
14 music all at the same time.
15 Q When you looked up after you came
16 around the curve, you say 35 to 40 yards ahead you saw the
17 car?
18 A Yes.
19 Q Where was the car then?
20 A The car was on the righthand side,
21 turning to make a U-turn.
22 Q When you first saw the car, where was
23 it?
24 A On the righthand side of the road.
25 Q Was it off the road?

1 A The two front wheels - - the back wheel
2 on the righthand side was off the road.
3 Q How much of the car was off the road?
4 A As far as I could see, just the two
5 wheels on the righthand side.
6 Q Was the car moving when you first saw it?
7 A Yes, it was moving, trying to make a
8 U-turn.
9 Q The question is, when you first saw it,
10 it was moving?
11 A Yes.
12 Q Was it moving forwards, backwards, or
13 what?
14 A Moving, trying to make a U-turn.
15 Q Just answer my question. Was it moving
16 forward?
17 A No.
18 Q It was not moving forward?
19 A No.
20 Q It was not moving forward. Was it moving
21 backwards?
22 A No.
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15 COURT: Well, in what
16 direction was it moving?
17 A When I saw it, he was making a U-hand-
18 turn, like this.
19 Q So it wasn't going forward, it was
20 turning?
21 A It was turning.
22 Q At 35 or 40 yards away, did you say
23 anything?
24 A No.
25 Q Did you holler out?

1 A No.
2 Q Did Vernon Waters have his lights on?
3 A Yes, he did.
4 Q And from those lights 35 or 40 yards
5 away, could you see the car in the lights?
6 A I could see it.
7 Q You could see it from your own headlights,
8 it was shining on the car?
9 A Yes.
10 Q Were there any lights on the other car?
11 A No.
12 Q No lights whatsoever?
13 A No.
14 Q You are sure about that?
15 A I am sure.
16 Q Nothing was said between the time you
17 first saw the other car and the time the actual impact
18 occurred?
19 A No.
20 Q Did Vernon Waters say anything?
21 A No.
22 Q Did he blow the horn?
23 A No.
24 Q Now, after you first saw the car, you
25 said it was coming in front of you - - is that right?

1 A I said it was trying to make a U-hand-
2 turn.
3 Q And what did your car do? - - The car
4 in which you were riding, which way did that go?
5 A The car I was in applied on his brakes,
6 but the car started sliding. Nothing he could do.
7 Q It applied on its brakes and started
8 sliding?
9 A Right.
10 Q Which way did it slide?
11 A Straight.
12 Q Straight?
13 A Yes.
14 Q It didn't slide to the right at all?
15 A No.
16 Q Was any traffic coming from Suffolk
17 towards you?
18 A No.
19 Q None whatsoever?
20 A None whatsoever.
21 Q Just two cars on the road?
22 A Yes.
23 Q You do not know what Vernon Waters
24 tried, or did not try to do, you just know what happened
25 to the car?

1 A Right.
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15 Q How many beers did he drink?
16 A He drank one beer.
17 Q Did he drink any more than one beer?
18 A No.
19 Q And you don't know what he had to
20 drink beforehand?
21 A No.
22 Q You are sure about that curve on 460?
23 A I am sure.
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6 Q Vernon, you were involved in this
7 accident that happened on November 4, 1972, were you not?
8 A Yes.
9 Q Where do you live?
10 A Suffolk.
11 Q Where are you working?
12 A Planters Cold Storage.
13 Q On the night of this accident, had you
14 taken your wife somewhere?
15 A Yes.
16 Q Where had you gone?
17 A Chuckatuck - - it is on the Smithfield
18 road.
19 Q Then did you pick up David after that?
20 A Yes.
21 Q After you picked David up, where did
22 you go?
23 A After I picked him up?
24 Q Yes?
25 A After I picked him up, we left from

1 Swing-in -- that is owned by Johnson -- and we started
2 to Ivor, over to a place called Uno's, and I had talked
3 to him earlier that day, and we had - - before we went to
4 Ivor, we went to the A & P and got us some beer to take
5 with us.
6 Q What did you get?
7 A Four cans of Champ Ale.
8 Q Now, after you went to - - Juno's is
9 that what you called it?
10 A Uno's, in Ivor.
11 Q How long did you stay there?
12 A About 15 or 20 minutes.
13 Q What did you do there?
14 A After we found there wasn't no dance,
15 we shot some pool.
16 Q And then where were you going?
17 A After we shot the pool?
18 Q Yes?
19 A Coming back to Suffolk.
20 Q What route were you on?
21 A Route 460.
22 Q Are you familiar with the road?
23 A Yes.
24 Q You were familiar with the road on the
25 night of the accident?

