

Nagle & Allgood
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MEMORANDUM

TO: Applicant
FROM: Alice Nagle
RE: Piccolo v. Dobbs
DATE: February 24, 1998

Our firm represents Patricia Piccolo in her personal injury lawsuit against Julia Dobbs. The suit is pending in the federal district court in Sharren based on diversity jurisdiction. The collision occurred when Ms. Dobbs's car crossed the median of the interstate and struck Ms. Piccolo's car, killing the passenger in Piccolo's car. We are proceeding with discovery and have encountered a problem in getting the statements two witnesses made to an investigator for Dobbs's insurance company.

I plan to file a motion to compel discovery of the recordings and transcripts that opposing counsel refused to produce during the depositions, claiming work-product protection. I want you to draft a persuasive brief in support of our motion. Your brief should argue that, under the facts of our case, we are entitled to get the tapes and transcripts. Motions like this are won or lost on how we use the facts, so it is very important that you pick out the key facts that support our position, set them forth cogently in your statement of facts, and weave them into your legal arguments. Follow the guidelines in the attached office memo regarding persuasive briefs.

Nagle & Allgood
Attorneys at Law

MEMORANDUM

September 8, 1995

TO: Attorneys
FROM: John Copper
RE: Persuasive Briefs and Memoranda

All persuasive briefs, including Briefs in Support of Motions (also called Memoranda of Points and Authorities), shall conform to the following guidelines.

All briefs shall include a Statement of Facts. The aim of the Statement of Facts is to persuade the tribunal that the facts support our client's position. The facts must be stated accurately; however, emphasis should be placed on the material facts that best support our client's position. Select carefully the facts that are pertinent to the legal arguments.

The firm follows the practice of breaking the argument into its major components and writing carefully crafted subject headings that illustrate the arguments they cover. Avoid writing briefs that contain only a single broad argument heading. The argument heading should succinctly summarize the reasons the tribunal should take the position you are advocating. A heading should be a specific application of a rule of law to the facts of the case and not a bare legal or factual conclusion or a statement of an abstract principle. For example, improper: THE UNDERLYING FACTS ESTABLISH PLAINTIFF'S CLAIM OF RIGHT. Proper: BY PLACING A CHAIN ACROSS THE DRIVEWAY, BY REFUSING ACCESS TO OTHERS, AND BY POSTING A "NO TRESPASSING" SIGN, PLAINTIFF HAS ESTABLISHED A CLAIM OF RIGHT.

The body of each argument should analyze applicable legal authority and persuasively argue how the facts and law support our client's position. Authority supportive of our client's position should be emphasized, but contrary authority also should generally be cited, addressed in the argument, and explained or distinguished. Do not reserve arguments for reply or supplemental briefs.

The lawyer need not prepare a table of contents, a table of cases, a summary of argument, or the index. These will be prepared, where required, after the draft is approved.

EXCERPTS FROM DEPOSITION OF JULIA DOBBS

February 9, 1998

BY MS. ALICE NAGLE:

* * *

Q: How old were you at the time of the accident on September 5, 1995?

A: I was nineteen.

Q: What was your destination at the time of the accident?

A: Home.

Q: Where were you coming from?

A: Franklin State University.

Q: Were you a student there?

A: Yes.

Q: Were you alone in the car?

A: Yes.

Q: At the time of the accident, how long had you had your driver's license?

A: I had been licensed for a little over a year.

Q: Had you ever driven between home and Franklin State by yourself before the day of the accident?

A: This was the second time. I drove to college the previous August when I returned for the fall semester.

Q: Would you tell us what happened at the time of the accident?

A: As I was driving north in the left lane on Interstate 101, near Mt. Vernon, Franklin, I was forced to drive onto the median because a tractor-trailer in the right lane started to move into my lane.

Q: Then what happened?

A: My car went across the median and struck a car traveling in the oncoming traffic lane.

Q: As your car went across the median what did you do?

A: I don't remember anything about the accident after I went on the grass median.

Q: Were you injured?

A: Not seriously.

Q: What do you mean, not seriously?

