DORIS LEE WILLIAMS,	*	IN THE
Plaintiff	*	DISTRICT COURT
vs.	*	OF MARYLAND
MELISSA ANN MAHONEY,	*	FOR
Defendant	*	ANNE ARUNDEL COUNTY
	*	CASE NO. 03814-2004

* *

DECISION

In this case, Doris Lee Williams (Williams), Plaintiff, sued Melissa Ann Mahoney (Mahoney), Defendant, for damages stemming from an automobile accident that occurred in Anne Arundel County, Maryland.

The evidence presented at trial on June 21, 2005, established that on December 19, 2003, after leaving a scheduled appointment at her doctor's office, Mahoney suffered a hypoglycemic episode (a medical condition caused by low blood sugar) and lost consciousness while driving her vehicle. While Mahoney was experiencing this episode, her automobile exited Route 97 North onto Quarterfield Road and struck the side of Williams' vehicle which was sitting at a traffic light. The subsequent impact resulted in Williams suffering personal injuries.

In addition, based on both the medical records admitted into evidence and the testimony heard at trial, the facts also indicate that: 1) Mahoney had been a diabetic for more than 24 years and took a combination of two different types of insulin on a daily basis, 2) in both the months prior to and after the accident, Mahoney's blood sugar levels were unstable and characterized as being "all over the place" and "out of control," 3) Mahoney had experienced severe episodes of hypoglycemia in the months before the accident, 4) Mahoney knew the risks associated with hypoglycemia and, as a result, regularly tested her blood sugar levels up to ten times a day

(including two hours after every meal), and 5) on the day of the accident, Mahoney failed to properly observe her treatment regimen when she neglected to test herself two hours after eating and when she failed to have in her possession a gel packet that she routinely carried in order to rapidly elevate her blood sugar level if necessary.

In her defense, Mahoney asserted that, because she had experienced a sudden and unforeseeable loss of consciousness, she could not be held liable based on the theory of sudden incapacity. The seminal case in Maryland setting forth the affirmative defense of sudden incapacity is Moore v. Presnell. In Moore, the Court of Special Appeals acknowledged the general proposition that "where the driver of a motor vehicle suddenly and unforeseeably becomes physically or mentally incapacitated, he is not liable for injury resulting from the operation of the vehicle while so incapacitated." Moore v. Presnell, 38 Md.App. 243, 246 (1977). However, "an exception to the general rule exists where a person knows that he is suffering from an illness which will likely cause his loss of consciousness." Id. In other words, "if the driver of the vehicle knew that he was subject to attacks in the course of which he was likely to lose consciousness, and an accident occurs because of the fact that the driver suffered a fainting spell, such loss of consciousness does not constitute a defense." Id., citing Annot., 28 A.L.R.2d 12, 23 (1952). This is because, when the driver knows from prior experience that he is susceptible to "such disturbances," the loss of consciousness is foreseeable. Id.

The Defendant's memoranda of law cite to a plethora of cases in an attempt to categorize and link the Defendant's actions to those elements required to sustain a sudden incapacity defense. However, based on the aforementioned recitation of the facts *sub judice*, the facts of these cases are dispositively distinguishable. In the aforementioned Moore v. Presnell, 38 Md.App. 243, the defendant's cardiac-induced incapacity was found to be **unforeseeable** based on the fact that the defendant had *no apparent history of fainting spells*. In Cruz v. United States, 987 F.Supp. 1299 (D. Haw. 1997), the defendant's cardiac-induced incapacitation was found to be **unforeseeable**

because he was *completely unaware of his underlying condition of coronary artery disease, did not have symptoms from which he could or should have known of the condition, had no prior history of unconsciousness, and was not under a doctor's care for his condition.* In Roman v. Estate of Gobbo, 791 N.E.2d 422 (Ohio 2003), the defendant's cardiac-induced incapacity was found to be **unforeseeable** based on evidence *that the defendant's heart condition was stabilized and that his sudden death could not have been predicted or prevented.* In Piatt v. Welch, 974 S.W.2d 786 (Tex. App. 1998), the defendant's diabetic-related incapacity was found to be **unforeseeable** based on the fact that he was *non-insulin dependent, had taken his medications on the day of the accident, had checked his blood sugar that morning with normal results, and had never suffered any other black-outs before or after the accident.* In van der Hout v. Johnson, 446 P.2d 99 (Or. 1968), the defendant's cardiac-induced incapacity was found to be **unforeseeable** based on the fact that he had been *satisfactorily following his physician's treatment regimen*, he had experienced absolutely no warning signs during a doctor's office appointment on the day of the accident, and had *no prior history of unconsciousness*. In Dewing v. Cooper, 147 N.W.2d 261 (Wis. 1967), the defendant's cardiac-induced incapacity was found to be **unforeseeable** where he had *taken reasonable precautions to assess his ability to drive by dutifully following his physician's treatment regimen of receiving electrocardiograms and chest x-rays* and was not limited in respect to his driving. In Martino v. Aetna Cas. & Sur. Co., 351 So.2d 204 (La. Ct. App. 1977), the defendant's cardiac-induced incapacity was found to be **unforeseeable** where he had received a *regularly scheduled checkup two days prior to the accident with no complications or irregularities* that would have indicated any grounds for a subsequent loss of consciousness.