1 A Yes.
2 Q I mean you had been up and back on that
3 road many, many times?
4 A Yes.
5 Q Now, where was David seated in your car?
6 A On the front seat on the side.
7 Q And do you recall whether the radio was
8 on?
9 A It was on, I think, but it wasn't turned
10 over-loud.
11 Q All right, as you were coming down the
12 road, what lane of travel were you in?
13 A In the center lane, the passing lane.
14 Q Well, there are two lanes going toward
15 Suffolk, are there not?
16 A Yes.
17 Q You were in the lane closest to the
18 middle of the road?
19 A Yes.
20 Q Now, around the accident scene,
21 immediately before you got to the accident scene, was there
22 any other traffic that you can recall . . .
23 A Well, I had . . .
24 Q Going towards Suffolk?
25 A No. - - Well, I had passed Ms. Foster

1 on the outskirts of Windsor, and I had gotten up the road
2 a little ways, out of her sight, and . . . .
3 Q How fast were you going at the time?
4 A About 45 miles an hour.
5 Q Was this right before the accident?
6 A Yes, sir.
7 Q Do you recall what the speed limit is?
8 A Yes.
9 Q What is that?
10 A 60.
11 Q As you were coming on the inside lane,
12 can you tell me what occurred?
13 A What happened?
14 Q What happened?
15 A Well, I had passed Ms. Foster on the
16 outskirts of Windsor, and I hadn't gone back in the outside
17 lane because I like to drive in the center lane, and going
18 along, and all of a sudden this car appeared across the
19 road, like this, and I had my low beam lights on, and I
20 tried to brake and tried to stop; and before I could stop,
21 I hit him in the lefthand side.
22 Q All right. Now, when you first saw the
23 car, was it moving or was it stopped?
24 A It could have been moving, but it
25 appeared to me it was crossways, like this, and wasn't moving.

1 Q All right. Was it pointed toward the
2 lefthand side of the road?
3 A Pointed straight across the road.
4 Q In other words the rear of the car
5 would be on your right?
6 A Yes.
7 Q And the front of this car would be to
8 your left?
9 A Yes.
10 Q There are no intersecting streets or
11 anything there, are there?
12 A No.
13 Q Just the lanes and the shoulder of the
14 road?
15 A Right.
16 Q Now, as soon as you saw this car, what
17 did you do?
18 A I applied my brakes and started sliding,
19 and proceeded sliding into his side.
20 Q All right, and I believe - - did you
21 and David get out of the car?
22 A Yes, we got out of the car, after a
23 time, and I did go over. I thought somebody had gotten
24 killed, I didn't know, I was excited.
25 Q Was it after all of this that Mrs. Foster

1 came along?

2 A Yes.

3 Q Now, she didn't have anything to do with

4 the accident between - - when Holloman pulled out?

5 A No, I don't think she could apply

6 her brakes because it was kind of late.

7 Q Was there any - - did you see any lights

8 on Mr. Holloman's car?

9 A No.

10 Q Was there any signal from his car?

11 A No.

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18 Q What was your physical condition after

19 the accident?

20 A Well, the steering wheel broke in

21 my stomach, and my head -- nose went through the windshield

22 and it was bleeding and I was kind of sore; and my leg had

23 got cuts - - on this leg here, and on this one too.

24 Q Were your legs bleeding?

25 A It was bleeding at the time, I had cut

1 my pants.

2 Q Were you crying and upset?

3 A Yes, I was.

4 MR. STEIN: That is all the

5 questions I have.

6

7 CROSS EXAMINATION

8 BY MR. WOODWARD:

9 Q Mr. Waters, you are pretty good friends

10 with David Johnson, aren't you?

11 A He is my cousin.

12 Q And he was with you on this night?

13 A That is right.

14 Q Now, how much had you had to drink after

15 you got off work this day?

16 A I drank one beer.

17 Q You drank one beer?

18 A That evening when I was with him.

19 Q Do you recall testifying in the

20 discovery deposition that was taken?

