CLERK
SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE

Supreme Court of Virginia

AT RICHMOND

RECORD NO. 770281

JENNIFER SNEED, an infant, etc., et al

v.

JOHN E. SNEED, Admr., etc.

APPENDIX

Carl E. McAfee, Esq.
CLINE, McAFEE, ADKINS & GILLENWATER
Professional Arts Building
Norton, Virginia 24273

Counsel for Appellant

Leslie M. Mullins, Esq.
MULLINS, WINSTON & ROBERSON
7TH Street
Norton, Virginia 24273

Counsel for Appellee

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VIRGINIA:

IN THE CIRCUIT COURT OF WISE COUNTY

DAVID SNEED, an infant who sues by his grandfather and next friend, ROY DULANEY

PLAINTIFF

VS: MOTION FOR JUDGMENT

JOHN E. SNEED, Administrator of the Estate of CAROL D. SNEED, Deceased
Norton, Virginia

DEFENDANT

TO: THE HONORABLE M. M. LONG, JR., JUDGE OF SAID COURT:

The undersigned plaintiff hereby moves the Circuit Court of Wise County, Virginia for a judgment against the defendant for the sum of TWENTY THOUSAND DOLLARS ($20,000.00) which sum is due and owing to the plaintiff from the defendant for the following damages, wrongs and injuries hereinafter set forth, to-wit:

I.

That on the 17th day of January, 1974 at about 2:10 p. m. and at the time of the happening of the grievances hereinafter complained of, the defend-

automobile and was driving and operating said Plymouth automobile over and along U. S. Route 23, Five Tenths (.5) of a mile south of the corporate limits of Big Stone Gap, Wise County, Virginia and was traveling in a northerly direction and at the same time and place your undersigned plaintiff was riding as a passenger in the 1972 Plymouth automobile being driven and operated by Carol D. Sneed, Deceased.

II.

That it thereupon became and was the duty of the defendant's decedent, Carol D. Sneed, Deceased, to drive and operate the said Plymouth automobile

in a non-negligent manner, to keep a proper lookout, to drive and operate the said Plymouth automobile in such a way and manner as to keep the said Plymouth automobile under proper control and in proper mechanical condition, to drive at a lawful and/or reasonable rate of speed commensurate with the circumstances then and there existing, to obey the traffic laws of the Commonwealth of Virginia, to drive and operate the said Plymouth automobile properly upon the highway, and to drive and operate the said Plymouth automobile in such a way and manner as not to cause injury to your undersigned plaintiff.

III.

Notwithstanding the aforesaid duties incumbent upon the defendant's decedent, she did violate each and every one of the aforesaid duties in that she did drive the vehicle in a negligent and careless manner and did thereby run off of the highway over and embankment with great force and violence.

IV.

That as a direct result and proximate cause of the negligence and carelessness of the defendant's decedent and as a result thereof, your undersigned plaintiff was wounded and damaged and injured about his entire body including

injuries to his head, arms, did receive bruises and contusions about his body, and has suffered great mental pain and anguish, and as a result of the aforesaid injuries was forced to seek the services of a medical doctor and was hospitalized and has incurred numerous medical and hospital expenses and will in the future expend divers sums in an endeavor to be cured of his injuries.

V.

Since the happening of the events hereinabove mentioned, Carol D. Sneed has become deceased and John E. Sneed has duly qualified in the Circuit Court of Wise County, Virginia as the administrator of the Estate of Carol D. Sneed, Deceased.

WHEREFORE, your undersigned plaintiff hereby moves the Circuit Court of Wise County, Virginia, for a judgment against the defendant for the sum of TWENTY THOUSAND DOLLARS ($20,000.00) together with cost and interest from the date of the wreck.

DAVID SNEED, an infant who sues
by his grandfather and next friend,
ROY DULANEY

-By Counsel-

CLINE, McAFEE, ADKINS & GILLENWATER
Attorneys at Law
Professional Arts Building
Norton, Virginia

BY_____
COUNSEL FOR PLAINTIFF

VIRGINIA:

IN THE CIRCUIT COURT OF WISE COUNTY

JENNIFER SNEED, an infant who sues by her grandfather and next friend, ROY DULANEY — PLAINTIFF

VS: MOTION FOR JUDGMENT

JOHN E. SNEED, Administrator of the Estate of CAROL D. SNEED, Deceased
504 Bernice Avenue
Norton, Virginia — DEFENDANT

TO: THE HONORABLE M. M. LONG, JR., JUDGE OF SAID COURT:

The undersigned plaintiff hereby moves the Circuit Court of Wise County, Virginia for a judgment against the defendant for the sum of FORTY-FIVE THOUSAND DOLLARS ($45,000.00) which sum is due and owing to the plaintiff from the defendant for the following damages, wrongs and injuries hereinafter set forth, to-wit:

I.

That on the 17th day of January, 1974 at about 2:10 p. m. and at the time of the happening of the grievances hereinafter complained of, the defend-

ant's decedent, Carol D. Sneed was the driver and operator of a 1972 Plymouth automobile and was driving and operating said Plymouth automobile over and along U. S. Route 23, Five Tenths (.5) of a mile south of the corporate limits of Big Stone Gap, Wise County, Virginia and was traveling in a northerly direction and at the same time and place your undersigned plaintiff was riding as a passenger in the 1972 Plymouth automobile being driven and operated by Carol D. Sneed, Deceased.

II.

That it thereupon became and was the duty of the defendant's decedent, Carol D. Sneed, Deceased, to drive and operate the said Plymouth automobile

in a non-negligent manner, to keep a proper lookout and to drive and operate the said Plymouth automobile in such a way and manner as to keep the said Plymou automobile under proper control and in proper mechanical condition, to drive at a lawful and/or reasonable rate of speed commensurate with the circumstances then and there existing, to obey the traffic laws of the Commonwealth o Virginia, to drive and operate the said Plymouth automobile properly upon the highway, and to drive and operate the said Plymouth automobile in such a way and manner as not to cause injury to your undersigned plaintiff.

III.

Notwithstanding the aforesaid duties incumbent upon the defendant's decedent, she did violate each and every one of the aforesaid duties in that she did drive the vehicle in a negligent and careless manner and did thereby run off of the highway over an embankment with great force and violence.

IV.

That as a direct result and proximate cause of the negligence and carelessness of the defendant's decedent and as a result thereof, your undersigned plaintiff was wounded and damaged and injured about her entire body including

a severe head injury, and did receive burises and contusions about her body, and has suffered great mental pain and anguish, and as a result of the aforesaid injuries, the plaintiff was required to seek the services of a medical doctor and was hospitalized and has incurred numerous medical and hospital expenses and will in the future expend divers sums in an endeavor to be cured of her injuries and will be permanently disabled.

V.

Since the happening of the events hereinabove mentioned, Carol D. Sneed has become deceased and John E. Sneed has duly qualified in the Circuit Court of Wise County, Virginia, as the administrator of the Estate of Carol D. Sneed, Deceased.

WHEREFORE, your undersigned plaintiff hereby moves the Circuit Court of Wise County, Virginia, for a judgment against the defendant for the sum of FORTY-FIVE THOUSAND DOLLARS ($45,000.00) together with cost and interest from the date of the wreck.

JENNIFER SNEED, an infant who sues by her grandfather and next friend, ROY DULANEY

-By Counsel-

CLINE, McAFEE, ADKINS & GILLENWATER
Attorneys at Law
Professional Arts Building
Norton, Virginia

BY_____
COUNSEL FOR PLAINTIFF

2724

VIRGINIA:

IN THE CIRCUIT COURT FOR WISE COUNTY

DAVID SNEED, an infant who sues
by his grandfather and next friend,
ROY DULANEY — PLAINTIFF

VS: ORDER

JOHN E. SNEED, Administrator of
the Estate of CAROL D. SNEED,
Deceased — DEFENDANT

This action came this day upon motion of Plaintiff by Counsel that he be permitted to amend his Motion for Judgment by substitution of next friend in this action, in that Roy Dulaney, the named next friend, has indicated his desire to resign as such.

UPON CONSIDERATION WHEREOF and for good cause shown, the Plaintiff's motion is hereby granted and it is hereby ordered that all of the

pleadings had herein be amended by inter-lineation by the Clerk of the Court, whereby the style of this case shall be amended to read: DAVID SNEED, an infant who sues by his grandfather and next friend, LONNIE SNEED. The Clerk of said Court shall cause the style of this case to be amended according

It is further amended that all of the pleadings and proceedings filed and had herein to the original Motion for Judgment shall be applicable to this amended Motion for Judgment.

