

Mediator Mediation PA  
123 Settlement Street, Suite 100  
Charlotte NC 28000  
Attention: Mark Mediator

**Re: CONFIDENTIAL MEDIATION STATEMENT – Johnson v. Williams, 13 CVS 1234**

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Dear Mr. Mediator,

This Confidential Mediation Statement is submitted on behalf of Chris Williams, the Defendant, in this matter in the County of Mecklenburg, State of North Carolina. It is understood that this Confidential Mediation Statement is for the use of the Mediator only, and has not been served on the other mediating party.

**I. DEFENDANT INFORMATION**

Chris Williams is the Defendant in this suit, and is a citizen and resident of Charlotte, North Carolina. Mr. Williams plans to attend mediation with Counsel at the offices of Mediator Mediation PA, on May 24, 2016.

**II. FACTS**

On November 1, 2013, at approximately 6:00 p.m., Sandra Johnson, the Plaintiff, and Defendant were involved in an automobile accident (hereinafter “the Collision”) at the intersection of Elm Street and Maple Street, in Charlotte, North Carolina. Plaintiff, who was travelling north on Elm Street, was alone in Plaintiff’s vehicle, and Defendant, who was travelling west on Maple Street, was alone in Defendant’s vehicle at the time of the Collision. There are no traffic signs at the intersection of Maple Street and Elm Street.

Plaintiff, who was positioned to the left of Defendant, proceeded into the intersection, and at the middle of the intersection struck the driver-side rear quarter panel of Defendant’s vehicle. According to the Police Report, there were two witnesses to the Collision. Wendy Jacobson testified under oath that, “. . . both the Plaintiff and the Defendant’s vehicles reached the intersection at the same time or a few seconds later.” Ms. Jacobson lives on the northeast corner of Elm Street and Maple Street, and witnessed the Collision from her front porch. Mr. Wood lives on the northwest corner of Elm Street and Maple Street, and he observed the Collision from his driveway. Both witnesses stated that although it was getting dark outside, they could clearly see both vehicles. On the night of the Collision, the law enforcement officer on the

scene issued the Defendant a traffic citation for “failure to have lights on after dark,” but the citation was subsequently dismissed in court by the presiding magistrate.

Defendant argues that since the Plaintiff and Defendant arrived at the intersection at approximately the same time, and Defendant was positioned to the right of Plaintiff, under N.C.G.S. § 20-155 (a), “Right-of-way,” the Defendant had the right-of-way. Plaintiff failed to perform her duty to yield to Defendant, as required and consequently Plaintiff was negligent.

Pursuant to *Sorrells*, if a plaintiff sues a defendant under a theory of negligence, the plaintiff may not recover if her injuries were caused in any way by her own negligence. See *Sorrells v. M.Y.B. Hospitality Ventures*, 332 N.C. 645, 648 (1992). There is no apportioning of negligence and a plaintiff's contributory negligence is a complete bar to recovery from a defendant who commits an act of ordinary negligence. *Id.*

### **III. NATURE OF DISPUTE**

The parties are in conflict as to whether the Plaintiff committed contributory negligence, and as to whether Plaintiff or Defendant was the proximate cause of the Collision. Plaintiff's position is that, by speeding and failing to turn his headlights on when required, Defendant's negligence was the proximate cause of the Collision. Defendant asserts that regardless of whether he was speeding with his headlights off, the Plaintiff's failure to yield the right of way to the Defendant contributed to the Collision, and thus Plaintiff's contributory negligence bars her recovery. Plaintiff further argues that a driver has no duty to yield to a vehicle that it cannot see.

### **IV. ISSUE OF FACT**

There are two primary disputes of fact. First, it is disputed as to how fast Defendant was driving. The approximate speed of both vehicles is not certain. Ms. Jacobson, an eyewitness, stated the Defendant was driving 35-40 mph. However, both the Plaintiff and the Defendant claim they were driving around 25 mph, which is the posted speed limit at the intersection of Elm Street and Maple Street. Neither the Plaintiff nor the Defendant were issued a citation for speeding.

Second, it is disputed as to how dark it was at the time of the Collision. The Police Report states the lighting at the time of the Collision was “dark.” However, Defendant argues that it was not in fact “dark” at the time of the Collision. In Defendant's deposition, he admitted that he did not have his headlights on, but stated that he did not need to have them on, because the visibility was clear.