21 A Yes.

22 MR. STEIN: Where is that?

23 What page is that?

24 MR. WOODWARD: Page 12.

25 Q Do you recall testifying in the discovery

1 depositions that was taken in this case on May 4, 1973?
2 A Over in Suffolk?
3 Q Yes?
4 A Yes.
5 Q Do you remember the questions being
6 asked of you at that time under oath?
7 A Yes.
8 Q And you answered those questions?
9 A Yes.
10 Q On Page 12, of the transcript, I would
11 like to read you this, and see if that is what you said:
12 The question starts on Page 11, actually, at the bottom:
13 "Had you had anything to drink since you got off work?"
14 Answer: "Since I got off from work, yes."
15 Question: "How much?"
16 Answer: "We had some Champ Ale, he had
17 drunk two and I had drunk two."
18 A I had drunk one.
19 Q So what you told me then was wrong?
20 A Yes, sir, I had drunk one - - I had one
21 in the car.
22 Q What you testified on that date is wrong
23 and what you are telling us now is correct?
24 A If you want to put it that way, but I
25 had one to drink and one was in my car.

1 Q Did you have anything else to drink?
2 A No.
3 Q Were you drunk?
4 A No.
5 Q After the accident were you acting like
6 you were drunk?
7 A I don't act like I am drunk.
8 Q So you were acting normally even though
9 you were hurt?
10 A I couldn't say I was acting normal, I
11 was upset.
12 Q You weren't having any trouble standing
13 up, were you?
14 A I was.
15 Q You were?
16 A The wheel broke in my stomach and
17 my legs, they were damaged.
18 Q Did you talk to the trooper?
19 A I tried to talk to him. As far as I
20 can remember, I tried to talk to him.
21 Q Why don't you remember?
22 A Because, like I said, I was upset.
23 Q And that is the reason you don't
24 remember?
25 A I remember. I talked to him, but some

1 things I didn't talk to him about.

2 Q Well, did he tell you several times to

3 sit down, or to stay somewhere?

4 A He might have.

5 Q And you didn't do it, did you?

6 A I might not, no.

7 Q Do you really remember what happened

8 after the accident?

9 A I do.

10 Q You remember all of it?

11 A Yes.

12 Q You heard Trooper Massengill testify

13 this morning, didn't you?

14 A Yes.

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5 Q Well, the question I am asking Mr.
6 Waters is, you heard Trooper Massengill's testimony about
7 your having wandered off several times, and you were in
8 and out of traffic?
9 A I don't think I was in the traffic.
10 Q You didn't do that?
11 A I didn't see any traffic. Of course,
12 like I say, I was kind of dizzy-like from the wreck. I
13 was shook up real bad.
14 Q You heard David Johnson testify. If
15 you will, tell the jury where the curve is on 460?
16 A There is a curve on the outskirts of
17 Windsor before you get to the outskirts of Windsor.
18 Q At the outskirts of Windsor?
19 A Yes, sir. Kind of at the city limits,
20 like.
21 Q Right at the city limit line, is that
22 the curve you are talking about?
23 A There could be one there.
24 Q And this accident happened a mile and a
25 half from Windsor?

1 A I don't know what distance it was
2 from Windsor.
3 Q Well, do you deny it is a mile and a
4 half from Windsor?
5 A No, I don't deny it.
6 Q So the curve you are talking about is
7 one back at the City limits of Windsor?
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15 A There is several curves in that road.
16 MR. WILKINSON: That is it. I
17 would like to get it straight and I think the
18 jury is entitled to have it straight as to
19 which curve we are talking about and trying
20 to hold this man to, whether it is David
21 Johnson's curve, or the one he is referring to.
22 MR. WOODWARD: I strenuously
23 object to Mr. Wilkinson trying to bail his
24 client out.
25 MR. WILKINSON: Well, I object

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12 Q The question I asked you, and I
13 thought I asked you plain enough, you heard David Johnson
14 testify?
15 A I heard him.
16 Q And you heard him talk about a curve,
17 didn't you?
18 A Yes.
19 Q "When we came around a curve"?
20 A Yes.
21 Q I am asking you now, what curve?
22 A There is several curves in Windsor.
23 Q In Windsor?
24 A On Windsor road.
25 Q Well, where is the curve right before

1 the accident happened?

2 A What curve are you talking about?

3 Q I am talking about the curve right before

4 the accident happened, was there any curve there?

5 A Two or three curves.

6 Q Two or three curves?

7 A Right.

8 Q And it was right when you came around

9 the curve, you then saw the car?

10 A Well, I hadn't came around a curve when

11 I saw his car.

12 Q You were coming around the curve and

13 then you saw the car?

14 A I said I wasn't coming around any curve

15 when I saw his car.

