224 Va. 176

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SUPREME COURT OF VIRGINIA
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RICHMOND, VIRGINIA

IN THE
SUPREME COURT OF VIRGINIA
AT RICHMOND

STEPHANIE DWYER

Appellant

v.

ALEXANDER T. YURGAITIS

Appellee

RECORD NO. 800225

APPENDIX

David L. Duff, Esquire
ODIN, FELDMAN & PITTLEMAN, P.C.
P.O. Box 367
10505 Jones Street
Fairfax, Virginia 22030

Counsel for the Appellant

Thomas A. Monahan, Esquire
HALL, MONAHAN, ENGLE, MAHAN
AND MITCHELL
9 East Boscawen Street
P.O. Box 948
Winchester, Virginia 22601

Counsel for the Appellee

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V I R G I N I A:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

Stephanie Dwyer 1602 Beacontree Lane Apartment 3-A Reston, Virginia 22090	)	
Plaintiff,	)	
vs.	)	AT LAW NO: 41247
James Carroll Steward 6908 Kenyon Drive Alexandria (Fairfax County), Virginia	)	
Defendant.	)	

MOTION FOR JUDGMENT

COMES NOW your Plaintiff, Stephanie Dwyer, by counsel, and moves this Court for judgment against the Defendant, James Carroll Steward. In support of such Motion, Plaintiff states as follows:

1. On or about April 27, 1977, the Defendant, James Carroll Steward, was operating an automobile north bound on Route 605, approximately one mile east of Warrenton, Fauquier County, Virginia.

2. At the same time, Manuel P. Dwyer was operating an automobile which was proceeding east bound on Route 29, approximately one mile east of Warrenton, Fauquier County, Virginia.

3. At the intersection of Route 605 and Route 29, the Defendant negligently, carelessly and recklessly drove through a stop sign on Route 605 and collided with the automobile operated by Manuel P. Dwyer.

4. When this collision occurred, Stephanie Dwyer was a passenger in the automobile operated by Manuel P. Dwyer.

5. As a direct and proximate result of the collision Stephanie Dwyer sustained severe injuries to her chest, neck, back, arms and hands and has suffered great pain and anguish.

6. As a further direct and proximate result of the collision caused as aforesaid, Stephanie Dwyer suffered other bodily injury.

7. As a further direct and proximate result of the collision caused as aforesaid, Stephanie Dwyer has lost her job with the Vienna Police Department where she was employed at the time of the collision and which has and will result in loss of employment and income, to her great loss and detriment.

WHEREFORE, your Plaintiff, Stephanie Dwyer, prays for judgment against the Defendant, James Carroll Steward, in the amount of $50,000.00 together with her costs in this behalf expended.

Stephanie Dwyer
Stephanie Dwyer
By Counsel

Frank A. Mika
Frank A. Mika
117 N. Fairfax Street
Alexandria, Virginia
Phone: 296-0993

10. State whether or not you claim any loss of earnings, income or renumeration, and if so, the dates and time lost on each date and the total time alleged to have been lost from gainful employment, and the monetary amount of loss of wages, income, earnings or remuneration claimed and the manner or method used to determine same.

11. State whether or not you claim any loss of earning capacity, either in the past, present or in the future; and if so, the amount claimed and the manner or method used in determining and computing such claimed loss.

12. State whether or not your employment at the time of the occurrence giving rise to this litigation,or up until the present time, involves any physical activities; and if so, a description of such physical activities necessary to do your job.

13. State the nature, extent, symptoms and complaints of injuries claimed by you to have been suffered as a result of the occurrence giving rise to this litigation and as reflected by the history, examination, diagnosis, treatment and prognosis of all doctors, practitioners or physicians consulted.

14. If it is claimed that any of said injuries are permanent, set forth in detail the nature of such permanency, the disability claimed to result therefrom and the name or names of the physician or physicians making such prognosis.

15. State what physical or mental complaints, symptons, injuries or disabilities you claim to suffer at the present time as a result of the occurrence giving rise to this litigation.

16. State the names and addresses of all doctors, practitioners, nurses or others who consulted with, diagnosed, examined, treated or cared for you for injuries allegedly occurring as a result of the occurrence giving rise to this litigation and charged to be the responsibility of the defendant in this case; the dates of such consultations, examinations or treatments and the itemized charges for such services. Please attach copies of any and all statements for services rendered and reports which you or your attorney have received from such doctors, practitioners, nurses or others consulted.

17. State the names and addresses of all hospitals, clinics or other institutions which rendered services for treatment of any injuries allegedly caused by the defendant; and if you were hospitalized, the dates of such hospitalization; and if you were confined in bed at home, the dates of such confinement. Please attach copies of statements or reports received by you or your attorney from any said hospitals, clinics or other institutions.

19. List a detailed itemization of your claim for monetary damages. Please attach copies of bills or receipts to support each item.

20. State the date, location and parties involved in any accident you have been involved in before or since the incident giving rise to this action.

21. State whether or not you have ever been injured or hospitalized as a result of trauma prior or subsequent to the occurrence giving rise to this litigation; and if so, the circumstances of such injury, including the date and place of such other occurrences, a description of the incident causing

AULT, LEWIS, ESCHICKTER

the injury, a description of the injury, the names and addresses of all doctors and hospitals rendering services for treatment of such injury and the names and addresses of all persons involved in the incident causing such injury.

23. State if you have ever made a claim or have a claim pending against anyone for damages for personal injury or property damage, and if so, the names and addresses of the parties against whom such claim is or has been asserted, the name of such parties' insurance carrier, including the address of the claim office handling the claim, the date when such claim arose and a description of the occurrence giving rise to the claim, including the location of the occurrence.

32. State the identity and address of each person whom you expect to call as an expert witness at the trial of this case.

33. State the subject matter on which the expert is expected to testify.

34. State the substance of the facts and opinions to which the expert is expected to testify and a summary of the grounds for each opinion; or in lieu thereof, attach copies of all correspondence and reports that you have received from such expert.

36. State the manner in which you allege and believe the defendant was negligent, the facts to support such allegations and the names of the witnesses who have knowledge to such facts.

37. State in detail your observation as to how the occurrence giving rise to this litigation occurred and what caused the occurrence.

38. State in detail what first caused you to believe that the occurrence was going to happen and what you did thereafter.

10. A. Yes, I do claim loss of earnings. The time lost was 8 hours per day from April 28, 1977 through July 6, 1977. At the time, my hourly rate of pay was $5.46/hour and $8.19/hour for overtime. The dates above total 13 days at 8 hours per day for 104 hours at $5.46 = $567.84. In addition, as of September, 1977, I was terminated from my job as a police officer for the town of Vienna, and have been unable to locate a new job since that time. My yearly rate of pay was at the time of termination, $11,356.14 per year. I will claim whatever portion of that amount I have listed as a result of being out of work.

11. A. See number 10.

12. A. Yes, police officer's duties; running, fighting, driving, jumping, firearm qualification, directing traffic, etc.

13. A. Partial dislocation of the left sterno-clavicular joint, curved spine, cervical section, possible herniated disc, bruises on knees, breasts and right elbow.

14. A. There is a possibility of permanent injury according to Dr. Schiener.

15. A. I have persistent, extreme back pain, and extreme pain along the collar bone and shoulder area. I do not have full use of my left arm. It will not move in all positions above the head and to the side of the head. There is no strength in the arm. I still have bad dreams about the accident. Sometimes it bothers me to drive, especially at night.

16. A. May, 24, 1977 - Dr. Scheiner, 8301 Arlington Boulevard, Fairfax, Virginia 22030, October 5, 1977 - Dr. Peterson, 8316 Arlington Boulevard, Fairfax, Virginia 22030, April 29, 1978 - Dr. Dvorak, Georgetown-Reston Medical Center, Reston, Virginia 22090. Statements and reports for all services rendered are attached.

17. A. Fauquier Hospital, 330 Hospital Drive, Warrenton, Virginia (emergency room care), Georgetown-Reston Medical Center, Reston, Virginia 22090, Jefferson Memorial Hospital, 4600 King Street, Alexandria, Virginia 22302 (hospitalized from June 30 to July 4). Also, one week (approximately) following the accident, several days after the hospital stay (exact days unknown).

19. A.

10/5/77	John E. Peterson, M.D.	15.00
2/13/78	James J. Schiener, M.D.	2245.00
1/16/78	James J. Schiener, M.D.	2060.00
8/12/78	James J. Schiener, M.D.	815.00
7/18/77	James J. Schiener, M.D.	655.00
2/7/77	The Fauquier Hospital	193.94
7/10/77	Jefferson Memorial Hospital	672.65
7/13/77	Tzo-Min Kao	50.00
	Prescriptions	

20. A. Not applicable.

21. A. No.

23. A. No.

32. A. Dr. Scheiner who is an orthopedic surgeon and the state trooper assigned to our accident.

33. A. My orthopedic problems (extent and nature of injury) will be testified to by the doctor, and the state trooper will cover the traffic investigation.

