
Pima County Superior Court Jury Trials

THE TRIAL REPORTER of Southern Arizona

January, 2013

1/10/13 - Judge JAMES E. MARNER - CV 2010-9541 - McKEMY (Shawn A. Jensvold of Doug Zanes & Associates, P.L.L.C.) v CESAREK (David L. Curl of The Curl Law Firm) - PERSONAL INJURY - REAREND. Plntf, female, age 35, a horse trainer, alleged that, while stopped for a red traffic signal, in the right turn lane, on Broadway Boulevard, west of Craycroft Road, she was rear-ended by Dfnt. Plntf also alleged that, when the traffic signal turned green, Dfnt began to move forward, and struck Plntf's vehicle. Dfnt, male, age 35, a water quality supervisor, admitted negligence, but argued causation. Plntf alleged she sustained a lumbar facet joint injury, with radiating pain into her leg. Plntf also alleged she might have two herniated lumbar disks. Additionally, Plntf alleged she is now losing strength in the left leg, and has difficulty standing. Plntf also alleged that the recurring ongoing pain wakes her during the night, and affects her ability to work and perform her everyday activities. Plntf called Matthew D. Holland, M.D., a pain management specialist, who was of the opinion that Plntf's facet joint injury was causally related. Dr. Holland testified that the radio frequency neurotomy performed was successful in temporarily relieving Plntf's pain, but that, generally, the relief from pain lasts approximately six to eighteen months, and that, if Plntf's pain returned, he would recommend repeating the radio frequency treatment. However, on cross, Dr. Holland acknowledged that his opinion was based solely on Plntf's history, telling him that she had no pain before the accident. Dfnt argued impact was minor, and Plntf's vehicle had little visible damage. Dfnt also argued Plntf's complaints were related to her preexistent lumbar injury. Dfnt called Joseph D. Peles, Ph.D., a biomechanical engineer, who testified that the

Delta V forces generated in the collision were approximately 6.6 miles-per-hour, and the vehicle's seat back provides support of the lumbar spine in a rear-end collision. Dfnt also called Colin R. Bamford, M.D., a neurologist, who performed an independent medical examination. Dr. Bamford testified that, if Plntf was injured, she had recovered by the end of April 2010, when she reported to her physical therapist that she was pain free. Prayer: Just and reasonable compensatory damages; \$22,578.76 past medical expenses; plus an unspecified amount for future medical expenses. Plntf made a pretrial demand of \$150,000 - Dfnt made an \$8,500 offer of judgment (D). (Carrier: State Farm Insurance.) During closing arguments, Plntf's counsel asked jury to award Plntf \$22,578 for past medical expenses, \$15 or \$25 per day for her pain for nineteen months, plus an unspecified amount for her future pain. Defense counsel argued Plntf was not injured. In the alternate, defense counsel suggested \$3,861.75 was adequate compensation. Three day trial. By stipulation, nine jurors deliberated. Jury out two hours. AWARDED PLNTF \$8,200 COMPENSATORY DAMAGES. UNANIMOUSLY. (Post-trial, Dfnt filed a Rule 68 motion for costs of \$20,000.)
