

2013 WL 9827309 (D.C.Super.) (Trial Filing)
Superior Court of the District of Columbia,
Civil Division.

Ruby DOWNING, Plaintiff,

v.

WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY, Defendant.

No. 2012CA0007560.
October 30, 2013.

Joint pretrial Statement

Michael K. Guss #465171, WMATA-COUN, 600 5th Street, NW, Washington, DC 20001, (202) 962-1468, Fax (202) 962-2550.

[Errol R. Thompson](#) #415043, The Thompson Law Firm, LLC, 8121 Georgia Avenue, Suite 501, Silver Spring, Maryland 20910, (301) 585-9700, Fax (301) 585-9670.

Judge [T. Motley](#).

Cal.#5

Next Event: Pre-Trial Conf.

Nov. 6, 2013

A. Certification of Rule 16(c) Meeting:

Counsel for the parties met on October 18, 2013 to exchange information regarding the case.

B. Parties and Counsel:

Plaintiff: Ruby Downing

Counsel:

Errol R. Thompson

The Thompson Law Firm, LLC

8121 Georgia Avenue, Suite 501

Silver Spring, Maryland 20910

Tel.: (301) 585-9700

Fax:(301) 585-9670

Defendant: Washington Metropolitan Area Transit Authority

Counsel:

Michael K. Guss

WMATA-COUN

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C. Nature of the Case:

Plaintiff: On October 2, 2009, Plaintiff boarded the #64 bus at 3rd and Decatur Streets, N.W., on her way to Caroline Street, N.W. The bus came to a full stop at a demarcated Bus Stop located on south bound New Hampshire Avenue, just before the intersection of Webster Street N.W. At the time of the stop, the traffic light at the intersection of New Hampshire Avenue and Webster Street was Red. While the bus was at a full stop, Ms. Downing, who was seated on the front right reserved disabled/**elderly** bench seat, stood up to open the window because the temperature in the bus was unbearably hot. This is a customary and permissible action on a Metro Bus. While Ms. Downing was still standing, the light changed to Green and the driver, being fully aware that Ms. Downing was standing, proceeded to travel one block to Grant Circle. Ms. Downing was in full view of the interior mirror that allowed the driver to see the aisle and seats on the bus. The driver then failed to yield to vehicular traffic in the circle and slammed on the break in order to avoid a collision as he entered Grant Circle. His actions caused Ms. Downing to fall. The driver continued to operate the bus around Grant Circle, eventually coming to a stop before Varnum Street, N.W. Ms. Downing received multiple injuries as a result.

Defendant: On October 2, 2009, at about 4:30 pm, WMATA bus #6391 was traveling southbound on New Hampshire Avenue, NW when the Plaintiff stood up in an attempt to open a window on the bus because she was hot. As the bus operator drove into Grant Circle, the Plaintiff fell from her standing position injuring herself. The Plaintiff alleges that the bus operator should have waited for her to open the window and sit down before proceeding because she was **elderly**. WMATA counters that it is not liable for injuries as the result of jerks, jolts, sudden stops or starts of the bus that are incident to its normal operation.

D. Claims and/or Defenses:

Plaintiff's Claims: The bus operator was negligent because he operated the bus while being fully aware that a passenger was standing to open a window; because he failed to yield the right of way to vehicular traffic in the circle; because he failed to observe a Yield sign at the intersection of New Hampshire Avenue and Grant Circle. That Plaintiff was not contributory negligent because she exercised all due caution while opening the window and could not avoid falling because of the sudden and violent movement of the bus as it tried to avoid a collision with a vehicle as it entered the circle.

Defendant claims: WMATA asserts that the bus operator (1) is not required to wait until a passenger sits down after that passenger voluntarily stands up from her seat before moving the bus; (2) that the movement of the bus was normal based on existing traffic conditions, therefore, there is no liability; and (3) the Plaintiff contributed to her fall by standing up out of her seat to open a window and not holding on to existing handrails or poles available on the bus.

E. Undisputed Issues/Stipulation

None

F. Disputed Issues

Plaintiff:

1. All contentions by defendant as to contributory negligence are disputed.

Defendant:

1. All issues of liability and damages alleged by the Plaintiff are disputed.

G. Requested Stipulations

Plaintiff:

- (1) That Plaintiff was in full view of the driver when he began to operate the bus from the demarcated Bus Stop on New Hampshire Avenue at Webster Street.
- (2) That Defendant made a sudden, violent stop as he entered the intersection of New Hampshire Avenue and Grant Circle on a Yield sign.

Defendant:

- (1) That the Plaintiff did not suffer from a permanent injury as a result of her allegations in this case.
- (2) That at the time of the incident, the Plaintiff got up from her seated position to open a window on the bus.

