

HERTZ,

Plaintiff,

vs.

AYCUP,

Defendant.

_____ /

TRANSCRIPTION OF SWORN DEPOSITION

MARGARET HERTZ

DECEMBER 2

MAGNA LEGAL SERVICES

866-624-6224

WWW.MAGNALS.COM

1 PROCEEDINGS

2 Q. What is your name?

3 A. Margaret A. Hertz.

4 Q. Where do you live?

5 A. 12 West Meridian Street, New Britain.

6 Q. How old are you?

7 A. 44.

8 Q. Where do you work?

9 A. I work at 154 Cherry Street in Flagstaff.

10 Q. What do you do for a living?

11 A. I am a senior programmer for Bolder
12 Computer.

13 Q. On the morning of November 18, YR-2 were
14 you involved in an accident?

15 A. Yes, I was.

16 Q. Where did the accident happen?

17 A. At the corner of Cambridge Street and New
18 Chardon Street.

19 Q. Where were you going at the time?

20 A. I was walking from the subway station to my
21 work.

22 Q. Were you alone?

23 A. Yes.

24 Q. What time had you left your house that
25 morning?

1 A. About 8. I took the bus to the subway and
2 got off at the Cambridge Street Station.

3 Q. And what time did you get up that morning?

4 A. Well, I was going to work, and I usually
5 get up about 6:45. That morning I had planned on
6 getting up at 6:15, but my alarm didn't go off; and
7 I guess I got up about 7:15 and got out about 8:00.

8 Q. Why had you planned on getting up earlier
9 than usual on that day?

10 A. Well, I was making a presentation to the
11 board of directors, and I wanted to make sure that
12 everything went right. I was being considered for a
13 promotion into a management position, and I knew
14 that they would be evaluating my performance that
15 morning.

16 Q. Were you distressed by the fact that you
17 were running late that morning?

18 A. No. I had planned on going over my notes
19 one more time in the morning, which is why I wanted
20 to wake up early. But it wasn't really a big deal.
21 Even though I overslept I still had plenty of time
22 to get to work. I had prepared the night before, so
23 it wasn't so important that I review my notes that
24 morning. Anyway, I had reviewed them on the subway.

25 Q. What time were you supposed to make your

1 presentation at the meeting?

2 A. Well, they were supposed to begin the
3 meeting at 8:45, and they were going to let me know
4 when they were ready for me. I knew that they had
5 some other business to attend to, so I did not
6 expect that they would get to me before 9:00.

7 Q. What was the weather like?

8 A. It was cool and windy.

9 Q. Did you stop anywhere after getting off the
10 subway?

11 A. I stopped and grabbed the newspaper and a
12 cup of coffee at the stand at the subway stop, just
13 like I do every morning.

14 Q. Then what did you do?

15 A. I walked to the corner of Cambridge Street
16 and New Chardon and waited to cross Cambridge Street
17 to go up Bowdoin Street to Cherry.

18 Q. I'm sorry. But where is Bowdoin Street?

19 A. New Chardon becomes Bowdoin Street on the
20 other side of Cambridge

21 Q. Just so we can get oriented, which way does
22 Cambridge Street run?

23 A. Cambridge runs east and west, and New
24 Chardon runs north and south on the south side of
25 Cambridge - Bowdoin is what New Chardon is called on

1 the north side of Cambridge.