34. A. See attached.

36. A. The defendant ran the stop sign at a high rate of speed, giving the appearance that he did not know it was there.

37. A. We were traveling on Rt. 29/211 headed for Rt. 66 from Warrenton and at the intersection of Rt. 605 and Rt. 29/211 the defendant smashed into our vehicle. The defendant's vehicle pushed us across the roadway, over a sign and across the entire median onto the opposite lanes of 29/211

38. A. I heard my husband mumble something like: "That guy is going to hit us." The tone of his voice distrubed me, and as I raised my head from the window it happened. I caught my husband in mid-air and tried to keep him from going through the windshield. When the vehicle came to a stop we tried to get out. I couldn't get my door opened. My husband kicked his door open and tried to get me out. At this point I took off my seat belt and moved across the seat towards my husband. Halfway across the seat, another vehicle slammed into our car. After the impact I was able to get out.

V I R G I N I A :

IN THE CIRCUIT COURT OF FAUQUIER COUNTY

STEPHANIE DWYER	:	
Plaintiff	:	
VS.	:	AT LAW NO:
ALEXANDER T. YURGAITIS	:	
Defendant	:	

MOTION FOR JUDGMENT

TO THE HONORABLE JUDGES OF THE SAID COURT:

COMES NOW the Plaintiff, Stephanie Dwyer, by her counsel, and moves this Honorable Court for its judgment against the Defendant, Alexander T. Yurgaitis; in the amount of FIFTY THOUSAND DOLLARS ($50,000.00) and in support thereof respectfully states as follows:

1. On or about April 27, 1977, the Plaintiff was a passenger in a vehicle being operated by her husband, Manuel P. Dwyer, and headed northbound on Route 29, in the County of Fauquier, Commonwealth of Virginia.

2. At the same time and place, the Defendant was operating his vehicle southbound on Route 29 in the County of Fauquier, Commonwealth of Virginia.

3. At that particular time and place, it was the duty of the Defendant owing unto the Plaintiff to drive at a reasonable speed under all the circumstances then and there existing; to keep his vehicle under proper control at all times; to maintain a proper lookout; and to obey all statutes and ordinances regulating this situation.

4. Notwithstanding the aforesaid duties, the Defendant did violate the same in that he carelessly, recklessly and negligently drove his vehicle into the vehicle in which Plaintiff was a passenger, which had been rendered inoperable by a pricr collision; and he was otherwise negligent.

5. The Defendant's negligence as aforesaid was the sole, proximate cause of the Plaintiff suffering serious, painful and permanent injury to the area of her left chest and shoulder, both knees, cervical and thoracic spine; she has incurred and will continue to incur medical expenses attempting to cure herself of these injuries; she has lost and continues to lose time and monies from her employment; her ability to earn a salary from gainful employment has been impaired; she has suffered and continues to suffer great pain of body and mind; and her normal recreational and social activities have been and will continue to be curtailed.

WHEREUPON, the premises considered, the Plaintiff prays this Court for judgment against the Defendant in the amount of FIFTY THOUSAND DOLLARS ($50,000.00), plus interest, costs and expenses incurred on her behalf.

/S/
STEPHANIE DWYER
By Counsel

ODIN, FELDMAN & PITTLEMAN

/S/
David L. Duff
Counsel for Plaintiff

V I R G I N I A :

IN THE CIRCUIT COURT OF FAUQUIER COUNTY

STEPHANIE DWYER

Plaintiff

v.

AT LAW NO. _____

ALEXANDER T. YURGAITIS

Defendant

MOTIONS

Now comes the Defendant and moves the Court as follows:

1. That the Plaintiff particularize the allegations of her Motion for Judgment as follows:

(a) The exact nature of the injuries claimed to have been suffered by the Plaintiff.

(b) The exact amounts of any bills heretofore incurred by the Plaintiff, the dates on which they occurred, and the persons with whom incurred as well as the nature of the services provided with respect to each such bill.

(c) The exact acts of the Defendant which the Plaintiff claims constituted negligence on the part of the Defendant.

2. That the Plaintiff state the names and addresses of all doctors who have treated or examined the Plaintiff in connection with the injuries claimed to have been incurred by her, giving their names, addresses, and the nature of the services rendered; and that the Plaintiff state the names and addresses of all hospitals or other institutions at which the Plaintiff has been treated; and further that the Plaintiff furnish to the undersigned copies of all written medical reports received by her.

.L. MONAHAN, ENGLE
IAHAN & MITCHELL
ATTORNEYS AT LAW
.EESBURG, VIRGINIA
INCHESTER, VIRGINIA

VIRGINIA

IN THE CIRCUIT COURT OF FAUQUIER COUNTY

STEPHANIE DWYER	:	
Plaintiff	:	
vs.	:	AT LAW NO. 4165
ALEXANDER YURGAITIS	:	
Defendant	:	

RESPONSE TO MOTIONS

1. (a) Please see the medical report of James Scheiner, M.D., attached hereto.

(b) Please see medical bills from James Scheiner, M.D., Tzu-Min Kao, M.D., John E. Peterson, M.D., Fauquier Hospital, Jefferson Memorial Hospital and miscellaneous prescriptions, all attached hereto.

(c) The Defendant was travelling at an excessive speed under the existing circumstances; he was not keeping a proper lookout; he failed to keep his vehicle under proper control; he was travelling in the improper lane; he failed to operate his vehicle within the range of his headlights. Additional discovery may disclose more acts of negligence.

2. See those listed in 1.(a) and (b). In addition, Plaintiff was seen for two weeks post-accident at the Reston-Georgetown Clinic by a Dr. Dvorak.

RELEASE

For the Sole Consideration of Five Thousand and no/dollars ($5,000)

Dollars, the receipt and sufficiency whereof is hereby acknowledged, the undersigned hereby releases and forever discharges James Carroll Steward

his heirs, executors, administrators, agents and assigns, and all other persons, firms or corporations liable or who might be claimed to be liable, none of whom admit any liability to the undersigned but all expressly deny any liability, from any and all claims, demands, damages, actions, causes of action or suits of any kind or nature whatsoever, and particularly on account of all injuries, known and unknown, both to person and property, which have resulted or may in the future develop from an accident which occurred on or about the Twenty-seventh (27th) day of April, 19 77 at or near Route 605, Warrenton, Fauquier County, Virginia.

This release expressly reserves all rights of the parties released to pursue their legal remedies, if any, against the undersigned, their heirs, executors, agents and assigns.

Undersigned hereby declares that the terms of this settlement have been completely read and are fully understood and voluntarily accepted for the purpose of making a full and final compromise adjustment and settlement of any and all claims, disputed or otherwise, on account of the injuries and damages above mentioned, and for the express purpose of precluding forever any further or additional claims arising out of the aforesaid accident.

Undersigned hereby accepts draft or drafts as final payment of the consideration set forth above.

In Witness Whereof, I have hereunto set my hand(s) and seal(s) this 24 day of July, 19 79

In presence of

Witness — Signed X Stephanie Dwyer
Stephanie Dwyer

Witness — Signed X

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VIRGINIA

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

STEPHANIE DWYER	:	
Plaintiff	:	
vs.	:	AT LAW NO. 41247
JAMES CARROLL STEWARD	:	
Defendant	:	

DISMISSAL ORDER

THIS CAUSE CAME TO BE HEARD this day upon the agreed motion of the parties hereto that this action be dismissed with prejudice, the parties having previously resolved all matters in dispute; and

IT APPEARING TO THE COURT that the motion is properly made and should be granted; it is therefore

ADJUDGED, ORDERED, AND DECREED that this action be, and the same hereby is, dismissed with prejudice.

ENTERED this 9th day of August, 1979.

JUDGE, CIRCUIT COURT OF
FAIRFAX COUNTY

WE ASK FOR THIS:

ODIN, FELDMAN & PITTLEMAN, P.C.
4031 University Drive, Suite 202
Fairfax, Virginia 22030

By _____
David L. Duff,
Counsel for Plaintiff

BRAULT, LEWIS, GESCHICKTER & PALMER

By _____
Richard H. Lewis
Counsel for Defendant

V I R G I N I A :

IN THE CIRCUIT COURT OF FAUQUIER COUNTY

STEPHANIE DWYER

Plaintiff

v. AT LAW NO. 4165

ALEXANDER T. YURGAITIS

Defendant

PLEA OF RELEASE

Alexander T. Yurgaitis, Defendant in the above cause, for a Plea of Release states that the Plaintiff in this cause has made a full release, accord and satisfaction for the injuries claimed in this cause with James Carroll Steward, Defendant in the case of Stephanie Dwyer, Plaintiff, v. James Carroll Steward, Defendant, At Law No. 41247, in the Circuit Court of Fairfax County, Virginia, and did absolutely release said alleged tort feasor for her injuries now claimed, for which reason she is barred from pursuing this action.

ALEXANDER T. YURGAITIS

By _____
Counsel

Thomas V. Monahan
Hall, Monahan, Engle, Mahan & Mitchell
3 East Market Street
Leesburg, Virginia 22075
Counsel for Defendant

TWENTIETH JUDICIAL CIRCUIT
OF VIRGINIA

RAYNER V. SNEAD, JUDGE
POST OFFICE BOX 8
WASHINGTON, VIRGINIA 22747

CARLETON PENN, JUDGE
DRAWER 471
LEESBURG, VIRGINIA 22075

FAUQUIER, LOUDOUN AND
RAPPAHANNOCK COUNTIES

October 17, 1979

David L. Duff, Esquire
Odin, Feldman & Pittleman
4031 University Drive, Suite 202
Fairfax, Virginia 22030

Thomas V. Monahan, Esquire
Hall, Monahan, Engle, Mahan & Mitchell
3 East Market Street
Leesburg, Virginia 22075

RE: Stephanie Dwyer vs. Alexander T. Yurgaitis
At Law Number 4391

Gentlemen:

The plea of release filed by defendant is sustained.