ENTER this the 31st day of October, 1974.

s/ M M Longo
JUDGE

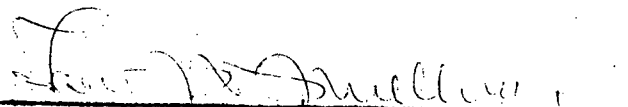
REQUESTED:

COUNSEL FOR PLAINTIFF

A COPY, TESTE:

Michael J. Cantrell
Deputy Clerk

SEEN:



COUNSEL FOR DEFENDANT

12723

VIRGINIA:

IN THE CIRCUIT COURT FOR WISE COUNTY

JENNIFER SNEED, an infant who sues
by her grandfather and next friend,
ROY DULANEY — PLAINTIFF

VS: ORDER

JOHN E. SNEED, Administrator of the
Estate of CAROL D. SNEED, Deceased — DEFENDANT

This action came this day upon motion of Plaintiff by Counsel that she be permitted to amend her Motion for Judgment by substitution of next friend in this action, in that Roy Dulaney, the named next friend, has indicated his desire to resign as such.

UPON CONSIDERATION WHEREOF and for good cause shown, the Plaintiff's motion is hereby granted and it is hereby ordered that all of the pleadings had herein be amended by inter-lineation by the Clerk of this Court, whereby the style of this case shall be amended to read: JENNIFER SNEED.

an infant who sues by her grandfather and next friend, LONNIE SNEED. The Clerk of said Court shall cause the style of this case to be amended accordingly.

It is further amended that all of the pleadings and proceedings filed and had herein to the original Motion for Judgment shall be applicable to this amended Motion for Judgment.

ENTER this the 31st day of October, 1974.

S/ M M Long Sr
JUDGE

REQUESTED:

COUNSEL FOR PLAINTIFF

A COPY, TESTE:

Deputy Clerk

SEEN:

COUNSEL FOR DEFENDANT

VIRGINIA:

IN THE CIRCUIT COURT FOR WISE COUNTY

JENNIFER SNEED, an infant who sues
by her grandfather and next friend,
ROY DULANEY, PLAINTIFF

VS: GROUNDS OF DEFENSE, MOTIONS & PLEAS

JOHN E. SNEED, Administrator of the
ESTATE of CAROL D. SNEED, deceased, DEFENDANT

The defendant, by his attorney, comes and says that for defense to the above-styled Motion for Judgment filed against him by the plaintiff he will rely on the following:

I.

Defendant denies each and every allegation of negligence alleged against decedent in the Motion for Judgment.

II.

That at the time and place of the alleged accident the automobile driven by the defendant's decedent was being operated in a lawful, prudent, and proper manner and in full compliance with all the laws and regulations of the State of Virginia incident to the operation of such vehicles.

III.

Defendant denies that the plaintiff sustained the injuries alleged in the Motion for Judgment.

IV.

Defendant denies that the plaintiff sustained the damages alleged in the Motion for Judgment.

V.

Defendant says that judgment should be rendered for the defendant.

MOTION TO TAKE DISCOVERY DEPOSITIONS

The defendant moves the Court to take the discovery depositions of the plaintiff.

MOTION FOR INDEPENDENT MEDICAL EXAMINATION

The defendant, if he be so advised after the taking of the discovery depositions, moves the Court for an independent medical examination.

INTERROGATORIES

Defendant requests the following Interrogatories be answered by plaintiff under oath within twenty-one days from the date of service hereof:

I.

Please state the names and addresses of all persons known to plaintiff or plaintiff's attorney who saw or claimed to have seen any part of the accident in controversy in this case or any negligent act on the part of defendant.

II.

Please state the names and addresses of all witnesses plaintiff intends to call on plaintiff's behalf, either in person or by deposition, at the trial of this case.

III.

Please state the names and addresses of all physicians who have treated or examined plaintiff for injuries allegedly received in the accident in controversy herein. Please furnish counsel for defendant with copies of reports from said physicians.

IV.

Please itemize all medical expenses incurred by or on behalf of plaintiff for diagnosis and treatment of said injuries.

V.

Please itemize any additional special damages which are claimed to have resulted from said accident and for which recovery is sought in this action.

VI.

Please seasonably amend or supplement any answer to the foregoing Interrogatories which becomes inaccurate or incomplete between the time of such answer and the conclusion of this case by settlement or final adjudication.

JOHN E. SNEED, Administrator of the Estate
of CAROL D. SNEED, Deceased

BY COUNSEL

LESLIE M. MULLINS
MULLINS, WINSTON & ROBERSON
THE LAW BUILDING
NORTON, VIRGINIA

CERTIFICATE

I hereby certify that I have served a true copy of the foregoing pleading by mailing the same to Cline, McAfee, Adkins & Gillenwater, Norton, Virginia, counsel of record for the plaintiff, on this the 10th day of May, 1974.

LESLIE M. MULLINS
COUNSEL

VIRGINIA:

IN THE CIRCUIT COURT FOR WISE COUNTY

DAVID SNEED, an infant who sues by his grandfather and next friend, ROY DULANEY, PLAINTIFF

VS: GROUNDS OF DEFENSE, MOTIONS & PLEAS

JOHN E. SNEED, Administrator of the Estate of CAROL D. SNEED, Deceased, DEFENDANT

The defendant, by his attorney, comes and says that for defense to the above-styled Motion for Judgment filed against him by the plaintiff he will rely on the following:

I.

Defendant denies each and every allegation of negligence alleged against decedent in the Motion for Judgment.

II.

That at the time and place of the alleged accident the automobile driven by the defendant's decedent was being operated in a lawful, prudent, and proper manner and in full compliance with all the laws and regulations of the State of Virginia incident to the operation of such vehicles.

III.

Defendant denies that the plaintiff sustained the injuries alleged in the Motion for Judgment.

IV.

Defendant denies that the plaintiff sustained the damages alleged in the Motion for Judgment.

V.

Defendant says that judgment should be rendered for the defendant.

MOTION TO TAKE DISCOVERY DEPOSITIONS

The defendant moves the Court to take the discovery depositions of the plaintiff.

MOTION FOR INDEPENDENT MEDICAL EXAMINATION

The defendant, if he be so advised after the taking of the discovery depositions, moves the Court for an independent medical examination.

INTERROGATORIES

Defendant requests the following Interrogatories be answered by plaintiff under oath within twenty-one days from the date of service hereof:

I.

Please state the names and addresses of all persons known to plaintiff or plaintiff's attorney who saw or claimed to have seen any part of the accident in controversy in this case or any negligent act on the part of defendant.

II.

Please state the names and addresses of all witnesses plaintiff intends to call on plaintiff's behalf, either in person or by deposition, at the trial of this case.

III.

Please state the names and addresses of all physicians who have treated or examined plaintiff for injuries allegedly received in the accident in controversy herein. Please furnish counsel for defendant with copies of reports from said physicians.

IV.

Please itemize all medical expenses incurred by or on behalf of plaintiff for diagnosis and treatment of said injuries.

V.

Please itemize any additional special damages which are claimed to have resulted from said accident and for which recovery is sought in this action.

VI.

Please seasonably amend or supplement any answer to the foregoing Interrogatories which becomes inaccurate or incomplete between the time of such answer and the conclusion of this case by settlement or final adjudication.

JOHN E. SNEED, Administrator of the Estate
of CAROL D. SNEED, Deceased

BY COUNSEL

LESLIE M. MULLINS
MULLINS, WINSTON & ROBERSON
THE LAW BUILDING
NORTON, VIRGINIA

CERTIFICATE

I hereby certify that I have served a true copy of the foregoing pleading by mailing the same to Cline, McAfee, Adkins & Gillenwater, Norton, Virginia, counsel of record for the plaintiff, on ~~this the~~ 10th day of May, 1974.

