



Trial Academy

Hertz v. Aycup

Student Hypothetical **(Automobile Accident – Head Injury)**

INTRODUCTORY NOTE

This hypothetical will be one of the problems used for the student demonstrations during the afternoon sessions at the International Association of Defense Counsel Trial Academy. This hypothetical problem is designed to simulate the material you would receive on the eve of trial. You should read and study this case as soon as possible. Advance preparation will serve you well during the Trial Academy.

All years in this problem are stated in the following form:

YR-0 indicates the actual year in which the case is being tried (i.e., the present year);

YR-1 indicates the next preceding year (i.e., the present year minus one);

YR-2 indicates the second preceding year (i.e., the present year minus two); etc

IADC TRIAL ACADEMY

Hertz v. Aycup

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Hertz v. Aycup
STATEMENT OF 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 was negative. Her discharge diagnosis from Flagstaff General Hospital indicated: "possible mild concussion/MVA; minor neck sprain." Ms. Hertz returned to work two days after the accident.

Meg saw Dr. Ramanan V. 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.

FLAGSTAFF POLICE DEPARTMENT
MOTOR VEHICLE ACCIDENT REPORT

DATE: 11/18/YR-2

LOCATION: CAMBRIDGE STREET

TIME REPORTED: 08:35

ARRIVAL ON SCENE: 08:41

DEPARTURE FROM SCENE: 0859

OFFICERS RESPONDING: Patrol - Sawyer, Callahan, Green (Photographer) -

ADDITIONAL RESPONDERS: EMT - Hodges, Koufax, Thronberry

DESCRIPTION OF INCIDENT:

Upon arrival on scene of reported bus-pedestrian accident, a Caucasian female, later determined to be Margaret Hertz (d/o/b - 11/17/YR-44), was found lying in the middle of Cambridge Street approximately 6 feet to the west of the west edge of the crosswalk, in apparent distress. A Bancroft Bus Lines vehicle was parked approximately 100 feet west of the intersection. A Caucasian male, who identified himself as Philip Aycup (d/o/b 10/2/YR-52), identified himself as the operator of the bus.

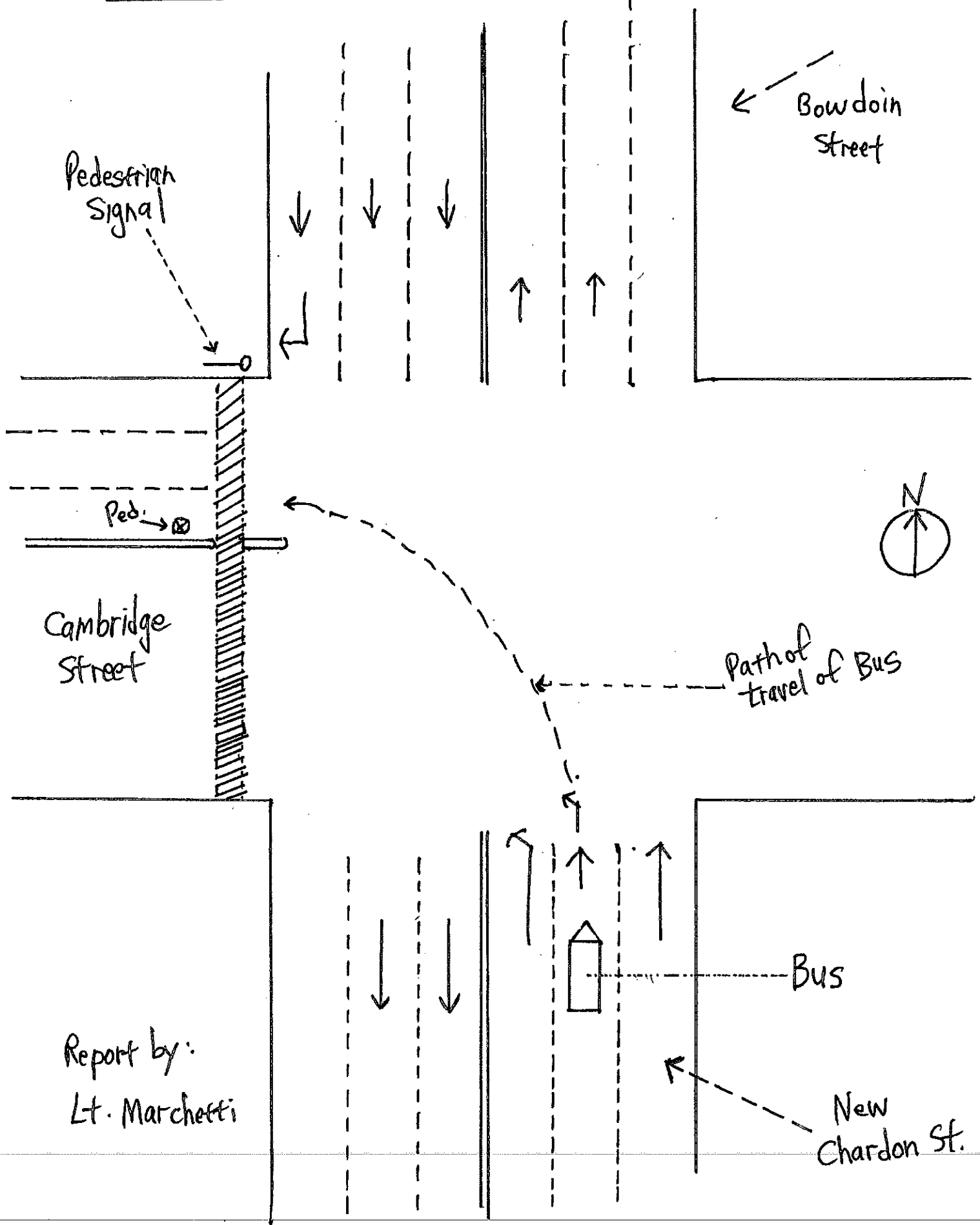
Witness Interviews:

Hertz reported that she was walking across the intersection with a "WALK" sign when she was struck by the side of the bus as she stepped off the center island. She stated that she had been thinking of a presentation that she was to give to her company's board of directors immediately before the bus hit her. She estimated the bus was traveling about 25 mph. She is not certain but believes the bus ran a red light. She briefly lost consciousness and is not certain of everything else that occurred.

Aycup reported that he was making a left hand turn from New Chardon Street after having stopped for a red light. He entered the intersection in the center lane and made a left turn after checking for pedestrians crossing to his left and for cars turning from Bowdoin Street onto Cambridge Street. He paid particular attention to those cars turning from Bowdoin and pedestrians on the far left (NW) corner of the intersection because they frequently step off the curb into traffic.

Donovan Mello - Mello (d/o/b 10/2/YR-24) - address 67 Parker Place, New Britain) "I was traveling south on Bowdoin Street and was the second or third vehicle stopped at a red light at the intersection with Cambridge Street. I was waiting to make a right turn onto Cambridge Street and after the other cars made the turn I saw a bus turning left from New Chardon Street (actually right as I was looking at it). I saw the bus begin its turn and as it was doing so I saw a lady stepping off the island in the center of the street. The next thing I saw was the lady lying in the street after the bus had completed the turn. She seemed to have lost consciousness for a brief period. I followed the bus down Cambridge Street, beeping my horn until it pulled over to the side of the road. I jumped out of my car and approached the driver. I yelled at him that he had hit a lady in the road and that she was unconscious. He said he might have seen someone on the island, but thought they would know enough to stay put until he passed.

Citation issued to Hertz N.S.G.L. c. 90 §45



Report by:
Lt. Marchetti

DEPOSITION OF MARGARET A. HERTZ

(Taken on December 2, YR- 1)

- Q. What is your name?
A. Margaret A. Hertz.
Q. Where do you live?
A. 12 West Meridian Street, New Britain.
Q. How old are you?
A. 43.
Q. Where do you work?
A. I work at 154 Cherry Street in Flagstaff.
Q. What do you do for a living?
A. I am a senior programmer for Bolder Computer.
Q. On the morning of November 18, YR-2 were you involved in an accident?
A. Yes I was.
Q. Where did the accident happen?
A. At the corner of Cambridge Street and New Chardon Street.
Q. Where were you going at the time?
A. I was walking from the subway station to my work.
Q. Were you alone?
A. Yes.
Q. What time had you left your house that morning?
A. About 8. I took the bus to the subway and got off at the Cambridge Street Station.
Q. And what time did you get up that morning?
A. Well, I was going to work and I usually get up about 6:45. That morning I had planned on getting up at 6:15, but my alarm didn't go off and I guess I got up about 7:15 and got out about 8.
Q. Why had you planned on getting up earlier than usual on that day?
A. Well, I was making a presentation to the board of directors, and I wanted to make sure that everything went right. I was being considered for a promotion into a management position and I knew that they would be evaluating my performance that morning.
Q. Were you distressed by the fact that you were running late that morning?
A. No. I had planned on going over my notes one more time in the morning which is why I wanted to wake up early. But it wasn't really a big deal. Even though I overslept I still had plenty of time to get to work. I had prepared the night before, so it wasn't so important that I review my notes that morning. Anyway, I had reviewed them on the subway.
Q. What time were you supposed to make your presentation at the meeting?
A. Well they were supposed to begin the meeting at 8:45 and they were going to let me know when they were ready for me. I knew that they had some other business to attend to, so I did not expect that they would get to me before 9.
Q. What was the weather like?
A. It was cool and windy.
Q. Did you stop anywhere after getting off the subway?
A. I stopped and grabbed the newspaper and a cup of coffee at the stand at the subway stop - just like I do every morning.

- Q. Then what did you do?
- A. I walked to the corner of Cambridge Street and New Chardon and waited to cross Cambridge Street to go up Bowdoin Street to Cherry.
- Q. I'm sorry but where is Bowdoin Street?
- A. New Chardon becomes Bowdoin Street on the other side of Cambridge
- Q. Just so we can get oriented, which way does Cambridge Street run?
- A. Cambridge runs east and west and New Chardon runs north and south on the south side of Cambridge - Bowdoin is what New Chardon is called on the north side of Cambridge.
- Q. When you got to the intersection what corner were you standing on?
- A. I was on the southwest corner.
- Q. And where were you heading?
- A. I was going to walk through the intersection to the north side of Cambridge.
- Q. How many lanes is New Chardon Street at the intersection?
- A. Three, plus two lanes of parking - all heading north, with turning lanes.
- Q. How many lanes is Bowdoin Street?
- A. Four - two heading south and two heading north.
- Q. How many lanes is Cambridge Street?
- A. Six - three in each direction - plus parking lanes on each side.
- Q. Is Cambridge Street divided?
- A. There is an island down the middle.
- Q. Are there crosswalks at the intersection?
- A. There are crosswalks going across Cambridge Street from north to south.
- Q. Are there traffic lights?
- A. Sure.
- Q. Where are the lights?
- A. I don't know whether there are overhead lights because I never drive in that area.
- Q. Okay - but are there other traffic lights?
- A. Yeah, there are lights on poles all around the intersection.
- Q. Where are they?
- A. The only one I ever looked at was on the far side of Cambridge Street at the corner.
- Q. Which corner would that be?
- A. Cambridge Street and Bowdoin Street.
- Q. Which corner?
- A. That would be the northwest corner.
- Q. What signals are there on that light?
- A. What do you mean?
- Q. Are there arrows and turn signals?
- A. I don't really know - I don't pay attention to that since I don't drive there.
- Q. Are there pedestrian signals?
- A. Do you mean "walk" and "don't walk" lights?
- Q. That's what I mean.
- A. Yes there are - they are on the same poles as the lights.
- Q. What color was the light when you got to the corner?
- A. It was red for traffic on Cambridge Street so I started across.

