

Margaret Hertz v. Phillip Aycup

STATEMENT OF THE CASE

On November 18, YR-2, Margaret A. ("Meg") Hertz, a senior programmer for Bolder Computer Corporation, Inc. ("BCCI") located at 154 Cherry Street, Flagstaff; New State, was to make a presentation before the board of directors of BCCI. She awakened at 7:15 a.m. She left her house at 8:00 a.m.

At 8:33 a.m., Meg was walking north across Cambridge Street, three blocks from the BCCI office. Traffic lights and pedestrian signals controlled the intersection. Cambridge Street has three travel lanes in each direction divided by an island. It was 45° F, clear and windy.

As Meg was crossing the westbound lanes of Cambridge Street, the side of a bus turning left from New Chardon Street onto Cambridge Street struck her. She fell, hit the left side of her head, and lost consciousness briefly.

Phillip Aycup, a licensed commercial bus driver for Bancroft Bus Lines, was the driver of the bus. Driving north on New Chardon Street, he had entered the intersection on a green light and turned left onto Cambridge Street.

Aycup got out of his bus and rushed over to see whether Meg was hurt. As a witness reported, Aycup said to her, "I had a green light. What's the matter with you?" He then realized that Meg was very groggy and not quite conscious.

Although she was not bleeding, Phil could see that Meg had a small bruise on the right side of her forehead. "Don't move," said Phil, "I'll get help." Within minutes a police car and an ambulance were on the scene. Officer Harry Callahan, sporting a really thick gray beard, hurried over to Meg, with Phil following closely behind. Meg said to Officer Callahan, "That guy ran the light and hit me. It was all his fault. Now I'm going to be late for work." Stunned by the accusation, Phil responded, "She even admitted it was her fault! She was in a hurry because she was late for work!" Meg was furious. "Late for work?" she shouted. "I don't have to be at work until 9:00, and it's only 8:30!"

"I saw the whole thing," said a voice from the crowd that had gathered. Donovan Mello stepped forward and identified himself to the police officer. He reported that the bus had turned at a high rate of speed, perhaps 30 mph, without yielding to cars turning right from Bowdoin onto Cambridge Street or pedestrians crossing the street.

Officer Callahan took statements from Hertz, Aycup, and Mello. Concerned about Hertz, Callahan returned to his car radio and called for an ambulance. Meg was taken to Flagstaff General Hospital, where she was seen in the emergency room and then released. A CT scan of her head was negative. Her discharge diagnosis from Flagstaff General Hospital indicated: "possible mild concussion/MVA; minor neck sprain." Ms. Hertz returned to work three days after the accident.

Meg saw Dr. Ramanan Bombay, her family doctor, two weeks after the accident. She complained of insomnia and a "sore neck." Dr. Bombay prescribed a sleeping pill, which Meg stopped taking after a few days, as the medication did not appear to be helping. Three weeks after

the accident, she noticed that she was having difficulty concentrating at work. She was irritable, easily frustrated, and temperamental. She experienced frequent non-specific headaches, receiving only minimal relief from over-the-counter pain relievers. Meg continued to be troubled by sleep disturbances; she had difficulty falling asleep, as well as staying asleep.

Meg was one of her company's top programmers and was frequently given challenging assignments. Several weeks after the accident she felt that she was in a "slump" and was having difficulty solving what would ordinarily be routine problems for her. She felt she could no longer perform her job as well as she had previously, and her self-confidence declined.

After seeing a continuing medical education cable television program, Ms. Hertz began to think that her problems might be related to the accident. A lawyer friend, Louis I. Able, recommended Irving M. Newrough, M.D. Dr. Newrough first examined Meg six weeks after the accident and diagnosed a cerebral concussion or contusion with a residual head injury syndrome with cognitive deficits. Meg continued to have trouble performing her work duties, and Dr. Newrough suggested taking a medical leave of absence.

Dr. Newrough told Meg that she probably would never be able to resume her employment as a computer programmer. Dr. Newrough also told her that if she could return, returning to her prior level of competence was doubtful. Three months after the accident, she went back to work for four days, but her supervisor then told her to stay home until she could "really do the job again." She has not returned to work.

Meg began to withdraw, avoiding friends and family. She had no means of support and feared that her home would fall into foreclosure.