LESLIE M. MULLINS
COUNSEL

15482

VIRGINIA: IN THE CIRCUIT COURT FOR WISE COUNTY

JENNIFER SNEED, an infant, who sues by her next friend, LONNIE SNEED, PLAINTIFF

V. FINAL ORDER

JOHN E. SNEED, Administrator of the Estate of Carol D. Sneed, Deceased, DEFENDANT

DAVID SNEED, an infant, who sues by his next friend, LONNIE SNEED, PLAINTIFF

V. FINAL ORDER

JOHN E. SNEED, Administrator of the Estate of Carol D. Sneed, Deceased, DEFENDANT

On the 15th day of December, 1975 came the Plaintiff Jennifer Sneed, an infant, who sues by her grandfather and next friend, Lonnie Sneed, in person, and came Lonnie Sneed, next friend, in person and came David Sneed, an infant, who sues by his grandfather and next friend, Lonnie

Sneed, in person and by his next friend, and came their counsel, and came John E. Sneed, Administrator of the Estate of Carol D. Sneed, Deceased, and upon motion of the Plaintiffs and by agreement of the Defendant, the case of Jennifer Sneed, an infant who sues by her grandfather and next friend, Lonnie Sneed vs. John E. Sneed, Administrator of the Estate of Carol D. Sneed, Deceased, and the case of David Sneed, an infant who sues by his grandfather and next friend, Lonnie Sneed v. John E. Sneed, Administrator of the Estate of Carol D. Sneed, deceased, was consolidated and issue was joined on the plaintiffs' Motion for Judgment and the Defendants Grounds of Defense and a panel of thirteen jurors were selected and duly

sworn and found free from exception and the Plaintiff struck three and the Defendant struck three and there remained a jury of seven, who were duly sworn to well and truly try the issues joined in the consolidated cases of Jennifer Sneed, an infant who sues by her grandfather and next friend, Lonnie Sneed v. John E. Sneed, Administrator of the Estate of Carol D. Sneed, deceased, and the case of David Sneed, an infant who sues by his grandfather and next friend, Lonnie Sneed v. John E. Sneed, Administator of the Estate of Carol D. Sneed, Deceased; and opening statements were made on behalf of the plaintiffs and on behalf of the defendant, and evidence was offered on behalf of the Plaintiffs and it was further stipulated that any claim of the father for medical expenses for the two infants would be submitted to the jury in this cas e and the parties retired to chambers and out of the presence of the jury, and the defendant moved the court to strike the plaintiffs' evidence in each of the two cases as consolidated for reasons assigned in the record and argument

was heard on behalf of counsel for the defendant and counsel for the plaintiffs and the Court overruled the defendant's motinn, and the parties returned to open Court and the Court instructed the jury and told the jury to retire and to find a verdict, and the jury did retire and after some time did return and the Court inquired of the jury if they had reached a verdict in each of the two case and the jurors answered in the affirmative. The verdict in the case of David E. Sneed v. John E. Sneed, Administrator, "We, the jury, on the issue joined find in favor of the plaintiff, David Sneed, and fix his damages at $20,000. Signed: A. W. Addington, Foreman."

And the verdict of the jury in the case of Jennifer Sneed v. John E. Sne Administrator, "We, the jury, on the issue joined find in favor of the plaintiff, Jennifer Sneed, and fix her damages at $45,000. Signed: A. W. Addington, Foreman."

Whereupon, counsel for the Defendant moved the Court to set aside the verdict of the jury and assign grounds in writing and the Court granted the

Motion, and permitted the defendant to file his grounds in writing within twenty-one days, and the defendant moved the Court to set aside the verdict of the jury and assigned his grounds in writing and the Court heard argument of counsel for the Plaintiffs and counsel for the Defendant, and the Court was of the opinion that the verdict of the jury should be set aside as not supported by the evidence and being contrary to the evidence, and the Court announced its intention to set aside the verdict of the jury and the plaintiff filed a Motion for a new trial on after-discovered evidence and filed the Affidavit of Lurlie F. Sturgill in support of the Motion, and the defendant filed the Counter Affidavit of Lurlie F. Sturgill and William E. Bradshaw in opposition to the Motion and the Court heard argument on the Motion and being of the opinion that the Affidavit for a new trial on the grounds of after-discovered evidence should be denied because the witness was known to the plaintiff and her evidence could have been utilized by the exercise of due

diligence, and the Court being of the further opinion that the two Affidavits of Lurlie F. Sturgill would not be sufficient grounds otherwise for a new trial, and the Court being of the opinion that the verdict of the jury should be set aside as not supported by the evidence and being contrary to the evidence, the Court doth set aside the verdict of the jury and ADJUDGE and ORDER that in the case of David Sneed, an infant, who sues by his grandfather and next friend, Lonnie Sneed, v. John E. Sneed, Administrator of the Estate of Carol D. Sneed, that the plaintiff recover nothing and that judgment be entered for the defendant and that the defendant recover his costs in this behalf expended, and in the case of Jennifer Sneed, an infant, who sues by her grandfather and next friend, Lonnie Sneed, v. John E. Sneed, Administrator of the Estate of Carol D. Sneed, deceased, that the plaintiff recover nothing and that judgment be rendered for the defendant,

John E. Sneed, Administrator of the Estate of Carol D. Sneed, deceased, and that he recover his costs in this behalf expended.

To the action of the Court in setting aside the verdict of the jury and rendering judgment for the defendant in each of the two cases, the plaintiffs, by counsel, duly excepted.

The plaintiffs in each of the two cases indicated their intention to petition the Supreme Court of Virginia for an appeal and supersedeas, execution of said judgment is suspended for a period of four months thereafter or until said appeal is disposed of by said Supreme Court provided the plaintiffs or someone in their behalf executes suspending bond in the penalty of $500 conditioned as the law directs, within fifteen days hereof, and thereafter take such steps as required by law to present such petition for appeal.

And it further appearing to the Court that the transcript

of the evidence in this case has been filed, it is ORDERED and DIRECTED that it become a part of the record in this case and that the two Affidavits of Lurlie F. Sturgill and the Affidavit of William E. Bradshaw be made a part of the record in this case.

ENTER this 7th day of February, 1977.

/s/ M M Long Jr
JUDGE

SEEN:

Craig E. Molle
OF COUNSEL FOR PLAINTIFFS

[illegible]
OF COUNSEL FOR DEFENDANT

A [illegible]

Joseph H. Kirk
Deputy

VIRGINIA:

IN THE CIRCUIT COURT FOR WISE COUNTY

JENNIFER SNEED, an infant, who sues
by her next friend, Lonnie Sneed — PLAINTIFF

VS: NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

JOHN E. SNEED, Administrator of the
Estate of Carol D. Sneed, Deceased — DEFENDANT

DAVID SNEED, an infant, who sues
by his next friend, Lonnie Sneed — PLAINTIFF

VS: NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR

JOHN E. SNEED, Administrator of the
Estate of Carol D. Sneed, Deceased — DEFENDANT

TO THE CLERK OF THE CIRCUIT COURT OF WISE COUNTY, VIRGINIA:

Counsel for Jennifer Sneed, an infant, who sues by her next friend, Lonnie Sneed, and David Sneed, an infant, who sues by his next friend, Lonnie Sneed, the Plaintiffs in the above-

styled cases in the Circuit Court of Wise County, Virginia, hereby give notice of appeal from the Order to be entered in the above cases, which were tried on December 15, 1975, and sets forth the following Assignments of Error:

I.

The Court erred in setting aside the jury verdicts in favor of the Plaintiffs and in finding in favor of the Defendant.

II.

The Court erred in setting aside the jury verdicts and finding in favor of the Defendant in each of the two aforementioned cases and ruling that the Plaintiffs did not establish a prima facie case of negligence of the Defendant's decedent.

The transcript of the evidence and incidents of the trial has previously been filed and made a part of the record.

JENNIFER SNEED, an infant, etc.
DAVID SNEED, an infant, etc.

-BY COUNSEL-

CLINE, McAFEE, ADKINS & GILLENWATER
Attorneys at Law
Professional Arts Building
Norton, Virginia 24273

BY /s/ Carl E. McAfee
COUNSEL FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I, CARL E. McAFEE, counsel for the Plaintiffs, do hereby certify that I have on the 7th day of February, 1977, mailed a true copy of the foregoing Notice of Appeal and Assignments of Error to Leslie M. Mullins, Norton, Virginia, counsel of record for the Defendant.

/s/ Carl E. McAfee
COUNSEL

9 MR. McAFEE: Call Trooper Buchanan.

10 TROOPER J. B. BUCHANAN, a witness of lawful age, after being duly

11 sworn, testified as follows:

12 DIRECT EXAMINATION BY MR. McAFEE:

13 Q. Would you state your full name, please.

14 A. J. B. Buchanan.

15 Q. And your occupation, sir.

16 A. I'm employed by the State Police of Virginia.

17 Q. And, Trooper, how long have you been employed by them

18 by the Department of State Police?