The Court finds as follows:

1. On April 27, 1977, plaintiff was a passenger in a vehicle that was struck by another driven by one Steward. As a result of this collision the vehicle in which she was riding was knocked into the lane of traffic of defendant Yurgaitis and shortly thereafter the vehicle was again hit by the Yurgaitis vehicle.

   She filed suit in Fairfax County against Steward and against Yurgaitis in Fauquier County alleging negligence on the part of each and essentially the same injuries in each case.

2. The interrogatories and medical reports filed in the Steward case make no distinction between the injuries received in the two collisions.

3. The Fairfax case was set for trial on June 13, 1979, without any amendment of the motion for judgment having been made or without further interrogatories being filed.

4. Counsel for plaintiff in discussing settlement of the Fairfax case made no distinction between the injuries received in the first and second accident.

5. The Fairfax case was settled by counsel for the parties for $5,000.00 on the day of trial, June 13, 1979, and the Court was so advised. All that remained to be done was to have a draft issued by defendant, a release signed by plaintiff, and an order of dismissal entered.

6. The $5,000.00 was late paid and a general release dated July 24, 1979, was executed by plaintiff.

   An order of dismissal of the case dated August 9, 1979, was also entered all pursuant to the agreement of counsel on June 13, 1979.

Plaintiff argues that Steward and Yurgaitis are not joint tort-feasors, so that a release of one does not bar an action against the other citing Brown vs. Parker, 167 Va. 286,

> "When the negligence of two or more persons concurs in producing a single indivisible injury, then such persons are jointly and severally liable, although there was no common duty, common design, or concert of action."

and Washington vs. Williams, 215 Va. 353.

In her pleadings, interrogatories, medical reports and discussions of settlement of the Steward case, plaintiff by counsel has made no distinction between the injuries received in the two collisions. She has in effect treated Steward and Yurgaitis as joint tort-feasors and the injuries as indivisible. She should not be allowed to contend now that they are divisible and should be treated separately.

Moreover, the release is a general release and does not attempt to distinguish the two collisions or any different injuries as a result thereof.

Plaintiff further argues that § 8.01-35.1 of the Virginia Code which became effective July 1, 1979, precludes the court from sustaining the plea of release.

"§ 8.01-35.1. Effect of covenant not to sue or settlement upon liability and contribution among joint tort feasors. --- A. When a covenant not to sue is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death:

1. It shall not discharge any of the other tort feasors from liability for the injury or wrongful death unless its terms so provide; but it shall reduce the claim against the others to the extent of any amount stipulated by the covenant, or in the amount of the consideration paid for it, whichever is the greater; and

2. It shall discharge the tort feasor to whom it is given from all liability for contribution to any other tort feasor.

B. A tort feasor who enters into a settlement with a claimant is not entitled to recover contributions from another tort feasor whose liability for the injury or wrongful death is not extinguished by the settlement, nor in respect to any amount paid in a settlement which is in excess of what was reasonable. (1979, c. 697)"

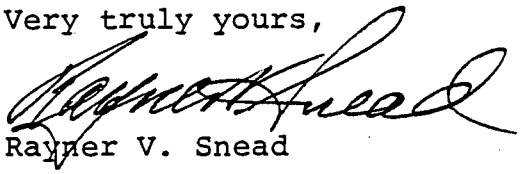
This argument cannot prevail for several reasons. In the first place the statute deals with covenants not to sue and not releases. We have a release involved in this case rather than a covenant not to sue. Furthermore, the settlement took place before July 1, 1979, even though the release was not executed until July 24, 1979. The settlement was effective as of June 13, 1979, and could have been enforced by the Circuit Court of Fairfax as all that remained to be done after June 13th was to accomplish the paperwork according to the uncontradicted testimony of Richard Lewis, counsel for defendant Steward.

Finally, plaintiff has shown by her conduct of the two cases by counsel that her injuries received from the two collisions were indivisible and that the first tort feasor, Steward, is responsible for all of her injuries which proximately resulted from his tort even though some of the injuries may have been received from the subsequent collision and negligent act on the part of another tort feasor, Yurgaitis.

"Dickenson v. Tabb, 208 Va. 184, 156 S.E. 2d 795, (1967), Maroulis v. Elliott, 207 Va. 503, 151 S.E. 2d 339, (1966), Powell v. Troland, 212 Va. 205, 183 S.E. 2d 184, (1971), Richmond Coca-Cola Bottling Works v. Andrews, 174 Va. 240, 3 S.E. 2d 419, (1939)."

Counsel for defendant may submit a final order sustaining the plea of release and dismissing the case from the docket.

Very truly yours,



Rayner V. Snead

RVS/ghb

V I R G I N I A :

IN THE CIRCUIT COURT OF FAUQUIER COUNTY

STEPHANIE DWYER

Plaintiff

v. AT LAW NO. 4165

ALEXANDER T. YURGAITIS

Defendant

ORDER

The 16th day of October, 1979, came again the parties in this cause, by counsel, upon the Praecipe of the Defendant, the previous Order of this Court setting the matter for hearing on the motion for dismissal on a Plea of Release, the evidence taken in support of said Plea of Release, the written memoranda furnished by counsel for both parties, and the matter was orally argued by counsel.

Upon the consideration of the foregoing matters, for the reasons set forth in the letter opinion of this Court addressed to counsel for the parties and dated on the 17th day of October, 1979, which letter is made a part of the record, it is ADJUDGED and ORDERED that the said Plea of Release be, and the same is, sustained. Accordingly, this matter is dismissed with prejudice to the rights of the Plaintiff.

ENTER this 13th day of ~~October~~ November, 1979.

Judge

SEEN: AND OBJECTION NOTED:
David L. Duff
Counsel for Plaintiff

JAMES J. SCHEINER, M. D.
DIPLOMATE: AMERICAN BOARD OF ORTHOPEDIC SURGERY

BOULEVARD MEDICAL CENTER
8301 ARLINGTON BOULEVARD
FAIRFAX, VIRGINIA 22030
TELEPHONE: 573-3107

August 22, 1977

Vienna Police Department
127 South Center Street
Vienna, Virginia 22190

RE: Stephanie G. Dwyer

Dear Sir:

Mrs. Stephanie Dwyer has been under my care for sometime in reference to injuries sustained in an accident.

As a result of this accident she sustained the following injuries:

1. Acute and chronic musculoligamentous strain cervical spine

2. Post traumatic subluxation, chronic synovitis left sternoclavicular joint

In view of these injuries which have not yet healed, she must limit her activities and to avoid activities which would place undue stress on the injured structures, that is her neck and left sternoclavicular joint. She avoid excessive lifting, bending, stooping, climbing, jumping, prolong sitting, turning of the neck, etc.

She was also hospitalized for this injury at Jefferson Memorial Hospital during the period of June 30, 1977 to July 6, 1977.

If you should have any questions, please do not hesitate to call.

Very truly yours,

James J. Scheiner, M. D.

JJS/hms

BOULEVARD MEDICAL CENTER
8301 ARLINGTON BOULEVARD
FAIRFAX, VIRGINIA 22030
TELEPHONE: 573-3107

DULLES INTERNATIONAL MEDICAL CENTER
SULLY ROAD
STERLING, VIRGINIA 22170
TELEPHONE: 430-2050

JAMES J. SCHEINER, M. D.
DIPLOMATE: AMERICAN BOARD OF ORTHOPEDIC SURGERY

May 12, 1978

Attorney Mika
1707 L. Street N.W.
Washington, D.C.

Re.: STEPHANIE DWYER

Dear Mr. Mika:

The following is a summation of my orthopedic evaluation and treatment of Mrs. Stephanie Dwyer in reference to injuries sustained in an automobile accident which occurred on April 27, 177.

HISTORY: Stephanie Dwyer is a 21 year old female who was initially seen by me on May 24, 1977. At that time she stated that on April 27, 1977 she was involved in an automobile accident. She stated that she was a passenger seated in the right front seat of a vehicle which was involved in a "head - on collision when the other party ran a stop sign."

At the time of impact she states that her body "felt as if I went into a cement wall."

She stated that following the initial impact her husband attempted to remove her from the vehicle when another vehicle struck the vehicle in which she was seated.

She stated that she was taken via ambulance to the Warrenton Hospital where she was seen by the emergency poom physician on duty, and was subsequently followed by Dr. Dvorak.

She developed symptoms referrable to her left clavicle especially in the region of the sternoclavicular joint, her left chest, and shoulder area, as well as the cervical region of her spine and her knees. She also developed headaches.

Dr. Dvorak recommended that she restrict her activities and she was given medication to take as necessary. Hot baths and massage was also recommended.

As a result of the accident she was unable to return to work as a police officer.