2 Q. When you got to the intersection, what
3 corner were you standing on?

4 A. I was on the southwest corner.

5 Q. And where were you heading?

6 A. I was going to walk through the
7 intersection to the north side of Cambridge.

8 Q. How many lanes is New Chardon Street at the
9 intersection?

10 A. Five. Three lanes heading north and two lanes
11 heading south.

12 Q. How many lanes is Bowdoin Street?

13 A. Six - three heading south and three heading
14 north.

15 Q. How many lanes is Cambridge Street?

16 A. Five - two lanes plus a bicycle path heading in one
17 direction and three lanes heading the other direction.

18 Q. Is Cambridge Street divided?

19 A. There is an island down the middle.

20 Q. Are there crosswalks at the intersection?

21 A. There are crosswalks going across Cambridge
22 Street from north to south.

23 Q. Are there traffic lights?

24 A. Sure.

25 Q. Where are the lights?

1 A. I don't know whether there are overhead
2 lights because I never drive in that area.

3 Q. Okay. But are there other traffic lights?

4 A. Yeah. There are lights on poles all around
5 the intersection.

6 Q. Where are they?

7 A. The only one I ever looked at was on the
8 far side of Cambridge Street at the corner.

9 Q. Which corner would that be?

10 A. Cambridge Street and Bowdoin Street.

11 Q. Which corner?

12 A. That would be the northwest corner.

13 Q. What signals are there on that light?

14 A. What do you mean?

15 Q. Are there arrows and turn signals?

16 A. I don't really know. I don't pay attention
17 to that since I don't drive there.

18 Q. Are there pedestrian signals?

19 A. Do you mean "walk" and "don't walk" lights?

20 Q. That's what I mean.

21 A. Yes. There are. They are on the same
22 poles as the lights.

23 Q. What color was the light when you got to
24 the corner?

25 A. It was red for traffic on Cambridge Street

1 so I started across.

2 Q. Was the "Walk" sign on?

3 A. I didn't notice - but if the light was red
4 for Cambridge Street traffic I could cross at least
5 to the island.

6 Q. What do you mean by that?

7 A. Well, it is really tough to get all the way
8 across the intersection on the "Walk" signal. So
9 what most people do is cross halfway and wait on the
10 island until it is safe to cross the rest of the
11 way.

12 Q. Was that your usual practice?

13 A. Me and everyone else.

14 Q. Was the light "Walk" or "Don't Walk" when
15 you walked to the island?

16 A. I don't know, and it wouldn't have mattered
17 to me either way. If traffic on Cambridge Street
18 had a red light, it was clear to cross. So I would
19 go. That's the only way to do it.

20 Q. What were you doing as you walked across
21 the street?

22 A. I was just walking and thinking about my
23 upcoming presentation.

24 Q. Were you watching where you were walking?

25 A. Of course I was. You know how city drivers

1 are.

2 Q. How long did it take you to get to the
3 island?

4 A. Probably three seconds.

5 Q. How long did you wait on the island before
6 you started across the second half of Cambridge
7 Street?

8 A. A few seconds. It was really pretty windy,
9 and I didn't want to stand there any longer than I
10 had to.

11 Q. Well do you mean: 2 second, 5 seconds, 10
12 seconds, what?

13 A. I would say about 10 seconds.

14 Q. Before you stepped off the island, where
15 did you look?

16 A. I looked at the light pole and saw that the
17 light for Cambridge Street was red, so I started
18 across.

19 Q. What was the light for traffic on New
20 Chardon?

21 A. I think that was red also. I think it was
22 a four-way red for pedestrians.

23 Q. What was the pedestrian signal at that
24 time?

25 A. I don't recall specifically, but it said

1 "Walk" I'm sure.

2 Q. Did any cars go past you west on Cambridge
3 Street while you were on the island?

4 A. None before that bus hit me.

5 Q. Were there any cars making a right turn
6 onto Cambridge Street from Bowdoin Street?

7 A. I wouldn't have started across the street
8 if there had been.

9 Q. Were you in the crosswalk?

10 A. I stepped straight off the island into the
11 crosswalk.

12 Q. Were you still thinking about your
13 presentation?

14 A. Yes.

15 Q. Then what happened?

16 A. I took about three steps, and the bus came
17 out of nowhere and hit me on the right side of my
18 face. I never saw it.

19 Q. How fast was the bus traveling?

20 A. It must have been going at least 25 miles
21 an hour. It just came tearing around the corner,
22 and I had no time to do anything. I lost
23 consciousness. Later I heard someone say that bus
24 was speeding.

25 Q. Do you remember anything about what

1 happened at the scene after you were hit?

2 A. After I regained consciousness, I saw that
3 there were paramedics and cops and people all
4 around. They asked me what my name was, what year
5 it was, and who was the President. I remember first
6 seeing this big cop with a thick gray beard because
7 the sight of him frightened me.

8 Q. Were you able to answer all of those
9 questions?

10 A. Yes, I think so.

11 Q. Did the paramedics ask what was wrong with
12 you?

13 A. I told them that I had hit my head and was
14 a little groggy. I had a terrible headache. I
15 showed them a little lump I could feel while I was
16 lying on the ground. I also told them that my neck
17 felt tight.