- Q. Was the "Walk" sign on?
- A. I didn't notice - but if the light was red for Cambridge Street traffic I could cross at least to the island.
- Q. What do you mean by that?
- A. Well it is really tough to get all the way across the intersection on the "Walk" signal. So what most people do is cross halfway and wait on the island until it is safe to cross the rest of the way.
- Q. Was that your usual practice?
- A. Me and everyone else.
- Q. Was the light "Walk" or "Don't Walk" when you walked to the island?
- A. I don't know and it wouldn't have mattered to me either way. If traffic on Cambridge Street had a red light - it was clear to cross - so I would go - that's the only way to do it.
- Q. What were you doing as you walked across the street?
- A. I was just walking and thinking about my upcoming presentation.
- Q. Were you watching where you were walking?
- A. Of course I was - you know how city drivers are.
- Q. How long did it take you to get to the island?
- A. Probably 3 seconds.
- Q. How long did you wait on the island before you started across the second half of Cambridge Street?
- A. A few seconds - it was really pretty windy and I didn't want to stand there any longer than I had to.
- Q. Well do you mean 2 second, 5 seconds, 10 seconds - what?
- A. I would say about 10 seconds.
- Q. Before you stepped off the island where did you look?
- A. I looked at the light pole and saw that the light for Cambridge Street was red so I started across.
- Q. What was the light for traffic on New Chardon?
- A. I think that was red also - I think it was a four-way red for pedestrians.
- Q. What was the pedestrian signal at that time?
- A. I don't recall specifically but it said "Walk" I'm sure.
- Q. Did any cars go past you east on Cambridge Street while you were on the island?
- A. None before that bus hit me.
- Q. Were there any cars making a right turn onto Cambridge Street from Bowdoin Street?
- A. I wouldn't have started across the street if there had been.
- Q. Were you in the crosswalk?
- A. I stepped straight off the island into the crosswalk.
- Q. Were you still thinking about your presentation?
- A. Yes.
- Q. Then what happened?
- A. I took about three steps and the bus came out of nowhere and hit me on the right side of my face - I never saw it.
- Q. How fast was the bus traveling?

- A. It must have been going at least 25 miles an hour - it just came tearing around the corner and I had no time to do anything. I lost consciousness. Later I heard someone say that bus was speeding.
- Q. Do you remember anything about what happened at the scene after you were hit?
- A. After I regained consciousness, I saw that there were paramedics and cops and people all around. They asked me what my name was, what year it was and who was the President. I remember first seeing this big cop with a thick gray beard because the sight of him frightened me.
- Q. Were you able to answer all of those questions?
- A. Yes, I think so.
- Q. Did the paramedics ask what was wrong with you?
- A. I told them that I had hit my head and was a little groggy. I had a terrible headache. I showed them a little lump I could feel while I was lying on the ground. I also told them that my neck felt tight.
- Q. What did you mean when you told them that your neck felt tight?
- A. Well, it felt like it was whiplashed, so it was stiff and a little sore.
- Q. What happened after that?
- A. Well, they told me that they were going to take me to the hospital and that I shouldn't move. Then they strapped me to a board and put a collar on me and put me in the ambulance.
- Q. Did you say anything else to them?
- A. I remember being scared. I complained about my excruciating headache. I'm claustrophobic, so I kept asking them why I had to be strapped down.
- Q. What did they say?
- A. They said that it was routine procedure anytime someone complains of back or neck pain. It made me crazy.
- Q. Do you recall how long after the accident the paramedics arrived?
- A. I really don't. I was unconscious for a time and I don't know how long it took for me to regain consciousness. The paramedics and police were on the scene when I came to. If I had to venture a guess, I would say that it seemed as though it was only a few minutes. I remember thinking that they got there pretty fast.
- Q. What happened when you got to the hospital?
- A. Well, I don't remember much, but they rushed me into the emergency room and moved me onto a stretcher. Then they got some information from me, name, address, insurance. After I was there on the stretcher for about a half-hour being ignored, I needed something for my headache, a doctor told me that he wanted to do a CAT scan. I remember thinking that it sounded serious.
- Q. Did they do the test?
- A. Yes, they did the test. I had to sign some forms and then they took me for the scan. I asked them what it was for and I think they told me that it would measure my brain. They never mentioned my headache.
- Q. Did anyone tell you the result of those tests?
- A. Yes. It seemed like hours later the doctor came in and told me that I was fine and that I could go home. He said that I had a concussion, but I was okay.
- Q. Did he give you any instructions?
- A. Yes. He told me that if I vomited I should come back in right away.

- Q. Did you vomit?
- A. No, I stayed home from work for two days. I thought that I was getting better so I went back to work. I figured that I had been out long enough and would already have a tough time catching up. I was afraid they'd hire a temp and then I'd have no job.
- Q. Did you have symptoms following the accident?
- A. Well, I had recurring headaches, but they would be really bad - not like any other headaches I had ever had. I would take aspirin or ibuprofen, but that would only help a little.
- Q. How frequently would you get these headaches?
- A. They would come and go. Right after the accident it seemed as though I was getting one every day. I still get them at least two or three times a week.
- Q. How long do they last?
- A. Sometimes they only last for an hour or two. Sometimes it seems like it lasts all day. I feel like my head is in a vise.
- Q. Do these headaches come at any particular time of the day?
- A. I guess there really isn't a particular time. Although it seems that I have them most frequently in the afternoon.
- Q. How frequently do you get the neck stiffness?
- A. That seems to come along with the headaches.
- Q. Have you had any other symptoms since the accident?
- A. Well, I can't sleep at night. I used to be a great sleeper. Since the accident, I've had trouble falling asleep and once I do fall asleep I have trouble staying asleep. Also, after the accident I began to notice that I was having difficulty concentrating at work. I am usually an up person, but it seemed that I was very irritable and frustrated and a couple of times I just blew up over things that just weren't that bad. It also seems that I've been depressed and distracted, it's hard to describe. I just can't pay attention, my mind wanders and I can't focus. I've been very forgetful and have trouble remembering things. It also seems that I'm having trouble doing things that used to be routine for me. I enjoyed a tremendous memory for dates and numbers. My friends and co-workers always marveled at my ability to recall numbers and dates. I can't recall numbers and dates anymore. It's very frustrating. I no longer have an interest in things that used to interest me. Everything is now a chore.
- Q. And how long had you been with Bolder?
- A. Since I graduated from college, about twenty-one years ago.
- Q. When did you leave Bolder?
- A. It was about three months after the accident. I just couldn't do my job anymore. I can no longer write the codes for computer programming. I can't remember how to do that anymore.
- Q. And what were your job responsibilities with the company?
- A. Well, I am, I was, a senior programmer. I had three programmers that worked under me. I was responsible for developing software for particular applications and troubleshooting bugs in the existing software systems.
- Q. Can you elaborate on your software development duties?

- A. Sure. As I'm sure you know, the computer field changes pretty quickly. Part of my job was to continually update the software systems to take advantage of the changes in hardware. The newer computers allow us to do things that we couldn't do before. Basically the software, or programs, expand to take advantage of the new hardware, or computers. Also, if the company had a particular problem, they will come to me and explain the situation. Then, with my team, I would develop software so that the computers can do what the company wants them to do. It's a high pressure job.
- Q. You stated earlier that you left your job because you couldn't perform your duties anymore. Can you explain what it was that you couldn't do?
- A. After the accident I was having trouble concentrating. I was distracted and seemed to be very forgetful. I became depressed. I had constant headaches. Those are not the traits of a good computer programmer. I had difficulties in writing programs and particularly in solving problems. I was very forgetful.
- Q. What was your salary at the time you left Bolder?
- A. I was making \$76,000 a year, plus benefits. I was in line for a big raise too.
- Q. What type of benefits did you have?
- A. Health insurance, and a 401K plan. They matched 50% up to 6% if you invested in company stock. I would always put in 6% so that I could take advantage of the maximum matching of 6%. I was fully vested before the accident. I had options that I lost too because I didn't have the money to exercise them.
- Q. Are you married?
- A. No, I am not. I have a fiancé though. Rick and I have been together for about ten years.
- Q. Have you had any problems in your relationship with him?
- A. Well, he certainly noticed that I have not been myself lately.
- Q. Have you discussed this with him?
- A. Yes. He's complained that since the accident I've been very moody and distant. I can't remember things like my own telephone number or the circumstances surrounding when Rick and I met ten years ago. He tells me that I appear distracted and don't pay attention to him. He keeps asking me what's wrong and I tell him that I don't know. He thinks that I'm nuts and has suggested that I see a psychiatrist, especially since my mother passed away. For a while I was beginning to believe him.
- Q. When did your mother pass away?
- A. She had been ill for a long time and very depressed by living that way. She died the day before Thanksgiving last year.
- Q. So she passed away within a couple of weeks after the accident?
- A. Yes.
- Q. Have you seen any doctors since the accident?
- A. Well, about a week or so after the accident I saw Dr. Bombey, my family doctor, because of the headaches and I was having trouble sleeping.
- Q. What did Dr. Bombey do for you?
- A. He said that he couldn't find anything wrong with me and gave me a prescription for a sleeping pill.
- Q. Did you take the medication?

- A. I took it for a couple of days. It wasn't helping, and I don't like to take any drugs unless I have to, so I stopped taking it.
- Q. Have you seen any doctors other than Dr. Bombay?
- A. Yes, I have seen a neurologist, Dr. Newrough. I was watching the T.V. one night and they were doing a program for doctors on head injury. They seemed to describe me perfectly. They said that if you had suffered a head injury and were experiencing the symptoms that I was experiencing that you could be very sick. They had interviewed Dr. Newrough who is an expert.
- Q. And when did you first go to see Dr. Newrough?
- A. The first time I saw Dr. Newrough was probably about two months after the accident, around January YR-1.
- Q. And what did Dr. Newrough do when you first saw him?
- A. Well, I said that I had been in an accident and a bus ran a light and hit me, and that I seemed to be having the symptoms that they described on the medical show. The doctor spent over an hour just talking to me about what had happened and what was going on in my life. It was nice to have someone to talk to that didn't think I was a nut. The doctor told me that the symptoms that I had were common in people who had suffered head injuries. He said that I was having a major depressive episode. I didn't know what that meant, but I was glad to learn that I wasn't going crazy and that there were other people out there who were going through the same things that I was.
- Q. What else did Dr. Newrough do besides talk to you?
- A. Well, after we talked for a while he examined me. It was a thorough exam and he did all kinds of tests.
- Q. What kinds of tests did he do?
- A. Well, he said that he was checking all of my head nerves. He looked in my eyes and ears, he checked all of my reflexes, and he made me lift my legs.
- Q. Did he give you any medication?
- A. He did give me something to help me sleep at night. I don't know if you'd call it "medication." I still have trouble falling asleep, but I don't wake up as much as I used to.
- Q. What else has Dr. Newrough done for you?
- A. Physical therapy and massage. He has a therapy center right next door to his office that I go three days a week. It's called "PT, Inc."
- Q. What do they do for you at therapy?
- A. They massage my neck, shoulders and head. They put warm compresses on and some type of electric wave. They have also given me some neck exercises to do. They have also put me on a biofeedback program to help me to learn how to relax the muscles. They also have me do Tai Chi.
- Q. Has any of this helped?
- A. It has helped a little with the headaches. But I still have trouble concentrating and solving problems. Dr. Newrough said that this will take time.
- Q. Have you seen any other doctors that we have not discussed?
- A. I saw Dr. Coe once.
- Q. What type of Doctor is Dr. Coe?