A: Well, I had a small cut on my forehead and I was sore for a couple of days.

Q: How fast were you going at the time of the accident?

A: I was driving the speed limit of 55 m.p.h.

Q: Did you make a statement to the State Police immediately after the accident?

A: Yes, at the scene.

Q: Do you remember what speed you told them you were going?

A: I'm not sure what you mean.

Q: Didn't you tell the state trooper that you were going 70 m.p.h.?

A: Yes.

Q: Are there any other differences between what you remember today and what you told the state trooper?

A: Well, other than the speed I was going, the only thing that might be confusing is that I know earlier I told the police officer that when I went off the road I jerked the wheel. What I meant was that turning the wheel and the wavering was caused by the movement of the car going off the road.

Q: Did the State Police interview you at anytime after the day of the accident?

A: Several days following the accident, the State Police asked to re-interview me.

Q: Did that interview take place?

A: No.

Q: Why not?

MR. BASANTA: I object. Attorney-client privilege.

MS. NAGLE: Let me ask this, then. Were you charged with any traffic or criminal violation resulting from the accident?

A: Yes.

Q: And, that was?

A: Vehicular homicide.

Q: What was the result of those charges?

A: I was found not guilty.

Q: Did you testify at the criminal trial?

A: No.

Q: Did you ever make statements to anyone else about what happened?

A: Well, of course, I spoke to my attorney.

Q: Anyone else?

A: I spoke to the man from the insurance company.

Q: Whose company?

A: My company.

Q: Who was that?

A: I'm not sure of the name.

Q: Was it Alan Isaacs?

A: That sounds right.

Q: Did he take notes?

A: He tape-recorded it.

Q: Did you ever see a transcript of that recording or listen to the tape?

A: I reviewed a transcript prior to the criminal case resulting from the accident, but have not looked at it since that time.

MS. NAGLE: Mr. Basanta, I assume you brought this recording and transcript with you in response to my subpoena duces tecum?

MR. BASANTA: No. We assert attorney work-product.

MS. NAGLE: Very well, Mr. Basanta. We'll move to compel. Ms. Dobbs, did I call you up two days after the accident?

A: Yes.

Q: Did I ask if you were represented by an attorney?

A: Yes.

Q: Did you say that you were not?

A: Yes.

Q: Did I ask you to tell me what happened at the time of the accident?

A: Yes.

Q: Did you then refuse to speak to me?

A: Yes.

Q: Going back to the accident, how close was the traffic that was following you?

A: I don't remember.

Q: In the mile prior to where the accident occurred, had you altered your speed at all?

A: What do you mean?

Q: Well, you have said that you were going either 55 or 70 at the time of the accident. In the mile you drove before the accident occurred did you change that speed, either up or down?

A: I don't remember.

Q: What became of the tractor-trailer that you say ran you off the road?

A: I don't remember.

MS. NAGLE: I have nothing further.

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EXCERPTS FROM DEPOSITION OF TED WALLACE

February 10, 1998

BY MS. ALICE NAGLE:

* * *

Q: On September 5, 1995, at approximately 6:00 p.m., what were you doing?

A: I was traveling north on Interstate 101.

Q: Did you observe an automobile accident?

A: Yes.

Q: Please describe what happened.

A: I was driving in the right lane behind a truck. There was a car driven by Ms. Dobbs in front of this truck, but in the left lane.

Q: Did you actually see Ms. Dobbs's car?

A: No. Not at that point.

Q: Just tell us what you saw or heard yourself.

A: Okay. I was talking on the citizen's band radio with a tractor-trailer driver who was in front of me. This driver tells me, "Back it down, an eighteen-wheeler done run a four-wheeler over in the median."

Q: What did you do?

A: Well, I slowed down and that's when I first saw Dobbs's car as it was rolling to a stop on the other side of the highway.

Q: Did you talk to this truck driver who was in front of you anymore?

A: The guy stopped at the scene of the accident.

Q: Did he say anything to you?

A: He said that a truck in the right lane had come over into the left lane where Julia Dobbs was and that she had no place to go except the median.