18 Q. What did you mean when you told them that
19 your neck felt tight?

20 A. Well, it felt like it was whiplashed, so it
21 was stiff and a little sore.

22 Q. What happened after that?

23 A. Well, they told me that they were going to
24 take me to the hospital, and that I shouldn't move.
25 Then they strapped me to a board and put a collar on

1 me and put me in the ambulance.

2 Q. Did you say anything else to them?

3 A. I remember being scared. I complained
4 about my excruciating headache. I'm claustrophobic,
5 so I kept asking them why I had to be strapped down.

6 Q. What did they say?

7 A. They said that it was routine procedure
8 anytime someone complains of back or neck pain. It
9 made me crazy.

10 Q. Do you recall how long after the accident
11 the paramedics arrived?

12 A. I really don't. I was unconscious for a
13 time, and I don't know how long it took for me to
14 regain consciousness. The paramedics and police
15 were on the scene when I came to. If I had to
16 venture a guess, I would say that it seemed as
17 though it was only a few minutes. I remember
18 thinking that they got there pretty fast.

19 Q. What happened when you got to the hospital?

20 A. Well, I don't remember much, but they
21 rushed me into the emergency room and moved me onto
22 a stretcher. Then they got some information from
23 me: name, address, insurance. After I was there on
24 the stretcher for about a half-hour being ignored, I
25 needed something for my headache. A doctor told me

1 that he wanted to do a CAT scan. I remember
2 thinking that it sounded serious.

3 Q. Did they do the test?

4 A. Yes. They did the test. I had to sign
5 some forms, and then they took me for the scan. I
6 asked them what it was for, and I think they told me
7 that it would measure my brain. They never
8 mentioned my headache.

9 Q. Did anyone tell you the result of those
10 tests?

11 A. Yes. It seemed like hours later the doctor
12 came in and told me that I was fine, and that I
13 could go home. He said that I had a concussion, but
14 I was okay.

15 Q. Did he give you any instructions?

16 A. Yes. He told me that if I vomited I should
17 come back in right away.

18 Q. Did you vomit?

19 A. No. I stayed home from work for two days.
20 I thought that I was getting better, so I went back
21 to work. I figured that I had been out long enough
22 and would already have a tough time catching up. I
23 was afraid they'd hire a temp, and then I'd have no
24 job.

25 Q. Did you have symptoms following the

1 accident?

2 A. Well, I had recurring headaches, but they
3 would be really bad, not like any other headaches I
4 had ever had. I would take aspirin or ibuprofen,
5 but that would only help a little.

6 Q. How frequently would you get these
7 headaches?

8 A. They would come and go. Right after the
9 accident, it seemed as though I was getting one
10 every day. I still get them at least two or three
11 times a week.

12 Q. How long do they last?

13 A. Sometimes they only last for an hour or
14 two. Sometimes it seems like it lasts all day. I
15 feel like my head is in a vise.

16 Q. Do these headaches come at any particular
17 time of the day?

18 A. I guess there really isn't a particular
19 time, although it seems that I have them most
20 frequently in the afternoon.

21 Q. How frequently do you get the neck
22 stiffness?

23 A. That seems to come along with the
24 headaches.

25 Q. Have you had any other symptoms since the

1 accident?

2 A. Well, I can't sleep at night. I used to be
3 a great sleeper. Since the accident, I've had
4 trouble falling asleep, and once I do fall asleep, I
5 have trouble staying asleep.

6 Also, after the accident, I began to notice
7 that I was having difficulty concentrating at work.
8 I am usually an "up person," but it seemed that I
9 was very irritable and frustrated; and a couple of
10 times I just blew up over things that just weren't
11 that bad.

12 It also seems that I've been depressed and
13 distracted. It's hard to describe. I just can't
14 pay attention. My mind wanders and I can't focus.
15 I've been very forgetful and have trouble
16 remembering things.

17 It also seems that I'm having trouble doing
18 things that used to be routine for me. I enjoyed a
19 tremendous memory for dates and numbers. My friends
20 and co-workers always marveled at my ability to
21 recall numbers and dates. I can't recall numbers
22 and dates anymore. It's very frustrating. I no
23 longer have an interest in things that used to
24 interest me. Everything is now a chore.

25 Q. And how long had you been with Bolder?

1 A. Since I graduated from college, about 21
2 years ago.

3 Q. When did you leave Bolder?

4 A. It was about three months after the
5 accident. I just couldn't do my job anymore. I can
6 no longer write the codes for computer programming.
7 I can't remember how to do that anymore.

