

# PARKER V. DAVIDSON

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## General Information for Attorney for Davidson

Last September 1, at 2:35 p.m., twenty-seven-year-old B.J. Parker was driving south in a three-year old Honda Accord on Wisconsin Avenue in Washington, D.C. This is a four-lane thoroughfare that carries a substantial amount of traffic between Georgetown and the Maryland suburbs. It was a clear, sunny day, and the pavement was dry.

Although the speed limit on that part of Wisconsin Avenue is 25 mph, Parker was driving 35 mph. Approaching the stoplight at R Street, N.W., Parker observed a green light for southbound traffic and continued to travel at 35 mph. D. Davidson was driving west on R Street in a new Ford Taurus. Davidson was then employed by the District of Columbia Department of Public Works as a civil engineer. At 1:30 p.m., Davidson had become embroiled in a disagreement with his/her immediate supervisor concerning Davidson's dissatisfaction with a recently received 2% salary increase. Their discussion had taken more time than anticipated. Davidson was thus late for an important job interview with a private engineering firm. Davidson was hoping to obtain a new position that would pay almost \$20,000 more per year than his/her current salary of \$67,500.

Approaching Wisconsin Avenue, Davidson was driving 37-mph in a 25-mph zone. At the Wisconsin Avenue and R Street intersection, Davidson noticed that the traffic light was red. Davidson reduced speed to 25-mph and endeavored to make a right turn onto Wisconsin Avenue. At this excessive rate of speed, the car swerved into the outer lane of southbound traffic. Davidson's car struck the left front portion of Parker's vehicle, causing that car to veer into a light pole located just below the south-west corner of the intersection. When Parker's car struck the light pole, it stopped abruptly. Davidson was wearing a seat belt, and the Taurus air bag opened as soon as the two vehicles collided. Because of the seat belt Davidson sustained no serious injuries. Although Parker was also wearing a seat belt, the Accord did not have an air bag. When the automobile struck the light pole, Parker's upper chest struck the steering wheel, resulting in a crushing blow to the chest that caused a cracked sternum and multiple rib fractures.

Parker was taken to the Georgetown University Hospital where a thorough examination revealed the cracked sternum and the fractured ribs. The doctors taped Parker's upper body and provided medication to reduce the discomfort. Although Parker's upper body was severely contused, there was no evidence of additional injury. The Emergency Room treatment cost Parker \$5,425. Subsequent examinations by Dr. Joan Bannon, an orthopedic specialist, cost an additional \$1,375. Parker was out of work for two weeks. Parker is a self-employed electrician, and these two weeks of missed work cost \$4,000 in lost business. Parker continued to experience some pain for an eight-week period,

but was able to perform his/her usual job duties after the second week. On October 28, Dr. Bannon examined Parker and declared him/her recovered.

Parker's Honda Accord was totally wrecked, at a loss of approximately \$12,000. Last month, Parker filed a civil action alleging that Davidson's negligent driving caused the accident. The complaint demanded \$500,000. Defendant Davidson carries liability insurance providing \$750,000 coverage per accident. The Court has referred the case to mediation.

### **CONFIDENTIAL INFORMATION**

You realize that your client was extremely negligent when s/he attempted to turn right onto Wisconsin Avenue at an excessive rate of speed and without stopping at the red light. Nonetheless, this is not your primary concern. Although Dr. Joan Bannon, who treated Parker after the accident, and Dr. James Woods, who examined Parker three months ago at the request of Plaintiff's Attorney, have indicated that Parker's chest has completely healed, this is incorrect.

Last week, you had Parker examined by Dr. Jules Goldberg, an orthopedic/thoracic specialist. Dr. Goldberg agreed that the cracked sternum and the fractured ribs had healed, but he discovered the early formation of an aorta aneurysm. Dr. Goldberg noted that the X-rays taken of Parker in the Georgetown University Hospital did not include any evidence of an aneurysm. The X-rays subsequently taken by Dr. Woods, an internal medicine specialist, did not appear to indicate the presence of an aneurysm. Only when Dr. Goldberg reviewed Dr. Woods' X-rays with a magnifying glass in light of his recent findings did he notice the incipient formation of an aorta aneurysm. His recent X-rays indicate that the aneurysm has progressed. *If it remains untreated, it could rupture and cause the death of Parker at any time.* Since the aneurysm was not evident in the Georgetown University Hospital X-rays, and has increased in size since then, Dr. Goldberg is convinced that the crushing chest injury inflicted in the September 1 automobile accident with Davidson caused that condition.

In light of Dr. Goldberg's medical conclusions, Davidson's insurance carrier would like to settle this suit expeditiously. Neither Parker nor his/her attorney is aware of Dr. Goldberg's finding with respect to the aorta aneurysm. You cannot believe that Parker's attorney agreed to participate in a mediation before receiving Dr. Goldberg's report. You suppose that just demonstrates the attorney's inexperience. You have been practicing for 15 years. If Parker's attorney happens to have additional X-rays taken before trial, Parker's serious condition would most likely be discovered. If the aneurysm did not exist, you would probably be able to settle this case for \$30,000 to \$40,000. If Parker's attorney was aware of the aneurysm, s/he would undoubtedly demand a figure ten times that range, since Parker may need surgery to correct this condition. That delicate medical procedure would be expensive, and the recovery period would be fairly long.

Parker would experience prolonged discomfort and would likely miss ten to twelve weeks of work.

The insurance claims adjuster has instructed you to resolve this matter immediately, and wants to have a complete settlement agreement before Parker undergoes further medical tests. You are willing to negotiate a good settlement for your client. It is only when you are close to concluding an agreement that you find yourself struggling with a moral dilemma. You think that you should disclose the information regarding the aorta aneurysm to Parker's attorney in order to save Parker's life. More practically, you have advised your client that the Court would be likely to vacate (i.e., undo) a settlement on fraud grounds if the Court learned that you had failed to disclose this very important piece of information.

**Once it looks like the case is close to settling** you decide that you will raise this matter with the mediator in a caucus, but you will absolutely require that the mediator keep this information confidential. You just want to be sure that you have fully considered the ethical implications and consequences of failing to disclose the information regarding the aneurysm. ***NOTE: Do not disclose this information prematurely – give the mediator an opportunity to fully mediate the case.***<sup>i</sup>

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<sup>i</sup> Adapted from "Parker v. Davidson" by Charles Craver