

A/R

IN THE CIRCUIT COURT OF THE FIFTEENTH  
JUDICIAL CIRCUIT IN AND FOR  
PALM BEACH COUNTY, FLORIDA CIVIL ACTION

LISA IMPEMBA, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 PAULA HELLMAN, )  
 )  
 Defendant. )  
-----x

No. CL 92-2523 AG

Fort Lauderdale, Florida

[REDACTED]

10:15 o'clock A.M.

APPEARANCES:

POWERS & KOONS, P.A.  
BY: MAXINE A. BRATEN, ESQ., of counsel,  
appearing on behalf of the Plaintiff.

LAW OFFICES OF LAWRENCE J. SIGNORI  
BY: JOSEPH HANKIN, ESQ., of counsel,  
appearing on behalf of the Defendant.

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DEPOSITION  
OF  
RICK SWOPE





I N D E X

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<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
RICK SWOPE	3	53		

E X H I B I T S

<u>DEFENDANT'S</u>		<u>FOR IDENTIFICATION</u>
A -	Diagram	53
B -	Diagram	53



1 Deposition of RICK SWOPE, a witness of  
 2 lawful age, taken by the Defendant for the purpose  
 3 of discovery and for use as evidence in the  
 4 above-entitled cause, wherein LISA IMPEMBA is the  
 5 Plaintiff and PAULA HELLMAN is the Defendant,  
 6 pending in the Circuit Court of the 15th Judicial  
 7 Circuit in and for Palm Beach County, Florida,  
 8 pursuant to notice heretofore filed, before  
 9 CHRISTINA ANDERSON SMITH, RPR, Registered  
 10 Professional Reporter and Notary Public in and for  
 11 the State of Florida at Large, at Bass Reporting  
 12 Service, 110 Southeast Sixth Street, Suite 1720,  
 13 Fort Lauderdale, Broward County, Florida, on the  
 14 21st day of October, 1992, commencing at 10:15  
 15 o'clock A.M.

16 -----  
 17 Thereupon:

18 RICK SWOPE,  
 19 a witness named in the notice heretofore filed,  
 20 being of lawful age, and being first duly sworn in  
 21 the above cause, testified on his oath as follows:

22 DIRECT EXAMINATION

23 Q. (BY MR. HANKIN) Can you tell us what  
 24 your name is, please.

25 A. Rick Swope, S-W-O-P-E.



1 Q. And what do you presently do for a  
2 living, sir?

3 A. I'm an accident reconstructionist. And  
4 I also do teaching instructions for various  
5 universities and police academies.

6 Q. What is the name of the firm that you  
7 own or work for as an accident reconstructionist?

8 A. It's - the firm is owned by me, and it's  
9 Swope Reconstruction.

10 Q. How long have you owned Swope  
11 Reconstruction?

12 A. February of '87.

13 Q. ~~What percentage of your income is~~  
14 ~~derived from working as an accident~~  
15 ~~reconstructionist for Swope Reconstruction?~~

16 A. ~~Probably about 90 percent.~~

17 Q. And have you ever been employed by Ms.  
18 Braten's law firm before as an accident  
19 reconstructionist?

20 A. Yes.

21 Q. How many times have you worked for Ms.  
22 Braten's law firm as an accident reconstructionist?

23 A. One other time.

24 Q. When were you first consulted by Ms.  
25 Braten in relation to the case we're here on today,

*Majority  
accidents*



1 Impemba versus Hellman?

2 A. I'm not sure the exact date, but I'm  
3 sure it was about November of '91. It's been  
4 roughly a year. November or December of '91.

5 Q. And what is your hourly rate that you're  
6 charging Ms. Braten's firm?

7 A. Let's see. It must be under the old  
8 rate. It would be \$100 an hour for all work.

9 Q. And how many hours so far have you  
10 worked on this case, not including coming here  
11 today for the deposition?

12 A. I'm not sure. I don't even think I sent  
13 a bill on this file yet, so I'm just getting -  
14 guessing six or seven hours, something like that,  
15 maybe a little bit more.

16 Q. What type of reports have you prepared,  
17 if any, up to this point?

18 A. With the exception of a letter, some  
19 correspondence we've had back and forth, I have not  
20 prepared a detailed written report. I have notes  
21 and things like that, but I have not provided Ms.  
22 Braten with any exhibits. I have all those in my  
23 possession.

