



Defense Lawyers
Association

July 2015 Verdict

Submitted By William R. Anderson
Acosta, Anderson & Obrey-Espinoza
william.anderson@farmersinsurance.com
(575) 522-4127

Court State Court

County Lea County

Judge Honorable William G. Shoobridge

Defense Counsel William R. Anderson and Raymond Baeza

Plaintiff Counsel Scott Borg

Trier Judge

Style *Jessica Sanders v. Tom and Margery Pruett*

Statement of Facts

The Plaintiff filed suit against Margery Pruett for negligence arising from a rear end motor vehicle accident, which occurred in Hobbs on July 20, 2010. The Plaintiff alleged that as a result of the accident she sustained post-traumatic migraine headaches, neck strain and back strain. She was ultimately referred for cervical epidural injections, which she claimed caused a leakage of brain fluid, resulting in compression of the spinal cord, which, in turn, caused significant neurologic symptoms and a traumatic brain injury. The Court instructed the jury on NM UJI 13-1802B, which provides that if the jury finds that the negligence of the defendant was a proximate cause of the plaintiff's injuries and damages, the defendant is also responsible for any harm caused by medical care that the plaintiff's injury reasonably required, even if the medical care was negligently performed. Plaintiff presented medical evidence from Bill Rosen M.D. that the epidural injections were the direct result of injuries from the accident, and that the Plaintiff sustained a traumatic brain injury and permanent neurologic damage as result of the epidural injections.

Dr. Rosen's initial diagnosis was based solely upon inaccurate information provided by the Plaintiff. Prior to being referred to Dr. Rosen by her counsel the Plaintiff had seen 2 neurosurgeons and a neurologist, none of whom found any evidence of a brain injury. These physicians also could not determine the cause of the Plaintiff's neurologic deficits, notwithstanding multiple MRIs, EMGs and nerve conduction velocity studies. A neuropsychological evaluation of the Plaintiff demonstrated that the Plaintiff showed significant signs of symptom embellishment and sub-optimal effort. The neuropsychological evaluation was not consistent with any cognitive deficits from a brain injury.

Verdict Defense

Comments The jury took 35 minutes to determine that the motor vehicle accident did not cause any injury or damages.

Experts Plaintiff's counsel retained Bill Rosen, M.D., a physiatrist from Montana, and Michael Freeman, Med.Dr. D.C.,
The defense retained Ron Feder, an ACTAR certified accident reconstructionist.



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September 2015 Verdict

Submitted By**Rip Harwood**

Ripley B. Harwood, P.C.

Ripharwood@aol.com

(505) 299-6314

Court

State Court

County

McKinley County

Judge

Honorable Robert Aragon

Defense Counsel

Rip Harwood

Plaintiff Counsel

Bill Carpenter, Ted Barudin, Helen Bennett

Trier

12 Person Jury

Style

Rosemarie Vandever, Personal Representative of the Estate of Lara Sanders v. New Mexico Department of Transportation, et al; Eleventh Judicial District Court Cause No. D-1113-CV-2012-00556

Statement of Facts

Wrongful death claim for the death of a 24-year old Navajo female pedestrian struck and killed by an uninsured motorist while crossing old Route 66 in front of the Fire Rock Navajo Casino just east of Gallup. Plaintiff asserted the highway department was negligent for failing to recognize an alleged need for traffic signals and pedestrian safeguards when the casino was built in 2008 (the accident was in 2011). Evidence showed the highway department had required studies of the intersection not only when the casino went in, but in two subsequent followup studies after the casino became operational. Three traffic studies over a six-year time frame all confirmed vehicle and pedestrian volumes far below warrant requirements for traffic signals or safeguards at the rural intersection. Design and permit immunity claims were rejected at the summary judgment stage. Plaintiff asked for 9.4 million. Jury found no negligence on the part of the highway department.

Verdict

Defense

Comments

Over objection that he was merely offering a number disguised as a "range", Brian McDonald was permitted to espouse his new narrow "range" approach of testifying that the value of a "statistical life is between 5-6 million dollars. Those facing such testimony are urged to argue that 5-6 million telegraphs a number not a range, and that this sleight of hand tactic violates Couch v. Aztec Industries just as thoroughly as a single fixed number.

Experts

Plaintiff: Lou Medrano (traffic engineering); Brian McDonald (economist)

Defendant: Jerome Hall (traffic engineering); G. Theodore Davis, M.D. (physician)