When I initially saw her she stated that there has been some improvement in her symptomatology, but the improvement was minimal. Her main problems were related to the left collar bone and she had difficulty elevating her left arm. She also had pain in the cervical region of her spine, both posteriorly and anteriorly.

Her right knee was discolored and quite tender.

PAST HISTORY: Miss Dwyer has had no complaints referrable to the injured areas prior to this accident.

PHYSICAL EXAMINATION: Physical examination on May 24, 1977 revealed Miss Dwyer to be in acute distress, movements involving the cervical region of the spine were carried on slowly and guardedly because of the pain and stiffness. There was tenderness to palpation extending from the lower cervical and upper thoracic region of the spine. There was noted to be spasm producing a decrease in range of motion of the cervical region of the spine by approximately 15 to 20 percent in all planes. The most significant area of tenderness was between the 7th cervical and first thoracic vertebra.

Examination of the left chest and collar bone revealed exquisite tenderness to palpation in the regionof the left sternoclavicular joint which was quite swollen but there was no evidence of flase motion in this area. Elevation of the left arm produced pain in this region.

Physical examination of the right knee revealed tenderness and discoloration over the medial aspect of the knee joint with some residual swelling. The ligaments, however, were intact and tests for deranged menisci were not remarkable.

There was also noted to be diffuse tenderness over the anterior portion of the chest in the region of the sterum and in the region of the left breast.

X-RAYS: X-ray examination of the left sternoclavicular joint was taken on May 25, 1977. The reports by the radiologist revealed no abnormalities in this area, however, I personally reviewed these x-rays and did appear to be some evidence of asymmetry of the joints

in the sternoclavicular area, suggestive of subluxation of the left sternocalvicular joint. Clinically, however, there was no evidence that there was an obvious injury to the left sternoclavicular joint.

X-ray examination of the thoracic spine revealed a slight scoliotic curvature but was otherwise within normal limits.

X-ray examination of the left shoulder was within normal limits.

DIAGNOSIS: It was my impression that as a result of the automobile accident Miss Dwyer sustained the following injuries:

(1) Acute musculoligamentous strain - cervical and thoracic spine.

(2) Acute sprain and contussion right knee.

(3) Probable subluxationleft sternoclavicular joint.

(4) Multipde contussions.

TREATMENT: Initial treatment consisted of marked restriction of activities, medication, and physical therapy consisting of heat, traction, massage, and ultra-sound to the cervical and upper thoracic region of her spine.

COURSE: Following my initial evaluation Miss Dwyer continued to have significant symptomatology referrable to the injured areas, and in June of 1977 because of severe symptomatology was admitted to the Jefferson Memorial Hospital for an intensive course of conservative therapy.

Her symptoms gradually improved and was seen in Decemaber of 1977, there was a considerable decrease in the degree of objective findings noted in the cervical region of the spine in the left sternoclavicular joint area.

Her symptoms,however, did not completely resolve and when seen in January of 1978 she was quite concerned and discouraged because of continuation of symptomatology. Physical examination at that time continued to reveal spasm in the cervical and upper thoracic region of the spine. THe sternoclavicular joint, however, revealed only minimal swelling and tenderness. I do not feel further therapy was necessary in reference to the sternoclavicular joint area.

Miss Dwyer was last seen by me on March 17,1978 at which time she stated that she was working part time selling Avon Products and had been able to tolerate the symptoms referrable to her neck and sternoclavicular joint. I recommended at that time that she continue limitation of activities to avoid placing undue stress on this area and she was requested to see me in two or three months for re-evaluation, and x-ray examination.

If you have any questions, please do not hesitate to call.

Very truly yours,

James J. Scheiner, M.D.

JJS:ms
Enclosure

May 7, 1979

Richard H. Lewis, Esquire
10533 Main Street
Fairfax, Virginia 22030

RE: Stephanie Dwyer vs.
James Carroll Steward
At Law No. 41247

Dear Dick:

Enclosed please find my Notice regarding argument on your Objection To Interrogatories. I had to set the matter for this Friday since no motions are heard on the 18th and 25th. I hope it does not upset your schedule too awfully much.

It certainly does appear to me that we should be able to reach a settlement of both Mr. and Mrs. Dwyer's suits for the balance remaining under Steward's policy, which you have indicated to be a mere $6,000 - $7,000. While the majority of Mrs. Dwyer's injuries did, indeed, result from the second accident her deposition and the report by Dr. Scheiner leave little doubt but that she did receive some injury from the initial collision with your insured.

I called your office twice last week, but you were in Court. I would appreciate explowing with you the possibility of reaching a settlement of this matter and avoiding the aforementioned motion and, perhaps, yet another continuance.

Most sincerely yours,

ODIN, FELDMAN & PITTLEMAN

David L. Duff

DLD/wmb
Enclosure

May 29, 1979

Richard H. Lewis, Esquire
BRAULT, LEWIS, GESCHICKTER & PALMER
10533 Main Street
P. O. Box 248
Fairfax, Virginia 22030

RE: Stephanie Dwyer vs.
James C. Steward
At Law No.: 41247

Dear Dick:

I have now had an opportunity to meet with my client, Stephanie Dwyer, and to review with her the facts of this accident and the nature of her injuries, as well as the circumstances which have resulted in a depletion of the available funds. The following is submitted by way of evaluation and demand for settlement:

LIABILITY

On April 27, 1977, Mrs. Dwyer was a passenger in a car being driven by her husband and headed roughly northbound on Route 29. As their car approached the intersection with Route 605, your client, who was approaching Mrs. Dwyer's right, proceeded through the "STOP" sign and collided with the Dwyer car. Your client was charged with "Reckless Driving".

In view of the above, I do not believe that liability is truly in issue.

DAMAGES

At the time of the accident, Mrs. Dwyer had her seatbelt engaged, which prevented her from being thrown about the inside of her car upon impact. She did, however, have her neck jolted forward and backward, and both knees were injured when the entire front dashboard was forced back against her. Her neck stiffened almost immediately with a considerable amount of pain, and she sustained bruises on the knees and elbow.

After the accident, Mrs. Dwyer was taken to a local hospital in Warrenton where x-rays were taken of her knees and neck area. Subsequently Mrs. Dwyer was treated by Dr. Dvorak at the Reston-Georgetown Clinic, and on May 24, 1977, came under the care of Dr. James J. Scheiner.

Dr. Scheiner noted that, in his initial examination of Mrs. Dwyer, one month post-accident, there was discoloration, tenderness and swelling of the right knee, as well as tenderness, spasms and a decreased range of motion in the cervical spine. The initial diagnosis was "(1) acute musculoligamentous strain - cervical spine; (2) acute sprain and contussion right knee".

As late as January, 1978, Dr. Scheiner noted spasms in the cervical spine, though the knee symptoms had apparently resolved.

Dr. Frederick Rook, who performed an Independent Medical Examination, at your request, confirms that Mrs. Dwyer "could well have suffered acute ligamentous muscular" strain or sprain to the cervical region of the spine.

DEMAND

In view of the foregoing, demand for settlement of Mrs. Dwyer's claim for bodily injuries received as a result of the automobile accident with your client is hereby made in the amount of $6,000.00.

Your review and consideration of the above would be greatly appreciated, and I look forward to your response.

Most sincerely yours,

ODIN, FELDMAN & PITTLEMAN

David L. Duff

DLD/wmb
CC: Stephanie Dwyer

June 14, 1979

Richard H. Lewis, Esquire
BRAULT, LEWIS, GESCHICKTER & PALMER
10533 Main Street
Fairfax, Virginia 22030

RE: Stephanie Dwyer vs.
James C. Steward
At Law No. 41247

Dear Dick:

Enclosed please find my proposed Dismissal Order in the referenced matter. Assuming the language meets with your approval, would you please endorse the same and return it to me for entry with the Court.

Would you kindly forward your client's settlement draft in the amount of $5,000.00 as soon as it is available.

Thank you for your continued courtesy.

Most sincerely yours,

ODIN, FELDMAN & PITTLEMAN

David L. Duff

DLD/wmb
Enclosures

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EDWARD H. GROVE, III

BENJAMIN J. TRICHILO
MICHAEL L. ZIMMERMAN
PETER J. JONES
BRUCE D. WHITE

PRINCE WILLIAM COUNTY OFFICE
P. O. BOX 534
MANASSAS, VIRGINIA 22110
(703) 368-9231
(METRO 631-9727)

June 25, 1979

David L. Duff, Esquire
ODIN, FELDMAN & PITTLEMAN
4031 University Drive
Suite 202
P.O. Box 367
Fairfax, Virginia 22030

re: Dwyer v. Steward

Dear David:

Enclosed is the draft of the carrier, a Release and the original Dismissal Order in this case, pursuant to our settlement of the matter.

The draft is sent with the understanding that it will not be negotiated until the executed Release and a certified copy of the Dismissal Order are posted to me.

Thank you for your cooperation in this matter.

Very truly yours,

Richard H. Lewis

RHL/jcl

Enclosure

1 EXHIBIT #3 TO THE DEPOSITION.

2 (WHEREUPON, THE DOCUMENT REFERRED TO WAS MARKED LEWIS
3 DEPOSITION EXHIBIT #3 FOR IDENTIFICATION.)

