

UNITED STATE DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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LESLIE ROADRUNNER, as Administratrix
of the Estate of LYNNE ROADRUNNER, deceased,

Plaintiff,

Docket No.: 04 CV 1234 (ABC)(DEF)

-against-

AUTOMOTIVE LEASING CORPORATION,

Defendant.

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AUTOMOTIVE LEASING CORPORATION,

Third-Party Plaintiff,

-against-

TRACY RACER and TIMOTHY RACER,

Third-Party Defendants.

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TRACY RACER and TIMOTHY RACER,

Second Third-Party Plaintiffs,

-against-

QUICK TO SETTLE INSURANCE COMPANY,

Second Third-Party Defendant.

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The following is plaintiff's proposed *voir dire* to be presented to the prospective jury
venire:

General Contention: This is a tragic case involving plaintiff, Lynn Roadrunner, a 53 year-old woman who was struck by a vehicle in Suffolk County as she was attempting to cross Wellwood Avenue in Lindenhurst. Lynn Roadrunner will not testify in person, she died six months ago from throat cancer which had nothing to do with this incident or the horrific injuries that she sustained. You will hear that Lynn Roadrunner, in her lifetime, had been dealt a hard life. For many years, Lynn had suffered from chronic alcoholism. However, she successfully completed an alcohol rehabilitation program one year before this incident. Until this accident, her life was on the mend.

Because Lynn has died, her estate is bringing this lawsuit. Her estate is represented by her daughter, Leslie Roadrunner, who was appointed by the Surrogate's Court to be the Administratrix of the Estate of Lynne Roadrunner.

The driver of the car that hit Lynn Roadrunner was operated by a teenager, 17 year-old Tracy Racer. The car was registered to her father, Mr. Timothy Racer, and owned by the leasing company, Automotive Leasing Corporation.

As a result of this accident, Lynn Roadrunner was rendered comatose for 7 months and when she awoke, she was severely brain damaged, partially paralyzed and had required 24-hour medial care and treatment. As a result of this accident, Lynn Roadrunner was confined to a nursing home for the past 6 years.

Plaintiff's lawsuit is brought only against the leasing company, Automotive Leasing Corporation, as the titled owner of the vehicle. Plaintiff has not sued the driver or the registered owner of the vehicle because long before this lawsuit was brought, plaintiff's court-appointed guardian settled her claim against the driver, Tracy Racer, and the registered owner, Timothy Racer, with their insurance company, Quick to Settle Insurance Company. Plaintiff claims that

the law allows her to hold the titled owner of the vehicle responsible for the driver's negligence in operating its vehicle. Understand, plaintiff is not claiming that Automotive Leasing Corporation was directly negligent in operating the vehicle. Rather plaintiff's claim is that as a matter of law, the leasing company, just like any other owner of a motor vehicle, is responsible for the negligence of any driver that it allowed to operate its vehicle. Therefore, plaintiff claims that because Tracy Racer, the driver, was negligent in operating this vehicle when she hit plaintiff, Automotive Leasing Company is responsible, as the vehicle owner, for her negligence.

Automotive Leasing Company, in turn, has sued Tracy Racer and her father, Timothy Racer, in what is known as a third-party action. Automotive Leasing Company claims that since its responsibility for this accident is only derivative or passive, meaning that the accident was caused by the direct and active negligence of Tracy Racer, that should it have to pay any damages to plaintiff, that Tracy Racer and Timothy Racer should indemnify it.

Tracy Racer and Timothy Racer claim that their insurance company should have included Automotive Leasing Company in its settlement with plaintiff. Therefore, the Racers have commenced a second third-party action against their insurance company, Quick to Settle Insurance Company, claiming that their insurance company committed insurance malpractice when it settled plaintiff's claim against Tracy Racer and Timothy Racer by not including Automotive Leasing Company in the settlement.