8 Q. And what were your job responsibilities
9 with the company?

10 A. Well, I am -- I was a senior programmer. I
11 had three programmers that worked under me. I was
12 responsible for developing software for particular
13 applications and troubleshooting bugs in the
14 existing software systems.

15 Q. Can you elaborate on your software
16 development duties?

17 A. Sure. As I'm sure you know, the computer
18 field changes pretty quickly. Part of my job was to
19 continually update the software systems to take
20 advantage of the changes in hardware. The newer
21 computers allow us to do things that we couldn't do
22 before. Basically the software or programs expand
23 to take advantage of the new hardware or computers.

24 Also, if the company had a particular
25 problem, they will come to me and explain the

1 situation. Then, with my team, I would develop
2 software so that the computers can do what the
3 company wants them to do. It's a high pressure job.

4 Q. You stated earlier that you left your job
5 because you couldn't perform your duties anymore.
6 Can you explain what it was that you couldn't do?

7 A. After the accident I was having trouble
8 concentrating. I was distracted and seemed to be
9 very forgetful. I became depressed. I had constant
10 headaches. Those are not the traits of a good
11 computer programmer. I had difficulties in writing
12 programs and particularly in solving problems. I
13 was very forgetful.

14 Q. What was your salary at the time you left
15 Bolder?

16 A. I was making \$76,000 a year plus benefits.
17 I was in line for a big raise too.

18 Q. What type of benefits did you have?

19 A. Health insurance, and a 401K plan. They
20 matched 50 percent up to 6 percent if you invested
21 in company stock. I would always put in 6 percent
22 so that I could take advantage of the maximum
23 matching of 6 percent. I was fully vested before
24 the accident. I had options that I lost too because
25 I didn't have the money to exercise them.

1 Q. Are you married?

2 A. No. I am not. I have a fianc? though.
3 Rick and I have been together for about 10 years.

4 Q. Have you had any problems in your
5 relationship with him?

6 A. Well, he certainly noticed that I have not
7 been myself lately.

8 Q. Have you discussed this with him?

9 A. Yes. He's complained that since the
10 accident I've been very moody and distant. I can?t
11 remember things like my own telephone number or the
12 circumstances surrounding when Rick and I met 10
13 years ago.

14 He tells me that I appear distracted and
15 don?t pay attention to him. He keeps asking me
16 what's wrong, and I tell him that I don't know. He
17 thinks that I'm nuts and has suggested that I see a
18 psychiatrist, especially since my mother passed
19 away. For a while I was beginning to believe him.

20 Q. When did your mother pass away?

21 A. She had been ill for a long time and very
22 depressed by living that way. She died the day
23 before Thanksgiving last year.

24 Q. So she passed away within a week or so
25 after the accident?

1 A. Yes. That sounds right.

2 Q. Have you seen any doctors since the
3 accident?

4 A. Well, about a week or so after the
5 accident, I saw Dr. Bombay, my family doctor,
6 because of the headaches, and I was having trouble
7 sleeping.

8 Q. What did Dr. Bombay do for you?

9 A. He said that he couldn't find anything
10 wrong with me and gave me a prescription for a
11 sleeping pill.

12 Q. Did you take the medication?

13 A. I took it for a couple of days. It wasn't
14 helping, and I don't like to take any drugs unless I
15 have to; so I stopped taking it.

16 Q. Have you seen any doctors other than
17 Dr. Bombay?

18 A. Yes. I have seen a neurologist,
19 Dr. Newrough. I was watching the TV one night, and
20 they were doing a program for doctors on head
21 injury. They seemed to describe me perfectly. They
22 said that if you had suffered a head injury and were
23 experiencing the symptoms that I was experiencing
24 that you could be very sick. They interviewed
25 Dr. Newrough, who is an expert.

1 Q. And when did you first go to see
2 Dr. Newrough?

3 A. The first time I saw Dr. Newrough was
4 probably about two months after the accident, around
5 January, YR-1.

6 Q. And what did Dr. Newrough do when you first
7 saw him?

8 A. Well, I said that I had been in an
9 accident, and a bus ran a light and hit me; and that
10 I seemed to be having the symptoms that they
11 described on the medical show. The doctor spent
12 over an hour just talking to me about what had
13 happened and what was going on in my life. It was
14 nice to have someone to talk to that didn't think I
15 was a nut.

