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To: Helen Keane

Fr: Applicant

Date: Exam Date

Re: Panko v. Dahir

You asked me to prepare a memorandum of the points and authorities to support the client's motion. My analysis follows.

Good Samaritan Law

Columbia's GSA bars actions against a person who gratuitously and in good faith renders aid or assistance at the scene of an emergency or accident except for acts or omissions of gross negligence. *Chung v. Delva*. Further, "Emergency care is statutorily defined to mean any actions which the aider reasonably believed were required to prevent death or serious injury disability or handicap, or reasonably believed would benefit the injured or ill person, depending on the aider's perception of the nature and severity of the injury or illness and the total emergency situation, and that the aider reasonably believed the aider could be successfully undertake. CS Sec. 34-29 (1)

This means to claim immunity under the Good Samaritan Act, the aider must reasonably believe whatever action they take will be of benefit to the person in distress, giving consideration to the totality of the circumstances.

Here, by his interview, when he came upon the van on the side of the road in his truck, D saw Tram (T) wandering around the van on the side of the road, and thought he was drunk or injured. Either condition might have given a would be good samaritan a reasonable belief such a person would benefit from help because either condition puts that person at risk of even greater injury. When he stopped he asked T "Are you okay?" Then asked him if he would wanted D to call 911. This further shows that D had a reasonable belief that T needed help and that calling 911 would benefit him because calling 911 would request larger support from authorities that D may not have been able to provide. In *Chung v. Delva*, Delva had stopped his truck to assist Chung. Chung argued that it was unclear what Delva's intentions were. But when he stopped, Delva asked him if everything was ok. *Chung v. Delva*. This shows Chung knew Delva's stop was in good faith, but because he had already been in one accident where he might be found liable, he may have offered this argument to seek an indirect form of contribution from Delva.

The statute combines elements of the reasonable person standard as well as the aider's subjective state of mind. *Chung v. Delva*. This shows the courts and the statute make the

aider's perception of the need for help, and any action they take to be dispositive in determining whether the GSA applies. In his interview, D stated that he did not turn on his hazard lights because he feared he may have to keep moving the truck forward, and also because the hazard lights will not function when brake lights are applied. This shows D took care to consider the risk of harm to other approaching drivers and supports the position that no genuine issue of fact exists as to whether his conduct constituted gross negligence to bar the GSA from applying here. Gross negligence is defined as a conscious, voluntary act or omission in reckless disregard of a legal duty and of the consequences to another party.. *Miller v. Jones* referring to *Palace Exploration Co., v. Petroleum Dev Co.* In her interview, Rebecca Higgins stated that she saw D's brake lights on. She saw D talking to T at the point D described in his interview, asking if he was ok and if he wanted D to call 911. This shows that an independent witness, Higgins, attested to the facts that support D's reasonable belief that he T needed help, and that he did in fact stop and talk to him to see if he could offer it. Higgins further stated that she put her high beams on, and waved at Panko as he approached to no avail. This shows that there was likely time for Panko to at least have observed the brake lights even if there were no hazards on.

In summary, D's use of the GSA will not be barred by gross negligence.

Summary Judgment

Summary Judgment requires that, after viewing the evidence in light most favorable to the nonmoving party, there are no genuine issues of material fact. But while any two parties may allege the facts that are in dispute, the disputed facts must be material. *Chung v. Delva*.

This means that if any fact a party bases their motion for summary judgment on will not change the result, regardless of how the court finds on that issue, the motion for summary judgement should be denied.

In a summary judgment motion, the question may become one of law if the facts are undisputed and only a single inference can be drawn from those facts. *Miller v. Jones*. Here, the application of the GSA to barring Panko's claim turns on whether D's perception that T needed help and whether he could help him by asking him if he was ok and if he wanted him to call 911 would be of benefit to him. Under the *Miller* court's finding, this would require the only possible inference from D's conduct was that his perception was unreasonable, because there is can be no genuine issue of fact as to whether D was grossly negligent. This shows that Panko will need to show that D did not believe T needed help and that he could help T. This presents an exceedingly high legal hurdle for Panko to clear.

Summary

In summary, the GSA applies to the circumstances in this case because D's belief that T needed help, and that he could help him was reasonable. It seems highly unlikely that the court could find a genuine issue of fact to find for Panko even if the facts are viewed in light most favorable to him. Further, there can be no genuine issue of fact as to gross negligence on D's part. Thus, the motion for summary judgment should be granted.

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