H. Relief Sought

Plaintiff: A Plaintiff verdict for the amount prayed for in the complaint.

Defendants: A defense verdict and/or dismissal of case with prejudice.

I. Citations

None at this time

J. Pending Motions

None at this time

K. Witnesses

Plaintiff:

1. Plaintiff
2. Calvin Matthews
3. Dr. Lawrence Manning (Fact and Expert)
4. Accident Investigator, Shante Ramos (Fact)*

*WMATA objects to Shante Ramos as a witness for the Plaintiff. Mrs. Ramos was never identified in Plaintiff's Witness List. In addition, to the extent that Mrs. Ramo's testimony includes expert opinion, WMATA objects to such testimony because it was not disclosed in accordance with [SCR-Civil 26\(b\)\(4\)](#).

Defendant:

1. Calvin Matthews- WMATA Bus Operator

L. Exhibits.

Plaintiff:

1. Photographs of the scene of the accident
2. Photographs of the interior of the bus
3. Measurements of the roadway from the demarcated Bus Stop to the Yield Sign at Grant Circle.
4. Video of Route between Webster Avenue, NW and Grant Circle, NW., if the court deems Defendant's Exhibit 2 admissible.

Defendant:

Exhibit # 1: Aerial Google Map of Bus Route between Webster Avenue, NW and Grant Circle, NW

Exhibit # 2: Video of Route between Webster Avenue, NW and Grant Circle, NW (Plaintiff objects to the admissibility of this Exhibit on the ground that it was not provided during Discovery)

M. Deposition Testimony

Plaintiff: Deposition of Calvin Matthew as impeachment evidence.

June 3, 2013 Deposition of Calvin Matthews, pg. 21, ln. 17-20; pg. 23., ln.16-22; pg. 39. Ln., 1-19; pg.57, ln. 9-22.

Defendant: Defendant WMATA designates the following deposition testimony by the Plaintiff as substantive evidence:

April 26, 2013 Deposition of Ruby Downing, pg. 14, ln. 22; pg. 15, ln. 1-22; pg. 19, ln. 1-22; pg. 20, ln. 15-18; pg. 23, ln. 19-22; pg. 24, ln. 1.

N. Pleadings and Discovery Responses

Plaintiff: Plaintiff's Interrogatory #4 and Defendant's response.

Defendant: None

O. Demonstrative Evidence or Physical Evidence

Plaintiff: Video file of the route between Webster Ave., NW and Grant Circle, NW

Defendant: Exhibit #2 will be a video file of the route between Webster Ave., NW and Grant Circle, NW. (Plaintiff objects to the introduction of Exhibit 2).

P. Videotapes

Parties reserve the right to take video depositions of related health care personnel and other witnesses or parties if necessary. Defendant's Exhibit #2 will be a video file of the route between Webster Ave., NW and Grant Circle, NW.

Q. Joint Voir Dire Questions

1. Do you or any relative or close friend, have a personal acquaintance or do any business with any of the parties or attorneys in this case?
2. Has any member of the jury panel or member of their immediate family been represented, opposed by, or had business dealings with any of the attorneys in this case?
3. Is there any member of the jury panel who has received any legal or medical training?
4. This case involves an incident in which the Plaintiff, Ruby Downing, was a passenger on a WMATA Metro bus on October 2, 2009 at about 4:30 pm at or near the intersection of New Hampshire Avenue NW and Grant Circle, NW. Do you have any information concerning this matter other than what you have been advised by the Court during these proceedings today?
5. It is estimated that the trial of this case will take one to two days. In light of this, do you have any substantial reason why you could not serve as a member of the jury in this case?
6. Do you or any relative or close friend, have a personal acquaintance with or know of any of the following persons who might be called to testify as witnesses? [list witnesses]
7. Have you or a member of your immediate family ever made a claim against anyone for damages in a court of law for personal injury? (a) If the answer is "Yes," please stand and state your name. Do you believe that such a claim or suit, by you or a member of your immediate family, might influence your judgment, so as to prevent you from properly deciding this case on a fair and impartial basis?
8. Have you or any member of your immediate family ever been named as a defendant in a personal injury case or named in any complaint in which an individual is seeking compensation for personal injury?

9. Have you, or any other person you know ever made a claim for personal injuries as a result of an accident?
10. Do any of you have any complaints against WMATA that would make it difficult to render a verdict based solely on the evidence presented in this case?
11. Have any member of the jury panel, any member of his or her immediate family, or any of his or her close friend ever been employed by the Washington Metropolitan Area Transit Authority (“WMATA”)? If so, who was so employed and what were his or her duties? Would this have an impact on your ability to sit as a fair and impartial juror in a case involving an employee of WMATA?
12. Do you work for or have you ever worked for an insurance company, law firm, or consulting company which handled, processed or investigated personal injury claims.
13. Do you work for or have you ever worked for an advertising company, law firm, or consulting company which was retained or employed by any insurance company or insurance interest or lobbying group to create, write, produce, distribute and disseminate, via print, radio or television, advertisements regarding accident and personal injury claims.
14. Does any member of the jury panel feel that personal injury and medical malpractice litigation is excessive and ought to be more regulated by congress through legislation.

