

Case Summary

Dorothy Hiller¹ v. Charles Cutler and Fleet Trucking Company

This case involves a head-on collision between a car driven by Dorothy Hiller and a tractor trailer driven by Charles Cutler and owned by Fleet Trucking Company. The vehicles were approaching each other on a two-lane rural highway in South Carolina.

Mrs. Hiller contends that she came down the street from her house to the highway intending to turn right. She stopped, looked to her left, saw a truck a long way back and turned right, pulled out onto the highway headed the same way as the distant approaching truck. She gradually increased her speed to the limit, 55 M.P.H. After she had been going that speed for a short while, the truck came up from behind her and went to pass her on the left. As the rear of the trailer was about even with her door, the truck suddenly pulled into her lane. The rear tire struck her door and knocked her car into the guardrail to her right. After hitting that guardrail, Mrs. Hiller's car caromed across the road hitting the guardrail on the opposite side of the highway. After hitting this second guardrail, her car bounced off it into the path of an oncoming large dump truck which hit her nearly head on.

Charles Cutler and Fleet Trucking, his employer, contend that Mrs. Hiller came down the street to the highway, never looked in his direction, and pulled out in front of Mr. Cutler leaving him with too little room between him and her. Mr. Cutler says he had only three options: run off into a ditch on his right, slam into Mrs. Hiller from behind, or pull out to pass into the lane for oncoming traffic. He chose the latter option once he realized there was nothing coming for nearly a mile ahead in that line. Once he started to pass, he says that Mrs. Hiller must have panicked because she increased her speed to 70 M.P.H., making it take longer for him to get around her. Despite the increased speed, Mr. Cutler was successful in getting past her, and after checking his rear view mirror and seeing that he had room, pulled back into his lane in front of Mrs. Hiller. Mr. Cutler then noticed trucks approaching in the opposite lane. Mr. Cutler never felt any contact between his vehicle and Mrs. Hiller's car. He was surprised when he heard on the CB that Mrs. Hiller was in a wreck.

Mrs. Hiller had multiple fractures and several surgeries, and she seeks compensatory damages. Aspects of her damages are disputed. The parties have stipulated that her medical and hospital bills at the time of trial are \$242,311.42 with both knee replacements included, \$192,311.42 with one knee replacement included, and \$142,311.42 with neither knee replacement included. Except for the knee replacements, the parties further stipulate that her bills were incurred as a result of injuries sustained in the accident. They also stipulate that all charges were reasonable and customary for the services

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VTLA wishes to thank AAJ, Professor Donald H. Beskind of Duke University School of Law and Professor Beskind's former client for her gracious permission to use her actual medical records and documents from her case. The facts as portrayed are largely taken from public records in the actual case except in those few places where they have been modified for the CLE exercise.

provided. Cutler and Fleet Trucking deny any negligence. Fleet Trucking, however, has admitted that Cutler was in the course and scope of his employment when this accident occurred. Plaintiff's only cause of action against Fleet is respondeat superior. Bolt has \$51,000,000 in insurance coverage for this incident.

Witnesses who will be testifying at trial:

- Dorothy Hiller, Plaintiff
- Robert Martin, M.D., Plaintiff's Treating Physician
- Charles Cutler, Defendant
- Herbert Shisler, M.D., Defense Medical Examiner

Notes:

1 *The medical illustrations contained in this fact pattern are not of Ms. Hiller's actual injuries, as those originally provided were of poor quality. Thus, illustrations of similar injuries from other cases have been used. Many thanks to Amicus Visual Solutions of Richmond for providing us with these state-of-the-art medical illustrations.*

2 *Similarly, the original photographs of Rte. 41 provided with the packet were illegible, and so pictures of the actual roadway were obtained with Google Street View™.*

3 *Although the accident happened in South Carolina, the parties have agreed to apply Virginia law.*

4 *Mrs. Hiller's preexisting condition was not part of the original fact pattern and was created for the VTLA Trial from Start to Finish seminar.*

5 *Assume that James McGinn, the driver of the dump truck that struck Ms. Hiller after she had careened off the guardrails, was not deposed and is not available as a witness. Though he is very much alive in real life, please assume for this program that he passed away before he could be deposed.*

6 *Plaintiff has a full life care plan prepared by Cynthia Orson, a life care planner. That report is omitted because of its length. It was, however, provided to Dr. Finley Suh, Plaintiff's economist, who used it as the basis of his report which is an attachment to this file.*