
Pima County Superior Court Jury Trials

THE TRIAL REPORTER of Southern Arizona

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2/4/15 - Judge GUS ARAGON, JR. - CV 2012-5698 - SUNDERHAUS (Michael F. Kelly of Hollingsworth Kelly, P.L.L.C.) v GRISSOM (David L. Curl of Curl & Glasson, P.L.C.) - PERSONAL INJURY - REAREND. Plntf, in her thirties, a collegiate assistant women's soccer coach, alleged she was rear-ended by Dfnt, who was travelling twenty miles-per-hour. Dfnt, male, age 70, retired, admitted negligence, but argued causation. Plntf alleged she sustained cervical and lumbar soft tissue injuries; plus a closed head injury with concussion and traumatic brain damage. Plntf also alleged the head injury exacerbated her preexistent short-term memory loss, inability to judge distance, fatigue, sleeplessness, concentration and focus problems, as well as vision and reading issues, plus chronic headaches. Plntf also alleged that, due to a concussion she sustained in 1998 while playing collegiate soccer, she was more susceptible to subsequent concussions. Additionally, Plntf alleged she sustained a third concussion at the Cincinnati Zoo because of her inability to judge distances. Plntf alleged that, as a result of the exacerbation of her preexistent symptoms, it is more difficult for her to pursue a career as a women's soccer coach at a Division I school. Plntf called John Smith, P.E., an accident reconstructionist and biomechanical engineer, who testified Dfnt was travelling twenty miles-per-hour at the time of impact, which generated Delta V forces of eleven miles-per-hour. It was Mr. Smith's opinion that an occupant of a sport utility vehicle can sustain a concussion even when there is little or no property damage to the vehicle, and even if the occupant's head does not strike the headrest or other part of the vehicle. Plntf also called Glenn Marks, Ph.D., a neuropsychologist, who was of the opinion that Plntf had sustained a concussion in the instant

accident, but she had had residual problems caused by the 1998 concussion. Dr. Marks testified that Plntf's IMPact scores, twelve days post-accident, indicated Plntf had sustained a brain injury and she had several deficits. However, on cross, Dr. Marks admitted that an earlier series of tests indicated Plntf's higher order executive functioning was within normal limits. Additionally, Plntf called B. Robert Crago, Ph.D., a neuropsychologist, who testified that a quantitative EEG (brain mapping), performed two years post-accident, demonstrated abnormal findings. However, Dr. Crago was unable to state whether the abnormal findings were caused by the 1998 concussion or the concussion sustained in the instant accident. Dfnt argued Plntf sustained only cervical soft tissue injuries, and did not sustain a concussion or exacerbation of her preexistent symptoms. Dfnt also argued that only \$9,000 of Plntf's medical expenses were causally related. Dfnt alleged that, at the time of trial, Plntf was running six miles per day and coaching a youth soccer team. Dfnt called Barry A. Hendin, M.D., a neurologist, who performed an independent medical examination. It was Dr. Hendin's opinion that Plntf did not sustain a concussion in the instant accident, only cervical soft tissue injuries, based on her perfect Glasgow Coma Scale score, above average test results, lack of any neurological findings, and no diagnosis of post-concussion syndrome for approximately three months post-accident. It was also Dr. Hendin's opinion that Plntf suffered from depression, not a brain injury. Dfnt also called H. Daniel Blackwood, Ph.D., a neuropsychologist, who performed an independent medical examination and administered a Minnesota Multiphasic Personality Inventory (MMPI) test. It was Dr. Blackwood's opinion that Plntf's MMPI test results were all within normal limits, and did

not reveal any concussion-related symptoms. It was also Dr. Blackwood's opinion that successive concussions over a short period of time might put a person at a greater risk for a concussion, but not one ten years prior to the second concussion. Dr. Blackwood testified that a brain injury heals over time and the greatest improvement is immediate. Dr. Blackwood also testified that brain injuries do not manifest themselves later. Additionally, Dfnt called John T. Beck, Ph.D., a neuropsychologist, who reviewed Plntf's records. It was Dr. Beck's opinion that Plntf's MMPI test results were within normal limits. It was also Dr. Beck's opinion that the testing performed by Plntf's experts was not reliable and Plntf did not have any concussion-related symptoms. Dfnt also called Wayne W. Bixenman, M.D., an ophthalmologist, who reviewed Plntf's vision records and was of the opinion that Plntf had no vision changes. It was also Dr. Bixenman's opinion that the prisms in Plntf's glasses were slight, and most people would not notice if the prisms were placed in their glasses. Prayer: Just and reasonable compensatory damages; \$37,579 medical expenses; plus \$500,000 to \$1 million future lost wages (per D). Plntf made a \$125,000 pretrial offer of judgment - Dfnt made a \$35,000 offer of judgment (P & D). (Carrier: State Farm Insurance.) During closing arguments, Plntf's counsel asked jury to award Plntf \$450,000 for past pain and suffering and approximately \$800,000 (per P) or \$850,000 (per D) for future pain and suffering. Defense counsel suggested \$9,000 (per P) or \$9,674.56 (per D) for medical expenses, plus \$5,000 (per P) or \$2,000 (per D) to \$10,000 for pain and suffering, was adequate compensation. Seven day trial. Jury out four hours, over a two-day period. AWARDED PLNTF \$50,000 COMPENSATORY DAMAGES. UNANIMOUSLY.