- A. I'm not sure exactly, I know that he is some type of a psychologist. Dr. Newrough sent me to him for testing.
- Q. Can you describe the testing that Dr. Coe performed?
- A. Well, first we just talked for a while about my background, college, my job, stuff like that. Then he gave me some tests that were like games. Looking at faces, recalling stories, copying line drawings. I was there pretty much all day for that.
- Q. Did Dr. Coe tell you if there was anything wrong with you?
- A. No, he just said that he would have to analyze the results of all the tests and that he would send a letter to Dr. Newrough.
- Q. Has Dr. Newrough told you what is wrong with you?
- A. Yes, he said that I have a serious post-concussion syndrome, brain damage, and depression.
- Q. Ms. Hertz, have you ever been to a psychiatrist?
- A. No, I haven't, except for when I broke up with my boyfriend in college and my grandmother died at the same time.
- Q. Have you ever been diagnosed with a learning disability?
- A. No, in fact, I always did very well in school. I was on the Dean's list all through college.
- Q. Aside from the problems that you have already discussed, as you sit here today is there anything else that you can think of that bothers you since the accident?
- A. Well, as far as the actual physical problems that I have that is all that I can think of right now. I would like to say though that this accident has totally destroyed my life. I used to be a fun person. I enjoyed going out and spending time with my friends. I loved my job. Now, I have no desire to do anything. I'm always frustrated, crying, and distracted. I feel isolated and depressed. I'm always tired, and emotionally I have been a wreck. Because I can't work or do my job the way I used to, my self-confidence is gone. Until I went to Dr. Newrough I thought that I was going crazy. I can't tell you how scary that is. I went home at night and just cried. I didn't want to see my friends and shut out my boyfriend. He keeps telling me that I'm not the person he used to know. He's right, I'm not. I'm someone else, and I don't like the person that I have become. I feel as though part of me died in that accident, and I am afraid that I will never get that back. I may even lose my home.
- Q. Why are you afraid of losing your home?
- A. I don't have the income to pay the mortgage because I can no longer work.
- Q. Ms. Hertz, thank you. I have no further questions.

My name is Margaret A. Heitz.
I live at 12 West Meridian Street,
New Britain, New State. My date
of birth is November 17, YR-44. I am
a college graduate.

On November 18, YR-2 I was
walking to work downtown when
I was struck by a bus. I had left
my house at 8 a.m. as usual and
had taken the subway to the Bowdoin
Street Station. I had a meeting
scheduled for 9:30 a.m. where I was
going to make a presentation to the
board of directors.

(2)

I crossed halfway over Cambridge Street and stopped on the island by the crosswalk. I had to wait about a minute until the pedestrian light turned to "WALK" and then started across. I had the right of way. Suddenly a bus came from my left ^{mid} right and I got hit by the side of the bus. I was not more than two feet off the island in the crosswalk when I was hit.

The bus driver came up to me while I was lying on the ground and started yelling at me. I did not say

(3)

anything to him. Other people at the scene were talking to him and telling him to calm down. When he finally did he said, "I'm sorry, I never saw you. I was looking up Bowdoin Street."

I have felt very bad since the accident and I have been unable to work. I am worried that I may lose my job because I am not working well and one of my managers has never liked me and may try to get rid of me if I don't get back to work soon.

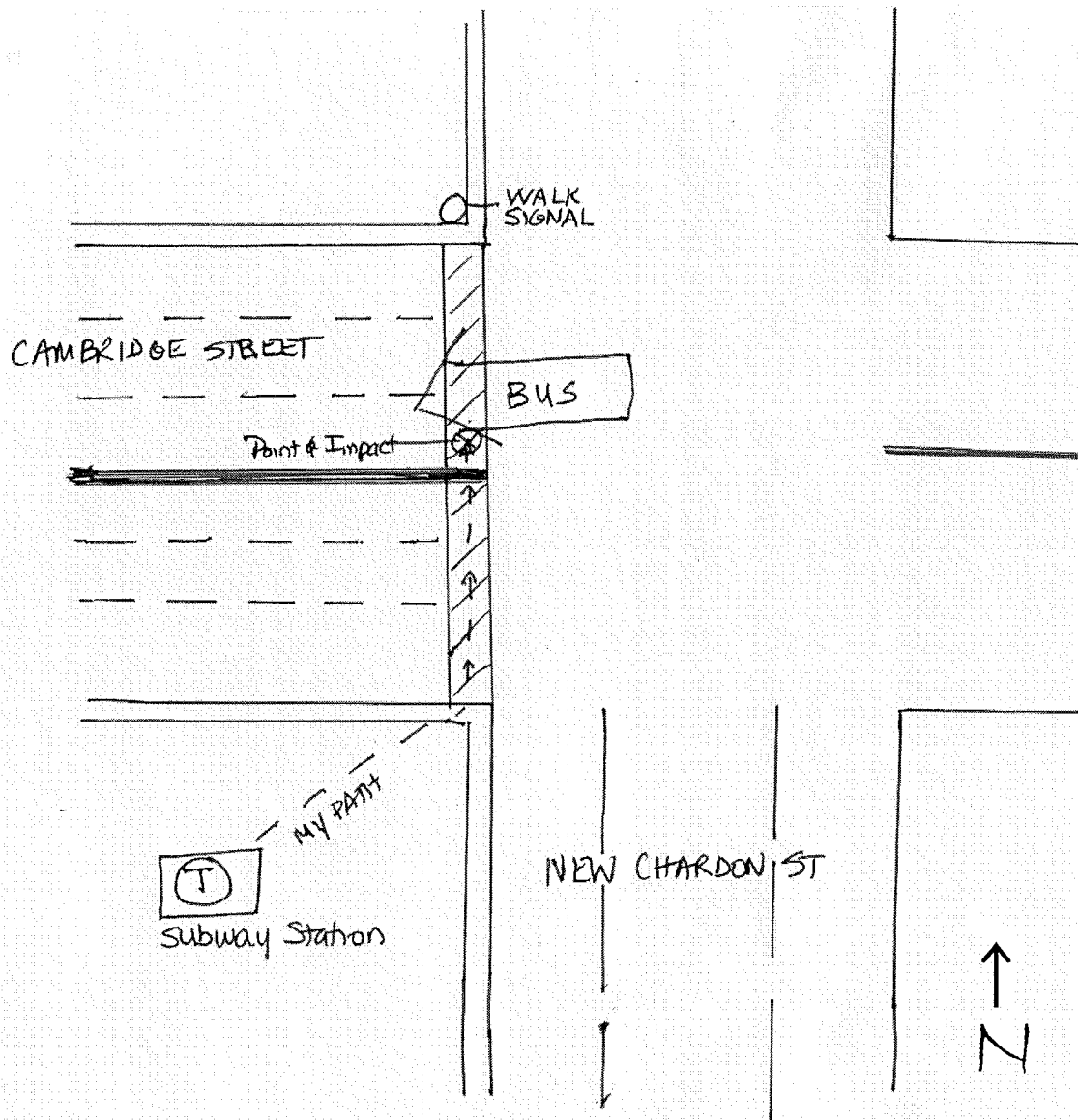
(4)

I have been having neck and
shoulder pain since the accident.

I have never had any medical
problems in my life.

I have prepared the attached
diagram of the accident scene.

Margaret A. Hertz
Margaret A. Hertz
"/25/YR-2



Deposition of Phillip Aycup
December 3, YR-1

- Q. Mr. Aycup, what's your address?
A. 74 River Street, Springfield.
Q. And your date of birth?
A. 10/2/YR-52
Q. Are you married or single?
A. Married.
Q. What's your wife's name?
A. Danielle.
Q. And does she live with you at that address?
A. Yes, sir.
Q. How long have you been married?
A. 32 years.
Q. Who is your current employer?
A. Bancroft Bus Lines.
Q. How long have you been employed by them?
A. Approximately eight and a half years.
Q. And was this your first job as a bus driver?
A. Yes, sir.
Q. Did you do a pre-trip inspection?
A. Always.
Q. What did they train you to do on a pre-trip check?
A. Checking the outside condition of the bus, tires. Looking at any damage to the bus, any scratches or dents on the bus that you notice. Windshields, side mirrors, any glass on the bus. Checking the emergency exits on the bus - we have two. We have one on each end of the bus - to make sure they're operable. Again, just general looking as to what you can see inside the bus. Then you would go start your bus up, put the lights on and go outside and check to make sure the headlights are working, the marker lights, and taillights.
Q. What specifically did they tell you, if anything, about being aware of pedestrians while you were driving?
A. You always want to look out for, as I was told when I first started, for what's around you. You're very attentive to pedestrians, motor vehicles, parked cars, because you never know who may come out running between parked cars. Extensively on that. They really harped on that as far as paying attention to those areas.
Q. And what was the model and type of bus that you were driving on the 18th of November of YR-2?
A. It was an MCI motor coach, 47 foot. It held 47 people. I'm not sure of the exact year of manufacture.
Q. Had you driven that particular bus before?
A. Yes.
Q. Do you remember what the date was that this incident occurred?
A. It was the 18th of November.
Q. What were you doing on the 17th?

- A. I was at home watching TV during the day, reading the newspaper. My daughter came over for supper with my granddaughter. And my son came over with his wife and their two children. And we had dinner.
- Q. Do you remember what time you went to bed that night?
- A. Yes approximately 10 o'clock.
- Q. What time did you get up the next day?
- A. The next morning I got up at 5:15 a.m.
- Q. Was that late for you, 10 p.m., to go to bed before a work night?
- A. No.
- Q. What time do you typically go to bed?
- A. Around 10-ish. 9:30, 10 o'clock, in that vicinity.
- Q. In the 24 hours before the accident did you consume any alcohol?
- A. No. sir.
- Q. What time do you remember getting up on the morning of the 18th?
- A. Approximately 10 minutes of five.
- Q. What did you do?
- A. Showered and shaved.
- Q. What time did you leave the house?
- A. Approximately quarter of six.
- Q. Where did you go?
- A. To work.
- Q. Where is that?
- A. 25 minutes from my house to the garage in Flagstaff.
- Q. Does this particular route that you were driving on the 18th of November YR-2 have a particular name?
- A. Not a name.
- Q. Or a number?
- A. The schedule number would be 12 from Springfield, leaving at seven o'clock arriving at Flagstaff Airport at 9:05. That is the scheduled arrival.
- Q. How many times have you done that Schedule 12 in the eight years you worked for Bancroft Bus Lines?
- A. Probably - and this is an approximation. I would say approximately close to seven years.
- Q. So it is fair to say that you did it about once a week for seven years?
- A. Yes, sir.
- Q. On the right-hand side, if you looked directly to your right when you're sitting in your driver's seat, is there a door there?
- A. Yes.
- Q. And does that have a glass window in it?
- A. Yes, it does.
- Q. And did you check that to see if you could observe anything out of the window?
- A. Yes.
- Q. How did it look?
- A. Fine.
- Q. Did you check the mirrors?
- A. Yes.

- Q. How did you check them?
- A. Visually.
- Q. Did this bus have manual mirror adjustments, or could you do it automatically?
- A. Electronically.
- Q. Did you have to adjust them?
- A. I don't recall.
- Q. But you were comfortable about what you saw out your mirrors?
- A. Yes, sir.
- Q. And again the side-view mirrors were in good operating condition as far as you remember?
- A. Yes, sir.
- Q. Does the pre-trip check include any kind of once around the block just to make sure the engine is running correctly and the steering and the brakes are braking, stuff like that?
- A. Well, you're driving the bus over to the terminal, which is about a 10-minute drive. So you would notice anything at that point in time.
- Q. And if there was anything irregular or something wasn't to your satisfaction, you could bring the bus back?
- A. Yes, sir. And the buses also have phones.
- Q. And on the trip down from Springfield, did you notice any problems with the bus?
- A. No, sir.
- Q. Is it fair to say you're very familiar with this route that you drove that day?
- A. Yes, sir.
- Q. As you approached Flagstaff that morning, do you remember whether the bus, whether you were running on time?
- A. To my knowledge, my recollection, the bus was not running late.
- Q. What was the weather like that day?
- A. Cloudy, partly cloudy I believe. Not chilly. The road conditions were dry.
- Q. No precipitation?
- A. Not that I am aware of.
- Q. Do you remember whether there were any passengers sitting in the first say three rows behind you?
- A. Yes, there were.
- Q. And as you were driving down from Springfield down into Flagstaff, did you have any problems looking out your windshield?
- A. No, sir.
- Q. Any problems looking out your left side window?
- A. No, sir.
- Q. Any problems with the side-view mirror on your left-hand side?
- A. No, sir.
- Q. How about to your right, any problems looking out the window on your right?
- A. No, sir.
- Q. At some point you stopped at Haymarket and discharged some passengers. What do you remember happening after that?
- A. Proceeding up to the light. As a matter of fact the light was green, so when I got through discharging the passengers I closed the door, looked in my left-hand

mirror to make sure I could leave, and I had the clearance to get out and go. And I proceeded up to New Chardon Street.