19 A. Two years and two months.

20 Q. And are you performing your duties in Wise County?

21 A. Yes, sir, I am.

22 Q. What part of the county do you generally cover?

23 All of it?

24 A. Yes, sir.

25 Q. I will ask you if you on Thursday, January 17, 1974,

were working in the lower end of the county at that time or were you called to go down there?

A. I was called to go to that end of the county.

Q. And approximately what time did you receive the call, if you know or if you remember?

A. Approximately 2:30 P. M.

Q. All right. And where were you called to go to?

A. I was called to go south of Big Stone Gap on U. S. 23.

Q. And when you arrived there was the vehicle involved still there?

A. Yes, sir, it was.

Q. Trooper, exactly where was this wreck and where did it occur?

A. It occurred approximately five-tenths of a mile south of Big Stone Gap on U. S. Route 23, and it occurred approximately 111 feet south of State Route 615 at the intersection of State Route 615 with U. S. 23.

Q. What was the road alignment where the wreck occurred?

A. The road alignment at this location was grade and curve.

Q. And the direction in which the vehicle had been traveling was which direction?

A. It was going north.

Q. Would that be from the Gate City road towards Big

1 Stone?
2 A. Yes, sir.
3 Q. What type of surface conditions did you find?
4 Dry? Wet?
5 A. The condition was dry at that time.
6 Q. Were there any defects in the road?
7 A. The road at this location is a little bumpy and the
8 shoulder is a little rough there.
9 Q. How about the traffic controls? Were there any
10 traffic controls?
11 A. The road was marked for no passing.
12 Q. Was it in open country?
13 A. Yes, sir, it was.
14 Q. Was it daytime or nighttime?
15 A. It was daytime.
16 Q. What were the weather conditions?
17 A. It was clear.
18 Q. And what type of surface did you have there?
19 A. The surface was blacktop.
20 Q. Trooper, just tell what position you -- first of all,
21 what type of vehicle did you find when you arrived there?
22 A. 1972 Plymouth Station Wagon.
23 Q. All right, sir. And did you determine the ownership
24 of the vehicle?
25 A. Yes, sir, I did.

1
2 Q. Who was the registered owner?
3 A. John E. Sneed.
4 Q. What was the speed limit in this area?
5 A. Fifty-five.
6 Q. What damage did you find to the vehicle? Not in
7 dollars and cents, but with respect to the vehicle itself.
8 A. The vehicle, the damage sustained to it was both
9 the sides and the top. It was a total loss.
10 Q. What position did you find the vehicle in?
11 A. The vehicle, as I recall when I arrived at the
12 scene, was setting on its wheels.
13 Q. Had it been moved?
14 A. People who were at the scene advised me they had
15 to turn it off of its side or push it off of its side back on
16 to its wheels to extract the victim.
17 Q. Now, Trooper, did you make any investigation of the
18 surface of the road with respect to markings, debris and so forth?
19 A. Yes, sir.
20 Q. What did you determine from your inspection of the
21 shoulder as well as the surface of the road?
22 A. My investigation revealed that Mrs. Sneed was
23 traveling north and her right wheels dropped off the paved portion
24 when Mrs. Sneed cut back to the hardtop, she overcorrected, swerved
25 to the left of the centerline and swerved back to the right, over
the embankment where she crashed.

1
2 Q. Trooper, what was the -- was this a cloudy day?
3 A. I don't recall whether it was cloudy. It was clear that day.
4
5 Q. Was there anything to obstruct visibility of Mrs. Sneed in the cirection in which she was traveling?
6
7 A. Not that I could determine.
8 Q. What was the distance from the time the wheels dropped off on the right to where the vehicle first went over the embankment?
9
10 A. Approximately 210 feet.
11 Q. How far did the vehicle travel after that?
12 A. Approximately ninety-six feet from the point where it went over the embankment to the location where it came to rest.
13
14 Q. Is there a maximum safe speed sign posted down there?
15 A. Yes, sir, there is.
16 Q. And what does the maximum safe speed sign say?
17 A. I don't know.
18 Q. Did you look at your notes there?
19 A. When we put these notes down, we have to use our own judgment and put what we would determine the maximum safe speed is.
20
21
22 Q. O. K. Trooper, did you take some photographs?
23 A. Yes, sir, I did.
24 Q. Do you have them in your possession?
25 A. Yes, sir.

1 Q. And were they taken by you?
2 A. All but one.
3 Q. Well, the one that you have, does it portray the
4 vehicle as you saw it when you arrived?
5 A. Yes, sir, it does.
6 MR. McAFEE: Mr. Mullins, you have seen these, haven't you?
7 MR. MULLINS: Yes, sir.
8 MR. McAFEE: Your Honor, we would like to have these marked as
9 Plaintiff's Exhibits 1 through 41.
10 THE COURT: All right.
11 (The photographs were marked by the reporter.)
12 MR. McAFEE: Your Honor, at this time if there are no objections
13 we would like to move for the introduction into evidence of
14 Plaintiff's Exhibits 1 through 41.
15 THE COURT: All right, they will be admitted.
16 Q. Trooper, could you come up just a moment, please.
17 (The witness went before the jury rail.) I show you Plaintiff's
18 Exhibit 2, and could you tell us on Plaintiff's Exhibit 2 what
19 this picture shows, Trooper.
20 A. O. K. This is looking in a northward direction in
21 the same direction that the vehicle was traveling. In other
22 words, the corporate limits of Big Stone are just over the hill
23 here. This is the edge of the roadway where the victim's car
24 dropped, the wheels dropped off the righthand side.
25 Q. Trooper, what would you estimate that dropoff to be?

A. I would say at least four inches.

Q. All right, sir. And is that dropoff fairly well continuous as you approach this curve? In other words, does it vary from place to place?

A. Yes, sir, it does.

Q. O. K., sir. Does this picture show the area where you found any tracks on the shoulder of the road?

A. They are not visible in the photograph.

Q. But did you see them?

A. Yes, sir, I did.

Q. O. K. And which way did they go after they -- on the shoulder of the road?

A. They dropped off the shoulder, then they swerved to the left, across the centerline.

Q. All right, sir. I show you now Plaintiff's Exhibit 3 and ask you what this shows.

A. This shows, if you look very close, an impression left by the victim's tires. There is a black mark that goes slightly across the centerline, then it goes back to the right over towards the point where it went over the embankment.

Q. O. K., sir. Now, Plaintiff's Exhibit 4, could you tell where that was taken from?

A. This was taken back further from the -- I think No. 1 over there. There used to be some sort of driveway that led off to the right down through there. This was taken just

back further south from where No. 1 was taken from over there.

Q. All right, sir. And does this show the road as Mrs. Sneed would be approaching it from the Gate City side?

A. Yes.

Q. Does it also show the dropoff on the shoulder?

A. Yes, sir.

Q. Approximately how many feet would this drop on the right be, Trooper, down through there? All the way or just part of the way? What I'm talking about is the dropoff on the right side.

A. On the right side how many feet?

Q. Yeah?

A. I don't understand.

Q. In other words, how many feet is there a dropoff through there? Is it just a foot or two?

A. No, there's --

Q. Several feet?

A. It's several feet. I would say about thirty to forty yards.

Q. O. K., sir. Is this shoulder of the road visible from the direction in which Mrs. Sneed was traveling?

A. Yes, sir, it is.

Q. Trooper, would you tell us what Photograph No. 12 shows now?

A. O. K. This photograph was taken primarily to show

1 that it happened near the intersection of State Route 615 and
2 I was standing back north of the scene, and I'm looking toward
3 Gate City, and the accident occurred, started occurring up in
4 here just as the road comes into sight and it ended approximate-
5 ly this location here and went over the embankment.
6 Q. I believe this is taken from the opposite direction
7 or No. 12 was taken from the opposite direction, as well as 7
8 here, which Mrs. Sneed was traveling, is that right?
9 A. That's correct.
10 Q. O. K., sir. And I believe Photograph 7 again was
11 just taken for the purposes of establishing the scene of the
12 wreck, is that correct?
13 A. That's correct, sir.
14 Q. Photograph 37 is taken at the intersection?
15 A. Correct, sir.
16 Q. Trooper, I show you Photograph 38 and ask you if
17 you can see the tire marks or tracks of a tire in that picture.
18 A. I can see tire marks. However, these were probably
19 not the same ones. The marks that I observed that day, anytime
20 a vehicle is traveling any speed, or I wouldn't say over the
21 speed limit, but normal speed, if the tire hits the gravel or
22 dirt, whatever, usually it doesn't leave a tread mark. However,
23 you can distinguish where the tire traveled from.
24 Q. O. K., the marks you see there were not from the
25 Sneed vehicle?