Questions to be inquired of the venire:

1. Anyone have a problem with the fact that plaintiff is only suing the leasing company, Automotive Leasing Corporation?
2. Anyone think that it is wrong to sue a leasing company for the negligence of the driver?

3. Anyone think that the leasing company should not be held responsible for the negligence of its driver?
4. Anyone think it's unfair that the law holds a leasing company responsible for the negligence of its driver?
 - a. Even if you think that such a law is unfair, do you understand that your job here is not to rewrite the law?
 - b. How many of you lease or ever leased a vehicle?
 - i. Remember having to sign a leasing contract with the leasing company that had lots of fine print legal provisions in it?
 - c. Do you understand that even if you disagree with this law, it is up to the legislature to change the law---your job is merely to apply the law to the facts that you find them. Does anyone have any problem with that?
 - i. [If anyone questions the fact that the law in NY has, in fact, changed and no longer allows plaintiffs to sue leasing companies, inquire into the following: Does anyone have a problem with the fact that the law has, in fact, been changed to no longer allow lawsuits against leasing companies for the driver's negligence?]
 - ii. [Anyone have a problem that plaintiff should be allowed to continue her case against the leasing company under the law that existed prior to this change?]
 - d. To put it another way, the judge will tell you what the law is. Are you willing to follow this law without question, even if you disagree with it or find it to be unfair?

- e. Has anyone heard any commercials on TV or the radio or read anything in the newspapers about lawsuits against leasing companies that would affect your ability to render a fair and impartial judgment in this case?
 - i. Anyone believe that automobile leasing companies are no longer leasing cars in NY because of this lawsuit or lawsuits like it?
 - ii. Would you agree that a leasing company is in the best position to protect itself?
 - 1. If the leasing company is concerned about lawsuits, would you agree that it is in the strongest position to require that all leased vehicles have sufficient insurance coverage to protect it against lawsuits seeking damages for the driver's negligence, such as this?
- 5. The fact that plaintiff has previously settled with the driver and registered owner, the Racers, does anyone here think that plaintiff has already recovered and should not be allowed to bring this lawsuit against the leasing company?
- 6. What is your opinion about people who bring lawsuits for injuries?
- 7. Who thinks that all or most of the personal injury lawsuits that are brought are frivolous lawsuits?
 - a. Everyone has heard of the MacDonald's coffee cup case. Do you understand that this case has nothing to do with spilled coffee? This case involves very serious injuries, including brain damage and paralysis.
- 8. Plaintiff is suing to recover for money damages for the 6 years of pain and suffering that Lynn Roadrunner had to endure as a result of this accident.
 - a. Does anyone think that this case is only about money?

- b. Does anyone think that all personal injury lawsuits are simply about money?
- c. Do you understand that we are not suing for money—rather we are suing for monetary damages? Do you understand the difference?
 - i. This is not a game like wheel of fortune where you get to spin the wheel to win money, this is a lawsuit where we are claiming that plaintiff's decedent, Lynne Roadrunner, suffered very serious and painful injuries. Under our system of justice, a plaintiff has a Constitutional right to bring a lawsuit to recover monetary damages commensurate with her injuries. What thoughts do you have about that?
- d. Does anyone have any problem with the fact that plaintiff is dead and that this lawsuit is being continued by her estate?
- e. Does anyone think that because plaintiff is dead that there is no reason for her estate to recover monetary damages for her injuries that she suffered during her lifetime?
 - i. Do you think that that the monetary value of this case is worth less because plaintiff is dead?
 - ii. Does anyone have a problem with the fact that whatever monetary damages are awarded is going to the estate and not to plaintiff, because plaintiff is dead?
 - iii. Does anyone think that because plaintiff is dead and no longer needs any money, that this case is frivolous and should be dismissed?
- f. Does anyone think that a lawsuit should end at the death of the plaintiff?