Q. How many lanes are there on that Street?

A. To my knowledge there are four lanes. There are parked cars on both sides of the street also.

Q. So four lanes of travel. What lane were you traveling up heading up New Chardon?

A. The second from the left.

Q. Are there any cars in front of you?

A. Yes sir.

Q. What happened then?

A. I'm traveling up New Chardon Street approaching the intersection of New Chardon and Cambridge. The light turned red. Cars in front of me went off to the right. I had another car in front of me which was gray. He dropped to the left. T was the first one in line at the red light right on the intersection of New Chardon and Cambridge Street.

Q. Do you know what the speed limit is on New Chardon?

A. I believe it's 15 to 20. I think. I'm not exactly sure.

Q. What was the traffic like that morning as you headed up New Chardon Street?

A. Moderately heavy I would classify it.

Q. When you say "moderately heavy," is that typical for that area of Flagstaff?

A. Yes. That can be a busy intersection. Generally in the winter and the fall it seems to be busier than the summer.

Q. Are you familiar with that intersection of New Chardon Street and Cambridge?

A. I'd been through it before, yes.

Q. How many times do you think you've been through that?

A. Well, let me see. It's once a week for seven years minus my vacations and maybe sick days I took every now and then. I don't take many. I don't know sir.

Q. Like three or four hundred times maybe?

A. Yeah, probably around 200 to 300 times, yeah.

Q. All right. From where you stopped on New Chardon Street you're looking straight ahead, what do you see?

A. Bowdoin Street.

Q. How many lanes of travel are coming on Bowdoin Street?

A. There are two lanes coming down onto Cambridge Street and both turn right. And then they go right onto Cambridge Street. And there is another lane to the east where people go from New Chardon straight up onto Bowdoin Street. And there's also a crosswalk, which stands right out in front of Cambridge Street in front of the median area. And directly to the other side of the crosswalk there is a pedestal for pedestrians to walk and not to walk. And then there's also one on the median area, a crosswalk pedestal, which are for people crossing from New Chardon over to the median area. And the other one dictates crossing from the Bowdoin area side over to the median area.

Q. Are you referring to what's on your left-hand or right hand side?

A. From where I'm at on the bus it would be my left-hand side, sir.

- Q. But it's fair to say that the traffic that's facing you on Bowdoin Street, the traffic if you're looking at it, it's the line of cars that's facing you on your left-hand side. Those cars are going to come towards you and take a right-hand turn on Cambridge, is that right?
- A. They can't go down New Chardon Street.
- Q. Because it's a one-way coming towards them?
- A. That's right.
- Q. So the lane of travel I just described on Bowdoin Street, those cars are typically turning west onto Cambridge Street?
- A. They would be making a right-hand turn onto Cambridge Street. I'm not trying to give you a hard time.
- Q. And then the other lanes of travel on Bowdoin Street, which if you're coming down Bowdoin, they're on the right-hand side of Bowdoin. This would be your left as you are looking at them from New Chardon Street. They're turning right onto Cambridge?
- A. That's correct, sir.
- Q. If you know, are the traffic signals with regard to - let me rephrase this. When you're on New Chardon Street and the light turns green, is that light staggered? In other words, is the traffic that's directly across from you when your light turns green, do they have a green light as well?
- A. The traffic comes out as I'm going straight when my light turns to green from Bowdoin.
- Q. As far as you know you haven't observed or noticed any kind of delay in terms of when the light turns green they're still waiting there as you turn left?
- A. No, I've seen them come out almost simultaneously.
- Q. When you're at the light - and you said you were the first vehicle in line on New Chardon Street?
- A. Yes, sir.
- Q. Did you have the opportunity to look to your left?
- A. Yes, sir. I saw a white car and a black vehicle.
- Q. Where was the white car?
- A. The white car was to my immediate left as far as I can recall.
- Q. And you said there was a black vehicle?
- A. Yes, sir.
- Q. Where was that?
- A. I believe right to the left or behind the white car to the left-hand side of it, sort of to the left-hand side of it.
- Q. And when you looked out to the left-hand side, did you observe anything else?
- A. Yes.
- Q. What?
- A. People walking across the crosswalk from my left - well, actually both directions. There were people walking from left to right and right to left right across the crosswalk.
- Q. How would you characterize the pedestrian traffic on this morning?
- A. I don't know how to answer that.
- Q. Were there a lot of pedestrians in the vicinity?

- A. There were several. I couldn't guess a number. There were several people walking around there and also walking across the other side of the street I could see.
- Q. So you certainly observed several people both on that corner and crossing Cambridge?
- A. Yes. And also people walking across - I mean, not walking across. I'm sorry. On the corner of - you know where Bowdoin Street is? When you look across, people were standing in the vicinity there. And there's also a Dunkin' Donuts to the right-hand side.
- Q. So there were a lot of people around?
- A. Yeah. I don't know if it's more than the normal. I've certainly seen less. I've seen more. I think that's the best estimate I can give.
- Q. When you're sitting in your bus at the top of New Chardon Street and you look to the left, how far can you see in distance?
- A. Well, you can see directly across Bowdoin Street. You can see somewhat up the hill. It's a steep incline. You can see the crosswalk clearly going across Cambridge. You can see down Cambridge Street for a distance.
- Q. When you look to your left, is there anything in the interior of the bus that might obstruct your line of vision?
- A. No, sir.
- Q. And looking straight out the windshield, are there any obstructions?
- A. No, sir.
- Q. Your intended route when the light turns green is to make a left-hand turn?
- A. Yes, onto Cambridge Street.
- Q. How many lanes are there on that stretch of Cambridge Street that you're going to turn on to?
- A. Three.
- Q. Which lane is it that you intended to turn into?
- A. Usually we turn into, if at all possible, the middle lane onto Cambridge Street. That way you're avoiding the parked cars on the right-hand side there on Cambridge Street. You don't want to be at all close to parked cars when at all possible.
- Q. Why is that?
- A. Because you don't know if a door is going to be opened all of a sudden or if somebody runs between the cars. You want to avoid those areas when at all possible.
- Q. Did you observe other cars across from you on Bowdoin Street?
- A. Yes, sir.
- Q. How would you characterize the level of traffic on Bowdoin Street? Heavy, light, moderate?
- A. Moderate.
- Q. And you also observed pedestrians in the area?
- A. When I was approaching the intersection with the bus or prior to?
- Q. While you were sitting there waiting for the light to turn.
- A. Yes. I did see pedestrians.
- Q. It is fair to say this is a pretty busy intersection, especially, at 8:30 in the morning?

- A. Yeah. I would say it's a busy intersection.
- Q. And since it's so busy, that requires a high degree of care on your part, wouldn't you say?
- A. Yes. You always, no matter what you're doing, you're always looking.
- Q. About how long did you have to wait for the light to turn green?
- A. A few minutes.
- Q. What happened when the light turned green?
- A. I looked into my mirrors and proceeded.
- Q. Which mirror did you look in first?
- A. Left.
- Q. What did you see?
- A. A white car coming around me to the left-hand side of the bus.
- Q. Did you observe that?
- A. I saw it briefly, yes.
- Q. How did you see it?
- A. In the mirror to the right. Because when your eyes are consistently moving, you can never focus on just one thing. Because you have activity all around you.
- Q. What happened next?
- A. I saw some vehicles come out of Bowdoin Street. I saw the crosswalk. Nobody was in the crosswalk. There were two vehicles coming out of Bowdoin Street. When I say nobody was in the crosswalk - the crosswalk going from the median strip across Cambridge, that crosswalk I'm talking about. A white car and a black car came around me to the left-hand side of the bus. And I had to yield to a black vehicle coming down Bowdoin Street. He seemed to want to get out of there in a hurry. So I backed off the accelerator pedal. I was probably traveling about eight miles an hour approximately. Backed it down. Didn't come to a complete stop. let him go out. Then I had my opening to continue my turn onto Cambridge Street. Nothing was obstructing me, okay, and as I was turning, a green pickup truck came to the left-hand side of the bus and passed me on the left-hand side. And that's what I was doing. Other vehicles also passed me on the left.
- Q. After you noticed the green pickup truck, what happened then?
- A. I heard a noise.
- Q. Where were you when you heard the noise?
- A. Past the crosswalk further down on Cambridge Street.
- Q. When you say you "heard a noise," how would you describe it?
- A. A loud, just one thump noise.
- Q. Just so the record can reflect, the witness had banged on the table lightly. And what did you do when you heard the noise?
- A. I looked in the mirror where the noise came from, my left-hand side. And I heard a woman say, "Oh, no" or something to that effect. And that's what I did.
- Q. What did you do when you heard the woman say, "Oh, no"?
- A. I looked immediately in the left-hand mirror.
- Q. What did you see?
- A. I saw an individual falling back to where the crosswalk was.

- Q. I was just trying to bring us up to where I want to ask you the next question. After you heard the noise you said you looked in your left-mirror, and you saw somebody. Can you just tell me again what you saw?
- A. Okay. Looked in the left-hand mirror, and I saw a person - appeared to be a man with a brownish colored coat - falling with their hands outstretched.
- Q. In which direction was the person falling?
- A. Back to my left, to my left rear.
- Q. So was the person falling back towards the intersection?
- A. Yes.
- Q. About how far down the bus was this person, if you could tell?
- A. The only thing I could tell is when I heard the noise. The noise appeared to be somewhere in the middle part of the left-hand side of the bus. When I looked in the mirror - again, this happened very, very quickly. What I saw in the mirror was real quick. I saw a brown coat or a brown jacket or something on the individual. I saw some papers and him going back to the left rear area of the bus or left rear of where I was. At an angle.
- Q. Right. When you saw the person in the mirror, how far was the person from your bus?
- A. I don't know.
- Q. And when you saw the person could you tell where the person was in relation to your bus? Was the person down by the back wheels? Was the pedestrian halfway down the length of the bus? Where in the bus - can you place the person in relation to your bus?
- A. When I looked out the mirror, again, I'm on the left-hand side, the front left. I saw the person towards the middle part of the bus it appeared.
- Q. Did you hear anybody say, "Stop"?
- A. No, sir.
- Q. And is it when you heard somebody say "oh, no," that you looked in your mirror?
- A. Well, I heard the noise. And the "oh, no" came almost simultaneously. And I looked immediately into my mirror.
- Q. And after you saw what you just described as "the individual," what did you do with the bus then?
- A. So I pulled the bus down to where I thought was a safe spot to park the bus with the flashers on. And I did that. I tried to dial 911. I couldn't get through. I don't know why.
- Q. Why were you calling?
- A. Well, when I heard the person falling back and I heard the noise, I assumed something had occurred.
- Q. Did you think you had hit somebody?
- A. I thought somebody had hit the side of the bus.
- Q. When the light turned green, did you pull out?
- A. Did I go across from New Chardon across onto Cambridge?
- Q. Did you pull out?
- A. Yes, I pulled the bus straight ahead.
- Q. You didn't start to angle to the left? You pulled straight out.