1 A. That's right.
2 Q. And again 39.
3 A. This is fairly close look at the edge of the roadway.
4 Q. O. K., sir. Then 40 again shows just the scene,
5 is that correct?
6 A. That's correct. This was taken from the opposite
7 side of the road.
8 Q. All right. I show you now Photograph No. 1 and ask
9 you if this photograph shows the slew marks or skid marks.
10 A. Yes, sir, it does. It's the mark leading from the
11 center lane proceeding toward the righthand side of the road.
12 Q. Trooper, I believe a series of pictures were taken
13 of the vehicle involved, I believe, were there not?
14 A. Yes, sir.
15 Q. I'll just show you Photograph 32 and ask you if
16 that shows the vehicle involved.
17 A. Yes, sir, it does.
18 Q. I believe that was taken at the Legg Ford Sales?
19 A. That's correct.
20 Q. Which was located close by at that time?
21 A. Yes, sir.
22 MR. McAFEE: Your Honor, I don't think that it will be necessary
23 to go through each one of the pictures of the vehicle here. I'll
24 just show the jury for their own edification here.
25 Q. Trooper, also I believe there is a Photograph 41.

1 This was not taken by you, was it?
2 A. No. It was taken by Mr. Sonny Young.
3 Q. I'll ask you if this was the position of the
4 vehicle when you arrived out there?
5 A. Yes, sir, it was.
6 Q. And were you advised that it had been turned over
7 from its top?
8 A. Yes, sir. Not from its top, from its side.
9 Q. Trooper, another series of pictures I believe were
10 taken of the embankment in the area where the vehicle actually
11 ended up. Is that correct?
12 A. That's correct.
13 Q. Trooper, may I ask you was this a rather steep
14 embankment that this vehicle went down?
15 A. Yes, sir, it was.
16 Q. And I'll show you Photograph No. 9 and ask you if
17 this is the general area where the vehicle ended up?
18 A. That's correct. It ended up right near the rock
19 wall.
20 Q. O. K. Have a seat now, Trooper, if you wish.
21 (Witness returned to witness stand.) Trooper, was this area,
22 I mean the direction in which Mrs. Sneed was traveling, was it
23 level or downgrade?
24 A. It was downgrade.
25 Q. And would it be a curve to her left?

A. Yes, sir.

Q. And did her vehicle go off on the righthand side of the road?

A. That's correct.

Q. And did I ask you whether or not the area in which this wreck occurred had any markings on the highway? I believe I did, didn't I?

A. Yes, sir.

Q. What type of markings on the highway?

A. They were marked for no passing.

Q. I ask you if there was a rock wall to the right in the direction in which Mrs. Sneed was traveling?

A. Yes, after you go over the embankment, yes, sir.

Q. And I believe that you said it was daylight? It was 2:00 in the afternoon, I believe?

A. Yes, sir.

Q. Were you able to determine from your investigation if there were other vehicles involved?

A. My investigation revealed that there were no other vehicles involved to my knowledge.

Q. O. K. That's all. Trooper, while you're looking there, was the damage to this automobile extensive throughout?

A. Yes, sir, it was.

CROSS EXAMINATION BY MR. MULLINS:

Q. Let me just ask you one question, Trooper Buchanan,

1 about this Photograph No. 2. If I understood you -- where did
2 these marks first start with reference to this photograph here?
3 A. You mean where it dropped off the righthand shoulder
4 Q. Yes, sir.
5 A. I can't tell exactly where it started, probably due
6 to poor photography. You cannot see on this, or I don't think
7 you can distinguish where it went off.
8 Q. Is this the general vicinity?
9 A. Yes, sir, it is.
10 Q. At this place how far was the dropoff there, would
11 you say?
12 A. I would say at least four inches.
13 Q. All right. I believe you indicated to the best of
14 your knowledge there was no other vehicle involved?
15 A. Right, sir.
16 Q. Also you found nothing in the car or otherwise to
17 indicate that Mrs. Sneed was drinking intoxicants in any way,
18 did you?
19 A. No, I didn't.
20 Q. And did you find any other reason that the car went
21 off the road other than that the road had this dropoff at this
22 place?
23 A. I could find no other reason.
24 Q. And do you know of any defects in Mrs. Sneed that
25 you have not mentioned in her body?

1 A. No, sir.

2 Q. Any reason other than what you have stated here as
3 to why this accident happened? Do you have any reason why it
4 happened?

5 A. No, sir.

6 Q. Or how it happened other than what you have testi-
7 fied here based on the marks?

8 A. No, sir.

9 MR. MULLINS: That's all.

10 REDIRECT BY MR. McAFEE:

11 Q. Trooper, is the righthand side of the road marked
12 with a white line?

13 A. Yes, sir, it is.

14 Q. And this drop that you're talking about and shown
15 in these pictures is not any hole in the traveled portion of the
16 road, is it, on the asphalt?

17 A. The white line, I believe that the pictures
18 indicate that the white line was partially broken off down
19 through there in places.

20 Q. My question is, on the lane of travel there, there
21 was no holes in the road, were there?

22 A. None that I remember.

23 Q. All right, sir. And also what would be the width
24 of the road over there?

25 A. The width of the road at that location was nineteen

1 feet ten inches.

2 Q. Then you would have say roughly nine feet on each

3 side of the highway there, traveled portion?

4 A. Yes, sir.

5 Q. Almost ten? What would be the approximate width

6 of that Plymouth station wagon? Average car, wasn't it?

7 A. About five feet I would say.

8 Q. O. K.

9 A. Maybe a little more.

10 Q. O. K. That's all, Trooper.

11 RECROSS BY MR. MULLINS:

12 Q. Trooper, was that highway at the place where this

13 five inch dropoff approximately was you're talking about, was it

14 also bumpy?

15 A. Yes, sir.

16 MR. MULLINS: I believe that's all.

17 REDIRECT BY MR. McAFEE:

18 Q. Trooper, one question. Do you have an estimate or

19 opinion as to the maximum safe speed through there?

20 MR. MULLINS: Well, I object to that, sir. That's asking for an

21 opinion and is clearly erroneous.

22 THE COURT: Objection sustained.

23 MR. McAFEE: Your Honor, he worked all night and has to work

24 tonight. Can we excuse him?

25 MR. MULLINS: I have no objection. If we have to call him we

1 can get in touch with him.

2 THE COURT: All right.

CLOWER EDWARD MALOY, JR., after being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. GILLENWATER:

Q. State your full name, please, sir.

A. My full name is Clower Edward Maloy, Jr.

Q. What is your age, Mr. Maloy?

A. I'm thirty-five, sir.

Q. What is your present address?

A. Route 2, Box 275, Stockbridge, Georgia.

Q. On February 1, 1974, I believe at our request you came to Wise County, Virginia, to examine a vehicle and the scene of a wreck that occurred there on January 17, is that correct?

A. That is correct, yes.

Q. At that time, Mr. Maloy, who were you associated with or an employee of?

A. I was associated with the firm of Dale Medsker Associates, which was a safety engineering firm out of Atlanta, Georgia.