24 MS. BRATEN: The only, what you could  
25 call a report has been.



1           MR. HANKIN:    That one letter that you  
2 sent me?

3           MS. BRATEN:    Is that letter, yes.

4           THE WITNESS:   I don't call that a  
5 report, but that's a letter that I sent to her.

6           Q.    (BY MR. HANKIN) Are you going to prepare  
7 any reports in relation to this case?

8           A.    That would be up to Ms. Braten.  I  
9 haven't been asked to do it.

10          Q.    You said you have some charts and pieces  
11 of paper here with you today?

12          A.    Yes, sir.

13          Q.    Do you mind if I see those?

14          A.    Nope.

15                   (Discussion off the record.)

16          Q.    (BY MR. HANKIN) Have you gone out to the  
17 scene where the accident took place at?

18          A.    Yes, sir.

19          Q.    And when did you go out to the scene  
20 where the accident took place?

21          A.    Actually I went out there twice.  I went  
22 out in, I believe, January.

23          MS. BRATEN:    Before that letter.

24          THE WITNESS:   It was right before the  
25 letter.  And then I went out again.  The letter I



1 wrote was January 13, and I had been to the scene  
2 about a week before that. I don't know the exact  
3 date.

4 Q. (BY MR. HANKIN) 1992?

5 A. Yes, sir. And then I went again in 1992  
6 in July. And that's why I - and that was for the  
7 purpose of doing the measurements for the diagram  
8 that you have.

9 Q. Which I've made a copy of?

10 A. Yes.

11 Q. Do you have any problem with attaching  
12 this as an exhibit at the end of the deposition?

13 MS. BRATEN: There is no distortion.

14 THE WITNESS: Right. It's just that  
15 mine is - I do have the full size scale replica.

16 MS. BRATEN: Okay. Yeah, with the  
17 understanding that this is a copy of the scale  
18 replica.

19 MR. HANKIN: Yeah. Right. And this is  
20 a partial version.

21 THE WITNESS: I'll just let you know, if  
22 you wanted a full size copy of this, if you call me  
23 I'll get it to you.

24 MR. HANKIN: Certainly.

25 Q. (BY MR. HANKIN) The diagram that you've





1 prepared; there are two pages, two separate  
2 pages --

3 A. That is correct.

4 Q. -- which we'll attach, I guess, as  
5 Exhibit A and Exhibit B.

6 A. That's correct.

7 Q. Are these to scale measurements?

8 A. That's correct. Everything is to scale  
9 on the diagram with the exception of the size of  
10 the vehicle. I don't know, you know, to the inch  
11 what size the vehicle is, so the vehicles on here  
12 are just representations of cars, although they are  
13 pretty close. I believe they're about 17 feet or  
14 something like that.

15 Q. How long did it take you to prepare this  
16 diagram and get these measurements?

17 A. Well, to get the measurements at the  
18 scene was about an hour, an hour and a half. To  
19 put it in the computer, about two hours. So the  
20 whole thing was maybe three, three and a half  
21 hours.

22 Q. Was anyone present with you at the scene  
23 when you took these measurements?

24 A. I don't believe on this case, no.

25 Q. So all the measurements you would have



1 taken for these diagrams are measurements that you  
2 obtained by yourself without anyone's assistance?

3 A. That's correct.

4 Q. Have you had any meetings with the  
5 police officer that investigated this accident?

6 A. Personally, no. I've spoken with him on  
7 the phone.

8 Q. And when did you speak with him?

9 A. It was the beginning of the year.  
10 January, because I spoke with him before the  
11 letter, I believe. Yeah. So it would have been -  
12 I know it was right after the new year in 1992, so  
13 it would have been sometime in January before this  
14 letter was written on the 13th.

15 Q. Did you come to a conclusion that there  
16 were any problems with the diagram prepared by the  
17 police officer?

18 A. Well, I don't believe that the state  
19 form accident report itself is correct. I mean,  
20 there are several errors in it so therefore, I  
21 called the police officer with the main reason of  
22 finding out where the cars were or where they ended  
23 up at because I couldn't quite follow his diagram.

24 Q. Was the officer able to tell you where  
25 the vehicles ended up at?



1 A. I believe he was, yes.

2 Q. And he told you this by way of the  
3 phone?

4 A. Yes.

5 Q. He didn't go out to the scene with you  
6 and show you where the cars ended up?

7 A. No.

8 Q. Did the officer ever tell you if he took  
9 any measurements at the scene as to where the cars  
10 ended up?

11 A. He didn't, but he recalled where the  
12 vehicles ended up at. There's a car dealership or  
13 something, Don Cook Motors, and he stated that the  
14 car ended up, Impemba's car ended up between a  
15 mailbox and a pole, and that the Hellman vehicle  
16 ended up south of that near the median. So that  
17 coincided with the depositions of Hellman and  
18 Impemba as well.

