

8-3-81

BERTELSMAN, KAUFMANN, ZALLA & SEIDENFADEN

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July 31, 1981

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Newport, Kentucky 41071  
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Please Reply To:

Newport Office

Hon. G. Wix Unthank  
United States District Court Judge  
Eastern District U.S. Courthouse  
Pikeville, Kentucky 41501

Re: Richard S. Wood, Jr. vs James B. Carter, et al  
Case No. 79-44

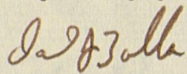
Dear Judge Unthank:

You will please find enclosed for your convenience a copy of a joint motion for continuance of trial along with two attached affidavits of counsel. A trial date is scheduled for September 24, 1981 and the completion for discovery is set for August 11, 1981. For the reasons set forth in the attached affidavits, counsel for both parties are requesting that you consider continuing the trial date and the discovery cutoff date.

The originals of the motion and affidavits have been forwarded directly to the U.S. District Clerk, but because of the need for a ruling at this time, copies have been sent to you.

Thank you for your consideration of the matters herein.

Very truly yours,



Daniel J. Zalla

DJZ/sp

Encl:

cc: Rodney S. Bryson



**BERTELSMAN, KAUFMANN, ZALLA & SEIDENFADEN**

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January 25, 1982

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Newport, Kentucky 41071  
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110 West Second Street  
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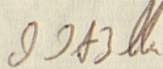
Dear Judge Unthank:

In compliance with your Order of January 12, 1982, you will please find enclosed an Agreed Order which has been executed by all counsel.

We are at the present time working out the guarantee on that part of the settlement which requires \$1,000.00 per month for one hundred ten (110) months. It is anticipated that an Agreed Entry of Dismissal with prejudice will be executed within the next thirty (30) days.

Thank you for your attention to this case.

Very truly yours,



Daniel J. Zalla

DJZ/ljl

Encl.

cc: Mr. Harry D. Hirsch, Jr.  
Mr. Robert E. Ruberg  
Mr. Rodney S. Bryson



*Monday*

Judge: This is set for pre-trial conference on January 11, 1982. There are several motions which you need to rule on, be it now or at the pre-trial conference.

- (1) Exhibit #41: Motion by plaintiff to compel discovery --to answer more fully the interrogatories #11 and 12.

Recommendation: I would sustain this motion. The defendant's answer is "This info is in the hands of my attorney." That doesn't cut it.

- (2) Exhibit #45: Motion by plaintiff to amend the Ad Damnum clause of the complaint from \$750,000 to \$2,000,000.

Recommendation: Probably sustain this motion, but I would hear the reason for it at the pre-trial conference.

- (3) Exhibit #46: Motion by plaintiff to take deposition of Doc LAWSON by videotape on January 13, 1982.

Recommendation: It appears that we have sustained this motion by Order dated November 3, 1981, but I think the problem which arises here is that the plaintiff wishes to take this deposition out of time from the discovery completion date of December 11, 1981. I would probably want to hear a darn good reason for this, inasmuch as the deposition will be taken after the pre-trial conference and therefore will take away the defendant's chance of ~~objecting~~ raising objections to it at the pre-trial conference.

- (4) Exhibits ## 49 and 50: #49 is motion by defendant for summary judgment and #50 is a memo supporting the motion.

Recommendation: This could indeed resolve the entire case, inasmuch as the defendants argue that the plaintiff was negligent per se by parking on the emergency strip of I-71; and that this is contributory negligence bars recovery.

I think the defendants have a very good argument here, but the plaintiff should be heard from at the pre-trial conference as to the negligence per se issue. If there is a question as to whether the plaintiff had pulled onto the emergency strip because there was an emergency (and what "emergency" is could probably be another question of fact), then you shouldn't grant summary judgment. Right now, however, the defendants' argument looks good.

- (5) Exhibit #51: Motion by defendants : they object to the taking of Doc Lawson's depo by videotape or in the alternative, they want you to require the plaintiff to pay the expenses of defense counsel to go to Michigan to retake the deposition.

Recommendation: This is in essence a protective order. Once again, we have stated in a prior order that we would consider this motion for a protective order, and I think this time we should consider it carefully, inasmuch as the scheduled depo of Doc Lawson is to take place Jan. 13 --two days after the pre-trial.

If we allow the plaintiff to take the depo again, then we should sustain the defendants' motion to the extent of requiring the plaintiff to pay the costs of the defendants' attorney in dealing with the 2d depo.

- (6) Exhibit #54: motion by plain-tiff for extension of time to file a pretrial brief and to respond to the defendants' motion for summary judgment. The plaintiff asks for time up till Jan. 5.

Recommendation: sustain the motion, but make sure he gets the memos in by the pre-trial



Civil action no, 79-44 COVINGTON

RICHARD S. WOOD VS JAMES B. CARTER

+++++1/4+++++

1. Auto accident action. Defendants are the driver and the corporate owner of teh vehicle under respondeat superior.
2. Teh defendants have moved to dismiss on grounds that the Complaint fails to state jurisdiction. Although no statute is stated, the basic facts of jurisdiction are stated. Teh motion should be denied.
3. The defendants also move to dismiss the defendnat Silas Carter on grounds thtat he has no connection with the matter other than he was riding in the car of defendant when the accidnet occured. Should be granted, however, ask counsel about this at the conference.
4. The issues are the events of teh accident. Defendant further cites a Knetucky regulation which prohibits stopping on the side of a controlled access highway except for emergency, and relies thereon as negligence per se. (The plaintiff was stopped on I-71 when the defendants struck their truck. Dfendants state this regulation shows contributory negligence as a matter of law.
5. ~~No memo from plaintiff.~~

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Need cut-off date, pre-trial conference date, trial date. There will probably be motion for summary judgment from the defendant later.



ASSIGNED FOR PRELIMINARY CONFERENCE AT PIKEVILLE, KY.

ON APRIL 13, 1981 AT 11:00 A.M.

COVINGTON  
~~PIKEVILLE~~ CIVIL NO. 79-44

RICHARD S. WOOD, JR.

DANIEL J. ZALLA  
HARRY D. HIRSCH, JR.

VS:

JAMES B. CARTER, ET AL

RODNEY S. BRYSON

PRELIMINARY CONFERENCE