Q. And did you work with that firm in connection with what?

A. My main work or line of work with that firm was in

1 mechanical failure analysis. In other words, I would go out and
2 examine cars and trucks that were involved in accidents to
3 determine if there had been a mechanical failure with the vehicle.
4 Q. All right, sir. I believe that since that time Mr.
5 Medsker has died and his firm has dissolved and does not exist,
6 is that correct?
7 A. That is correct, sir.
8 Q. And so therefore you are in another location. What
9 are you presently doing?
10 A. At the present time I'm working as an automobile
11 mechanic with the firm of Forest Park Auto Service in Forest
12 Park, Georgia. And I specialize and do strictly front end repairs
13 and suspension repairs and alignment and a little bit of brake
14 work at this place.
15 Q. All right, sir. Now, Mr. Maloy, I don't guess there
16 is a college of automobile mechanics, is there, where you get
17 degrees?
18 A. There are technical schools.
19 Q. All right. Briefly tell the Court and the gentlemen
20 of the jury specialized training that you have had in the area of
21 automotives and particularly mechanics and mechanical engineering
22 and so forth.
23 A. All right, starting after I got out of high school
24 in 1956, I started to work for a local garage in Metro Atlanta
25 as a mechanic's helper. I later entered the U. S. Army, and

during the time I was in there I worked also as a mechanic. After leaving the service I stayed in the mechanical field working for dealerships and garages primarily until 1965, when I got married. During that time I attended the Chrysler Training Center in Atlanta. I also attended the General Motors Training Center in Atlanta and of course picked up quite a bit of working knowledge in actual on the job mechanics at the different places that I worked. In 1965 I basically got out of auto mechanics and didn't re-enter it until, start making my living at it again until about 1970. At that time I had gone to work with Dale Medsker and Associates, and I had entered their firm because of the patent application I had on a safety item for trucks, over-the-road trucks.

Q. I believe that during that period before you went back in it you were driving a tractor-trailer rig, is that right?

A. Yes, sir, I was.

Q. And have you had any specialized training specifically on front ends and wheel alignment and so forth?

A. Yes, sir. After going to work with Dale Medsker and Associates I went with them fulltime at first, and when I found there was not a sufficient amount of work to keep me busy fulltime in that area, I became the manager of an auto repair shop in Atlanta. This shop was not only for auto repair, but for automotive diagnostic work. It was equipped with dynamometer and stuff of this type. And I attended the Bear Manufacturing

1 School up in Rock Island, Illinois, which is the largest
2 specialized front end repair and alignment framestraightening
3 school of its type in the country, and in attending up there I
4 attended all the classes that they had on front suspension, rear
5 suspension, frames, steering, alignment and even some classes
6 on other stuff not relating to steering, such as brakes and
7 automotive diagnostics.
8 Q. All right, sir. When you came down here on February
9 the first I believe you visited the scene and made photographs
10 and were shown where this wreck had occurred?
11 A. Yes, sir.
12 Q. And I believe you were taken to where the automobile
13 was stored.
14 A. Yes, sir.
15 Q. And you examined that automobile?
16 A. Yes, sir, I did.
17 Q. For what purpose did you examine that automobile?
18 A. To determine if there was mechanical, basically
19 mechanical steering failure, but any possibility of any other
20 failure that could be related to the accident also.
21 Q. In other words, you inspected that car and examined
22 it for all failures, defects?
23 A. Yes, sir, with the main stress on steering, sir.
24 Q. All right, sir. Would you give us fairly briefly
25 but enough that the jury could be satisfied, as to what you found

1 that let you come to this conclusion that there were no defects.
2 First of all, would you go in the area of the steering and what
3 you discovered.
4 A. All right, sir. Of course, I examined the car over-
5 all, appearance, damage, stuff of this type. I examined the tire
6 found to be all inflated. I found all of them to have sufficient
7 tread depth to be in acceptable condition. I examined the front
8 suspension. I found all the components in the front suspension
9 to be intact and in working order. I examined the steering
10 apparatus of the car, and with the exception of the intermediate
11 steering shaft or the lower steering shaft, I found all the other
12 components to be in acceptable condition, with the exception of
13 some minor crash damage. The lower section of the steering
14 shaft, which connects the upper steering shaft to the steering
15 gear, I found to be pulled loose at its lower pivot or connection
16 point which is the bellshaped slip coupling, and this disengage-
17 ment there was of a nature that had to occur only in an impact
18 and could not have occurred prior to impact.
19 Q. Let me put in right now something I know I haven't
20 asked you. What car did you examine, what make and so forth?
21 A. All right. It was a 1972 Plymouth Station Wagon
22 Serial No. PM46K2D181279. It was a four-door and green in color.
23 Q. And do you know where it was located at the time?
24 A. I believe the area that it was located in was the
25 shop area of the Ford dealer.

1 Q. Could it have been Legg Ford at Big Stone?
2 A. Yes, sir.
3 Q. Now, you mentioned this intermediate and lower
4 steering shaft coupling. You said that it could not have come
5 loose, but that it was done on impact. Would you describe why
6 that is so.
7 A. The slip coupling is made to give a certain amount
8 within itself, to take the normal flexing between the frame and
9 the car body, which are mounted together in such a way that there
10 is actually a little bit of movement in them as they go down the
11 road, and they hit bumps. And this coupling is made to absorb
12 this amount of movement and still remain intact. Now, there is
13 no way that in normal movement that the frame and body could
14 separate enough to pull this coupling apart. It would take a
15 great amount of stress against one of the members, one of these
16 two members, either the body or the frame, in order to separate
17 the two to a degree that it would pull the steering linkage apart.
18 Q. When you say a great amount of stress, what do you
19 mean?
20 A. I mean like a heavy impact.
21 Q. Did you observe any damage to the vehicle that would
22 indicate such impact?
23 MR. MULLINS: Well, I object to that as being leading and suggest-
24 ive and asks for a conclusion and opinion.
25 Q. Let me rephrase it. What did you observe about the

1 vehicle that would have had any connection with this steering
2 shaft that you have just described?
3 A. The body, the front portion of the body of the car -
4 I'm talking about the fire wall -- this is the portion in front
5 of the driver that the dash is mounted to, between -- this is
6 the portion between the driver and the motor area of the car,
7 had sustained heavy impact damage. It was distorted, bent, it
8 was out of shape and had received tremendous pressure against it.
9 Also the front of the car showed signs of heavy stress, the grill
10 area; this stress was probably initially initiated from the
11 bottom and then later pressure from the top or the upper portion
12 of the grill; and there were indications that the frame, front
13 portion of the frame from approximately the fire wall area had
14 been put in excessive stress and had given at some point.
15 Q. Did you further inspect the car for other defects,
16 such as you mentioned the tires and so forth, did you check the
17 brakes, the wheels?
18 A. Yes, sir. I found the master cylinder to be full
19 of fluid; I found no indications of wheel cylinder or caliber
20 leaks, there was no leaks I could find any indication of anywhere
21 in the hydraulic system, and I found them to be in a working or
22 a semiworking order considering the amount of collision damage
23 to the vehicle.
24 Q. State whether or not you found any defect there.
25 A. No, sir, I did not find any defects in this car

1 whatsoever.

2 Q. Of a mechanical nature?

3 A. Mechanical defects that could be -- with the

4 exception of course of the crash damage that occurred to the car.

5 There was no prior mechanical defects that I could find any

6 evidence of.

7 MR. GILLENWATER: You may ask.

8 CROSS EXAMINATION BY MR. MULLINS:

9 Q. In other words, if there was any prior ones, you

10 couldn't find them?

11 A. I couldn't find them or any evidence to indicate

12 such, sir.

13 Q. Well, the car was obviously pretty badly banged up,

14 was it not?

15 A. Yes, sir. Of course the majority of the damage was

16 sheet metal, frame damage, metal work mostly.

17 MR. MULLINS: That's all.

18 MR. GILLENWATER: Thank you, Mr. Maloy.

End

18 DAVID SNEED, after being duly sworn, testified as follows:

19 DIRECT EXAMINATION BY MR. McAFEE:

20 Q. I believe your name is David Sneed, is that right?

21 A. Yes.

22 Q. How old are you, David?

23 A. Nine.

24 Q. Do you remember when the car wreck happened?

25 A. No, not much.

1 Q. Were you in the car that day?
2 A. Yeah.
3 Q. Where were you sitting?
4 A. In the front seat.
5 Q. Did your mother say anything before the wreck
6 happened?
7 A. Yeah. "Hang on."
8 Q. Do what, son?
9 A. "Hang on." That's all she said.
10 Q. "Hang on"? Did you see where the car went afterwards?
11 A. No.
12 Q. Is that all you remember about it?
13 A. Yes.
14 Q. Is that all?
15 (Witness nodded his head affirmatively.)
16 MR. McAFEE: O. K. That's all.
17 CROSS EXAMINATION BY MR. MULLINS:
18 Q. David, do you remember testifying down at Mr.
19 McAfee's office?
20 A. Yeah.
21 Q. I'll ask you at that time if we asked you about it,
22 asked you this question: "Well, can you tell us anything about
23 this accident you were involved in?" You said, answer, "I don't
24 know." Question: "Do you remember anything about it?" Answer:
25 "I know that she was turning this steering wheel and it wouldn't

1 turn or nothing and it just went like that and it wouldn't turn."
2 Do you remember that?
3 A. Yeah, I remember it.
4 Q. Well, do you remember the fact that your mother
5 was trying to turn the steering wheel and it wouldn't turn?
6 A. Yeah.
7 Q. And you told us that before, I believe, didn't you?
8 (The witness nodded his head affirmatively.) And Question:
9 "She was turning the steering wheel and it wouldn't turn?"
10 and your answer was, "Yes." Is that your answer still, that
11 your mother was turning the steering wheel and it wouldn't turn?
12 A. Yes.
13 Q. Was there any other car involved in this accident?
14 A. No.
15 MR. MULLINS: All right. I believe that's all.
16 MR. McAFEE: That's all, David. Come around.