19 Q. When did you first review the  
20 depositions of Impemba and Hellman?

21 A. I received the deposition of Lisa  
22 Impemba on September 23 from Ms. Braten's office.

23 Q. 1992?

24 A. Yes. And on September 25 I received the  
25 deposition of Paula Hellman. And I would have



1 reviewed them - I reviewed them together, so I  
2 would have reviewed them probably the week after.

3 Q. And these two diagrams that you prepared  
4 were prepared in July of 1992?

5 A. No. The diagrams would have been  
6 prepared within the last 30 days.

7 Q. Was that after or before you reviewed  
8 the depositions of Impemba and Hellman?

9 A. After.

10 Q. The initial report that we previously  
11 discussed was sent to Ms. Braten in January of  
12 1992?

13 A. Yes, sir.

14 Q. And at that point that you had prepared  
15 that initial report giving your opinions as to what  
16 took place, had you prepared any diagrams at that  
17 point?

18 A. No.

19 Q. Had you reviewed any depositions at that  
20 point?

21 A. No.

22 Q. And in that initial letter that you  
23 prepared to Ms. Braten, did you express any  
24 concerns as to the speed that my client, Ms.  
25 Hellman, was going?



1 A. Well, I'd have to look at that.

2 MS. BRATEN: Let me just say that the  
3 letter speaks for itself.

4 THE WITNESS: There was nothing in there  
5 about speed.

6 Q. (BY MR. HANKIN) What did you mean in  
7 your letter where you stated that it also appears  
8 that this vehicle was speeding based on the  
9 distance traveled after impact by your client?

10 A. What I meant by that was at that time I  
11 had - of course I did not have the depositions at  
12 the time. But I did - had spoken with the police  
13 officer, and from the time that the Impemba vehicle  
14 took its so-called evasive action until its final  
15 rest position was about 200 feet, and that's an  
16 awful long distance to travel for a vehicle.

17 MS. BRATEN: Is that Hellman?

18 THE WITNESS: I said Hellman, right?

19 MS. BRATEN: No. You said Impemba.

20 THE WITNESS: I'm sorry. Hellman.

21 Q. (BY MR. HANKIN) Can you go back and  
22 state that again?

23 I'm a little bit lost now.

24 A. Okay. The distance Hellman was  
25 traveling southbound on Military - in speaking with



1 the police officer at that point, in January, he  
2 stated that the operator of the Hellman vehicle had  
3 stated to him that she saw Impemba pull out in  
4 front of her and had taken evasive action by  
5 skidding and slamming on her brakes and those kind  
6 of things. He also stated that she had stopped her  
7 vehicle, Hellman, south of the point of rest of the  
8 Impemba vehicle.

9 In measuring that area and looking at  
10 the scene originally, that's a distance of about  
11 over 200 feet, you know, give or take a few feet  
12 either way. That's quite a distance to travel for  
13 someone going 35 miles an hour.

14 Q. Before they would take evasive action?

15 A. No, for the entire scene to occur. And  
16 I had told Ms. Braten that it was my belief at that  
17 point, in January, that my belief at that point was  
18 that the Hellman vehicle was possibly exceeding the  
19 posted speed limit of the area.

20 Q. So you weren't certain at that point  
21 that the Hellman vehicle was speeding?

22 A. No. It was just my initial estimate.  
23 That letter dealt with my initial opinions at that  
24 point. Naturally, as I went on I received depositions  
25 and other things.



1 Q. Had you gone out and taken any  
2 measurements at that point that you prepared that  
3 initial letter?

4 A. No.

5 Q. Then how did you know it would be 200  
6 feet?

7 A. Well, because I had just walked it off  
8 at the scene. I went to the scene and I looked at  
9 it and I, you know, I walked it off, but I didn't  
10 do any scale measurements because of the time  
11 involved.

12 Basically, you know, I get called on  
13 many cases where somebody may ask me to go to a  
14 scene and look at it and give an initial opinion if  
15 the accident could have happened that way. And  
16 that was Ms. Braten's original request was, had -  
17 you know, did the Impemba vehicle violate the right  
18 of way of Ms. Hellman. And if so, then I would  
19 have told her.

20 Q. At that point you were not asked to  
21 prepare a thorough report?

22 A. No.

23 Q. Now, you have two different diagrams  
24 that you've drawn. I'd like to refer to this one  
25 as Exhibit A, and we'll mark it as Exhibit A later



1 on. Can you tell me why you've prepared two  
2 different diagrams, Exhibit A vs. Exhibit B?

