

THIRTY FOURTH JUDICIAL DISTRICT COURT

PARISH OF ST. BERNARD

STATE OF LOUISIANA

NUMBER 86-237

DIVISION "B"

ELMO J. WALKER, III

VERSUS

**TIMOTHY BILLIOT AND STATE FARM
MUTUAL AUTOMOBILE INSURANCE COMPANY**

FILED

DEPUTY CLERK

REASONS FOR JUDGMENT

Plaintiff, Elmo J. Walker, initiated these proceedings against Defendants, Timothy Billiot and his automobile liability insurance company, State Farm Mutual Automobile Insurance Company by petition filed on October 28, 1998 claiming personal injuries and property damage resulting from a two-vehicle automobile accident which occurred on the early morning hours of November 1, 1997 in which the Plaintiff Walker and Defendant Billiot were involved. Timothy Billiot also filed a petition for personal injury and property damage against Elmo J. Walker, III and State Farm Mutual Automobile Insurance Company as the automobile liability insurance carrier of Elmo J. Walker, III resulting from the same automobile accident in proceedings numbered 86-259 on the docket of this court and consolidated with this action prior to the settlement and dismissal of that consolidated action.

The evidence produced at trial of this matter by the testimony of both parties shows that Plaintiff, Elmo J. Walker was proceeding in a southerly direction on Riverbend Drive to the point of its intersection with La. Highway 39 (East Judge Perez Drive) in his Chevrolet Nova automobile. A traffic control device in the form of a STOP sign requires that Plaintiff's vehicle come to a complete stop on Riverbend Drive prior to entering the favored East Judge Perez Drive. Defendant, Timothy Billiot was proceeding on East Judge Perez Drive in an easterly direction prior to the time of the accident in his Chevrolet Pickup truck. By the positioning of the respective parties prior to impact, the Defendant's vehicle was in the travel lane closest to the intersection of Riverbend Drive and East Judge Perez Drive on its northern side. Plaintiff intended to cross the eastbound lane of Judge Perez Drive in which Defendant was traveling and then negotiate a left turn

at the median on Judge Perez Drive for the purpose of making a left turn to return home via Judge Perez in a west bound direction. However, prior to doing so, Plaintiff's and Defendant's vehicles collided in the east bound lane of Judge Perez. The impact caused Plaintiff to be ejected from his vehicle and his the vehicle to come to rest in the west bound lane of Judge Perez Drive.

Plaintiff contends he stopped in obedience to the STOP sign and looked in the direction from which the Defendant's truck was coming. Plaintiff testified he saw headlights which he determined must have been the Billiot truck at a sufficient distance for him to clear the east bound lane of Judge Perez Drive, if the Billiot vehicle would have not been speeding in excess of the posted speed limit of 55 mph.

Defendant contends he was traveling at 55 mph prior to the accident and was not speeding. He further testified that he did not see Plaintiff stop at the STOP sign, but concludes that the Plaintiff could not have so stopped because the Plaintiff was going 40-50 mph at the time of impact.

Plaintiff called a scientific accident reconstruction expert, Frank Griffith, Ph.D. who concluded that the Billiot vehicle was going at least 80 mph prior to braking and over 60 mph prior to impact. His conclusion considered the measurement of and recording of 84' of pre-impact single wheel skid marks found on the highway in the police report by the investigating state trooper, who did not testify at trial. The expert witness further testified the Billiot truck traveled 350' after impact and made a ½ rotation prior to coming to its post impact final location. By compute simulation, Dr. Griffith concluded that the Billiot vehicle was exceeding the safe and posted speed limit and that the speed of the Billiot vehicle was the cause of the accident.

On cross examination, Dr. Griffith testified the Walker vehicle could have stopped at the stop sign and still may have accelerated therefrom to a sufficient speed to result in the Walker vehicle to travel 50' and making a 2 ½ post-impact rotation and crossing into the opposite lane of Judge Perez traffic to its post impact final location as a physical possibility. However, Dr. Griffith also admitted that such an occurrence would have required the Walker vehicle to go to full acceleration taxing the performance limits of his vehicle.

