

TRIALS DIGEST®

THE COMPREHENSIVE SOURCE FOR CALIFORNIA CIVIL TRIAL RESULTS

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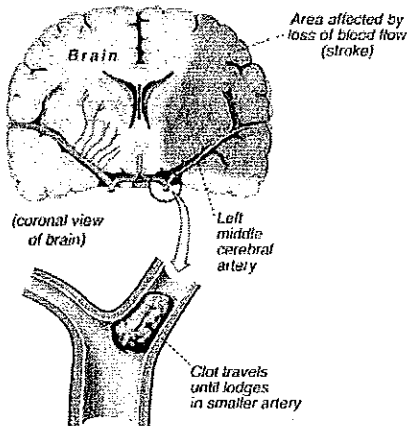
Notable Cases in This Week's Issue...

	Result	TR#
Settlement—Electrician suffers third-degree burns on the job	\$20,000,000	9
Motorcycle passenger knocked off bike and run over	\$775,361	31
AG accuses tax preparation firm of deceptive practices	\$1,297,585	11
Settlement—Police car runs red light, causes collision	\$675,000	32
Asbestos exposure leads to mesothelioma in drywaller	\$8,468,759	4
Settlement—Mail carrier jumps off porch to avoid dog attack	\$230,000	2
Settlement—Toddler injures fingers in paper shredder	\$475,000	25
Settlement—Failure to timely diagnose cancer results in death	\$547,000	20
Settlement—Woman injures back in intersection collision	\$112,000	29

Settlement—Student suffers stroke during dodgeball game: \$96,000,000

Trial Report No.: 22

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Defendant: Hiram B. Morgan, Jr., M.D., orthopedic surgeon, Fresno (559) 437-1065.

COMMENTS

According to plaintiff: The complaint was filed on March 3, 2008.

Defendant's insurance carrier was Farmers. Her limits were \$250,000/\$500,000.

28 TD 12TH 30

SETTLEMENT - Pregnant woman suffers injuries as a result of chain-reaction collision

VEHICLE NEGLIGENCE

Motor Vehicle v. Motor Vehicle/Chain Reaction Collision/Rear-End/Passenger/Parked/Stalled/Stopped Vehicle

NO COURT/UNFILED SETTLEMENT

Perez v. Ceballos, Trial type: Settlement. Settlement date: 9/19/2008.

SETTLEMENT: \$50,958

Defendant's insurer, Mercury, settled on September 19, 2008 for \$15,000 policy limits.

Plaintiff's UIM carrier, Farmers, settled on January 16, 2009 for \$35,958.

COUNSEL

Plaintiff: Michael A. Penn, Aitken, Aitken & Cohn, Santa Ana.

Defendant: None.

FACTS/CONTENTIONS

According to plaintiff: On January 28, 2007, at 12:51 p.m., plaintiff Mary Alice Perez, a 31-year-old elementary school teacher, was a passenger in the middle car of a three-vehicle collision. She was the front seat passenger in a 1998 Saturn driven by her friend, Helen Louise Crabtree. Crabtree's vehicle was stopped behind traffic at a red light on north Main Street at the intersection with Myrtle Street in Santa Ana, California. Defendant Cynthia Leticia Ceballos was driving a 2004 VW Passat when she rear-ended Crabtree's vehicle. The force of the impact pushed Crabtree's vehicle into a 2005 BMW stopped in front of her. At the time of the collision, plaintiff was seven months pregnant.

The investigating officer concluded that defendant caused the incident by traveling at an unsafe speed for the prevailing conditions. Defendant admitted liability for the accident to the officer at the scene. Defendant stated that she stepped on the accelerator instead of the brake pedal prior to the collision.

CLAIMED INJURIES

According to plaintiff: Plaintiff was transported by ambulance to St. Joseph's Hospital in Orange with complaints of stomach pain. Plaintiff went into pre-term labor as a result. Her treating physicians successfully relieved this condition. Plaintiff was later diagnosed with cervical strain, right trapezium strain, and knee pain as a result of the collision.

CLAIMED DAMAGES

According to plaintiff: Crabtree's vehicle was declared a total loss.

Plaintiff and her insurance carrier paid \$5,000 for medical.

SETTLEMENT DISCUSSIONS

Not reported.

EXPERTS

None.

28 TD 12TH 31

Motorcycle passenger knocked off bike and run over by truck making illegal U-turn

VEHICLE NEGLIGENCE

Motor Vehicle v. Motor Vehicle/Motorcycle/U-Turn/Passenger/Truck

VICARIOUS LIABILITY

ORANGE COUNTY SUPERIOR COURT

Nielson v. McAlister, Docket number: 07CC09862. Judge: Kazuharu Makino. Trial type: Jury: 5 days. Verdict/Judgment date: 3/3/2009.

VERDICT: \$775,361

\$59,563 past medical; \$15,798 past wage loss; \$540,000 past non-economic damages; \$160,000 future non-economic damages.