16 Q What lane of travel were you in?

17 A I was in the center lane.

18 Q I believe you testified you had passed

19 a car back in Windsor, hadn't you?

20 A Ms. Foster's.

21 Q Why didn't you get in the righthand

22 lane after you had done that?

23 A I was in the center lane. - - Why didn't

24 I do it? I likes to drive in the center lane.

25 Q You just like to drive in the center

lane?

A Yes, most of the time.

Q How fast were you driving?

A 45 miles an hour.

Q How far were you from Mr. Holloman's car when you first saw it?

A 35 yards - - maybe closer.

Q Give us your best estimate?

A I know I was right up on top of him, or . . .

Q Right up on top of him?

A No, I don't say right on top of him, about as far as from me to you (indicating).

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8 Q Well, do you call 35 yards right up
9 on him?
10 A You can say that.
11 Q So at 35 yards you were right up on him?
12 A I just used that as a round figure,
13 like I said. I was close up on him when I saw the car.
14 Q How far is a car length?
15 A What do you mean a car length?
16 Q What do you call a car length?
17 A I have never measured a car length.
18 Q It is not 35 yards, is it?
19 A It might be.
20 Q It might be 35 yards?
21 A Yes.
22 Q Do you recall testifying in my office
23 about how far it was when you first saw it?
24 A I think I do.
25 Q And what did you say at that time?

1 A I think I said about a car length away.
2 Q So you admit when you testified then
3 that you said a car length?
4 A No, I don't admit to it.
5 Q Do you deny it?
6 A No, I don't deny it.
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12 Q You answered there - - this was in
13 response to the question, on page 13: "I don't know, about
14 like to me about like from here to that door there,
15 (indicating)."
16 Question: "Was it nighttime?"
17 Answer: "Yes."
18 It was stated for purposes of the
19 record that all counsel can agree from him to the door is
20 fifteen feet. "Yes, a car length, or so."
21 And then your answer: "It was about a
22 car length or two."
23 A It might have been.
24 Q Are you telling us here that a car length
25 or two is 35 or 40 yards?

1 A I am saying I don't know what a car
2 length is. I have never tried to say what a car length is.
3 Q Was anything said by you to Johnson
4 before the accident happened?
5 A No, sir.
6 Q Did he say anything to you?
7 A Not that I recall.
8 Q All right, when you first saw the
9 car, where was it?
10 A Right in front of me, when I saw it.
11 Q Right in front of you?
12 A Yes.
13 Q Was there anything to obstruct your
14 view of the car?
15 A What do you mean?
16 Q Was anything between you and the car?
17 A No.
18 Q Was the road straight or curved there?
19 A In front of me, it was straight.
20 Q Well did the curve that we have referred
21 to, did that block your vision?
22 A No.
23 Q You say when you first saw it, it was
24 right in front of you?
25 A Right.

1 Q In what lane was it?
2 A On the lane this way (indicating), part
3 was this way in front of me. It was across both lanes.
4 Q Well, taking four lanes on the roadway,
5 what lanes was it in?
6 A On the lanes going to Suffolk.
7 Q On the lanes going to Suffolk?
8 A Yes.
9 Q Was it moving or standing still?
10 A It could have been moving.
11 Q It could have been? Do you know?
12 A I don't really. I couldn't say, because,
13 like I say, it could have been moving because it was in
14 front of me. That is all I saw. - - I would say it was
15 moving.
16 Q You had your headlights on, didn't you?
17 A Yes.
18 Q You didn't see it until it was cross,
19 right straight in front of you?
20 A That is right.
21 Q You didn't see it partially off the
22 road?
23 A It might have been.
24 Q Well, did you see it?
25 A I saw the car in front of me.

1 Q That is all you saw?
2 A Yes.
3 Q Were you paying attention?
4 A I was.
5 Q Were you looking down, or looking around,
6 or away?
7 A No, straight ahead.
8 Q Straight ahead?
9 A Yes.
10 Q Did your car lights shine on the car?
11 A No, because I had my low beam lights on.
12 Q And you say they didn't shine on the
13 car at all?
14 A Not until I got right up on it. Then
15 I could see it shining then.
16 Q Now at 35 or 40 yards you testified to,
17 what did you do when you saw the car?
18 A I tried to apply my brakes.
19 Q Did you?
20 A Yes.
21 Q What happened?
22 A They didn't do no good.
23 Q Did you try to blow your horn?
24 A No.
25 Q Did you try to pull to your right or

1 left?