Q: Do you know if this driver ever made any statements to the police?

A: I don't think so. He said he was not about to be subpoenaed to court or get involved and he left the scene after five minutes.

Q: Have you ever mentioned this other truck driver to anyone before today?

A: I'm not really sure.

Q: Have you given statements to anyone else involved in this case?

A: I talked to you two days after the accident.

Q: You didn't mention the other truck driver to me, did you?

A: I don't remember.

Q: Did you speak to anyone else?

A: Well, I talked to the insurance investigator for Ms. Dobbs's company.

Q: Did you mention the other truck driver to the insurance investigator?

A: I don't remember.

Q: Who was the insurance investigator?

A: I'm not sure of the name.

Q: Did he take notes?

A: He tape-recorded it.

Q: Did you ever see a transcript of that recording or listen to the tape?

A: I reviewed a transcript prior to the criminal case against Ms. Dobbs.

MS. NAGLE: Mr. Basanta, I assume you brought this recording and transcript with you in response to my subpoena duces tecum?

MR. BASANTA: No. We assert attorney work-product.

MS. NAGLE: Okay. I guess we'll include that in our motion to compel. I have a few more questions. Were you called as a witness in the criminal case against Ms. Dobbs?

A: No, I was subpoenaed by Ms. Dobbs's lawyer but I didn't testify.

Q: You drove Julia Dobbs to her parents' home in Sharren after the accident, didn't you?

A: Yes.

Q: And Julia Dobbs's father took you out to dinner in a Sharren restaurant in August 1996, right?

A: Yes.

Q: And who paid for that dinner?

A: Mr. Dobbs.

Q: And when you visited the Dobbs home in October 1996, you received a gift, didn't you?

A: Yeah. It was only a small box of pears.

Q: You were injured in an accident in July 1997, weren't you?

A: Yes.

Q: And you hired Julia Dobbs's father as your lawyer, didn't you?

A: Yes.

Q: No further questions.

MR. BASANTA: I have just one question. Mr. Wallace, how is your memory of the accident?

A: I have a good memory of what occurred at the time of the accident. It's actually quite vivid. It was amazing anyone survived from either car.

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EXCERPTS FROM DEPOSITION OF ALAN ISAACS

February 10, 1998

BY MS. ALICE NAGLE:

* * *

Q: What is your position with the Silverado Insurance Company?

A: Supervising adjuster.

Q: When did you become aware of the accident?

A: On or about September 5, 1995.

Q: Does the insurance company take statements in all cases?

A: Well, in all cases involving injuries we do.

Q: Did you personally conduct any of this investigation?

A: Yes, when there is a death, as there was in this case, I get personally involved. I interviewed Ms. Dobbs and Mr. Wallace.

Q: Did you interview the plaintiff?

A: I tried to. At that early date I felt that it was virtually certain that a lawsuit would be filed against our insured, Ms. Dobbs, and, therefore, I personally tried to obtain recorded statements from all witnesses.

Q: I don't understand.

A: In this case the accident did not just involve the insured's vehicle but rather another automobile in which one passenger was severely injured and another was killed. It was immediately apparent that the negligence, if any, would likely be solely with the insurance company's insured.

Q: Did you speak to legal counsel before you did the investigation and took the statements of the witnesses?

A: No.

Q: Who were the witnesses who gave you statements?

A: Ms. Dobbs and Mr. Wallace.

Q: When did you take those statements?

A: On September 6, 1995.

Q: Did you record the statements?

A: Yes. I used a handheld tape recorder and later had a secretary type up transcripts.

Q: Did you interview any other witnesses?

A: Well, as you know, the plaintiff, apparently being hit by surprise, was not able to give any account concerning the cause of the accident. The only eyewitnesses I was able to find were Ms. Dobbs and Mr. Wallace.

Q: Did you bring copies of the statements of Ms. Dobbs and Mr. Wallace with you?
MR. BASANTA: Objection. We assert attorney work-product.
MS. NAGLE: In that case, I have nothing further until we take the matter up with the judge.

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