In addition to the various factual differences exemplified in the preceding case law, the one common thread running through all of these cases, as accurately identified by the Plaintiff in her memorandum of law, is that the defendants in these cases proffered some evidence so as to

suggest that their sudden incapacity was unforeseeable. Mahoney, however, does not follow their lead.

Here, the only evidence that arguably suggests that Mahoney's incapacity was unforeseeable is the January 5, 2005, letter drafted by Dr. Kashif Munir, Mahoney's physician at the Joslin Diabetes Center. According to Mahoney's medical records, she was experiencing severe hypoglycemic events prior to the accident on December 19, 2003. As such, Dr. Munir's letter stated that:

> Since Ms. Mahoney was experiencing these frequent hypoglycemic episodes, it is very probable that she was asymptomatic prior to her loss of consciousness on December 19, 2003, resulting in the motor vehicle accident. She likely had hypoglycemic unawareness, a condition where one becomes less aware of low blood sugars often prompted by repeated episodes of hypoglycemia in the recent past. . . Due to hypoglycemic unawareness, Ms. Mahoney would not have experienced any warning signs of impending altered consciousness and would have been unable to prevent the unfortunate outcome of her physical state.

In the Court's opinion, there is insufficient evidence to prove that Mahoney was actually suffering from hypoglycemic unawareness at the time of the accident. Dr. Munir's opinion that Mahoney "likely had hypoglycemic unawareness" and that it was "very probable that she was asymptomatic prior to her loss of consciouness" is too speculative for the Court to conclude that Mahoney was in fact experiencing hypoglycemic unawareness before, during, or after her accident. However, even assuming *arguendo* that Mahoney was hypoglycemic unaware, this assumption does not change the critical fact that Mahoney knew that she was subject to hypoglycemic attacks and thus subject to losing consciousness in the first place.

It is self-evident that Mahoney was cognizant of both the instability of her blood sugar levels as well as the ramifications of a sudden dip in these levels. Mahoney had accordingly attempted, albeit not on the day of the accident, to actively guard against the consequences of such a dip by following a regimented course of treatment. That these consequences were foreseeable is exemplified by the fact that Mahoney routinely tested her blood sugar levels and usually maintained a gel packet with her at all times in order to permit her to quickly elevate her levels if necessary. For what other reason would Mahoney possess a gel packet if not to ward off the effects of a pending hypoglycemic episode? This evidence, alone and in and of itself, recognizes Mahoney's state of preparedness for this foreseeable possibility. That she forgot her gel packet on the day of the accident does not change the fact that Mahoney knew and appreciated the potential risks of hypoglycemia. In this respect, the facts of this case closely mirror those facts seen in Howle v. PYA/Monarch, Inc., 344 S.E.2d 157 (S.C. Ct.App. 1986), where the defendant's diabetic-induced incapacity was found to be foreseeable where he had *failed to follow his treatment regimen, had experienced previous hypoglycemic episodes, and had failed to ingest the sugar that he carried with him just in case of a medical emergency.*

Consequently, based on the aforementioned facts, Mahoney falls quite precisely into that exception to the general rule of sudden incapacity categorized by the individual who knows from prior experience that she is suffering from an illness that will likely cause a loss of consciousness. Thus, it was quite foreseeable that Mahoney could become incapacitated and lose consciousness due to her diabetic condition.

In the impact that occurred on the front passenger side of her vehicle, Williams, age 68, was jerked about in her seat and experienced dizziness, a headache, and a contusion on her forehead. Williams was taken by ambulance to North Arundel Hospital where she was examined, x-rayed (no fractures were observed), received a CT scan (no abnormalities were detected), and

was released with medication and instructions to rest and to seek further care should her symptoms not lessen. On December 22, 2003, Williams was examined by Dr. Lawrence S. Saez, D.C., of United Therapy Associates, PA, complaining of neck and both upper and middle back pain. Dr. Saez's diagnosis was a cervical and thoracic sprain/strain, post-traumatic headaches and a post-traumatic contusion of the head. Dr. Saez recommended physical therapy. Williams accordingly participated in a total of 19 physical therapy sessions from December 22, 2003, through February 13, 2004. Dr. Saez followed Williams' progress, examining her on January 16, 2004, and February 13, 2004, at which time Dr. Saez released Williams from further care after determining that Williams had sustained maximum medical improvement.

The Court concludes that Williams' injuries were caused by the accident of December 19, 2003, that was the result of Mahoney's previously described negligence in failing to control her vehicle so as to avoid the collision without any negligence on the part of Williams contributing thereto. There is no evidence of any permanent injury to Williams.

The Court hereby awards Williams the following medical bills which the Court finds to be fair and reasonable and caused by the accident of December 19, 2003:

North Arundel Hospital	$426.50
NAH Physicians Services	294.00
Advanced Radiology	218.00
United Therapy	2,510.00
Total	$3,448.50

In addition, the Court awards Williams the sum of $4,000.00 for pain and suffering for a total award of $7,448.50 plus court costs.

Vincent A. Mulieri
Judge

9-15-05
Date

cc: J. Matthew Bodman, Esq., attorney for Plaintiff

Mary R. Costezzo, Esq., attorney for Defendant