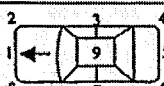
- A. Yeah. Because when you drive a bus you have to pull straight out in order to make the left-hand turn. Otherwise, you wouldn't be able to make the turn. Then I had cars on my left.
- Q. Explain that to me. What's different about making a left-hand turn with a bus that size as opposed to a passenger car?
- A. Well, you're bringing around 47 feet. And a passenger car is how long in comparison to a bus? The bus turns differently. It's a different turning ratio with a passenger car.
- Q. Tell me about that.
- A. Well, when you're attempting to make a left-hand turn, if you were over here to the inside lane, and when you want to make that turn your rear tires would go up onto the crosswalk area or the median strip area.
- Q. On the left-hand side?
- A. On the left-hand side. Because you're bringing around a wide piece of equipment. So in training you're taught to stay whenever possible away from that area, to get over towards the middle of the road, okay, as you're making a left-hand turn. So the rear of the bus could make a swing as you make the turn onto the other street without hitting or going up onto any obstacles or sidewalks or whatever.
- Q. What did you see in front of you as the light turned green? What happened?
- A. From my view, cars were coming down on Bowdoin Street making a left-hand turn on Cambridge.
- Q. From which lane did this car that took a left-hand turn in front of you come from?
- A. From my view, the car came from the left-hand lane of Bowdoin Street.
- Q. What did it look like?
- A. It was a green vehicle. I don't recall the make.
- Q. What did you do when you saw this car coming toward you?
- A. Let him go.
- Q. Did you come to a complete stop? Did you pause? What did you do?
- A. Paused dramatically.
- Q. How far were you going before you slowed to allow that car to pass in front of you?
- A. I can give you an estimation. Probably anywhere between six and eight miles an hour.
- Q. And after you paused, about how fast were you going then?
- A. Two to three, four.
- Q. When the light turned green what did you do?
- A. I proceeded straight.
- Q. Did you look to your left when the light turned green?
- A. Yes.
- Q. What did you see?
- A. A white car.
- Q. What did you do then?
- A. Continued forward a little bit.
- Q. What happened then?
- A. The white car went around me. Then I noticed the black vehicle coming around to my left hand side.

- Q. What did you next observe?
- A. The cars coming down from Bowdoin Street.
- Q. How far have you gone at this point?
- A. Probably almost to the middle of the intersection, not quite to the middle.
- Q. And when you say that you had almost gone to the middle, are you referring to the front of the bus where you're sitting?
- A. Yes. Almost to the middle of Cambridge Street.
- Q. What did you next observe?
- A. Cars making a left-hand turn in front of me onto Cambridge Street that I yielded to.
- Q. How many cars did you yield to?
- A. Two that I remember.
- Q. What did you next observe?
- A. Myself going forward in preparation to make a left-hand turn onto Cambridge Street. There was a black vehicle coming down Bowdoin Street wanting to go right onto Cambridge. And I'm not going to say he was speeding, but he was moving a lot faster than I was.
- Q. Can you describe what kind of vehicle this was?
- A. I'm not sure if it was a pickup or an SUV or what, but it might have been something along those lines. And as to the make, I don't remember. Color was black.
- Q. And after you made this observation what did you do?
- A. I let him go. I let him make his right-hand turn onto Cambridge Street.
- Q. How far into the intersection was your bus at this time?
- A. A little more than halfway.
- Q. How fast were you going?
- A. Five to seven.
- Q. What did you next observe?
- A. I observed a blackish vehicle turning left onto Cambridge Street from my left-hand side. Some people were across --.
- Q. Let me stop you right there. Did you see this out your window? Did you see this via your mirror? Did you see it out your windshield? How did you see it?
- A. See what?
- Q. The vehicle you just described to me making a left.
- A. Left-hand mirror.
- Q. And did you see it drive off down Cambridge Street?
- A. He went onto Cambridge Street. I wasn't watching how far it went. I don't know how far it went down Cambridge Street.
- Q. You didn't see him drive down Cambridge Street?
- A. I saw him go past me on the left and then proceeded. And then my eyesight was focused to the right. I had two things going on to the right, too.
- Q. And you observed pedestrians on the corner?
- A. I just happened to see some people walking around.
- Q. What, if anything, did you notice about the pedestrians on that corner?
- A. Nothing.
- Q. What did you next observe?

- A. A green pickup truck passing me to the left-hand side as I continued to make my turn.
- Q. How is it that you observed that green pick up truck?
- A. Looking in the mirror.
- Q. So you see it behind you?
- A. I see it coming behind me and making the left-hand turn. At this point in time I'm already through the crosswalk. I've cleared the crosswalk.
- Q. And do you see this green pickup truck pass you? Or I don't know if it's a pickup truck, but do you see this green vehicle pass you out your window without the use of your mirror?
- A. You can't. You're looking at the mirror as soon as you look the left-hand side. It's glass about the size of this, and the mirror is right there. First thing you're going to look at is in the mirror.
- Q. What did you next see?
- A. Someone in my left-hand mirror.
- Q. Does the island in Cambridge Street extend up to the crosswalk? Does it go through the crosswalk or does it fall short?
- A. It doesn't come through the crosswalk. It falls short of the crosswalk.
- Q. How far short does it fall of the crosswalk?
- A. Probably 10 feet approximately.
- Q. As you began to make the left hand turn did you look to your left?
- A. Yes and I saw no one crossing Cambridge Street.
- Q. Where did you look next after that?
- A. To my right quickly.
- Q. And did you look out the right into your right side rearview mirror? Or were you looking out the window?
- A. The mirror.
- Q. And what did you see out that mirror?
- A. A couple of cars that were going straight up Bowdoin Street.
- Q. And what are you looking at?
- A. Car coming down Bowdoin Street.
- Q. When you get to the edge of the crosswalk is the bus still in the process of turning at that point?
- A. Let me see if I understand what you're saying. After I yielded to the black vehicle making a right-hand turn onto Cambridge Street, I was continuing making my left-hand turn onto Cambridge Street. What you're asking me is as I was crossing through the walkway, was the bus perfectly straight with Cambridge Street? Or was I still in the process of making the turn?
- Q. That's what I'm asking.
- A. Still in the process of completing the final turn.
- Q. How much time had elapsed from when you started forward when the light changed to green and the time you entered the crosswalk?
- A. Maybe 30 seconds, that's an estimate.
- Q. After you make the left-hand turn and you square the bus away, and it's pointing straight down Cambridge Street, how much time goes by before you hear that sound?

- A. Probably 10 seconds or that vicinity. It's not very long.
- Q. Could it have been less than that?
- A. Possibly.
- Q. Could it have been more like 5 seconds?
- A. I really don't know. I really can't be specific.
- Q. As you are entering the crosswalk, you're looking in which direction?
- A. All three directions.
- Q. When you say "all three directions," are you actually looking out your left, your driver's side window?
- A. You have to look out the driver's side window to look in the mirror, yes.
- Q. And when you said that you were looking to your left, don't you mean that you're looking out your mirror and not what's out beyond your mirror?
- A. You see things that are, whatever is there when you look into the mirror and maybe some things are beyond the mirror. But you're looking into the mirror. You're focusing into the mirror because that's going to tell you what's to your left, what's behind you to your left. Any pedestrians there? Are there any vehicles there? But you're trained to focus your eyes in several different directions at once, not just concentrate in looking in one area for five or ten seconds. Because something could happen over here.
- Q. And especially at an intersection like this, there's a lot going on, correct?
- A. Yes.
- Q. So you need to be very careful when going through an intersection like this.
- A. Absolutely.
- Q. Can you estimate your speed for us from when you first started from your position on New Chardon Street to, say, where the crosswalk is?
- A. Zero. When I started out. Probably anywhere from zero to six miles per hour.
- Q. Where your window meets the front windshield of the bus, is there a beam there or something?
- A. No. There is a support probably about this wide.
- Q. The mirror that you've been alluding to, I'm assuming that comes out from that stanchion and sticks out outside the bus. Or is it more towards you?
- A. No. It's bolted out. And you have an adjustable electronic - it adjusts by itself by moving the button up or down or in or out.
- Q. Just getting back for a moment to the mirror, on the driver's side of your bus and the window that's there, can you look down out of that window and see the ground right next to the bus?
- A. Yes, sir.
- Q. Do you have to lean into the window at all, or can you just glance down from your natural driving position and see the ground right next to the bus?
- A. You have to lean a little bit to see the ground right next to the bus.
- Q. Do you remember a gentleman coming up to you and stating that he thought you were driving too fast?
- A. No, sir.
- Q. Did he ask you at a later time how the accident happened?
- A. Yes.
- Q. What did you say?

- A. At the later time he asked me and told him basically what I described to you.
- Q. Tell me what you remember telling him.
- A. I told him I was making a left-hand turn from New Chardon Street onto Cambridge Street with the green light. And that there was nobody in the walkway. There were vehicles passing me on the left. I had just got through yielding for a vehicle coming down Bowdoin Street. I heard a noise. I looked in the mirror and saw a person falling back where the walkway was. And I pulled the bus over to the right-hand side.
- Q. Do you remember telling anyone that you never saw the pedestrian? "I never saw anyone."
- A. Yes.
- Q. Did you talk to anyone else at the scene?
- A. Not that I remember.
- Q. Where did you go after the accident?
- A. I had to go and take an alcohol breathalyzer right at Flagstaff Airport, because Bob Green had called me and requested me to do that. Which I had no objection to do. A couple of days later, I sat down and drew a diagram out and filled out an accident report for the Registry of Motor Vehicles.
- Q. Where was Ms. Hertz when - did you observe Ms. Hertz when you got out of the bus?
- A. I observed her lying on the ground.
- Q. Isn't it a fact that you were looking up Bowdoin Street, and you were not looking in front of you at the time of the accident?
- A. No. I wasn't looking up Bowdoin Street, sir. At the time of the accident I was on Cambridge Street.