Understand, further, that although plaintiff's estate claims that plaintiff was not drunk and had no alcohol in her body at the time of the accident, that plaintiff also has some fault to bear for the happening of this accident. Are you the type of thinking person who would take at face value what someone says about someone else being drunk or would you look to see what scientific facts exist before reaching a conclusion?

- a. Do you think that some people, if they learn that someone had a drinking problem, that they automatically consider that person to be a drunk, whether or not they were at the time of the accident?
- b. Are you open to the possibility that there could be a number of reasons why a person was acting a certain way that has nothing to do with alcohol?
 - i. Would you consider what a witness was doing and their vantage point at the time that they had observed plaintiff?
 - ii. Would you also consider how much time that that witness had to observe plaintiff?
- c. What if a police detective were to say that someone involved in an accident was drunk, would you accept that at face value without looking to see what scientific facts exist or would you just jump to the conclusion that the police are never wrong and therefore, that person must have been drunk?
 - i. Have you ever heard of the police having made a mistake?
 - ii. Do you think that the police can be prejudiced and that this prejudice can blind them from making an impartial judgment about someone?

12. What if someone who knew a person involved in the accident would testify that this person had been drinking every day, does that automatically mean that that person was drunk or had even consumed alcohol at the time of the accident?
13. Even if a person did happen to fall off the wagon and was drinking alcohol every day, would you agree that that doesn't mean that that person was automatically drunk or had even consumed alcohol at the time of the accident?
 - a. Are you open minded and willing to consider all the evidence, including scientific evidence on this issue?
 - b. What if a can of beer was found in the plaintiff's pocketbook, does this mean that she was automatically drunk?
 - i. Do you think that an adult person's mental ability would be impaired after having consumed one 12-ounce can of beer?
 - ii. Would you look to see whether the can of beer had been opened or was still closed at the time of the accident?
 - iii. What if the can of beer was empty, does that automatically mean that it had been opened or would you look to determine if it had become punctured in the accident and that's why it was empty?
14. Are you familiar with the scientific evidence that is used to determine whether a person has consumed alcohol?
 - a. What is your opinion about whether if the police really believed that someone involved in an accident had been drunk, the hospital should test for alcohol?
 - b. What reasons do you think as to why a hospital may not have tested for blood alcohol in a person involved in an accident?

15. Let me ask you this, do you think that someone—a pedestrian—was drunk at the time of an accident, is it your opinion that that person's lawsuit should automatically be tossed out of court?
 - a. Are you still willing to look beyond the alcohol issue to see if the other party involved in the accident—the driver, and Tracy Racer, had any fault to bear in contributing to this accident?
16. What if someone were to accuse my client of having abused drugs, claiming that she was a crack addict—how would that affect your ability to judge this case?
 - a. Would your judgment be so affected that you could not look to see what proof, if any, that they had for this accusation?
 - b. Would you apply the same logical tools of intellect that you said you would apply in determining whether alcohol played a part in this case, such as scientific proof?
17. Do you live alone?
18. What do you and your family members do for a living?
 - a. What is the best thing that you like about your job?
19. Have you ever been in the position, whether it be at work or at home, to make a determination as to who is right or wrong in a dispute involving family members or co-workers?
 - a. When making this determination, did you side with one side or the other without hearing all the evidence?
 - b. How did you go about determining who was right?
 - c. During this process, did either side say anything to prejudice you against the other?

- i. If so, how did you handle that?
- 20. What are your interests/hobbies outside of work?
- 21. What are some of your favorite television shows?
- 22. Do you drink, socially?
- 23. Have you, any family member or close personal friends ever been involved in an accident involving alcohol?
 - a. What is your opinion about someone who drinks and drives?
 - b. What is your opinion about someone who drinks, but does not drive—is a pedestrian—do you think that that person should be held to the same standard as a driver who drinks?
- 24. Have you, any family member or close personal friends ever been involved in a serious automobile accident?
- 25. Have you, any family member or close personal friends ever been involved in a lawsuit?
 - a. Were you/they a plaintiff or defendant?
 - b. Without going into any of the details, was it a personal injury lawsuit?
 - c. Was it resolved to your/their satisfaction?
- 26. Have you ever been a juror before?
 - a. If so, was it a criminal or civil case?
 - b. Did you get to deliberate?
 - c. Was a verdict returned?