4 CONTINUATION OF DIRECT
5 EXAMINATION BY MR. MONAHAN:

6 Q. NOW, SIR, AT MY REQUEST HAVE YOU MADE AN EXAMINATION OF
7 YOUR FILE TO DETERMINE WHETHER, IN FACT, YOU WERE
8 PROVIDED WITH MEDICAL REPORTS, MEDICAL INFORMATION
9 IN THIS CASE?

10 A. I HAVE A MEDICAL FILE AND I, FRANKLY, HAVEN'T GONE
11 THROUGH THE FILE LETTER BY LETTER AND I DON'T KNOW
12 WHETHER THEY WERE FURNISHED TO ME VOLUNTARILY OR
13 ATTACHMENTS TO ANSWERS TO INTERROGATORIES; BUT I DO HAVE
14 THE MEDICAL FILE.

15 Q. WAS THAT A FILE PROVIDED BY COUNSEL FOR STEPHANIE DWYER
16 OR DID YOU SUBPOENA RECORDS IN THIS INSTANCE?

17 A. TO THE BEST OF MY RECOLLECTION, THESE WERE FURNISHED BY
18 COUNSEL FOR THE PLAINTIFF EITHER BY, VOLUNTARILY OR
19 ATTACHED TO ANSWERS TO INTERROGATORIES.

20 Q. ARE THOSE MEDICAL REPORTS CONTAINED WITHIN ONE FILE
21 FOLDER IN YOUR POSSESSION, SIR?

22 A. THAT'S CORRECT.

23 Q. I WOULD LIKE TO REFER TO THAT AS EXHIBIT #4 FOR THE
24 PURPOSE OF IDENTIFICATION AND ASK YOU IF THIS FOLDER
25 CONTAINS THOSE RECORDS?

A. THAT'S CORRECT.

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1 MR. MONAHAN: I'LL OFFER THAT AS
2 EXHIBIT #4, THEN, TO THE DEPOSITIONS, BEING THE VARIOUS
3 MEDICAL REPORTS TESTIFIED TO BY MR. LEWIS.
4 (WHEREUPON, THE DOCUMENT REFERRED TO WAS MARKED LEWIS
5 DEPOSITION EXHIBIT #4 FOR IDENTIFICATION.)
6 Q. MR. LEWIS, DID THERE COME A TIME IN JUNE OF 1979 OR
7 RATHER, LET ME REPHRASE THAT. DID THERE COME A TIME WHEN
8 THIS CASE WAS SCHEDULED FOR TRIAL IN JUNE OF 1979?
9 A. YES.
10 Q. WHAT WAS TO HAVE BEEN THE TRIAL DATE, SIR?
11 A. MY FILE INDICATES THE TRIAL DATE WAS JUNE 13, 1979.
12 Q. PRIOR TO JUNE 13, 1979, WAS THE MOTION FOR JUDGMENT
13 AMENDED BY THE PLAINTIFF OR DID THE TRIAL PROCEED ON
14 THE ORIGINAL MOTION FOR JUDGMENT?
15 A. UNLESS, MY RECOLLECTION AND MY BRIEF REVIEW OF THE FILE
16 THAT I HAVE INDICATES THAT IT PROCEEDED ON THE ORIGINAL
17 MOTION FOR JUDGMENT. THE MOTION FOR JUDGMENT WAS NOT
18 AMENDED.
19 Q. WERE THERE ANY SUPPLEMENTAL OR AMENDATORY INTERROGATORIES,
20 ANSWERS TO INTERROGATORIES FILED ON BEHALF OF THE
21 PLAINTIFF?
22 A. NO AMENDMENTS TO THE ANSWERS TO INTERROGATORIES, TO MY
23 RECOLLECTION OR BASED ON WHAT'S CONTAINED IN MY FILE.
24 Q. NOW, SIR, PRIOR TO THE TRIAL DATE, DID YOU ENGAGE IN ANY
25 DISCUSSIONS WITH RESPECT TO THE SETTLEMENT OF THE CLAIM

1 WITH STEPHANIE DWYER?
2 A. YES, WE DID.
3 Q. I BELIEVE AT ONE POINT COUNSEL FOR STEPHANIE DWYER WAS
4 CHANGED; MR. MIKA WITHDREW FROM THE CASE AND ANOTHER
5 COUNSEL WAS SUBSTITUTED, SIR?
6 A. THAT'S CORRECT.
7 Q. WHO WAS THE SUBSTITUTED COUNSEL?
8 A. DAVID DUFF; I'M SORRY I DON'T RECALL HIS MIDDLE INITIAL
9 RIGHT OFF.
10 Q. IS THAT MR. DAVID DUFF OF FAIRFAX, VIRGINIA?
11 A. DAVID L. DUFF, THAT'S CORRECT.
12 Q. DID YOU CONDUCT DISCUSSIONS ABOUT SETTLEMENT WITH
13 BOTH ATTORNEYS?
14 A. YES.
15 Q. IN THE COURSE OF THE DISCUSSIONS WITH RESPECT TO
16 SETTLEMENT, DID THE ATTORNEYS MAKE REFERENCE TO THE
17 MEDICAL REPORTS PROVIDED TO YOU?
18 A. I DON'T RECALL WHETHER WE HAD SPECIFICALLY DISCUSSED THE
19 CONTENT OF THE MEDICAL REPORTS OR NOT.
20 Q. IN TERMS...
21 A. I MEAN, I KNEW WHAT THE MEDICAL REPORTS CONTAINED AND I
22 ASSUMED THAT THEY DID AND I'M SURE THAT HAD A BEARING
23 ON, IT CERTAINLY HAD A BEARING ON MY JUDGMENT AND MY
24 RECOMMENDATIONS TO MY CLIENT AND MY EVALUATION OF THE
25 SETTLEMENT VALUE OF THE CASE.

1 Q. WERE YOU, DURING THE COURSE OF THESE NEGOTIATIONS, SIR,
2 AWARE THAT THE VEHICLE IN WHICH MRS. DWYER HAD BEEN
3 RIDING WAS STRUCK FIRST BY THE VEHICLE OF YOUR CLIENT
4 AND STRUCK AGAIN BEFORE SHE LEFT THE SCENE OF THE
5 ACCIDENT?
6 A. VERY WELL AWARE OF THAT.
7 Q. IN TERMS OF THE CLAIM FOR SETTLEMENT OF THE
8 PLAINTIFF, WAS ANY DISTINCTION MADE BETWEEN INJURIES
9 CLAIMED TO HAVE BEEN CAUSED BY YOUR CLIENT AND INJURIES
10 CLAIMED TO HAVE BEEN CAUSED BY THE SECOND ACCIDENT
11 AND AN ATTEMPT MADE TO SETTLE ONLY WITH RESPECT TO THE
12 FIRST ACCIDENT?
13 MR. COSBY: LET ME INTERPOSE AN
14 OBJECTION. WHEN YOU SAY, ANY DISCUSSION I, OR ANY
15 DISTINCTION MADE, ARE YOU SAYING THAT MR. LEWIS MADE A
16 DISTINCTION IN HIS MIND OR THE TWO OTHER ATTORNEYS THAT
17 YOU WERE TALKING ABOUT MADE A DISTINCTION; I DON'T...
18 Q. TO CLARIFY THE QUESTION, MR. LEWIS, I DON'T MEAN IN YOUR
19 OWN MIND, I MEAN IN TERMS OF CONVERSATIONS, HOW WERE
20 THE INJURIES DISCUSSED AND ON WHAT BASIS WAS SETTLEMENT
21 ARRIVED AT, ON THE BASIS OF ONLY THE INJURIES FROM THE
22 FIRST IMPACT OR WERE YOU BEING HELD ACCOUNTABLE FOR ALL
23 INJURIES RESULTING FROM THE ACCIDENT?
24 A. WELL, I KNEW THAT THE PLAINTIFF, STEPHANIE DWYER, HAD
25 BEEN IN THE AUTOMOBILE WHEN IT WAS STRUCK BY, STRUCK IN

1 THE SECOND ACCIDENT, SO TO SPEAK, AND, OF COURSE, MY
2 POSITION WAS THAT HER, CERTAINLY A PART OF HER
3 INJURIES AND A SIGNIFICANT PART OF HER INJURIES WERE
4 CAUSED BY THE SECOND ACCIDENT; THAT WAS MY NEGOTIATING
5 POINT. THE PLAINTIFF MADE NO, THE PLAINTIFF THROUGH
6 HER LAWYER HAD MADE NO DISTINCTION OR WASN'T
7 CONCEDING THIS, THAT OR THE OTHER, IT WAS A MATTER OF
8 JUDGMENT; BUT IF YOU MEAN SPECIFICALLY WAS IT, DID THE
9 PLAINTIFF SAY, WELL, WE'RE ONLY ASKING YOU FOR DAMAGES
10 FOR A CERTAIN PART OF THE INJURIES RECEIVED BY
11 MRS. DWYER, NO, THAT WAS NOT DISCUSSED.
12 Q. IN LOOKING THROUGH THE MEDICAL REPORTS WHICH YOU HAVE
13 MADE AVAILABLE TO US AND WHICH WERE REFERRED TO BY
14 YOU AS HAVING BEEN PROVIDED BY COUNSEL FOR THE PLAINTIFF,
15 EITHER VOLUNTARILY OR BY DISCOVERY, I NOTICE THERE
16 ARE ONLY TWO MEDICAL REPORTS: THOSE OF DR. SCHEINER, DATED
17 MAY 12, 1978, AND, EXCUSE ME, AUGUST 22, 1977, IN THE
18 NEGOTIATIONS WHICH LED UP TO SETTLEMENT; DID COUNSEL
19 FOR STEPHANIE DWYER REPRESENT THAT THE SETTLEMENT SHOULD
20 INCLUDE THE MATTERS REFERRED TO BY DR. SCHEINER IN THESE
21 TWO REPORTS?
22 A. NO, IT WASN'T, IT WASN'T SPECIFICALLY STATED. THEY HAD
23 ALSO, WELL, I WOULD LIKE TO STATE THAT THE RECORDS THAT
24 I FURNISHED TO YOU EARLIER IN THIS DEPOSITION DO NOT
25 INCLUDE THE INDEPENDENT MEDICAL EXAMINATION THAT I HAD