City/Town Where Crash Occurred FLAGSTAFF		Date of Crash NOV 18, YR-2	Time of Crash 8:33 AM	# Vehicles Involved: ①																				
Section A: Crash Location																								
Please complete Section A1 or A2 below to indicate the location of the crash. If you need additional space to describe the crash location, please use the Crash Narrative Section on the last page of this form.																								
SECTION A1: Complete this Section if the crash occurred at an intersection of two or more streets: Step 1: Please indicate the route or roadway where you were traveling when the crash occurred: Route # <u>CAMBRIDGE ST.</u> Name of Roadway/Street Step 2: What was the name (or names) of the intersecting streets? Route # <u>NEW CHARDON / BOWDON</u> Name of Roadway/Street Route # _____ Name of Roadway/Street		OR SECTION A2: Complete this Section if the crash did NOT occur at an intersection: Step 1: Please indicate the route, roadway and address where the crash occurred: The crash occurred on Route #: _____ at Street or Address Number: _____ on the Street/Roadway known as: _____ Step 2: Please provide as much of the following specific location information as possible: The crash occurred (estimate the number of feet) _____ feet (Indicate direction as N/S/E/W) _____ of a) Mile Marker number _____ OR: b) Exit Number _____ OR: c) Intersecting Street/Roadway _____ Route # _____ Street/Roadway Name _____ OR: d) Landmark _____																						
Section B: Vehicle You Were Driving																								
Number of occupants in vehicle (including yourself): _____		Was vehicle damage above \$1000? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No																						
Driver's License Number 072 426 000	License State NEW	Date of Birth ____/____/____	Age ____	Sex <input checked="" type="checkbox"/> M <input type="checkbox"/> F																				
Your Full Name (Last, First, Middle) AMCUP PHILLIP		Street Address 74 RIVER STREET	City/Town SPRINGFIELD	State Zip NEW YORK																				
Insurance Company TRANSPORTATION MUTUAL	Vehicle Registration # 8536 CM	Reg. Type BUS	Reg. State NAN	Vehicle Year YR-4																				
Vehicle Make BUS																								
Indicate your type of vehicle 4																								
<table border="0" style="width:100%;"> <tr> <td>1 Passenger car</td> <td>4 Bus (15 or more passengers)</td> <td>8 Truck/trailer</td> <td>12 Tractor/triples</td> <td>97 Other</td> </tr> <tr> <td>2 Light truck (van, mini-van, pick-up, sport utility)</td> <td>5 Bus (7-15 passengers)</td> <td>9 Truck tractor (bobtail)</td> <td>13 Unknown heavy truck</td> <td>99 Unknown</td> </tr> <tr> <td>3 Motorcycle</td> <td>6 Single-unit truck (2 axles)</td> <td>10 Tractor/semi-trailer</td> <td>14 Motor home/recreational vehicle</td> <td></td> </tr> <tr> <td></td> <td>7 Single-unit truck (3 or more axles)</td> <td>11 Tractor/doubles</td> <td></td> <td></td> </tr> </table>					1 Passenger car	4 Bus (15 or more passengers)	8 Truck/trailer	12 Tractor/triples	97 Other	2 Light truck (van, mini-van, pick-up, sport utility)	5 Bus (7-15 passengers)	9 Truck tractor (bobtail)	13 Unknown heavy truck	99 Unknown	3 Motorcycle	6 Single-unit truck (2 axles)	10 Tractor/semi-trailer	14 Motor home/recreational vehicle			7 Single-unit truck (3 or more axles)	11 Tractor/doubles		
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Full Name of Vehicle Owner (Last, First, Middle) BANCROFT BUS LINES		Street Address _____ City/Town _____ State Zip _____																						
What Was Your Vehicle Doing Prior to Crash?																								
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	3 Turning right	6 Entering traffic lane	9 Overtaking/passing																					
Please Indicate the Sequence of Events as they occurred to YOUR vehicle by writing the corresponding number (1-52, or 97, 99) in up to 4 boxes below.																								
What happened first? 3	What happened 2nd (if applicable)? 	What happened 3rd (if applicable)? 	What happened 4th (if applicable)? 																					
<table border="0" style="width:100%;"> <tr> <td style="vertical-align: top;"> Collision with 1 Motor vehicle in traffic 2 Parked motor vehicle 3 Pedestrian 4 Cyclist 5 Animal-deer 6 Animal-other 7 Moped 8 Work zone maintenance equipment 9 Railway vehicle (train, engine) 10 Other movable object 11 Unknown movable object 20 Curb 21 Tree 22 Utility pole </td> <td style="vertical-align: top;"> 23 Light pole or other post/support 24 Guardrail 25 Median barrier 26 Ditch 27 Embankment/Sloping shoulder 28 Highway traffic signpost 29 Overhead sign support 30 Fence 31 Mailbox 32 Crash cushion/impact attenuator 33 Bridge 34 Bridge overhead structure 35 Other fixed object (wall, building, tunnel) 36 Unknown fixed object </td> <td style="vertical-align: top;"> Non-Collision 40 Ran off road right 41 Ran off road left 42 Cross median/centerline 43 Overturn/rollover 44 Equipment failure (blown tire, brakes, etc) 45 Fire/explosion 46 Immersion 47 Jackknife 48 Cargo/equipment loss or shift 49 Separation of units 50 Downhill runaway 51 Other non-collision 52 Unknown non-collision 97 Other 99 Unknown </td> </tr> </table>					Collision with 1 Motor vehicle in traffic 2 Parked motor vehicle 3 Pedestrian 4 Cyclist 5 Animal-deer 6 Animal-other 7 Moped 8 Work zone maintenance equipment 9 Railway vehicle (train, engine) 10 Other movable object 11 Unknown movable object 20 Curb 21 Tree 22 Utility pole	23 Light pole or other post/support 24 Guardrail 25 Median barrier 26 Ditch 27 Embankment/Sloping shoulder 28 Highway traffic signpost 29 Overhead sign support 30 Fence 31 Mailbox 32 Crash cushion/impact attenuator 33 Bridge 34 Bridge overhead structure 35 Other fixed object (wall, building, tunnel) 36 Unknown fixed object	Non-Collision 40 Ran off road right 41 Ran off road left 42 Cross median/centerline 43 Overturn/rollover 44 Equipment failure (blown tire, brakes, etc) 45 Fire/explosion 46 Immersion 47 Jackknife 48 Cargo/equipment loss or shift 49 Separation of units 50 Downhill runaway 51 Other non-collision 52 Unknown non-collision 97 Other 99 Unknown																	
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Was your Vehicle Towed From the Scene Due to Damage? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Vehicle Damaged Area (circle up to three) 																						

Section C: You and Your Passengers													
Please provide the full name, address, and DOB or Age for all passengers in your vehicle. Then write the corresponding code in each of the boxes for each occupant of the vehicle (yourself and all passengers). A list of the possible codes is provided at the bottom of this section.													
		Date of Birth/Age	Sex (M/F)	A	B	C	D	E	F	G	H	Name of Medical Facility	
Driver (See previous page)													
Name of Passenger 1 (Last, First, Middle)		Address											
NONE INJURED		City/Town State Zip											
Name of Passenger 2 (Last, First, Middle)		Address											
		City/Town State Zip											
Name of Passenger 3 (Last, First, Middle)		Address											
		City/Town State Zip											
A. Seating Position				B. Safety System Used				C. Air Bag Status		D. Air Bag Switch			
1 Front seat - left side (or motorcycle driver)				0 None used				1 Deployed-front		1 Switch in ON position			
2 Front seat - middle				1 Shoulder and lap belt				2 Deployed-side		2 Switch in OFF position			
3 Front seat - right side				2 Lap belt only				3 Deployed both front and side		3 ON-OFF switch not present			
4 Second seat - left side (or motorcycle passenger)				3 Shoulder belt only				4 Not deployed		4 Unknown if switch is present			
5 Second seat - middle				4 Child safety seat				5 Not applicable		99 Unknown			
6 Second seat - right side				5 Helmet									
7 Third row - left side (or motorcycle passenger)				99 Unknown									
8 Third row - middle													
9 Third row - right side													
10 Sleeper section of cab													
11 Enclosed passenger area													
12 Unenclosed passenger area													
13 Trailing unit													
14 Riding on vehicle exterior													
97 Other													
99 Unknown													
E. Ejected From Vehicle?		F. Trapped?		G. Injured?		H. Transported for Medical Care?							
0 Not ejected		0 Not trapped		1 Fatal injury		1 Not transported						97 Other	
1 Totally ejected		1 Freed by mechanical means		Non-fatal injury:		2 EMS (emergency service)						99 Unknown	
2 Partially ejected		2 Freed by non-mechanical means		2 Incapacitating		3 Police							
3 Not applicable		99 Unknown		3 Non-incapacitating		5 No injury							
99 Unknown				4 Possible		99 Unknown							
Section D: Other Vehicle(s) Involved in the Crash													
Number of occupants in the vehicle:		Was vehicle Damage above \$1000? — Yes — No		Moped? — Yes — No		Hit and Run? — Yes — No							
Driver's License Number		License State		Date of Birth		Age		Sex — M — F		License Class		Commercial Driver's License Endorsements	
										— D — A — B — C		H — Hazardous N — Tank vehicles P — Passenger	
										— M — Unknown		T — Doubles/triples X — Tank and Hazardous transport	
Full Name of Vehicle Driver (Last, First, Middle)		Street Address		City/Town		State		Zip					
Insurance Company		Vehicle Registration #		Reg. Type		Reg. State		Vehicle Year		Vehicle Make			
Indicate type of vehicle													
1 Passenger car		4 Bus (15 or more passengers)		8 Truck/trailer		12 Tractor/triples		97 Other					
2 Light truck (van, mini-van, pick-up, sport utility)		5 Bus (7-15 passengers)		9 Truck tractor (bobtail)		13 Unknown heavy truck		99 Unknown					
3 Motorcycle		6 Single-unit truck (2 axles)		10 Tractor/semi-trailer		14 Motor home/recreational vehicle							
		7 Single-unit truck (3 or more axles)		11 Tractor/doubles									
Full Name of Vehicle Owner (Last, First, Middle)		Street Address		City/Town		State		Zip					
Vehicle Travel Direction		What Was The Vehicle Doing Prior to Crash?		7 Leaving traffic lane		10 Backing		97 Other					
— N — S — E — W		1 Travelling straight ahead		4 Turning left		8 Making U-turn		11 Parked				99 Unknown	
		2 Slowing or stopped		5 Changing lanes		9 Overtaking/passing							
		3 Turning right		6 Entering traffic lane									
Section E: Non-Motorist(s) Involved in the Crash													
Indicate the type of non-motorist involved													
① Pedestrian 2 Cyclist 3 Skater 97 Other 99 Unknown													
What was the non-motorist doing prior to the crash?						Where was the non-motorist prior to the crash?							
1 Entering or crossing location						1 Marked crosswalk at intersection							
2 Walking, running or cycling						2 At intersection but no crosswalk							
3 Working						3 Non-intersection crosswalk							
4 Pushing vehicle						4 In roadway							
5 Approaching or leaving vehicle						5 Not in roadway							
6 Working on vehicle						6 Median (but not on shoulder)							
7 Standing						7 Island							
97 Other						8 Shoulder							
99 Unknown						9 Sidewalk							
						10 Shared-use path or trails							
						99 Unknown							
Date of Birth/Age		Sex		Full Name of Non-Motorist (Last, First, Middle)		Street Address		City/Town		State		Zip	
11/17/44		M		MARGARET A. HERTZ		12 W. MERIDIAN ST.		NEW BRITAIN		NEW STATE			
Safety Equipment?		Injured?		Transported for Medical Care?									
0 None used		1 Fatal injury		1 Not transported								97 Other	
6 Helmet		Non-fatal injury:		2 EMS (emergency service)								99 Unknown	
7 Protective pads (elbows, knees, etc.)		2 Incapacitating		3 Police									
8 Reflective clothing		3 Non-incapacitating		5 No injury									
		99 Unknown		99 Unknown									
		③ Possible											
If transported, please indicate Hospital/Medical Facility:													
FLAGSTAFF GENERAL													

Section F: Crash Conditions					
Light Conditions 1 1 Daylight 2 Dawn 3 Dusk 4 Dark - lighted roadway 5 Dark - roadway not lighted 6 Dark - unknown roadway lighting 97 Other 99 Unknown	Weather Conditions (up to two) 1 1 Clear 2 Cloudy 3 Rain 4 Snow 5 Sleet, hail, freezing rain 6 Fog, smog, smoke 7 Severe crosswind 8 Blowing sand, snow 97 Other 99 Unknown	Traffic Control Device 3 1 No controls 2 Stop signs 3 Traffic control signal 4 Flashing traffic control signal 5 Yield signs 6 School zone signs 7 Warning signs 8 Railroad crossing device 99 Unknown	Was the traffic control device functioning at the time of the crash? 1 <input checked="" type="checkbox"/> Yes 2 <input type="checkbox"/> No	Road Surface 1 1 Dry 2 Wet 3 Snow 4 Ice 5 Sand, mud, dirt, oil, gravel 6 Water (standing, moving) 7 Slush 8 Other 99 Unknown	Roadway Intersection Type 2 1 Not at intersection 2 Four-way intersection 3 T-Intersection 4 Y-Intersection 5 On ramp 6 Off ramp 7 Traffic circle 8 Five-point or more 9 Driveway 10 Railway grade crossing 99 Unknown
Trafficway Description 2 1 Two-way, not divided 2 Two-way, divided, unprotected median 3 Two-way divided, protected median 4 One-way, not divided 99 Unknown	School Bus Related? 1 <input type="checkbox"/> Yes 2 <input checked="" type="checkbox"/> No	Work Zone Related? 1 <input type="checkbox"/> Yes 2 <input checked="" type="checkbox"/> No	Manner of Collision 1 1 Single vehicle crash 2 Rear-end 3 Angle 4 Sideswipe, same direction 5 Sideswipe, opposite direction 6 Head on 7 Rear to rear 99 Unknown		

Section G: Crash Diagram	
	<p>Please draw a diagram of the roadway or streets where the crash occurred, indicating the vehicles involved and direction of travel using the following symbols:</p> <p>→ = Direction [1] = Vehicle 1 (Your Vehicle) [2] = Vehicle 2 O = Pedestrian/Non-Motorist</p> <p>Select one of the following if the crash did not occur on a public way:</p> <p><input type="checkbox"/> Off-street parking lot <input type="checkbox"/> Garage <input type="checkbox"/> Mall/shopping center <input type="checkbox"/> Other private way</p>