MR. McAFEE: We want to call Mr. John Sneed.

JOHN SNEED, a witness of lawful age, after being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McAFEE:

Q. Mr. Sneed, I believe you're the father of these two children.

A. That's correct.

Q. How old was your wife?

1 A. Twenty-nine.

2 Q. And do you know where your wife was going that day?

3 A. Yes.

4 Q. Where was she going?

5 A. She had been to the orthodonist in Kingsport and

6 was coming back.

7 Q. Where were you and your wife from originally?

8 A. She was raised in Big Stone Gap, and I was born

9 and raised there too.

10 Q. Are you familiar with the scene where this wreck

11 happened?

12 A. Yes.

13 Q. Have you and your wife ever traveled this road before

14 A. Many times.

15 Q. Are you familiar with it?

16 A. Yes.

17 Q. Was she familiar with it?

18 A. Yes.

19 Q. When you say you traveled it many times, was she

20 born and raised in Big Stone, is that correct?

21 A. Yes.

CROSS EXAMINATION BY MR. MULLINS:

21 Q. Mr. Sneed, your wife was killed in this accident,
22 was she not?
23 A. Well, she died about three or four hours after.
24 We were enroute to Kingsport Hospital when she died.
25 Q. All right. Was she a diabetic?

1 A. Well, borderline.

2 Q. Borderline? No question about any drinking that

3 you're aware of?

4 A. No. She did not drink.

5 MR. MULLINS: That's all.

6 REDIRECT BY MR. McAFEE:

7 Q. How many -- who was the child that was going to the

8 orthodonist?

9 A. David.

10 Q. How many times did you have to take him over there?

11 A number of times?

12 A. Well, David and Mark both had been going. I don't

13 know just -- they went trips after that and before, and I don't

14 really know.

15 Q. Had you and your wife traveled that section of road

16 in say the last year before her death?

17 A. Oh, yeah. We went to Kingsport. She had two sisters

18 and a brother lived there. We traveled it, well, practically -- we

19 Q. To your knowledge had there been any appreciable

20 change in the road in the last year or year before her death?

21 A. Well, they were building the new four-lane.

22 Q. Yeah, but I'm talking about in the area of where

23 this wreck occurred.

24 A. No.

25 MR. McAFEE: That's all.

IN CHAMBERS:

10 MR. MULLINS: Please, the Court, the defendant by counsel now
11 moves the Court to strike the evidence of the Plaintiffs because
12 there has been no showing of any negligence that would predicate
13 liability upon the defendant, John Sneed, Administrator for
14 Carol Sneed. We have the case of -- I am citing the case of
15 Hicks vs. Cassidy, 208 Va. 610, 159 SE 2d 527, where this vehicle
16 was unexplainedly out of control. If there is any explanation
17 in this case it's because of the defective condition of the high-
18 way, which at this place was very rough and which broke off,
19 according to the trooper for four, five or six inches. The sole
20 survivor that testified, David Sneed, indicated and testified
21 under oath that his mother tried to turn the steering wheel and
22 it didn't turn and told him to hang on. And according to the
23 expert that testified here, he indicated that there was a defect
24 in the lower portion of the steering mechanism, which would be
25 caused by an impact, and we say that this car dropped off the

ridiculous

1 edge of the road, and that's exactly what happened, that caused
2 the steering mechanism to become defective. Therefore, this
3 woman would be -- there is no evidence that she knew that the
4 vehicle was defective before that, and that's the only defect.
5 The defect either happened when she went off the road and over
6 this edge, or it happened somewhere else when the vehicle wrecked
7 further on down the road. But the fact that the Plaintiff David
8 Sneed indicated that his mother attempted to steer it and the
9 vehicle wouldn't steer, which indicated very positively that it
10 happened at that time when it went off the road the first time.
11 And she wouldn't be liable for any defects in the road. Those
12 are the only logical explanations and that would exonerate her
13 from anything, but if it don't, in other words, the evidence
14 has got to show how and why the accident happened, and the only
15 way it could be shown was that she had gotten off where the road
16 was defective. The white line was partly eroded away, and there-
17 after the steering mechanism wouldn't work. Of course, the
18 physical facts need no support, so I'm going to submit this
19 case to Your Honor, Hicks vs. Cassidy.
20 THE COURT: Well, she was familiar with the road, and there is
21 evidence that the defect was plainly visible. What is your
22 answer to that?
23 MR. MULLINS: She was familiar with the road, but I would say
24 that there is no evidence that she had ever gotten over in this
25 place before, and no evidence that this was visible on casual

1 inspection.
2 MR. McAFEE: Your Honor, that's an affirmative defense too.
3 MR. MULLINS: And there is no evidence of any drinking in this
4 case, no evidence of any excessive speed and no evidence as to
5 what caused her to get over off of this road. She was a diabetic,
6 borderline. And I might further cite to the Court the case of
7 McFadden vs. Garrett, 211 Va. 680, 179 SE 2d 482. I have got a
8 case here where a car ran off the road, Grasty vs. Tanner, and
9 that goes on that the most you have in this case is the fact
10 that she was familiar with the road and therefore she knew about
11 this place. That would be just an inference. They say an
12 inference cannot be drawn from a presumption, and she knew it
13 was there. It must be founded on some fact legally proven.
14 So it's our position in citing the case of Grasty vs. Tanner
15 that you can't prove a case by speculation, inference, and
16 negligence is never presumed from the mere happening of an
17 accident. The burden is on the plaintiff to show by a
18 preponderance of the evidence that they was negligent by a
19 number of cases. There is a whole line of cases that I'm sure
20 the Court is familiar with that hold that the burden is upon
21 the plaintiff to prove his or her case by a preponderance of
22 the evidence and the case cannot be based on speculation,
23 surmise and conjecture. And I want to cite --
24 THE COURT: The Grasty case, what was the citation of that?
25 MR. McAFEE: Gross negligence.

1 MR. MULLINS: It's a gross negligence case.
2 MR. McAFEE: Grasty is just an inference on negligence.
3 MR. MULLINS: That's right.
4 MR. McAFEE: That's what that case stands for.
5 MR. MULLINS: Grasty vs. Tanner, that's gross negligence case,
6 it's 206 Va. 723, 146 SE 2d 252, and that's a gross negligence
7 case, same principles apply. Also the case of Brennan vs.
8 Kaylor, Administrator, 213 Va. 33, 189 SE 2d 371, I desire to
9 cite to the Court. In that case they proved that the mechanical
10 condition of the car was good and he wasn't aware of any defects
11 in the highway. In this case of course we can show by the expert
12 that this car did have a defect in the steering mechanism, plus
13 the plaintiff indicated that it wouldn't steer immediately before
14 and while the accident was happening. And of course there is a
15 defect in the road in this case. I think that's enough to set
16 forth our authority. And Spurling vs. Richardson and some other
17 cases.
18 MR. McAFEE: Your Honor, much of what Mr. Mullins says is an
19 affirmative defense as to whether it should or should not be a
20 jury question, as I understand his motion now. But the plaintiff
21 has proven, No. 1, that this wreck occurred in the middle of the
22 afternoon at 2:00, clear day, dry road, no obstructions at all,
23 and that the vehicle involved went off to the righthand side of
24 the road off of the hardtop off of a drop some four to six inches
25 off of the traveled portion of the highway; and that the vehicle

