

1/20/06 - Judge DEBORAH BERNINI - CV 2004-5111 - MORALES (John G. Balentine of O'Steen and Harrison) v EWER (David L. Curl of Barassi & Curl, P.L.C.) - PERSONAL INJURY - REAREND. *Case being tried on Dfnt's appeal of Plntf's \$24,000 arbitration award, with a finding that Dfnt was sixty-five percent at fault, and Plntf's husband was thirty-five percent at fault. Pretrial, Parties stipulated Dfnt was sixty-five percent at fault.* Plntf, female, age 51, unemployed, was passenger in a van, operated by her husband. Plntf alleged her husband pulled into the bike lane because their vehicle's engine warning light came on, and they were then rear-ended by Dfnt. (PLNTF'S HUSBAND'S CARRIER, FARMERS INSURANCE, SETTLED BEFORE TRIAL, FOR \$8,400 [THIRTY-FIVE PERCENT OF \$24,000 ARBITRATION AWARD].) Dfnt, male, age 18, a customer service representative for Economy Restaurant Supply, admitted negligence. Plntf alleged she sustained injuries to the right shoulder, arm, elbow, and hand, with residual numbness, tingling, and pain in the elbow and hand; plus secondary headaches, and eye pain and tearing. Plntf called Fernando Gonzales-Portillo, M.D., a neurologist, who testified Plntf's treatment was reasonable, necessary, and causally related. Dr. Gonzales-Portillo also testified that the exacerbation of one of Plntf's two bulging disks, which were asymptomatic pre-collision, was causally related; and Plntf has chronic elbow pain, plus chronic, but mild, carpal tunnel syndrome in the right hand, which was also causally related. It was Dr. Gonzales-Portillo's opinion that Plntf's three subsequent falls, with one minor exception, did not aggravate the injuries sustained in the instant collision. Dfnt argued Plntf's subsequent falls either caused or aggravated her complaints. Dfnt called Colin R. Bamford, M.D., a neurologist, who testified Plntf had subjective complaints, but no objective findings. It was Dr. Bamford's opinion Plntf's carpal tunnel syndrome was possibly, but not probably, related to the instant collision. Prayer: Just and reasonable compensatory damages; plus \$10,510 medical expenses. Plntf made a \$25,000 pretrial offer of judgment - Dfnt made a \$10,000 offer of judgment (P). (Carrier: State Farm Insurance.) During closing arguments, Plntf's counsel asked jury to award Plntf her medical expenses, plus \$30,000 to \$40,000 for pain and suffering, chronic elbow pain, and carpal tunnel

symptoms. Defense counsel suggested \$4,000 to \$5,000 was adequate compensation. Two day trial. Jury out three hours. AWARDED PLNTF \$25,000 COMPENSATORY DAMAGES. 7 - 1. (Pursuant to Dfnt's sixty-five percent stipulated degree of fault, Plntf to recover \$16,250 from Dfnt.) (Post-trial, Plntf filed motion for attorney's fees and costs.)
