

TO: Judge
FROM: Maggie
DATE: 4 May 1982
RE: Civil action # 81-161

LEONARD & BILL WELLMAN vs. RONNIE LEE HOWELL

Pre-trial conference (The coal chunk through
Wednesday, 1:00 p.m. windshield case)

Jury trial: 5/19

TYPE OF ACTION: Personal injury/property damage action for negligence

- DEFENSES:
- 1) denial that, if plaintiff was indeed injured by a chunk of coal falling off a coal truck, it was coal from this defendant's truck. Defendant says it was someone else's truck, driven by someone else, from which the coal fell.
 - 2) a bar against the requested recovery because of plaintiff's being subject to KRS 304.39, etc. (Ky. Motor Vehicle Reparations Act), thus making his reparations obligor, Aetna Life & Casualty, the entity entitled to recover as to \$10,000.
 - 3) Statute of Limitations - nothing's been said about this since one sentence in defendant's answer.
 - 4) contributory negligence, on the part of both plaintiffs
 - (NOTE: 5) In deft's PTC memo, he lists this substantive legal issue: "Whether or not the maintenance of this action is barred by reason of the failure of plaintiffs to join the shipper and loader of coal as a party defendant to this action."

* Judge, this is the first mention of this matter during the entirety of this action. If this is meant to be an argument for dismissal for failure to join a Rule 19 party, it should have been raised in the answer or by a motion to dismiss much earlier than this, and certainly it shouldn't have been raised by this one, unsupported statement in a PTC memo!)

- ISSUES:
- 1) whether the coal came from defendant's truck.
 - 2) if the coal did come from defendant's truck, was defendant negligent and, if he was negligent, was that negligence the proximate cause of the accident?
 - 3) whether res ipsa loquitur applies, so as to shift the burden of proof.
 - 4) whether either or both plaintiffs were negligent.
 - 5) who owned the ambulance which was damaged by the coal?
 - 6) what is the effect on plaintiff's standing to sue or on his right to recover of Ky's no-fault insurance law and plaintiff's failure to reject the law's limitation on his right to sue in tort for this motor vehicle accident?
 - 7) what were the extent of the damages suffered?

PREPARATION FOR CONFERENCE:

- 1) Plaintiffs have done an admirable job!
 - a) a good memo
 - b) a witness list, accompanied by statement of expert witness's credentials (shows 10 or 11 names)
 - c) an exhibit list (medical bills, various photographs, hospital records, documents relating to the damaged ambulance. . .)
 - d) copies of the exhibits
 - e) copies of cases in support of their position
- 2) Defendant offers a good memo

(continued)

TO: Judge
FROM: Maggie
DATE: 5/4/82
RE: Civil #81-161 (continued)

WELLMAN v. HOWELL

PTC

RECOMMENDATIONS FOR CONFERENCE

- 1) You might want to suggest bifurcating the trial, so as to try damages separately, since the damages part will get into how much plaintiffs have already received from the insurance company, (defendant arguing that Ky Motor Vehicle Reparations Act bars suit for part of the damages).
- 2) You might construe the statement by defendant about plaintiffs' failure to join a party defendant as a motion on that issue and overrule it as untimely.
- 3) You can probably get them to stipulate as to the admissibility of and the foundation for plaintiffs' hospital record exhibits.
- ★ 4) NOTE: Very odd here. Plaintiffs, in their PTC memo, are quite concerned that the jury may find out the fact that plaintiffs' co-counsel are from Louisville. ". . . Plaintiffs ask the Court to rule that no mention should be made of where Plaintiffs' co-counsel live and principally practice." (Plaintiffs' PTC memo, p. 5)
- 5) You could ask defendant whether he'd stipulate to the trade catalog that plaintiffs want to use to show fair market value of the equipment in the damaged ambulance.
- 6) The deposition of plaintiff's plastic surgeon was taken by video-tape. Would you want to see the tape before allowing it to be shown at trial? I don't know anything about the procedure involved here. And, at trial, you'll need to remember to tell the jury about giving the tape the same weight they'd give to in-person testimony. For now, you could ask all counsel whether they've seen the tape and whether there are any objections to it or the manner in which it was made.

TO: Judge

FROM: Maggie

DATE: 12/16/81

RE: Leonard Wellman, et al. vs. Ronnie Lee Howell

PRELIMINARY CONFERENCE AT 3:00

TYPE OF ACTION: Negligence/ personal injury & property damage

PARTIES: Plaintiffs are Leonard Wellman, driver of car
and Bill Wellman, owner of the car and
father of Leonard
Defendant is owner and driver of coal truck from
which plaintiffs allege fell a block
of coal which crashed into their car

PLAINTIFFS' POSITION:

That defendant was negligently operating an
over-loaded coal truck and that a 50-lb. chunk
of coal fell from the truck and crashed through
the window of Bill Wellman's car, being
driven by his son, Leonard Wellman, as the
two vehicles passed going in opposite directions,
causing injury to the driver and to the car.

DEFENDANT'S Plaintiffs plan to prove the elements of
res ipsa loquitur, as well as all the elements
of a negligence cause of action.

DEFENDANT'S POSITION:

That it was someone else's coal truck involved.
That the complaint fails to state a claim.
That Leonard Wellman is time-barred.
That Leonard Wellman was contributorily negligent.
That the action is barred by the Ky. Motor
Vehicle Reparation Act, Subsection 39 of
KRS Chapter 304, since plaintiffs have
not sustained sufficient damage.
That Bill Wellman was contributorily negligent,
either on his own or in concert with his son.

CURRENT STATUS:

Both parties submitted memos, though defendant's
is so cursory as to be virtually useless.
Plaintiff has undertaken some discovery.