Defendant also called a scientific accident reconstruction expert, Mr. Michael Sunseri, who testified that the photographs taken at the accident scene did not show skid marks from pre-accident braking and doesn't know that any such marks were made by the Billiot vehicle. He further

calculates the Billiot vehicle came to rest 320' after impact rather than the 350' calculated by Dr. Griffith. Mr. Sunseri attributed the difference in both calculations that Dr. Griffith used average weights for each vehicle while Mr. Sunseri used specific vehicle type and manufacturer or dealer specification for the respective vehicle weight and the application of the coefficient of friction. Mr. Sunseri calculated the co-efficient of friction used in his analysis while Dr. Griffith assumed the friction coefficient from prior work on similar highways. In conclusion, Mr. Sunseri testifies that the Billiot vehicle was going 60 mph prior to impact if he were to conclude that the pre-impact skid marks were left by the Billiot vehicle and 70-75 mph if there were no pre-impact skid marks. In either event, his opinion is that the primary cause of the accident was the entry of the Walker vehicle in the favored street contributed to by the speed of the Billiot vehicle.

The night before this accident was Halloween. Plaintiff, Elmo Walker, III, and his friend, Bryan had been joyriding in the French Quarter from 8:00 P. M. to about midnight. After midnight, He and Bryan drove to the Sugar Mill development in lower St. Bernard to visit with two young girls at their home. He testified they had nothing alcoholic to drink until approximately 2:00 A.M. when they went to buy a case of Budweiser beer and returned to the girl's home. Plaintiff and his friends consumed nearly the entire case of 24 beers there. Plaintiff testified he had only 4 beers that night before bring Bryan home on Reunion Drive in Riverbend Plantation. After Bryan was at his home, Plaintiff proceed to go to his home via Riverbend Drive to East Judge Perez when the accident occurred. A blood test done at the hospital some undetermined time after the accident resulted in a reading of .05% of alcohol in 100 centimeters of blood or ½ of the limit of intoxication for adult offenders as provided in La. R. S. 14:98. Although the Plaintiff was under 18 years old and may have been considered to be beyond the legal limit of intoxication for a minor as provided in La. R. S. 14:98.1, he was not prosecuted because a decision of a state district court invalidating the statute was on appeal before the Louisiana Supreme Court at the time of this accident.

Defendant, Timothy Billiot, went to a Halloween party in Lexington subdivision in Meraux from about 7:00 P.M. to 3:30 A.M. He testified he had 4 beers while at the party with the last one consumed at 10:00 P.M. since he was scheduled to go to work later in the day of November 1, 1979. His consent was requested by the State Trooper to administer a breathalyzer test and was denied by Mr. Billiot. His prosecution was dismissed by the District Attorney for lack of prosecuting witness.

The issue of intoxication or the relative extent or level of impairment of each of the parties, if any, and its contribution to the causation of the accident is unclear or unremarkable. Both Plaintiff and Defendant were attending a Halloween party or visiting with friends into the early hours of the morning where alcoholic beverages were served and consumed. Each contends and testifies that they drank only a coincidental four beers. However, a determination on the issue of intoxication influence, impairment or contribution to the causation is not necessary for the ultimate judicial resolution, of the litigation in light of the following other facts established by evidence presented at trial.

This court finds that the Defendant, Timothy Billiot was exceeding both the posted and safe rate of speed by as little as 5 mph (60 in a 55 zone by his testimony and the testimony of his expert, Mr. Sunseri) or as much as 25 mph (80 in a 55 zone by the physical evidence and testimony of his expert, Dr. Griffith) and that the speed of Defendant contributed proximately to the causation of the accident. Clark vs. Natt, 748 So. 2d. 584, (La. App. 2nd Cir 1999); Campbell vs. American Home Insurance Company 258 So. 2d 81 (La.1972).

This court also finds that the Plaintiff, Elmo Walker, III, was proceeding on an unfavored street when entering the intersection of Riverbend Drive and East Judge Perez Drive where a STOP sign was posted for traffic requiring him to bring his vehicle to a complete stop before entering the favored lane of traffic. The evidence shows clearly that Plaintiff either failed to make a complete stop at the STOP sign or, at least after stopping, accelerated from the stop sign at a such a rate to full capability of his vehicle in the path of the Defendant's vehicle, according to the testimony of his expert, Dr. Griffith. Audubon Insurance Co. vs. Knoten, 325 So. 2d. 624(La. App. 4th Cir. 1976) Corvers vs. Acme Truck Lines 673 So. 2d. 1088 (La. App. 5th Cir. 1996) Guillot vs. Valley Forge Insurance Company 753 So. 2d. 891(La. App. 3rd Cir. 1999).