1 then came back upon the highway and crossed the centerline and
2 then drove over into a ravine. Now, the plaintiff doesn't have
3 to show that in fact the driver of that vehicle did in fact know
4 that the drop was there or did in fact know exactly the terrain.
5 All we have to establish is that the defendant either knew or
6 should have known if there was in fact a defect here. And it
7 was plain and obvious, and the plaintiff has established, No. 1,
8 that the vehicle was out of control and that the defendant driver
9 or the decedent driver was not keeping the vehicle under control
10 at the time. Now, Mr. Mullins is attempting to grasp upon a
11 statement that Mr. Maloy made that upon his examination that he
12 found a portion of that steering mechanism dislodged from above
13 with such force that it had broken it loose. But he also
14 demonstrated that this could not occur except in a crash. He
15 also testified that there was no defect in this automobile prior
16 to the wreck and that there were no mechanical defects in the
17 vehicle at all. And this would have been his burden anyway, to
18 have established a mechanical defect with the physical facts as
19 they existed here. Your Honor, there are any number of cases
20 that say that physical and circumstantial facts are sufficient
21 to prove a prima facie case here. If Mrs. Sneed had not been
22 killed in this accident, the most that she could say if she was
23 here today, that, "Well, I dropped off of the righthand shoulder
24 of the road for reasons unknown to me why I did it" or that she
25 was distracted by something. All of these are affirmative

1 defenses. The burden is on him to prove all these things. We
2 made our case out, a prima facie case out, and what he is talking
3 about are the defenses that are required by the defendant, not us
4 He is trying to explain the conduct and the traveling of this
5 automobile by the dropping off on the righthand shoulder of the
6 road as being the cause of the wreck. That's his burden, not
7 ours. We just say we have made out a prima facie case and he
8 can't take our proof here, by the fact that we have gone beyond
9 what was expected of us. We didn't have to prove that there was
10 no mechanical defect in this automobile. That would have been
11 his burden with these facts, assuming his client had lived
12 through all of this, and assuming all of the conjecture that he
13 wants to come forth with and all these hypotheses of what may
14 have happened. The cold, hard facts that the plaintiff has
15 proved were that this vehicle went over on the righthand shoulder
16 of the road, traveled 210 feet and went over an embankment.
17 Now, that, Your Honor, is prima facie negligence in the operation
18 of the automobile. Then it's his burden to exonerate himself
19 by some sudden emergency, by some defect in the road that caused
20 it. I mean the fact that that dropoff was there is not in and
21 of itself an explanation why this woman ran over there. If she
22 was inadvertently looking at something else and let her vehicle
23 veer over there, she is negligent, because she is not keeping
24 her vehicle under proper control and not keeping a proper lookout
25 or at least it's a question for the jury. And, Your Honor, I

1 don't know whether you looked at these photographs or not, but
2 the dropping off of this vehicle was on a straight stretch of
3 road and then she hit the curve. And this is evidence in the
4 case. We just say we made out a prima facie case, and if he
5 wants to establish that the defect is why she went over there,
6 that's his burden. And if he wants to show that there was a
7 flaw or defect, mechanical defect, he can do so.
8 THE COURT: You have to go further than just showing an accident
9 occurred. Also maybe an accident occurs and someone goes over
10 the bank or goes over to the left of the road. Is that sufficient?
11 You have to still go further and show why, because an accident
12 can occur for a number of reasons, one of which may be negligence.
13 MR. McAFEE: Yes, sir, but I contend, Your Honor, it's negligence
14 to drive your vehicle to the left of the center of the highway,
15 and I contend it's negligence to drive your vehicle over a steep
16 bank in broad daylight in open country. Certainly can Your Honor
17 say that running that car over the bank was certainly not negli-
18 gence? That's not a prudent driver, to drive a vehicle over an
19 embankment, I don't think.
20 THE COURT: Well, why did it go over?
21 MR. McAFEE: Well, Your Honor, it may have gone over for any
22 number of reasons. The point I am making is that when a driver
23 of an automobile drives a vehicle over an embankment, it makes
24 out a prima facie case, there was negligence in the operation of
25 it, unless they can come forth and say that she had a heart attack,

1 she was a diabetic and she passed out, which is not the case here
2 Certainly if there was conclusive evidence that this woman had a
3 heart attack and drove her vehicle over the bank, but that's not
4 the case here though. That's what I'm saying, we have made out
5 a prima facie case, Your Honor, when that vehicle went over the
6 bank. And we went further, and I was anticipating that they
7 would contend that there was some mechanical defect in it,
8 which it could have been possibly, but that's their burden,
9 Your Honor. If you had two people in there and both had been
10 killed, as I am sure Mr. Mullins in one of these cases was
11 talking about, and where there is no evidence whatsoever who
12 was driving or how it occurred or anything about, then certainly
13 that may be one of the cases that he cited, as I remember. That
14 may be true where you can't establish anything.
15 THE COURT: Apparently she went out of control because she hit
16 the chug hole, dropped off the shoulder.
17 MR. McAFEE: Well, that's according to the trooper's investigatic
18 THE COURT: Well, what caused her to drop off the shoulder?
19 MR. McAFEE: Failure to keep a proper lookout.
20 THE COURT: All right.
21 MR. McAFEE: In other words, we don't have to show, Your Honor,
22 under the proof that she did in fact know that chug hole was
23 there. All we got to show is that she knew or should have known,
24 if that's their defense to it, but why did she run over there in
25 the first place?

1 THE COURT: Does it make out a prima facie case to get off on the
2 shoulder of the road?
3 MR. McAFEE: No, sir, I don't think it necessarily makes one out,
4 but if you get off on the shoulder of the road under such circum-
5 stances, physical circumstances as they exist here that cause you
6 to go over a high embankment, and again, Your Honor, there was,
7 in addition to a dropoff, there was a wall that was within three
8 foot of this hardtop.
9 THE COURT: All right.
10 MR. MULLINS: Your Honor, I believe I gave you the case of
11 McFadden vs. Garrett, 211 Va. 680, 179 SE 2d 482. We say this
12 case of McFadden vs. Garrett is just about on all fours with
13 this case here.
14 THE COURT: All right. Is that all?
15 MR. MULLINS: Yes, sir.
16 THE COURT: Well, we'll take a recess for lunch.
17 AT 1:30: IN CHAMBERS:
18 MR. MULLINS: With reference to the wreck, John Sneed, Jr., has
19 testified that his mother was turning the steering wheel and it
20 wouldn't turn, and therefore under the doctrine of Massie vs.
21 Firmstone we say that he can't rise any higher than his own
22 evidence.
23 THE COURT: Well, I don't know from his testimony when that was,
24 whether it was before the accident or --
25 MR. MULLINS: I got the impression it was before the accident.

THE COURT: Or after she lost control. He didn't state when it happened.

MR. McAFEE: Your Honor, we also want to rely on 46-203, which says, "Except as otherwise provided by law, upon highways of sufficient width, the driver of a vehicle should drive the same on the right half of the highway unless it is impracticable to travel on such highway" and passing and so forth. The definition of "highway" is defined as well as roadway in 46.1 and under 10(c) it says "that part of the highway between the portion regularly traveled by vehicular travel and lateral curb or line of ditch." And it also defines roadway as that portion of the highway improved, designed or ordinarily used for vehicular travel, exclusive of the shoulder. A highway may include two or more roadways divided by physical barriers of unpaved area. It says the highway is the entire width between the boundary lines of every way or place, of whatever nature, open to the use of the public for the purposes of vehicular travel in this state.

MR. MULLINS: What about the definition of shoulders?

MR. McAFEE: "Shoulder" says "part of the highway between the portion regularly traveled by vehicular traffic and the lateral curb line or ditch." So we say that in 206 it says she shall drive it as nearly practically within the single lane, and when she went off of the traveled portion onto the shoulder she was not keeping her vehicle in compliance with the statute.

1 MR. MULLINS: Our position is the fact that you drop off the
2 edge of the shoulder, such as the evidence in this case discloses,
3 one that's defective and rough, according to the trooper, or
4 bumpy, would not be negligence.
5 THE COURT: I think I'll let the jury decide it. It's a very
6 close question in my mind. What I'm primarily concerned with
7 is why she got off of the traveled portion of the highway,
8 whether there was sufficient evidence for the jury to arrive
9 at the decision that that was due to negligence or not. I think
10 I'll just let the jury decide it. Do you have any evidence?
11 MR. MULLINS: No.
12 MR. McAFEE: He rested out there.
13 MR. MULLINS: I except to the Court's ruling.