1 REQUESTED AND WAS DONE BY A DOCTOR THAT WAS SELECTED
2 BY ME CONCERNING STEPHANIE DWYER; I HAVE THAT REPORT
3 ALSO IF EITHER OF YOU GENTLEMEN CARE TO LOOK AT IT
4 OR RECEIVE IT; BUT IN ANY EVENT, TO ANSWER YOUR
5 QUESTION. NO, SPECIFICALLY, THERE WERE NO WORDS SAID
6 TO THE EFFECT THAT THIS CLAIM IS ONLY OR FOR ALL OF
7 THE INJURIES CONTAINED IN THIS REPORT THERE. AS I SAY,
8 MY POSITION, NOT ONLY FROM THE MEDICAL REPORTS, BUT
9 FROM THE OTHER INVESTIGATION, I WAS GOING TO TRY TO
10 MINIMIZE THE INJURY IN MY ACCIDENT, ALTHOUGH ON THE
11 OTHER HAND THERE WAS NO OFFER ON BEHALF OF THE PLAINTIFF
12 TO VOLUNTARILY REDUCE, OR NOT TO CLAIM ANY OF THE
13 INJURIES MENTIONED IN THOSE REPORTS AS COMING FROM
14 THIS ACCIDENT. IT WAS NOT DISCUSSED SPECIFICALLY. IF
15 WE TRIED THE CASE, IT WOULD HAVE BEEN A MATTER FOR THE
16 JURY TO DETERMINE, PERHAPS.
17 Q. WELL, I UNDERSTAND YOUR POSITION AS BEING THAT THE
18 SUBSEQUENT ACCIDENT WAS INDEPENDENT OF YOUR
19 ACCIDENT; BUT DO I CORRECTLY UNDERSTAND THAT THE
20 POSITION OF THE PLAINTIFF WAS SIMPLY THAT YOU WERE
21 RESPONSIBLE FOR THE INJURIES FLOWING FROM THE ACCIDENT
22 AS SET FORTH IN THE MEDICAL REPORTS?
23 A. I WAS READY TO DEFEND THAT CLAIM. THERE WAS NO
24 ASSERTION TO THE CONTRARY; WE WERE, THOSE WERE THE
25 MEDICAL REPORTS FURNISHED TO ME IN CONNECTION WITH MY

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1 INTERROGATORIES AS TO WHAT INJURIES THE LADY SUFFERED.
2 A. YOU HAVE ALREADY STATED THERE WAS NO AMENDMENT TO THE
3 MOTION FOR JUDGMENT?
4 A. NO, SIR.
5 Q. NOW, WAS, IN FACT, THIS CASE TRIED, SIR?
6 A. IT WAS SETTLED ON THE MORNING OF TRIAL.
7 Q. FOR WHAT SUM WAS IT SETTLED?
8 A. $5,000.
9 Q. ON THE MORNING OF TRIAL, IN WHAT FORM WAS THE SETTLEMENT,
10 ORAL, WRITTEN, OR WHAT?
11 A. THE SETTLEMENT, AS I SAY, WAS REACHED MOMENTARILY BEFORE
12 THE CASE WAS TO COMMENCE. IT WAS A VERBAL, ORAL
13 AGREEMENT AT THAT POINT AND IT WAS LATER, LATER WE
14 SECURED A RELEASE AFTER I HAD SECURED THE SETTLEMENT,
15 DRAFTED THE RELEASE AND THE DRAFT AND THE DISMISSAL
16 ORDER WERE FORWARDED TO THE PLAINTIFF'S ATTORNEY AT
17 THE SAME TIME.
18 Q. WAS THE ULTIMATE RELEASE RECEIVED?
19 A. YES.
20 Q. DID YOU, IN FACT, FORWARD THAT SETTLEMENT DRAFT TO
21 COUNSEL FOR THE PLAINTIFF?
22 A. YES. AS I INDICATED, OUR PRACTICE IS TO SEND THE
23 SETTLEMENT DRAFT ALONG WITH THE RELEASE, WITH THE
24 UNDERSTANDING THE RELEASE, I MEAN THE DRAFT,
25 WOULD NOT BE NEGOTIATED UNTIL THE RELEASE IS

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1 PROPERLY EXECUTED AND RETURNED TO ME ALONG WITH THE
2 DISMISSAL ORDER.
3 Q. TO WHOM DID YOU FORWARD THE RELEASE AND DRAFT?
4 A. IN THE STEPHANIE DWYER CASE, TO MR. DUFF.
5 Q. WAS THE AMOUNT OF THE DRAFT AS ISSUED IDENTICAL TO THE
6 SUM AGREED ON ON THE MORNING OF TRIAL?
7 A. $5,000, YES.
8 Q. HAVE YOU A COPY OF THAT RELEASE, SIR?
9 A. YES. THE ORIGINAL WAS SENT TO MY PRINCIPAL, BUT THE, I
10 WOULD ALWAYS RETAIN A COPY AND I DO HAVE A COPY, A
11 XEROXED COPY.
12 Q. I'LL HAND YOU WHAT I WILL REFER TO FOR THE PURPOSE OF
13 THIS DEPOSITION AS EXHIBIT #5 AND ASK YOU IF THAT IS THE
14 RELEASE OR A PHOTOCOPY OF THE RELEASE OBTAINED IN
15 SETTLEMENT OF THIS CASE, SIR?
16 A. YES.
17 (WHEREUPON, THE DOCUMENT REFERRED TO WAS MARKED LEWIS
18 DEPOSITION EXHIBIT #5 FOR IDENTIFICATION.)
19 Q. FINALLY, SIR, DO YOU HAVE A COPY OF THE FINAL ORDER
20 ENTERED IN THIS CASE?
21 A. YES, I DO, I HAPPEN TO HAVE A CERTIFIED COPY.
22 Q. I'LL REFER TO THAT AS EXHIBIT #6 AND ASK YOU IF YOU CAN
23 IDENTIFY THAT, SIR?
24 A. YES, THIS IS A CERTIFIED COPY OF THE DISMISSAL ORDER
25 ENTERED IN THE STEPHANIE DWYER CASE.

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(WHEREUPON, THE DOCUMENT REFERRED TO WAS MARKED LEWIS DEPOSITION #6 FOR IDENTIFICATION.)

CONTINUATION OF DIRECT
EXAMINATION BY MR. MONAHAN:

Q. NOW, I NOTE THAT THAT ORDER, SIR, IS DATED AUGUST 9, 1979, AND THAT THE RELEASE ITSELF IS DATED JULY 24, 1979; BOTH OF WHICH WERE SOME TIME SUBSEQUENT TO THE MORNING OF TRIAL. I WILL ASK YOU WHETHER THERE WERE ANY FURTHER NEGOTIATIONS OR WHETHER THE ORIGINAL SETTLEMENT CONTINUED IN FULL EFFECT UNTIL THE FINAL DISMISSAL ORDER?

A. THERE WERE NO SUBSEQUENT DISCUSSIONS THAT I, PERHAPS WE CAN GO OFF THE RECORD A MINUTE.

OFF THE RECORD

MR. MONAHAN: I WANT THAT IN HERE; THE SAME QUESTION, PLEASE.

MR. LEWIS: ALL RIGHT.