Thus, this court determines that each of the parties, both Plaintiff and Defendant equally contributed to the cause of the accident and assigns comparative fault to the Plaintiff, Elmo J. Walker, III at fifty (50%)percent and to the Defendant, Timothy Billiot at fifty (50%) percent.

Plaintiff suffered injuries to his face, thumb, finger and upper body, primarily as lacerations and contusions. He suffered a large cut at or about the eye area on the face and body which required numerous stitches which were removed 2 weeks after the accident. His thumb was placed in a cast

for six weeks post accident. He was treated for his injuries for approximately two months after the accident. He was required to cease his community college courses as a computer engineering technical student because of his limited ability to use his thumb and finger to take notes in classes and

claims he had a financial loss of \$525.00 for semester tuition payments. The property damage is stipulated at \$712.00, including the towing bill. Total non-medical special damage is \$1,237.00.

From the medical bills and records introduced at trial, it appears the total medical special damage is \$3,751.85 which include the bills of Priority EMS, De La Ronde Medical Center, X-rays by Fortenberry et al M.D., Reza M, D. , Baker M. D. and Bopp, M.D. for medical services performed. Total special damage claimed equals \$4, 988.85.

For the general damages calculation for the cuts, bruises and lacerations to the face and body,

injuries to the finger and thumb and soft tissue injuries with headaches for the duration of treatment, this court determines a proper award for compensation in the amount of \$11,000.00. Manville vs. Citizen 689 So. 2d. 578 (La. App.3rd Cir. 1997) Reed vs. Arthur 556 So. 2d. 937 (La. App. 3rd. Cir. 1990) Dill vs. DODT 556 So. 2d. 1288 (La. App. 5th Cir 1988) Barillas vs. Carrion 692 So. 2d. 1217 (La. App. 5th Cir. 1997) Brown vs. Sears Roebuck 512 So. 2d. 439 (La.1987) Wischer vs. Major 694 So. 2d. 924 (La. App. 4th Cir. 1995) Harris vs. Douchette 539 So. 2d. 987 (La. App. 1989)

This court does not award any general damages or for future medical expenses for the removal of the facial scar recommended by Doctor Bopp. The court was able to clearly see the Plaintiff as he appeared in court to testify in these proceedings and did not find the scar to be significant or unsightly to this young male to justify an further award for disfigurement other than as is reflected in the above general damage calculation and based on the jurisprudence awarding damages in those cited cases for disfigurement.

The court further finds that the consultation with Doctor Bopp took place nearly two years after the accident and 2 ½ years ago with no effort to attempt, plan or even consider the surgery for scar removal. The damages sought by the Plaintiff in this respects is to speculative to justify a further award.

After considering the Plaintiffs comparative fault of fifty (50%) percent the court reduces the prospective award accordingly and will enter a judgment on this day in favor of the Plaintiff,

Elmo J. Walker and against the Defendant, AllState Insurance Company in the full and true sum of **SEVEN THOUSAND NINE HUNDRED NINETY FOUR AND 13/100 (\$7, 994.13) DOLLARS** together with interest thereon from the date of judicial demand at the prescribed legal rate of interest and for one-half (½) of the costs of these proceedings.

These reasons for judgment were written at Chalmette, Louisiana on this Day of May, 2002.

MANUEL A. FERNANDEZ
DISTRICT JUDGE, DIVISION "B"

THIRTY FOURTH JUDICIAL DISTRICT COURT

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JUDGMENT

This matter came to be heard on April 15, 2002 on trial on the merits.

PRESENT: ELIZABETH BOWMAN, Attorney for Plaintiff, and
Plaintiff, ELMO J. WALKER, III

and

PAUL TABARY, Attorney for Defendant,
ALLSTATE INSURANCE COMPANY

The Court, upon considering testimony of witnesses, the pleadings and stipulations of the parties, and the record of this proceeding, the law and evidence being in favor of Plaintiff, Elmo J. Walker III, and accordingly, renders judgment in favor of the Plaintiff, Elmo J. Walker, III, and against the Defendant, Allstate Insurance Company, for the reasons provided in the Reasons for Judgment filed herein.

JUDGMENT RENDERED AND SIGNED at Chalmette, Louisiana, this _____ day of
_____, 2002.

MANUEL A. FERNANDEZ
DISTRICT JUDGE, DIVISION "B"