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Re: ***Simione & Hackendorn v. Vignola***  
C.A. No. 01C-02-105-JRJ

Dear Counsel:

An Inquisition Hearing was held in the above referenced matter on September 18, 2001. The following evidence was presented at the hearing regarding damages suffered by plaintiffs David Simione and Amy Hackendorn Simione.

**David Simione**

David Simione, a pleasant, well spoken twenty-seven year old collection agent for a finance corporation, testified that prior to the July 23, 1999 accident, he had no injuries to his neck or back. This testimony was un rebutted. Mr. Simione testified that in the collision on July 23, 1999 he sustained injuries to his head and neck when his head hit the car window or the door pillar. Mr. Simione was taken from the accident by ambulance and transported to the emergency room at Christiana Hospital. In the ER, he complained of dizziness, a headache on the right side of his head and pain in his neck and right shoulder. He was prescribed an anti-inflammatory and a muscle relaxant and told to follow up with his family doctor. The following day, in addition to

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the problems noted in the ER, Mr. Simione experienced severe pain in his lower back. Mr. Simione testified that he missed 2-3 days of work as a result of his injuries. On July 26, 1999, he saw one of the physicians in his family doctor's practice who diagnosed a thoracic strain. On August 3, 1999, he saw Bruce Grossinger, D.O. of Swarthmore Neurology Associates, P.C. Dr. Grossinger is board certified in neurology. Mr. Simione reported to Dr. Grossinger that he experienced headaches after the accident but that they had improved substantially. He reported that he had severe low back pain that had been troubling him at work. Dr. Grossinger diagnosed a thoracic and lumbar strain with sacroiliac dysfunction. Concerned that Mr. Simione might have herniated discs or spurs in the thoracic or lumbar spinal distribution, Dr. Grossinger recommended that Mr. Simione undergo a thoracic and lumbar MRI. Dr. Grossinger prescribed a muscle relaxant and physical therapy. Mr. Simione subsequently underwent an MRI which was normal. He never went to physical therapy. Dr. Grossinger related Mr. Simione's injuries to the accident of July 23, 1999. On October 18, 2000 Dr. Grossinger again examined Mr. Simione. Dr. Grossinger noted Mr. Simione had weakness of the hip flexors and extensors and positive root tension signs with tenderness in the distribution of the sacro-iliac. Dr. Grossinger testified in a deposition taken after the inquisition hearing<sup>1</sup> that Mr. Simione's injury is

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<sup>1</sup>At the inquisition hearing, defendant objected to the October 18, 2000 narrative report of Dr. Grossinger (in which Dr. Grossinger opined Mr. Simione's injuries were permanent) as

permanent.

Mr. Simione testified that he is currently not taking any pain medication for his back pain but that he has pain more than once a week. He further testified that he can perform household chores, but he experiences back pain afterward. He reported that any activity that involves lifting bothers his back and if he lifts too often or lifts something too heavy he experiences severe back pain that usually causes him to miss two to three days of work. Given that (1) Mr. Simione's un rebutted and credible testimony established that two years post accident he still experiences back pain more than once a week, and (2) Mr. Simione is only twenty-seven years old and the un rebutted expert evidence establishes his injury is permanent, the Court finds that reasonable and just compensation for his injuries is \$10,000.00.

**Amy Hackendorn Simione**

Amy Hackendorn Simione, thirty years old, works for Mid-Atlantic Realty. Like Mr. Simione, she was articulate in describing the impact her injuries have had and continue to have on her life. And, like Mr. Simione, she testified that prior to the auto accident of July 23, 1999 she never had any problems with her neck, head or back. This testimony was un rebutted.

Ms. Hackendorn Simione described herself as extremely distraught after the accident.

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hearsay. The Court sustained the objection and ordered that the record remain open until plaintiff could either depose Dr. Grossinger or arrange for him to testify live. Dr. Grossinger's deposition was taken on October 9, 2001 and the transcript was provided to the Court on October 17, 2001.

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She testified that upon impact her airbag deployed causing pain in her arm and upper chest. She accompanied Mr. Simione to the hospital in the ambulance but was not treated that day. The next day, she noticed welts on her chest from the seatbelt and felt pain in her arm, upper chest, neck, wrist and head. She went to the ER for treatment. ER records reveal she complained of head and neck pain radiating to her shoulder blades. A physical exam revealed muscle spasms and decreased range of motion in her neck. She was prescribed pain medication and a muscle relaxant and told to follow up with her family doctor. Ms. Simione saw her family doctor on July 26, 1999. He prescribed physical therapy three times a week for three weeks. Ms. Simione testified that after attending a few sessions of physical therapy the major stiffness had subsided and therefore she discontinued physical therapy and performed exercises at home.

Ms. Simione saw Dr. Grossinger on August 3, 1999. She told Dr. Grossinger that within two and a half hours after the accident she suffered from a sharp burning, right-sided headache, right neck pain and right shoulder stiffening. Upon examination, Dr. Grossinger found spasm and tenderness in her cervical paraspinous regions to the low right side in addition to a positive spurling's sign. She also had tenderness in the right trapezius, infraspinatus, with restricted shoulder mobility to elevation, abduction and internal rotation. Dr. Grossinger concluded that Ms. Simione suffered from post-traumatic headaches with right occipital neuralgia, cervical strain, right trapezius and rhomboid bursitis, in addition to the possibility of a cervical root or brachial plexus traction injury. He further concluded that her injuries were directly related to the accident on July 23, 1999. Dr. Grossinger recommended that she undergo an MRI of the cervical spine, needle electromyography and physical therapy. An MRI was performed and it revealed a slight straightening of the normal cervical lordosis. The record does not indicate

whether Ms. Simione underwent needle electromyography. She underwent physical therapy as described above.

Ms. Simione testified that she still experiences headaches three to four times a week as a result of the accident. On occasion, they are so severe that she must take three to four extra strength Tylenol to obtain relief from the pain. Ms. Simione also testified that she still experiences tightness and burning in her shoulder and pain in her neck and head. When asked about activities that exacerbate her symptoms, Ms. Simione explained that, among other things, she cannot row the boat she and Mr. Simione own without experiencing pain in her shoulders. She has tried to row, but as a result, she was unable to do much of anything for two days afterwards. It is difficult for her to sit at her computer for long periods of time. If she does so, she experiences tightness and burning in her shoulder. Ms. Simione's un rebutted and credible testimony makes clear that she still suffers from headaches and shoulder pain as a result of this accident. However, unlike Mr. Simione, she presented no expert medical testimony that these injuries are permanent.

In light of these facts, the Court concludes that reasonable and just compensation for Ms. Simione's injuries is \$5,000.00.

Because plaintiffs are the prevailing parties, Dr. Grossinger's fee for appearing at deposition is assessed against defendant.

IT IS SO ORDERED.

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Jan R. Jurden, Judge

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