Q. YOU SAID THERE WERE NO SUBSEQUENT NEGOTIATIONS?

A. NO SUBSEQUENT NEGOTIATIONS; HOWEVER, THE EXPLANATION FOR THE DELAY OF A TRIAL SETTLEMENT OF JUNE 13 UNTIL WE ENTERED THE DISMISSAL ORDER RESULTED FROM MY OFFICE, MY SENDING THE RELEASE IN THE STEPHANIE DWYER CASE TO MANUEL DWYER AND SENDING THE MANUEL DWYER RELEASE TO COUNSEL FOR STEPHANIE DWYER. IT WAS A MISTAKE AND IT EVENTUALLY WAS CORRECTED IN THAT I

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1 BELIEVE I MADE UP NEW RELEASES AND SENT THEM WITH A
2 NEW ORDER TO MR. DUFF IN THE STEPHANIE DWYER CASE.
3 Q. ALL RIGHT, LET ME SEE IF I UNDERSTAND YOU CORRECTLY.
4 ARE YOU SAYING THAT THE STEPHANIE DWYER RELEASE
5 THAT'S ORIGINALLY ISSUED BY YOUR OFFICE INADVERTENTLY
6 CONTAINED A SUM OF MONEY THAT SHOULD HAVE BEEN PAID
7 TO MANUEL?
8 A. I'M NOT SURE THAT HAPPENED OR WE JUST SENT, THAT COULD
9 HAVE HAPPENED. I KNOW THAT THE RELEASES WERE WRONG,
10 THEY CONTAINED, EITHER THE WRONG AMOUNT WAS SENT TO
11 THE WRONG PEOPLE AND I, NOW THAT YOU MENTION IT, I DO
12 BELIEVE THAT'S WHAT HAPPENED, ALTHOUGH MY FILE
13 DOESN'T REFLECT IT. THEY WERE WRONG AND IT WAS CALLED
14 TO MY ATTENTION.
15 Q. WELL, IN ANY EVENT, SIR, AM I CORRECT THAT THE
16 SUBSTITUTION OF RELEASES WHICH YOU ACCOMPLISHED IN
17 YOUR OFFICE WAS SOLELY TO CARRY OUT THE ORIGINAL
18 SETTLEMENT AND NOT THE RESULT OF FURTHER NEGOTIATIONS
19 OR CHANGE?
20 A. NO QUESTION ABOUT IT; THERE WAS NEVER ANY DISCUSSION
21 ABOUT, ONCE THE CASES WERE SETTLED ON JUNE 13, THERE WAS
22 NO FURTHER NEGOTIATION OR DISCUSSION ABOUT THE AMOUNT.
23 WE AGREED ON THE AMOUNT; MY OFFICE MADE THE MISTAKE IN
24 THE RELEASES, AND ONCE THAT WAS CALLED TO MY ATTENTION,
25 IT WAS CORRECTED AND WE PROCEEDED WITH THE SETTLEMENT

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1 ON THE ORIGINAL TERMS AS AGREED UPON ON JUNE 13TH.
2 Q. ON THE 13TH OF JUNE, WAS THE COURT ORALLY ADVISED OF
3 THE SETTLEMENT OR THAT THE CASE HAD BEEN SETTLED, I
4 MEAN, SIR?
5 A. THAT'S CORRECT. WE WERE ACTUALLY OUTSIDE THE DOOR OF
6 THE COURTROOM STANDING IN THE HALL WHEN WE ARRIVED AT
7 THE SETTLEMENT AND I CAN'T HONESTLY RECALL WHO THE
8 JUDGE WAS OR HOW WE NOTIFIED THE COURT, BUT I KNOW THE
9 JURY WAS THERE, WE WERE READY TO START, AND CERTAINLY
10 THE COURT WAS NOTIFIED. I DON'T KNOW WHETHER WE STATED
11 THE AMOUNT OF THE SETTLEMENT TO THE COURT OR NOT.
12 Q. BUT YOU DIDN'T ASK FOR A CONTINUANCE...
13 A. NO.
14 Q. ...AND IT WAS TOLD THAT THAT CASE HAD BEEN SETTLED?
15 A. THAT'S CORRECT.
16 MR. MONAHAN: I BELIEVE THAT'S
17 ALL THE QUESTIONS I WANT TO ASK, SIR.
18 CROSS-EXAMINATION
19 BY MR. COSBY:
20 Q. MR. LEWIS, LET ME ASK YOU, BASICALLY, WHEN YOU SIGNED,
21 WHEN YOU AGREED WITH THE COUNSEL FOR THE PLAINTIFF'S
22 ATTORNEY ON JUNE 13TH, WHAT YOU AGREED TO WAS TO
23 SETTLE THE CASE FOR A CERTAIN FIGURE, FOR $5,000?
24 A. YES, SIR.
25 Q. BASICALLY WHAT THAT WAS WAS AN AGREEMENT TO SETTLE, WAS
IT NOT?

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ME, END OF QUOTE.

Q. THAT'S ALSO YOUR CUSTOM, IS IT NOT, MR. LEWIS?

A. YES, SIR.

Q. LET ME GO BACK. MR. MONAHAN ASKED YOU AS TO WHETHER YOU CONSIDERED BOTH ACCIDENTS, AND IT'S NOT, IN EVALUATING YOUR CASE, IT'S NOT YOUR POSITION TO PAY ON BEHALF OF YOUR CLIENT FOR SOMEONE ELSE'S ACCIDENT, IS IT, MR. LEWIS?

A. I TRY TO AVOID THAT.

MR. COSBY: THAT'S ALL THE QUESTIONS I HAVE.

RE-DIRECT EXAMINATION
BY MR. MONAHAN:

Q. MR. LEWIS, HOW LONG HAVE YOU BEEN PRACTICING LAW?

A. TWENTY-THREE YEARS.

Q. IS YOUR PRACTICE OF LAW PRINCIPALLY IN THE FIELD OF NEGLIGENCE AND AUTOMOBILE REPARATION WORK?

A. YES, SIR.

Q. AND I BELIEVE THAT YOUR PRINCIPAL FIELD OF EXPERTISE ACTUALLY IS THE DEFENSE OF CLAIMS ARISING OUT OF DAMAGES IN THAT PARTICULAR FIELD?

A. I DO MORE DEFENSE WORK THAN I DO PLAINTIFF WORK.

Q. DON'T WE ALL. MR. LEWIS, IN YOUR OPINION AS AN ATTORNEY,

MR. COSBY: WE OBJECT, GO AHEAD.

Q. ...AT THE TIME OF THE CONCLUSION OF YOUR DISCUSSIONS AND

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1 YOUR REPRESENTATIONS TO THE COURT ON THE MORNING OF
2 JUNE 13, 1979, HAD YOU ARRIVED AT A BINDING AND
3 ENFORCEABLE AGREEMENT WITH OPPOSING COUNSEL?
4 MR. COSBY: LET ME MAKE AN
5 OBJECTION TO THAT; I THINK THAT GOES BASICALLY
6 TO THE ULTIMATE ISSUE OF WHAT THIS MOTION IS
7 ABOUT.
8 A. WELL, TO ANSWER YOUR QUESTION. YES, I FELT WE HAD A
9 BINDING SETTLEMENT, BUT WHICH COULD HAVE BEEN ENFORCED
10 BY LATER COURT ACTION, A PLEA OF COMPROMISING
11 SETTLEMENT, SOMETHING OF THAT NATURE. MR. DUFF WAS, HE
12 KNEW HIS CASE WELL AND HIS CLIENT WAS THERE AND WE HAD
13 DISCUSSED THINGS AND HE HAD TALKED WITH HIS CLIENT AND WHEN
14 HE INDICATED THAT THEY WOULD ACCEPT $5,000, I FELT THE
15 CASE WAS SETTLED. HE DIDN'T SPECIFICALLY STATE THAT
16 MY CLIENT IS AUTHORIZING ME TO DO THAT, BUT HE CERTAINLY
17 TALKED WITH HER AND I HAD NO DOUBT IN MY MIND.
18 Q. WAS HE PRESENT WHEN THE RECORD HAD BEEN, OR DO
19 YOU KNOW, HAD HE BEEN, WHEN THE CASE WAS DISMISSED THAT
20 MORNING FROM THE DOCKET?
21 A. WAS MR. DUFF PRESENT?
22 Q. YES.
23 A. I JUST CAN'T REMEMBER THAT.
24 Q. WELL, HE DIDN'T COME IN AND WANT TO TRY IT, DID HE?
25 A. NO. NO, WE HAD NOTIFIED THE COURT IN SOME WAY, BUT AS I

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1 SAY, I JUST CAN'T REMEMBER WHETHER WE WENT IN AND TOLD
2 THE COURT, WHETHER THE BAILIFF WAS IN THE HALL AND
3 WE TOLD THE BAILIFF OR, I JUST CAN'T RECALL.
4 Q. THIS IS THE SAME DAVID L. DUFF WHOSE SIGNATURE APPEARS
5 ON THE LETTER OF JUNE 14TH, 1979, IN WHICH THE ENTRY OF
6 A DISMISSAL ORDER IS DISCUSSED, IS IT NOT, SIR?
7 A. YES.
8 MR. MONAHAN: THAT'S ALL I HAVE.
9 MR. COSBY: LET ME JUST ASK ONE
10 MORE. I TOTALLY FORGOT ABOUT IT, EXCUSE ME.
11 RECROSS- EXAMINATION
12 BY MR. COSBY:
13 Q. MR. LEWIS, THROUGH ALL OF THIS, THE CASE THAT WE'RE
14 TALKING ABOUT WAS FILED IN THE CIRCUIT COURT OF
15 FAIRFAX, WAS IT NOT? YOUR DISCUSSIONS WITH MR. DUFF?
16 A. THE CASE WE'RE TALKING ABOUT?
17 Q. YES.
18 A. YES.
19 Q. NOW, YOU, AT NO TIME DURING ANY OF THIS, HAD EVER BEEN
20 CALLED UPON TO REPRESENT A MR. ALEXANDER T. YURGAITIS
21 WHO WAS THE DEFENDANT IN A CIRCUIT COURT CASE IN
22 FAUQUIER, LAW NUMBER 41650?
23 A. NO, TO MY KNOWLEDGE, I'VE NEVER REPRESENTED MR. YURGAITIS.
24 Q. AND THE SETTLEMENT THAT YOU MADE AND YOU WERE AUTHORIZED
25 TO MAKE ON BEHALF OF YOUR CLIENT, MR....