Plaintiff filed a memorandum of costs in the amount of \$14,067. Following the verdict, several jurors indicated their desire to award more money than had been demanded by counsel in closing argument. All of the jurors questioned what had happened to the operator of the motorcycle. All of the jurors informed defense counsel that they did not award any money to plaintiff for having witnessed the truck run over her operator or for any speculative damages he may have suffered. Vote: 12-0. Deliberations: 3 hours.

COUNSEL

Plaintiff: Kevin L. Elder, Penney & Associates, Roseville. Larry K. Eslinger, Penney & Associates, Roseville.

Defendant: Dan Kim, Jenkins, Goodman, Neuman & Hamilton, San Francisco. Nicole Child, Jenkins, Goodman, Neuman & Hamilton, San Francisco.

FACTS/CONTENTIONS

According to plaintiff: On September 23, 2005, plaintiff Shannon Nielson, a 37-year-old hairstylist, was traveling on the back of a motorcycle operated by her boyfriend/financé, Troy McDaniel. The two had left Reno, Nevada for a trip around South Lake Tahoe, California. They were traveling on S.R. Highway 431 (Mt. Rose Highway), a two-lane, narrow mountain road with double, solid-yellow lines dividing the lanes.

At the same time, defendant Carl Ivan McAlister, age 44, within the course and scope of his employment with defendant White Cap Construction Supply, was stopped on the northbound shoulder of the highway, in the same direction plaintiff was traveling. McAlister was operating a 10-ton flatbed freightliner truck loaded with construction material. He was admittedly lost and should have been traveling in the opposite direction. McAlister made an illegal U-turn across the double yellow lines directly in the path of plaintiff's motorcycle.

Plaintiff and the operator of the motorcycle had to lay it down to avoid an impact. After plaintiff bailed off the motorcycle, she began sliding toward the truck. She observed the truck run over the operator of the motorcycle and then observed the left rear wheel of the truck run over her right hip.

CLAIMED INJURIES

According to plaintiff: Plaintiff was transported to Washoe Medical Center in Reno. She was evaluated and diagnosed as suffering from a fractured right pelvis. An open-reduction and internal fixation was performed by Dr. Peter Althausen on September 24, 2005, which included 10 screws and 2 plates. Plaintiff was discharged after four days in the hospital with the use of a walker. Plaintiff also sustained an injury to her right upper extremity, including her right elbow and wrist. Rafael Neiman, M.D., an orthopedist in Roseville, California and David Gotham, D.O. in Rocklin, California provided follow-up care.

CLAIMED DAMAGES

According to plaintiff: Plaintiff suffered from congenital abnormalities, which required no fewer than seven surgeries to her hands and feet between the ages of 3 and 10. Her right hand was left without an index finger and her left hand was left without an index and ring finger. Notwithstanding these deficits, plaintiff was able to engage in her occupation as a hairstylist without problems for over 18 years. As a result of injuries to her right wrist in the accident, plaintiff was unable to return to work and earn at the same rate as before the accident.

Plaintiff's greatest loss was the emotional distress she suffered as a result of witnessing the accident. Plaintiff testi-

fied that she suffered from daily reminders of the visions she had while sliding on the asphalt, of the operator getting run over, and of the truck running over her hip.

\$59,563 past medical; \$15,798 past wage loss; \$475,000 past general damages; \$348,000 future general damages.

SETTLEMENT DISCUSSIONS

According to plaintiff: Defendants offered \$200,000 (CCP § 998) two weeks prior to trial. Plaintiff demanded \$650,000 and suggested that the case could settle for a six-figure number with a five in front.

EXPERTS

Plaintiff: Travis D. Kieckbusch, M.D., orthopedic trauma surgeon, Reno, NV. Peter L. Althausen, M.D., orthopedic trauma surgeon, Reno, NV. Rafael Nieman, M.D., orthopedic trauma surgeon, Roseville. David R. Gotham Jr., D.O., orthopedic trauma surgeon, Carmichael. Gary McClure, Ph.D., psychologist, Roseville. James Gracey, Ph.D., rehabilitation counselor.

Defendant: Peter Sfakianos, M.D., orthopedic surgeon, Folsom.

EXPERT TESTIMONY

According to plaintiff: Defense expert Peter Sfakianos, M.D., testified that, in his medical opinion, plaintiff's injury to her right wrist and knee were unrelated to the subject accident because she had not reported pain in these areas during the four to five weeks following the accident.

COMMENTS

According to plaintiff: The defense filed a motion for a new trial, which was denied. Pursuant to motions in limine prior to trial, the jury was not given any evidence during trial as to the name of the operator of the motorcycle, his relationship to plaintiff, or the nature and extent of his injuries. Defendant White Cap Construction Supply was owned by Home Depot USA Inc. and was self-insured up to \$1 million.