2 A No.

3 Q You just applied brakes?

4 A Just applied my brakes. The car itself

5 pulled when I applied my brakes.

6 Q Which way did it pull?

7 A I can't recall.

8 Q Right or left, you don't know?

9 A It pulled one way, I can't recall.

10 Q Did you apply your brakes as soon as

11 you saw the car?

12 A I did.

13 Q Did the car have any lights on?

14 A I didn't see any.

15 Q I ask you again, are you sure it was

16 moving?

17 A I am quite sure it was moving.

18 Q On Page 16 of your deposition on May 4,

19 1973, the question was asked of you: "Was it moving?"

20 Answer: "Not that I could see it was

21 moving, I don't think it was moving."

22 Do you recall that answer?

23 A Yes.

24 Q But which is correct?

25 A I think it was moving.

1 Q Now you say it was moving?

2 A It could have been moving, it could not

3 have been moving - - I know it was in front of me. I don't

4 think it was just standing there with its motor cut off in the

5 middle of the street.

6 Q Do you recall also testifying, on

7 page 16,- - Question: "Which lane of travel had you been

8 going on?"

9 Answer: "What was I on?"

10 Question: "Yes?"

11 Answer: "I was in the righthand lane."

12 Do you recall that testimony?

13 A What do you mean?

14 Q On Page 16, do you recall testifying

15 to that?

16

17 * * *

18 A Which lane I was in?

19 Q Yes?

20 A I told you which lane I was in.

21 Q Then you said, on page 17, "Had you

22 been in the righthand lane ever since you left Windsor?"

23 Answer: "No, I was in - - it is a

24 four lane drive."

25 Question: "Yes."

1 Answer: "And I was in this lane here."
2 Question: "Is that the far right on the
3 shoulder or left inside lane?"
4 Then you said, Answer: "Left inside
5 lane." - - That is where you were the whole way from Windsor
6 to where this accident happened?
7 A From Windsor, right, because I passed
8 Ms. Foster's vehicle.
9 Q Do you remember going to Obici Hospital
10 after the accident happened?
11 A Yes.
12 Q Were you admitted to Obici Hospital?
13 A No.
14 Q Were any stitches taken in any part of
15 your body?
16 A No.
17 Q You were released, were you not?
18 A Yes.
19 Q Your headlights were working properly
20 were they not?
21 A Yes.
22 Q So if Johnson said he saw it 35 or
23 40 yards, you did not see it 35 or 40 yards?
24 A I couldn't say what he saw.
25 ***

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1 MR. WOODWARD: No further
2 questions.
3 MR. WILKINSON: All right, we
4 rest.
5 MR. WOODWARD: We don't have
6 any rebuttal testimony.
7 COURT: It is now five
8 minutes to 1:00. I will let you go to lunch
9 at this time, and I would ask that you come
10 back by 2:15. I will ask that you not
11 discuss this case with anyone during the
12 lunch hour. You are excused until 2:15.
13 (The jury was then excused from
14 the courtroom.)
15
16 MR. STEIN: At this time, we
17 would like to renew our motion made at the
18 conclusion of the Plaintiff's evidence,
19 motion to strike the evidence of the Plaintiff
20 and enter up summary judgment on behalf of
21 the Defendant.
22 (At this time, Mr. Stein presented
23 his argument in favor of his motion to strike;
24 and Mr. Woodward presented his argument
25 against the motion to strike.)

COURT: I still think it is a jury question at this point, I am going to overrule the motion; and I will note your exception for the record.

Gentlemen, I think if we go right into it, we can probably get the instructions together in a few minutes, and then go to lunch.

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22 CLERK: Ladies and
23 Gentlemen, have you arrived at your verdict?
24 JURORS: Yes, we have.
25 CLERK: "We, the Jury,

on the issue joined, find in favor of the Plaintiff, Edward Holloman, and asses his damages at Thirty-five Thousand Dollars. (signed) Alfred R. Call, Foreman."

Is this, then, your verdict?

JURORS: Yes.

COURT: Would you like the jury polled?

MR. WILKINSON: No, sir.

COURT: Thank you for your service here today. We will need you back on the 17th. You are not excused.

(The Jurors were then excused and retired from the courtroom.)

MR. WILKINSON: As I understand it, if it please the Court, we have 21 days to file any exceptions we have?

COURT: Yes.

MR. WILKINSON: So, we will be in touch with the Court and with counsel.

COURT: All right. Court stands adjourned.

(The Court then adjourned.)

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23 PAGES

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