16 The doctor told me that the symptoms that I
17 had were common in people who had suffered head
18 injuries. He said that I was having a major
19 depressive episode. I didn't know what that meant,
20 but I was glad to learn that I wasn't going crazy;
21 and that there were other people out there who were
22 going through the same things that I was.

23 Q. What else did Dr. Newrough do besides talk
24 to you?

25 A. Well, after we talked for a while he

1 examined me. It was a thorough exam, and he did all
2 kinds of tests.

3 Q. What kinds of tests did he do?

4 A. Well, he said that he was checking all of
5 my head nerves. He looked in my eyes and ears. He
6 checked all of my reflexes, and he made me lift my
7 legs.

8 Q. Did he give you any medication?

9 A. He did give me something to help me sleep
10 at night. I don't know if you'd call it medication.
11 I still have trouble falling asleep, but I don't
12 wake up as much as I used to.

13 Q. What else has Dr. Newrough done for you?

14 A. Physical therapy and massage. He has a
15 therapy center right next door to his office that I
16 go three days a week. It's called PT, Inc.

17 Q. What do they do for you at therapy?

18 A. They massage my neck, shoulders and head.
19 They put warm compresses on and some type of
20 electric wave. They have also given me some neck
21 exercises to do. They have also put me on a
22 biofeedback program to help me to learn how to relax
23 the muscles. They also have me do Tai Chi.

24 Q. Has any of this helped?

25

1 A. It has helped a little with the headaches,
2 but I still have trouble concentrating and solving
3 problems. Dr. Newrough said that this will take
4 time.

5 Q. Have you seen any other doctors that we
6 have not discussed?

7 A. I saw Dr. Coe once.

8 Q. What type of doctor is Dr. Coe?

9 A. I'm not sure exactly. I know that he is
10 some type of a psychologist. Dr. Newrough sent me
11 to him for testing.

12 Q. Can you describe the testing that Dr. Coe
13 performed?

14 A. Well, first we just talked for a while
15 about my background, college, my job, stuff like
16 that. Then he gave me some tests that were like
17 games. Looking at faces, recalling stories, copying
18 line drawings. I was there pretty much all day for
19 that.

20 Q. Did Dr. Coe tell you if there was anything
21 wrong with you?

22 A. No. He just said that he would have to
23 analyze the results of all the tests, and that he
24 would send a letter to Dr. Newrough.

25 Q. Has Dr. Newrough told you what is wrong

1 with you?

2 A. Yes. He said that I have a serious post-
3 concussion syndrome, brain damage, and depression.

4 Q. Ms. Hertz, have you ever been to a
5 psychiatrist?

6 A. No. I haven't, except for when I broke up
7 with my boyfriend in college, and my grandmother
8 died at the same time.

9 Q. Have you ever been diagnosed with a
10 learning disability?

11 A. No. In fact, I always did very well in
12 school. I was on the dean's list all through
13 college.

14 Q. Aside from the problems that you have
15 already discussed, as you sit here today, is there
16 anything else that you can think of that bothers you
17 since the accident?

18 A. Well, as far as the actual physical
19 problems that I have, that is all that I can think
20 of right now. I would like to say though that this
21 accident has totally destroyed my life. I used to
22 be a fun person. I enjoyed going out and spending
23 time with my friends. I loved my job.

24 Now, I have no desire to do anything. I'm
25 always frustrated, crying, and distracted. I feel

1 isolated and depressed. I'm always tired, and
2 emotionally I have been a wreck because I can't work
3 or do my job the way I used to. My self-confidence
4 is gone.

5 Until I went to Dr. Newrough, I thought
6 that I was going crazy. I can't tell you how scary
7 that is. I went home at night and just cried. I
8 didn't want to see my friends and shut out my
9 boyfriend. He keeps telling me that I'm not the
10 person he used to know.

11 He's right. I'm not. I'm someone else,
12 and I don't like the person that I have become. I
13 feel as though part of me died in that accident, and
14 I am afraid that I will never get that back. I may
15 even lose my home.

16 Q. Why are you afraid of losing your home?

17 A. I don't have the income to pay the mortgage
18 because I can no longer work.

19 Q. Ms. Hertz, thank you. I have no further
20 questions.

21 (Deposition concluded)

22

23

24

25