Section H: Witness Information		
Witness Name (Last, First, Middle)	Address	Phone
Donovan mello	100 Sunshine Way, Yellowstone, New York	

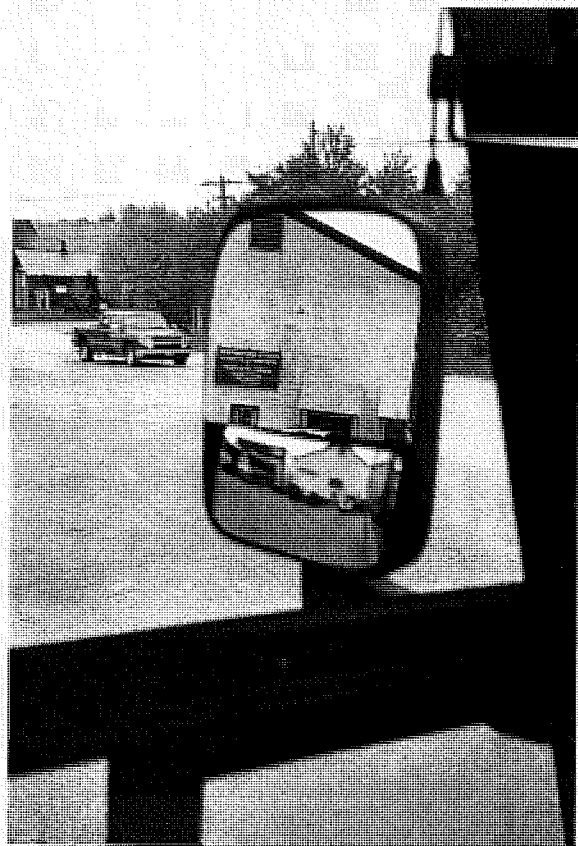
Section I: Property Damage Information (Other than Vehicles)			
Owner Name (Last, First, Middle)	Address	Phone	Property and Damage Description

Section J: Crash Narrative
<p>I made a left turn with a green light from New Chatham St onto Cambridge Street. I had waited for at least one car that was making a right turn from Bowdoin Street. After I had completed the turn and straightened out on Cambridge Street, I heard a thud noise and looked in my left side mirror and saw what looked like a person on the ground in the left lane.</p>

Section K: Signature	
Signed under Penalties and Penalties of Perjury Philip Ayup	Print Philip Ayup Date 11/24/98



Aycup's view in left side mirror





Hertz and Aycup traveled in the direction towards the camera.



This is a view looking down Cambridge Street toward the intersection of New Chardon. Aycup was turning left onto this portion of Cambridge Street. He would be heading toward the camera.



This is the subway station from which Hertz exited. She would go up the stairs and turn right to walk along Cambridge Street to the crosswalk.



This is a view looking up New Chardon toward Cambridge Street.



This photo shows New Chardon intersecting with Cambridge. There are three lanes in the direction traveled by Aycup.



This is the crosswalk traversed by Hertz. She would have been walking away from the camera.



This is the crosswalk traversed by Hertz. She would have been walking toward the camera.



Hertz was walking from left to right across the crosswalk area.



View looking down New Chardon Street from across Cambridge Street. Aycup was taking a left turn from New Chardon onto Cambridge.

Cyrus Coe, Ph.D.
Cognitive Rehabilitation, Inc.
One Jungian Way
Flagstaff, New State 03333

March 8, YR-1

I. M. Newrough, M.D.
The Head Clinic
One Horses Tail Way
Flagstaff; New State 03333

Re: Margaret A. Hertz
Date of Birth: 11/17/YR-44
Date of accident: 11/18/YR-2

Dear Dr. Newrough:

Thank you for referring the above referenced patient to me for neuropsychological testing. I had the opportunity to meet and examine Margaret A. Hertz at my office on March 8, YR-1. Ms. Hertz is a lovely, 42-year-old, well-developed, well-nourished adult female who gives a history of having been injured in an accident on November 18, YR-2.

My examination of Ms. Hertz was comprised of both a verbal interview and neuropsychological testing.

HISTORY: Pre-accident intelligence above average. Ms. Hertz graduated from Flagstaff High School in YR-26. She then attended New State University where she received her B.S. in mathematics, with a minor in philosophy in YR-22. She was on Dean's list through most of her college career. Upon graduating from New State University she began working for Bolder Computer Corporation. She successfully completed various technical courses in computer programming. Her math background and the logic courses which she took in pursuit of her philosophy minor helped her to become an excellent programmer. Since the accident she has suffered from headaches and irregular sleep patterns. She has become irritable, easily frustrated and has difficulty in problem solving skills. She remembers exactly what she was doing immediately before the bus struck her but cannot remember how to structure codes needed for computer programming. She believes that she has lost her ability to recall dates and numbers. These deficits have further added to her frustration and anxiety.

NEUROPSYCHOLOGICAL TESTING: Due to her obviously genuine symptoms, Ms. Hertz was given a complete battery of neuropsychological tests in order to determine the nature of her residual cognitive disabilities. The following tests were administered:

Trail Making Test;
Wisconsin Card Sorting Test;
Wechsler Adult Intelligence Scale;
California Verbal Learning Test;
Wechsler Memory Scale-Revised: Logical Memory Subtest
Multilingual Aphasia Examination;
Benton Test of Facial Recognition;
Benton Test of Line Orientation.

NEUROPSYCHOLOGICAL FINDINGS:

Higher Level Cognition: The Trail Making test was administered. Part A directed her to sequence a series of numbers, which were dispersed about a page. The basic task was completed in 55 seconds converting to a t-score of 35. This reflects mild to moderate impaired time in visual scanning. Part B increased in complexity and she was directed to sequence both numbers and letters while alternating between them. This more complex task was completed in 114 seconds converting to a t-score of 31. This finds her time of simultaneously processing two sets of stimuli to be within the mild to moderately impaired range.

Categorical reasoning was measured with the Wisconsin Card Sorting Test. This psychometric procedure directed the patient to sort stimulus cards according to categorical cues. She learned the first category by the second stimulus card and maintained ten consecutive correct responses. She successfully completed six categories requiring a maximum of three stimuli. Her overall performance reveals evidence of preservation but some impairment in categorical reasoning.

Global Index TQ scores were obtained with the Wechsler Adult Intelligence Scale-Revised. A full scale IQ of 105 was obtained, placing her within the average range for intelligence, but within the mildly impaired range for her educational background. A subtest score of 13 on Digit Span converted to a t-score of 63. This reflects above average immediate rote recall of forward and backward digit spans. Her arithmetic subtest score of seven converted to a t-score of 42. This is below average borderline performance for verbal arithmetic reasoning. These subtests weigh heavily on attention and concentration indicating inconsistent performance. Her verbal scores were all appropriate. Within the performance domain, subtest scores range from four through six. A subtest score of six was evident on Picture Completion converting to a t-score of 39. This reflects mild impairment with discarding essential details. A subtest score of six was also evident on Block Design converting to a t-score of 38. This indicates mild impairment with visuo-spatial processing as measured by her capacity to determine similarities among diverse word pairs.

Memory: The California Verbal Learning Test was administered in order to examine rote memory for verbal stimuli. This psychometric procedure directed her to learn a list of related items over five trials. 5 of 16 items were retained upon initial presentation indicating a weakness with initial encoding of verbal information. Her learning curve increased to a modest extent as 10 items were retained by the fifth trial showing a clear weakness is short term memory.

The Logical Memory Subtest of the Weschler Memory Scale-Revised was administered in order to examine more complex verbal information recall. This procedure directed her to learn two brief paragraphs presented in an oral format. A profound amount of story facts omissions were noted. Here, her score places her only at the 25th percentile. Consolidation difficulties were also evident as only 40 percent of the story facts initially learned were retained after a delay. This placed her long-term memory well below average.

Visual memory was measured with graphic reproductions of the Complex Rey Figure. Her short-term reproduction was less than the 30' percentile indicating a weakness with short- term visual memory.

Visuo-spatial, motor and mental status examinations were all within the normal range.

MOTOR TESTING: Ms. Hertz exhibits right hemisphere bias. She does extremely well with stimulation of the left side of the body, such as grip strength and tactile performance. On the other hand, she does extremely poorly with all things associated with the right side of her body.

MAJOR DEPRESSION EPISODE: Ms. Hertz has experienced weeks during which she is either depressed or has lost interest in nearly all activities. As further evidence that she is experiencing a major depressive episode, she has sleep disturbance and difficulty concentrating. She denies any changes in appetite, weight loss or weight gain, or recurrent suicidal ideations.

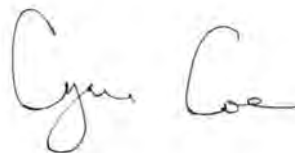
IMPRESSION: As a result of the November 18, YR-2 automobile accident, Margaret A. Hertz suffered a serious head injury with resulting cognitive deficits in memory and problem solving abilities. She complains of posttraumatic headache that dates back to the time of the accident.

Ms. Hertz sustained a significant head injury with persistent post-accident personality changes by history. Her increased irritability, lower frustration tolerance, problem solving and concentration difficulties are all symptoms consistent with a closed head injury/post concussion syndrome. Her sleep disturbance is likewise causally related to her traumatic injury.

From the history available to me, it is my opinion to a reasonable degree of medical probability, that all of the aforementioned problems are a result of her traumatic closed head injury and are causally related to the November 18, YR-2 motor vehicle accident. Ms. Hertz has suffered significant cognitive disabilities in memory and problem solving, which are incompatible with her usual occupation as a computer programmer. Further treatment is appropriate for the above problems and I would recommend a course of cognitive rehabilitation. Ms. Hertz' prognosis is guarded and she will most likely be left with some degree of permanent disability.

I thank you for referring this most pleasant woman, and I hope that I may continue to provide support in her overall treatment plan.

As always,

A handwritten signature in cursive script, appearing to read "Cyrus Coe". The ink is dark and the signature is fluid.

Cyrus Coe, Ph.D.

I. M. Newrough, M.D.
The Head Clinic
One Horses Tail Way
Flagstaff, New State 03333

June 27, YR-0

Re: Margaret A. Hertz
Date of Birth: 11/17/YR-44
Date of Accident: 11/18/YR-2

To Whom It May Concern:

Margaret A. Hertz is a 43-year-old female who gives a history of having been in good health until 11/18/YR-2 when she was a pedestrian involved in a motor vehicle accident. She was struck a glancing blow in the head by a bus, hit her head when she fell to the ground, and believes that she lost consciousness briefly. She recalls being taken by ambulance to General Hospital where she was treated in the emergency room and then released. A CT scan was read as negative. Her discharge diagnosis from General Hospital was cerebral concussion and cervical sprain and strain. She complained of headache. Ms. Hertz returned to work two days post accident. She was recommended to me by her lawyer's paralegal.

Ms. Hertz first presented at my office approximately six weeks post accident and was referred to me by Mr. Able. She has subsequently remained under my care. She appeared generally dull and concerned. Ms. Hertz stated that after the accident she experienced headaches and neck pain, but assumed that they would subside. The neck pain subsided after a few days. The headaches diminished in frequency and intensity, but she began to notice that she was having difficulty concentrating at work. She felt physically tired and emotionally "drained." She experienced frequent headaches, receiving only minimal relief from over-the-counter pain relievers. She cannot identify provocative or palliative factors. She also has developed a sleep disturbance, difficulty getting to sleep, as well as staying asleep, and she finds that she is generally very easily frustrated and very irritable and has episodes of "exploding" at home and work. She is easily distracted and feels that she is unable to concentrate for extended periods of time. She thought that her difficulties at work were causing the sleep problems, as she had been worried about her suffering job performance and fears an inability to support herself. She stated that she was one of her company's top programmers and was frequently given the most challenging assignments. She felt that post-accident she was doing a "lousy job" and was having difficulty solving what used to be routine problems. She has become very forgetful and can no longer recall numbers or dates. She felt she could no longer perform her job as she had been and her self-confidence and attitude have declined.