3 A. Let me get mine straight so I can see.

4 Q. And I have this one as Exhibit A.

5 A.. Okay. Let me - I want to mark mine the  
6 same as yours. One - that one is A?

7 Q. Yes.

8 A. Okay. So that one is A. And then this  
9 one would be B, right?

10 Q. Correct.

11 A. Okay. The reason I received two  
12 different diagrams - Number 1, the initial diagram  
13 itself is the same. The only thing that I did on  
14 A, what's marked as Exhibit A, that is the scenario  
15 stated by the Impemba driver in her deposition.

16 MS. BRATEN: The Defendant is Hellman.  
17 I'm just --

18 THE WITNESS: Am I mixing these names  
19 up all the time?

20 MR. HANKIN: Yes. Impemba is the  
21 Plaintiff.

22 THE WITNESS: I realize that, but I --  
23 This is the description that Impemba gave in her  
24 deposition.

25 Q. (BY MR. HANKIN) That's A?





1           A.    In A, right. The description that  
2 Hellman gave is B. Have I got that right? Right.

3           MS. BRATEN: Okay.

4           Q.    (BY MR. HANKIN) Have you come to any  
5 opinions as to which is the more accurate story of  
6 what took place, based upon your investigation?

7           A.    Well, I hate to use the word accurate.  
8 I took both depositions into consideration when I  
9 did it, and my scene visit and speaking with the  
10 police officer and the physical evidence, and the  
11 deposition given by the Impemba driver, the  
12 Defendant, is not consistent at all with the  
13 physical evidence. It could not have happened that  
14 way.

15           MS. BRATEN: Hellman is the Defendant.

16           THE WITNESS: Did I say that again? Why  
17 am I doing that?

18           Okay. The description in the deposition  
19 given by the Defendant driver, Hellman, is not  
20 consistent with the physical evidence that's  
21 available as to how the accident happened or could  
22 have happened. The description in the deposition  
23 of the Plaintiff driver, Impemba, appears, in my  
24 opinion, to be accurate. It comes - the physical  
25 evidence matches that, and, therefore, I believe



1 it's highly likely that her story is the correct  
2 story or scenario, I should say.

3 Q. (BY MR. HANKIN) Now, you referred to  
4 physical evidence available. What physical  
5 evidence did you have available to you when you  
6 reached your opinion?

7 A. The physical evidence is the path - I  
8 should say the point of rest of both vehicles. The  
9 point of rest of the Plaintiff, Impemba, is not at  
10 issue. The police officer stated where it's at.  
11 Impemba stated where it's at and Hellman stated  
12 where it's at, so that's not an issue as to where  
13 that vehicle came to rest.

14 The only issue we have is to the final  
15 point of rest of Hellman's vehicle, the Defendant  
16 driver. We're not certain as to where exactly it  
17 came to rest. But we are certain from all  
18 depositions and the police officer, that Ms.  
19 Hellman's vehicle came to rest south of the Impemba  
20 vehicle. So that kind of narrows down the  
21 distance. The other physical evidence is the  
22 photographs of the Impemba vehicle and the damage  
23 estimates and what was repaired on the Hellman  
24 vehicle. So those are all things I used in  
25 arriving at my opinions.



1 Q. Did you come to any conclusions as to  
2 speed that the Hellman vehicle, the Defendant,  
3 would have been traveling at the time of the  
4 collision or prior to the collision?

5 A. Yes.

6 Q. What was your opinion as to the speed  
7 that the Hellman vehicle was traveling prior to  
8 attempting to stop?

9 A. My - I don't have an exact speed  
10 estimate because, actually, the speed is based on  
11 various things in this particular case because we  
12 have a wet roadway.

13 We also have a -- We have some dispute  
14 as to was the road wet or dry or was it raining or  
15 had it been raining. There is some dispute,  
16 however, even in Hellman's deposition. She says  
17 the roads are wet at one point and then she says -  
18 no, she says they're dry at one point, and then at  
19 another point she says that, you know, it had been  
20 raining and it was slightly wet, so that's going to  
21 affect the speed somewhat.

22 But due to the distance traveled after  
23 the impact, or before and after the impact with the  
24 Impemba vehicle, I believe that her speed was over  
25 50 miles per hour. And that would be Hellman.



1 Q. Now, you stated that the Plaintiff's  
2 position of rest is not at issue, based upon the  
3 physical evidence that you observed?

4 A. Yes.

5 Q. Do you know if the poles or the  
6 mailboxes that you viewed a year later after the  
7 accident were the exact same poles and mailboxes  
8 that were where the Plaintiff's vehicle came to  
9 rest between?