27. You understand that this is a civil case, no one is going to jail. Do you also understand that the burden of proof in a civil case is different from that of a criminal case where the burden is proof beyond a reasonable doubt?
- a. Plaintiff has the burden of proof in this case—even though we did not sue the driver, we still have to prove that the driver was negligent in the operation of the motor vehicle to recover against Automotive Leasing Company. You understand that we do not have to prove that the driver, Tracy Racer, was negligent beyond a reasonable doubt. We simply have to prove that from a preponderance of the evidence, meaning a slight shifting of the scales, that Tracy Racer was negligent in the operation of the vehicle. This is a lesser burden of proof than that of a criminal case’s proof beyond a reasonable doubt. Are you willing to hold plaintiff to this lesser burden of proof or will you require her to prove her case beyond a reasonable doubt?
28. You heard me mention that the driver, Tracy Racer, was a teenager at the time of the accident. Does anyone have any bias against teenage drivers?
- a. What opinions do you have about teenage drivers?
- b. Do you think that teenage drivers are as experienced as older, more mature adult drivers?
29. Are you familiar with the term, “Accident Reconstruction”?
- a. Do you have any opinion about whether a speed of a vehicle can be scientifically determined based solely upon the measurement of the skid marks it left at the scene of an accident?

- i. Does anyone think that such laws of science with respect to determining a vehicle's rate of speed from its skid marks are voodoo science and not to be believed?
- 30. Does anyone here have any family member or close personal friend who has been confined to a nursing home?
 - a. Is this person an elderly person or someone who is there for 24-hour care and treatment due to an accident?
- 31. Do you understand that the law allows us to sue for pain and suffering?
 - a. Does anyone have any problem with lawsuits that seek to recover for pain and suffering?
 - b. Does anyone think that all lawsuits for pain and suffering are phony/frivolous?
 - c. Do you understand that if plaintiff were alive, you could never give her back the ability to walk or to repair her brain injury? The law only allows a plaintiff who has been injured to sue for pain and suffering—this is the only way that we can adequately and fairly compensate someone who has been injured. Do you have any problem with that?
- 32. Do you have an opinion about whether there are degrees of severity to brain damage?
 - a. Do you think that someone who is severely brain damaged can still experience pain and suffering just like someone who is not brain injured?
 - b. Do you think that someone who is brain injured is entitled to the same amount of compensation for their pain and suffering as someone who is not brain injured?

33. Plaintiff is also suing for damages related to her medical care and treatment as a result of this accident. Does anyone have any problem awarding plaintiff monetary damages for her past medical care and treatment?
- a. Do you understand that an award for past medical care and treatment is separate and apart for your award for pain and suffering? Are you comfortable with that or do you have a problem with that distinct measure of damages?
 - b. Medicaid is claiming that they are entitled to a lien for the medical care and treatment that they paid for plaintiff to have, therefore any award that you make for plaintiff's medical care and treatment will go straight to Medicaid to reimburse it for its payments. Does anyone have a problem with that?
34. The fact that we will not be asking for money, but for monetary damages in a sufficient amount to compensate plaintiff for her pain and suffering and her past medical care and treatment, does anyone have a monetary cap in the back of their minds above which they would not award any damages, even if the evidence warranted otherwise?
- a. Does anyone think that it is wrong to ask for monetary damages to compensate someone for their loss?
35. Does anyone or their immediate family work for an insurance carrier such as Quick to Settle Insurance Company or any other liability insurance company that insures against accidents such as this one?
- a. Does anyone or their immediate family or close circle of friends work for an insurance investigator or insurance claims manager?