I suggested she take time off from work, but she rejected my suggestion due to her devotion to her employer and her need for the income. Eventually, she was unable to perform her assigned duties and was forced to take a leave from her job. She fears that her home may fall into foreclosure. She is frustrated, confused and depressed. Ms. Hertz thought that her problems might be related to the accident after seeing a medical education program on TV on head injuries.

She saw Dr. Bombay, her family doctor, once, approximately two weeks after the accident. She complained of being unable to sleep. Dr. Bombay prescribed a sleeping pill. As the sleeping pills did not help she stopped taking them after a few days and has not taken them since. She does not recall the name of the medication.

Ms. Hertz denies any past history of injuries or medical treatment beyond routine care. She is single. She denies smoking and drinks only wine occasionally with dinner. She denies any allergies. She has worked as a computer programmer her entire adult life.

On examination, Ms. Hertz is a well-developed woman who is awake, alert, oriented, and cooperative. Examination of the skull is normal.

The neck is supple with no trapezial spasm or tenderness.

Blood pressure is 124/84.

Cranial nerves:

II	The fundi are well visualized and fields are intact to finger counting.
III, IV, VI	Normal. Pupils are equal and reactive.
V	Normal.
VII	Shows no asymmetries.
VIII	TMs intact.
IX, X	Symmetrical.
XI	Strong.
XII	Strong.

Cerebellar function is intact in the upper and lower extremities.

Sensation testing is intact to pin, light touch and vibration.

Motor function testing shows good bulk. Triceps, wrist flexors and extensors and grip are intact. She is right handed. Grip is 32 kilograms right, 27 kilograms left. In the lower extremities, hip flexors, knee flexors and extensors, EHL and TA are intact.

Gait is unremarkable.

Deep tendon reflexes in the upper and lower extremities are normal and symmetrical with symmetrical knee jerks and ankle jerks with bilateral flexor plantar response.

As Ms. Hertz was exhibiting classic signs of a closed head injury, I referred her to Dr. Cyrus Coe for complete neuropsychological testing in order to determine whether these signs were a result

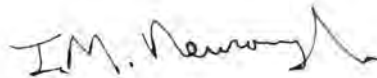
of her injury. Dr. Coe examined Ms. Hertz on March 8, YR-1 and rendered a report to me dated March 10, YR-1. Based on my own findings and as confirmed by Dr. Coe's examination and interview with Ms. Hertz, it is my opinion that to a reasonable degree of medical probability Ms. Hertz has suffered a cognitive disability caused by the injuries which she sustained in the accident on November 18, YR-2 when she was struck on a crosswalk by a speeding bus.

IMPRESSION: Margaret A. Hertz suffered a serious head injury on November 18, YR-2 with cerebral concussion or contusion and resulting in cognitive deficits in memory and problem solving abilities. She complains of post-traumatic headache that dates back to the time of the accident.

Ms. Hertz had a cerebral injury with significant and persistent post-concussion syndrome. She experienced a major depressive episode. Ms. Hertz' sleep disturbance may respond to tricyclic antidepressants. Counseling on living with head injury is recommended so that she may better adapt to her condition. I have prescribed a course of physical therapy and biofeedback to help control the neck and shoulder tension that may be triggering her headaches.

From the history available to me, it is my opinion to a reasonable degree of medical probability, that all of the aforementioned problems are causally related to the November 18, YR-2 motor vehicle accident. Ms. Hertz has suffered significant cognitive disabilities, which have prohibited her from carrying on her usual occupation as a computer programmer. Ms. Hertz' prognosis is extremely guarded. I believe that she will be left with permanent sequelae.

Very truly yours,

A handwritten signature in dark ink, appearing to read "I.M. Newrough", with a stylized flourish at the end.

Irving Max Newrough, M.D.
F.A.C.P., Board Eligible in
Both Neurology and Psychiatry

PROGRESS NOTES

Patient	Margaret A. Hertz	Date of Birth: 11/17/YR-44
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12/30/YR-2: Hx mva 11/18/YR-2. Pt. states speeding car hit her while pedestrian. Pt, struck in head, possible loss of consciousness, HA and neck pain of weeks duration. Pt. presently c/o sleep disturbance, concentration difficulties, personality changes by history. Pt. appears dull, concerned. Cranial nerves normal. Cerebellar function testing is intact in the upper and lower extremities. Sensation testing is intact to pin, light touch and vibration. Motor function testing shows good bulk. Triceps, wrist and extensors, EHL and TA are intact. Gait is unremarkable. Deep tendon reflexes in the upper and lower extremities are normal and symmetrical with symmetrical knee jerks and ankle jerks with bilateral flexor plantar response. Neck -supple with no trapezial spasm or tenderness. BP 124/84.

Imp. - cerebral concussion with significant and persistent post-concussion personality changes by history. Recommend course of PT, return in 2 weeks.

1/8/YR-1: Patient states PT providing relief from HA. Still c/o HA 2 to 3x/wk. BP120/82. Personality changes persist. Pt. Notes memory and problem solving difficulties. Easily distracted, having trouble concentrating and performing job duties as computer programmer. Questionable major depressive episode. Recommend neuropsych. Consult for cognitive testing. Offered to place pt. on disability. Pt. refused, does not want to leave in middle of projects. Needs the money. Fear of foreclosure. Pt. to return in 2 wks.

1/18/YR-1: N/S. Auto reschedule to 1/20 - (office left message on patient's phone)

1/20/YR-1: Pt. cancelled. Reschedule to 1/24 - (left message on office machine - in Florida)

1/24/YR-1: Pt. continues with therapy and biofeedback training. PT provides temporary relief. HA continue 2-3x/wk. less severe. Cranial nerves normal. BP 122/82 Personality changes, sleep disturbance, memory and concentration deficits persist. F/u 1 month.

2/25/YR-1: Pt. completed course of PT. Do not believe further PT will benefit. Cranial nerves normal. BP 122/83. Pt. still complains of inc. frustration. Pt. had explosive episode at work. Again suggested she take disability time off if she can. Pt. agreed some rest from work would be helpful, States that she isn't "doing her job very well any more anyway." Fear of foreclosure. Disability form completed and forwarded to Bolder. Will see Dr. Coe in consult on 3/8/YR-1. Pt. to return after neuropsych. Advise atty.

3/15/YR-1: Pt. examined on 3/8/YR-1 by Dr. Coe. Report received confirms cognitive dysfunction, including major depressive episode. Latter still questionable. Pt. still complains of personality changes at home. Notes that reduced stress from not working has helped. Still gets frustrated over little things at home. F/U 1 mo.

4/15/YR-1: Pt. cancelled.

4/17/YR-1: Pt. doing better. Claims she has not had headache since last visit. Pt. states very relaxed, but is afraid to return to work. Fears relapse. Still fears foreclosure. Suggested she try to return part-time when ready. F/U as needed.

**Flagstaff General Hospital
Emergency Room Discharge Summary**

Patient: Margaret A. Hertz

Date of Birth: 11/17/YR-44

Date/time of Admission: 11/18/YR-2 – 9:01 am.

Date of Discharge: 11/18/YR-2

HISTORY AND PHYSICAL: This 42 year old woman was a pedestrian involved in an accident with a bus. She stated that she was struck by a bus which had gone through a red light at the intersection of Cambridge and New Chardon Street. She claims that she was hit in the head although she does not recall other details. She does not believe that she lost consciousness but is not certain. Patient is alert and oriented, PERLA. Neck - mild spasm in the cervical region; chest - clear; HEENT - within normal range; abdomen - soft.

X-rays of the head and cervical spine showed no fractures or dislocations. CT Scan of the head was normal.

IMPRESSION: Possible mild concussion/MVA; minor neck sprain.

DISCHARGE INSTRUCTIONS: Advised to apply ice to her head and neck intermittently over the next 24 hours and to take Tylenol, or other non-aspirin pain reliever as needed for pain. If nausea, vomiting or dizziness occur, she should return to the emergency room immediately.

BOLDER CORPORATION

"The Bolder solution to your systems problems"™

ANNUAL EMPLOYEE REVIEW

Employee: Margaret A. Hertz

Start date with Company: June, YR-22

Evaluation period - Jan. 1, YR-3 - December 31, YR-3

Present position: Senior Programmer


Years in present position: 12

Present supervisor: Ralph King

Years as employee's supervisor: 2

Supervisor's Written Evaluation:

Margaret has been with the company for more than 20 years, rising from entry level programmer to senior programmer. She has been a senior programmer for more than 12 years. Her work is certainly acceptable although she does not show any particular initiative or ability to grow beyond her present position.

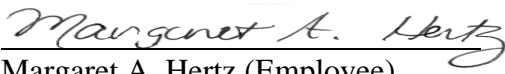


Ralph King (Supervisor)
1/15/YR-2

S/S

Employee's Comments Concerning Evaluation:

I disagree with Ralph's comments to the extent he questions my initiative or potential for growth. An employee has to feel valued and be given an opportunity for advancement in order to show initiative and I don't think Ralph has done that. I don't know what his problem is with me or my work but I did not have any issues with Sally Fitch who was my supervisor before Ralph.



Margaret A. Hertz (Employee)
1/20/YR-2

New State General Laws c. 90 § 11**Regulation of Vehicles Approaching Pedestrians in Marked Crosswalks.**

The driver of a vehicle shall yield the right of way, slowing down or stopping if need be so to yield, to a pedestrian lawfully crossing the roadway within a crosswalk marked in accordance with standards established by the department of highways if the pedestrian is on that half of the traveled part of the way on which said vehicle is traveling.

(cite as NSGL c. 90 § 11)

New State General Laws c. 90 § 45**Regulation of Pedestrian Traffic.**

Pedestrians shall cross intersections only in designated crosswalks where such are present.

(cite as NSGL c. 90 § 45)

DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (DSM-IV)

Major Depressive Episode: The central feature of a Major Depressive Episode is a period of at least two weeks during which there is either depressed mood or the loss of interest or pleasure in nearly all activities.

Criteria for Major Depressive Episode:

- A. Five (or more) of the following symptoms have been present during the same two-week period and represent a change from previous functioning; at least one of the symptoms is either (1) depressed mood or (2) loss of interest or pleasure.
 1. Depressed mood most of the day, nearly every day, as indicated by either subjective reports (*e.g.*, feels sad or empty) or observation made by others (*e.g.*, appears tearful).
 2. Markedly diminished interest or pleasure in all, or almost all, activities most of the day, nearly every day (as indicated by either subjective accounts or observations made by others).
 3. Significant weight loss when not dieting or weight gain (*e.g.*, a change of more than five percent of body weight in a month), or decrease or increase in appetite nearly every day.
 4. Insomnia or hypersomnia nearly day.
 5. Psychomotor agitation or retardation nearly every day (observable by others, not merely subjective feelings of restlessness or being slowed down).
 6. Fatigue or loss of energy nearly every day.
 7. Feelings of worthlessness or excessive or inappropriate guilt (which may be delusional) nearly every day (not merely self-reproach or guilt about being sick).
 8. Diminished ability to think or concentrate, or indecisiveness, nearly every day (either by subjective account or as observed by others).
 9. Recurrent thoughts of death (not just fear of dying), recurrent suicidal ideations without a specific plan, or a suicide attempt or a specific plan for committing suicide.
- B. The symptoms cause clinically significant distress or impairment in social, occupational, or other important areas of functioning.
- C. The symptoms are not due to the direct physiological effects of a substance (*e.g.*, a drug of abuse, or medication) or a general medical condition (*e.g.*, hypothyroidism).
- D. The symptoms are not better accounted for by bereavement, *i.e.* after the loss of a loved one, the symptoms persist for longer than two months or are characterized by marked functional impairment, morbid preoccupation with worthlessness, suicidal ideation, psychotic symptoms, or psychomotor retardation.