R. Pattern Jury Instructions Joint Instructions

Chapter 1 Function of the Judge and Jury

- | | |
|------|--|
| 1.01 | Function of the Court |
| 1.02 | Function of the Jury |
| 1.03 | Significance of Party Designations |
| 1.04 | Juror's Duty to Deliberate |
| 1.05 | Attitude and Conduct of Jurors |
| 1.06 | Instructions to be Considered as a Whole |
| 1.07 | Court's Comment on the Evidence |
| 1.08 | Court's Questions to Witnesses |
| 1.09 | Jury Not to Take Cue from Judge |
| 1.10 | Rulings on Objections |
| 1.11 | Equality of Litigants - Corporations* |
| 1.12 | Equality of Litigants - Individuals |

* Change Corporations to Government Agency

Chapter 2 Weighing the Evidence

- 2.01 Evidence in the Case
- 2.02 Evidence in the Case - Judicial Notice
- 2.03 Inferences
- 2.04 Inadmissible and Stricken Evidence
- 2.05 Statements of Counsel
- 2.06 Jury's Recollection Controls
- 2.07 Evidence admitted against one party only
- 2.08 Burden of Proof
- 2.09 Evidence Produced By Adversary
- 2.10 Direct and Circumstantial Evidence

Chapter 3 Evaluating the Witnesses

- 3.01 Jury to Determine Credibility of Witnesses
- 3.02 Number of Witnesses
- 3.03 Expert Opinion
- 3.04 Failure to Produce Stronger Available Evidence
- 3.05 Depositions as Evidence
- 3.08 Impeachment by Prior Inconsistent Statements
- 3.09 Adopting Prior Inconsistent Statements
- 3.10 Charts and Summaries

Chapter 5 Negligence

- 5.01 Elements of a negligence cause of Action
- 5.02 Negligence Defined
- 5.03 Relative Concept
- 5.04 Extreme Caution or Exceptional Circumstances
- 5.05 Right to Assume Proper Conduct by Others
- 5.06 No Comparative Negligence

- 5-08 Violation of Regulations/statute - negligence per se
- 5-09 Violation of regulations/statutes - negligence
- 5.12 Proximate Cause Defined
- 5.15 Contributory Negligence Defined
- 5.17 Assumption of Risk
- 5-18 Last Clear Chance
- 5.19 Facts of Accident Alone

Chapter 6 Vicarious Liability

- 6.03 Agency or Scope of Employment Conceded

Chapter 8 Common Carrier Cases

- 8.01 Common Carrier - Degree of Care
- 8.02 Common Carrier - Passenger Relationship
- 8.04 Duty to disable or infirm passenger
- 8.05 Sudden Starts, Stops, Jerks or Jolts
- 8.11 Passenger's Contributory Negligence

Chapter 12 Damages - General

- 12.01 Damages --Jury to Award
- 12.02 Extent of the Damages - Proximate Cause
- 12.03 Burden of Proof - Speculative Damages (First 3 sentences only)
- 12.07 Duty to Mitigate

Chapter 13 Personal Injury Damages

- 13.01 Damages - Elements
- 13.02 Permanent Injury Absent Medical Treatment
- 13.03 Medical Treatment - Past and Present

S. Non-Standard Jury Instructions Requested

Plaintiff:

To be submitted at trial.

Defendant:

You are instructed that, if you make an award to the Plaintiff in this case, it is not income to the Plaintiff within the Federal and the District of Columbia income tax laws and is, therefore, tax free. Should you find that the Plaintiff is entitled to an award of damages, then you are to follow the instructions already given you by the Court in measuring those damages but in no event should you add to or subtract from that award any allowance for Federal or the District of Columbia income tax.

Norfolk and Western Railroad Co. v. Liepelt 444 U.S. 490 (1980)

Psychiatric Institute of Washington v. Allen. 509 A.2d 619, 627(D.C. 1986).

Schleier v. Kaiser Foundation. 876 F.2d 174 (D.C. Cir. 1989) 26 U.S.C.A. §104

Defendant WMATA reserves the right to amend, add or delete jury instructions based on the evidence presented at trial.

T. Verdict Forms

To be provided at close of evidence.

U. Settlement Positions

Plaintiff's demand - \$ 100,000.00

Defendant's offer - \$0

V. Estimated Length of Trial

1-2 days

Respectfully Submitted

/s/ Michael K. Guss

Michael K. Guss #465171

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