

April 27, 2001

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**RE: Cathy Messinger v. Ian Wilkinson
C.A. No. 98C-07-007 CHT**

**Submitted: January 22, 2001
Decided: April 27, 2001**

**On Plaintiff Cathy Messinger's Motion for a New Trial. Granted.
On Defendant Ian Wilkinson's Motion for Costs. Denied.**

Dear Counsel:

The plaintiff has filed a Motion for a New Trial asserting that the verdict is against the great weight of the evidence. The Court agrees and will grant the motion.

The evidence at trial established that the plaintiff was operating her motor vehicle on Interstate 495 in the early morning hours of July 23, 1996 when she collided with the defendant's vehicle. There is no evidence to suggest that the plaintiff was operating her motor vehicle in an unsafe or inappropriate manner, and she was driving within the posted speed limit.

In contrast, the defendant had been operating his motor vehicle northbound on Interstate 495 when he fell asleep and collided with the guardrail adjacent to the left lane of the highway. Unable to move his vehicle, he decided to abandon it and began walking up Interstate 495 to seek assistance. The defendant's vehicle was situated against the guardrail, which separated the north and southbound lanes of traffic, and extended approximately three feet into the left lane of travel. The defendant turned off his lights because of his concern about running down his battery and did not activate his flashers. As a result, the plaintiff, traveling at 65 miles per hour, came upon a non-illuminated vehicle in her lane of travel and failed to avoid colliding with it.

The only evidence offered to suggest that the plaintiff might also be negligent was

the non-expert testimony of the police officer that headlights normally illuminate 500 feet in front of a vehicle, and as a result of the position of the defendant's vehicle when he responded to the accident site, those lights should have reflected off the rear of the abandoned vehicle. The defense counsel then crafted an effective argument that the plaintiff would have had sufficient time to observe the vehicle and react to the condition so as to avoid the collision. Even if this was an appropriate argument, which the Court in hindsight now believes should have been excluded since there was no expert basis to support the assertions made by the defense counsel in his closing, the verdict of the jury finding that the plaintiff was 70% liable for the accident simply shocks the conscience of this Court and is clearly against the great weight of evidence. The evidence simply does not support the jury's verdict.

There is no dispute between the parties as to the legal standard the Court must apply in deciding this motion. The Court must be convinced that the verdict was against the great weight of evidence.¹ Further, the trial judge must act "with great caution and with extremely careful regard for the role of the jury",² and the Court should seldom interfere with their verdict.³ I have a very high regard for the wisdom and common sense routinely exhibited by our jurors and have never before reversed one of their decisions. However, this case has finally tipped those scales, and I would be unfaithful to my duty and responsibility to let the verdict stand.

As a result, the jury's verdict is vacated, and the plaintiff's Motion for a New Trial is granted. Counsel should contact Judge Toliver, to whom this case was originally assigned, for a new trial date. In addition, as a result of this decision, the basis for the defendant's Motion for Costs is moot, and that motion is denied.

Sincerely yours,

Judge William C. Carpenter, Jr.

WCCjr:twp

**cc: The Honorable Charles H. Toliver
Prothonotary**

¹ *Storey v. Camper*, Del. Supr., 401 A.2d 458, 465 (1979).

² *Ellis v. Shipe*, Del. Super., C.A. No. 92C-09-191, Quillen, J. (Mar. 21, 1995)(Letter Op. and Order)(*quoting Storey*, 401 A.2d at 464).

³ *Stabler v. Smith*, Del. Super., C.A. No. 93C-07-087, Quillen, J. (May 16, 1996)(Order).