10 A. Well, do I know if they were the exact  
11 mailbox or exact pole? No. All I know is what the  
12 police officer stated, you know, where the poles  
13 were at. And he listed it in his report even. And  
14 when I talked to him on the phone he gave me the  
15 address, 1589 South Military in West Palm Beach.  
16 He said that the mailbox did have some damage on  
17 it. The mailbox that was out there had some  
18 damage on it. Did it come from that car or not? I  
19 don't know.

20 Q. Did you check with the Post Office or  
21 the Department of Highway Safety to see if the  
22 mailbox or the poles had been repositioned since  
23 the time of the accident?

24 A. No. I wouldn't have had to check with  
25 the Post Office. I would have had to check with



1 the property owner. But there is no other place to  
2 put poles there, and that would be readily visible  
3 if that was the case.

4 Q. As a former police officer, when you  
5 used to perform investigations -- I assume you were  
6 a police officer in the past?

7 A. Yes.

8 Q. And when you used to perform your  
9 investigations, did you ever check with the  
10 Department of Highway Safety or the property owners  
11 when you performed your investigations to see if  
12 different pieces of property had been moved since  
13 the time of the accident?

14 A. Well, not really because in those days I  
15 investigated it at the scene, so it wasn't like -  
16 it didn't make any difference later because I was  
17 the at-scene investigator, so I didn't have to  
18 check where something was a year before. So I  
19 didn't have to do that in those days.

20 Q. Have you taken any steps to verify at  
21 all if those were - if the pole or the mailbox had  
22 been moved in any way since the time of the  
23 accident?

24 A. No.

25 Q. Now, you also stated that we're not



1 exactly sure as to where the Defendant's vehicle  
2 came to rest.

3 A. That's correct.

4 Q. You stated it's somewhere in the range  
5 of about 200 feet south.

6 A. No. I stated that from where the -  
7 where Hellman stated she saw Impemba pulling out --

8 Q. Okay.

9 A. -- considering her going the speed limit  
10 and the time it would have taken her to react until  
11 her point of rest would be about 200 feet.

12 Q. Do you know if, after impact, the  
13 Defendant Hellman's vehicle was under - was under  
14 its own power, or whether or not it was guided in  
15 that direction and continued to be driven by the  
16 driver, Hellman?

17 A. That's unknown. But it didn't come into  
18 any play in my formulas anyway.

19 Q. Okay. Would that come into play if you  
20 knew that information?

21 A. If the information was available. It's  
22 not available in the depositions, and I don't know  
23 of any other way I would know it's available. But,  
24 no, it didn't come into play in this case.

25 Q. If the vehicle was driven by Hellman



1 after the impact, actually guided in that  
2 direction, how would that affect your conclusions?

3 A. The only thing it would affect is it  
4 would be able to give us a more accurate speed.  
5 I'm estimating her speed now, although in all my  
6 computations, including the diagrams that you have,  
7 I've used the speed she said she was going. So I  
8 haven't used any of my calculations as far as to  
9 her being above the speed limit. I used all of her  
10 calculations.

11 Q. And what speed does Hellman indicate  
12 that you have available that she was traveling?

13 A. In the deposition she said she was going  
14 35 to 40 on two or three different occasions. I  
15 used low speed she said, 35.

16 Q. Did you also view the scene from the  
17 position that Impemba would have had prior to  
18 impact when she was sitting on Hairland Drive?

19 A. Yes.

20 Q. And did you come to any conclusion as to  
21 whether or not Impemba's view of the Hellman  
22 vehicle would have been obstructed by anything?

23 A. Well, I came to two different views on  
24 that. Number 1 is if you're pulled far back, I  
25 mean, if your - would be stopped prior to the



1 sidewalk before you even get up there, naturally  
2 your vision would be obstructed that. If you pull  
3 up into a position, a proper position to turn, you  
4 can see fairly clearly down the road. There are a  
5 couple of poles, and they do obstruct a little, a  
6 small percentage of your view, but not much.

7 The second fact deals with if there was  
8 other cars in the area or other vehicles coming,  
9 they could obstruct somewhat of a view, yes.

10 Q. Have you reviewed Impemba's deposition?

11 A. Yes.

12 Q. And do you know if Ms. Impemba indicates  
13 that her view was obstructed or not?

14 A. No. She states that she had no  
15 obstructions. And just to save time, I'm not using  
16 that as a - really an opinion that the vision was  
17 obstructed.

18 Q. Okay. As a former police officer, are  
19 you aware of any Florida statutes that state  
20 whether or not a driver who has a stop sign must  
21 yield to traffic out on the main highway?

22 A. Certainly. If there was traffic coming  
23 or there was traffic close enough to constitute a  
24 hazard in her lane, absolutely, she'd have to  
25 yield.