## **V. PROCEDURE AND SETTLEMENT**

The parties have finished the discovery process. Plaintiff and Defendant have interviewed witnesses, completed depositions and interrogatories, and conducted various motions. On April 10, 2016, Plaintiff filed a lawsuit against Defendant, alleging negligence under both North Carolina General Statute § 20-129, “Required Lighting Equipment of Vehicles,” and North Carolina General Statute § 20-141, “Speed Restrictions.” On April 20, 2016, Defendant filed a Motion for Summary Judgment, alleging contributory negligence under N.C.G.S. § 20-155 (a), “Right-of-way.”

The Plaintiff is ready to commence settlement negotiations, or is prepared to proceed to trial if settlement is not possible.

## **VI. DEFENDANT’S AUTHORITY**

Under N.C.G.S. § 20-155 (a), “Right-of-way,” when two vehicles approach or enter an intersection from different highways at approximately the same time, the driver of the vehicle on the left shall yield the right-of-way to the vehicle on the right.” Plaintiff was travelling north on Elm Street, and Defendant was travelling west on Maple Street at the time of the Collision. Thus, Plaintiff had a duty to yield the right of way to Defendant.

The doctrine of contributory negligence applies where the plaintiff’s negligence was a cause of the collision. In *Bennett*, the North Carolina Supreme Court held that a party commits contributory negligence if she fails to yield the right of way, even if the other party is speeding at the time of the collision. See *Bennett v. Stephenson*, 75 S.E. 2d 147, 150 (N.C. 1953). Therefore, the Defendant contends that Plaintiff is barred from recovery for any injuries she suffered resulting from the Collision.

## **VII. EVALUATION OF THE CASE**

Plaintiff has suffered \$17,500 in actual damages resulting from both medical and vehicle related damages. The doctor responsible for Plaintiff, Erica Mueller, (“Dr. Mueller”) diagnosed Plaintiff with a concussion following the Collision. The Plaintiff asserts that the Collision has caused Plaintiff to suffer significant physical, emotional, and economic injury. Plaintiff has suffered from periodic headaches since the Collision. The periodic headaches have interfered with Plaintiff’s work as an accountant and with Plaintiff’s family life.

Plaintiff missed six weeks of work following the Collision. As of the date of this letter, Plaintiff still suffers from headaches several times each week. The severity of Plaintiff’s headaches force Plaintiff to stop work and rest. Plaintiff takes over-the-counter pain relief

medication for the headaches, which is mostly ineffective. Dr. Mueller has stated that no medication can treat Plaintiff's symptoms, and has recommended avoiding stressful situations.

The Collision has affected Plaintiff's home life substantially. Plaintiff is less willing to engage in outdoor activities with Plaintiff's spouse and children because Dr. Mueller has recommended avoiding stress, and it is likely that such activities will trigger headaches. Consequently, the quality of Plaintiff's home life, and familial relationships have suffered. Plaintiff's "private marital relationship" with Plaintiff's husband has diminished.

If Plaintiff were to prevail, based on the actual costs suffered, as well as pain and suffering, a verdict of between \$25,000 and \$50,000 could be expected.

#### **VIII. TRIAL COST ESTIMATE**

Should the matter not be settled, it is estimated that the trial would require five days. Defendant would expect to call, as expert witnesses, Dr. Earnhardt, at a rate of \$500 per hour, for two hours, to provide testimony about the relative speed of each vehicle. The cost of the trial is expected to be between \$2,000 and \$5,000.

#### **IX. SETTLEMENT PROPOSAL**

It is Defendant's intent to settle this matter immediately, and without any further cost. Defendant is willing to entertain only a settlement offer in which Defendant is required to pay Plaintiff that which is fair and reasonable, and no more than trial cost estimate. Defendant is willing to defend his position in a court of law.

#### **X. ATTACHMENTS**

Please find the following attached: (1) deposition summary of Mr. Wood; (2) deposition summary of Mr. Johnson; (3) deposition summary of Mr. Mueller; (4) interrogatories of Ms. Johnson; (5) Mr. Williams interrogatories; (6) Ms. Johnson's statement; (7) Ms. Johnson's medical bills and notes; and, (8) Mr. Wilson's "Police Report."

Respectfully Submitted,

**Rufty and Stiles LLC**  
Attorneys for Defendant  
Daniel Rufty, Esq., Matt Stiles, Esq.