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1 A. MY CLIENT WAS MR. STEWARD.
2 Q. ...MR. STEWARD. YOU IN NO WAY NEGOTIATED ANY CLAIM OR
3 ANY DEFENSE ON BEHALF OF MR. YURGAITIS DURING THIS,
4 DID YOU?
5 A. I WAS NOT NEGOTIATING ON BEHALF OF MR. YURGAITIS.
6 Q. IT WAS ONLY MR. STEWARD?
7 A. YES, I REPRESENTED MR. STEWARD ONLY.
8 MR. COSBY: THAT'S ALL I HAVE.
9 RE-DIRECT EXAMINATION
10 BY MR. MONAHAN:
11 Q. MR. LEWIS, I ASSUME AS AN ATTORNEY YOU WERE FAMILIAR WITH
12 THE LEGAL PRINCIPLE THAT ONE WHO CAUSES AN INJURY TO
13 OCCUR THROUGH HIS OWN NEGLIGENCE IS RESPONSIBLE FOR ALL
14 RESULTING DAMAGES TO THE PERSON WHO IS INJURED THROUGH
15 THE NEGLIGENCE OF THE PERSON, WHETHER IT BE AFTER THE
16 TREATING DOCTOR OR BEFORE, OR HOWEVER IT APPROXIMATELY
17 AND DIRECTLY FLOWS FROM THE ORIGINAL ACCIDENT?
18 A. THAT'S MY UNDERSTANDING OF THE LAW.
19 Q. DID YOU HAVE THAT REPRESENTED TO YOU ALSO BY MR. DUFF,
20 SIR, OR DO YOU RECALL?
21 MR. COSBY: I'M GOING TO OBJECT.
22 HE'S ALREADY SAID IN ANSWER TO A COUPLE OF YOUR QUESTIONS
23 THAT THAT SPECIFIC INCIDENCE OR THOSE THINGS WERE NOT
24 SPECIFICALLY DISCUSSED.
25 MR. MONAHAN: I DON'T THINK HE HAS,

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1 MR. COSBY, UNLESS HE SAID THAT THOSE SPECIFIC MEDICAL
2 REPORTS MAY NOT HAVE BEEN DISCUSSED, ALTHOUGH HE WAS
3 AWARE OF ALL OF THE MEDICAL INJURIES.
4 A. I WAS AWARE OF HER INJURIES AND WHAT SHE CLAIMED. I
5 ATTEMPTED TO NEGOTIATE AND TRIED TO POINT OUT IN
6 NEGOTIATIONS IN MY JUDGMENT THAT SOME OF THESE
7 INJURIES SHE CLAIMED WERE ONES AS A RESULT OF OUR
8 ACCIDENT; THERE WAS NO...
9 Q. YES, SIR, WHAT, BUT I'M ASKING YOU WHAT THE POSITION
10 OF MR. DUFF WAS?
11 A. MR. DUFF NEVER CONCEDED IN OUR DISCUSSIONS THAT ANY
12 OF THE INJURIES THAT THE LADY CLAIMED WERE NOT AS A
13 RESULT OF OUR ACCIDENT.
14 MR. MONAHAN: THANK YOU, SIR.
15 WOULD YOU WANT TO ASK ANY FURTHER QUESTIONS, MR. COSBY;
16 OTHERWISE, I'LL ASK HIM IF HE WAIVES SIGNATURE. WHILE
17 HE'S THINKING, WILL YOU WAIVE SIGNATURE AT THE END OF
18 THIS DEPOSITION?
19 A. YES, I WILL.
20 MR. COSBY: WAIT A MINUTE, I'M
21 CONFUSED.
22 RECROSS- EXAMINATION
23 BY MR. COSBY:
24 Q. MR. LEWIS, I THOUGHT YOU SAID EARLIER THAT THE SPECIFIC
25 MEDICAL REPORTS THAT WERE GIVEN BY THE DIFFERENT DOCTORS

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1 WERE NOT SPECIFICALLY DISCUSSED WITH RELATION TO YOUR
2 INJURY OR SOMEONE ELSE'S INJURY, SO THAT YOU WERE
3 SETTLING THE CASE BASED ON WHAT YOU FELT WERE THE
4 INJURIES THAT YOUR CLIENT WAS RESPONSIBLE FOR?
5 A. AS FAR AS I RECALL, WE DIDN'T SIT DOWN AND DISCUSS
6 THE MEDICAL REPORTS. I KNEW WHAT WAS IN THEM, MR.
7 DUFF KNEW WHAT WAS IN THEM, I'M SURE, AND I KNEW
8 WHAT WAS IN THE MOTION FOR JUDGMENT, I KNEW WHAT SHE
9 WAS CLAIMING, I ALSO HAD MY OWN THOUGHTS THAT I DIDN'T
10 THINK SOME OF THE THINGS THAT WERE CLAIMED WERE FROM MY ACCIDENT AND
11 I ARGUED THAT AND WAS PREPARED AS BEST I COULD TO TRY TO
12 REBUT THAT, BUT IT WAS NEVER, THAT WAS MY
13 POSITION AND ARGUMENT. I WAS ASKED IF THERE WAS ANY
14 CONCESSION BY MR. DUFF OR THE PLAINTIFF THAT SOME OF
15 THE INJURIES WERE NOT, IN FACT, ARISING FROM OUR
16 ACCIDENT AND THAT WAS NOT, IT WAS NOT REPRESENTED TO ME.
17 NOW, AS FAR AS I'M CONCERNED, I WAS TAKING CARE OF
18 MR. STEWARD TO THE BEST OF MY ABILITY AND, BUT THERE
19 WAS NO, AS FAR AS I, I WAS READY TO DEFEND THE CASE AND
20 ALL OF THE CLAIMS MADE BY THE PLAINTIFF, ALTHOUGH I DIDN'T
21 THINK THEY WERE ALL AS A RESULT OF MY ACCIDENT.
22 MR. MONAHAN: MAY I JUST ASK THIS,
23 WOULD IT BE APPROPRIATE FOR HIM TO STATE...
24 RE-DIRECT EXAMINATION
25 BY MR. MONAHAN:
Q. THAT YOU ARRIVED AT A COMPROMISE BETWEEN YOUR CONTENTIONS

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1 THAT THE INJURIES ATTRIBUTABLE TO YOUR ACCIDENT WERE
2 LESS THAN ALL OF THE INJURIES AND MR. DUFF'S POSITION
3 THAT YOUR CLIENT WAS RESPONSIBLE FOR ALL OF THE
4 INJURIES, WOULD THAT BE A FAIR STATEMENT OF YOUR
5 COMPROMISED?
6 A. THAT MIGHT BE, I DON'T KNOW WHAT WAS IN HIS MIND.
7 AS FAR AS I'M CONCERNED, THE PLAINTIFF WAS PUSHING
8 FOR OUR TWO DEFENDANTS TO CLAIMING THAT
9 ALL OF THESE INJURIES CAME FROM OUR ACCIDENT.
10 I DIDN'T BELIEVE SO, I DON'T KNOW WHAT WAS IN MR. DUFF'S
11 MIND.
12 Q. NO, SIR, BUT I'M NOT ASKING ABOUT HIS MIND, I'M ASKING
13 ABOUT THE REPRESENTATIONS MADE TO YOU IN AN EFFORT TO
14 ACHIEVE A COMPROMISE AT THE HIGHEST POSSIBLE FIGURE.
15 HE REPRESENTED THAT THAT WAS HIS POSITION, DID HE NOT?
16 HE WANTED TO BE PAID FOR EVERYTHING?
17 A. WELL, SURE, I MEAN, HE WAS TRYING TO GET EVERY PENNY
18 HE COULD FOR HIS CLIENT, I'M SURE AND I'M SURE NO
19 MATTER WHAT WAS IN HIS MIND HE HAD NEVER GOTTEN DOWN
20 FROM ASSERTING THAT ALL OF THESE INJURIES WERE CAUSED
21 IN OUR ACCIDENT AND WE WERE RESPONSIBLE FOR THEM.
22 MR. MONAHAN: THAT'S ALL, THANK
23 YOU, SIR.
24 (WHEREUPON, THE PROCEEDINGS WERE CONCLUDED.)
25

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ASSIGNMENTS OF ERROR

I. The Trial Court erred in holding that, as a matter of law, the original wrongdoer was legally responsible for those injuries ultimately inflicted upon Plaintiff by the Defendant.

II. The Trial Court erred in granting the Defendant's Plea of Release and dismissing Plaintiff's action, where the evidence showed that Plaintiff had not received "full satisfaction" for her injuries.

III. The Trial Court erred in finding, as a matter of law, that the Defendant and the original wrongdoer were joint tortfeasors.

IV. The Trial Court erred in holding that the Plaintiff had treated her injuries as indivisible and therefore a settlement necessarily represented "full satisfaction".