
Pima County Superior Court Jury Trials

THE TRIAL REPORTER of Southern Arizona

February 15, 2003

2/10/03 - Judge CHRISTOPHER C. BROWNING - CV 2001-2708 - CARTER (Douglas B. Levy, a sole practitioner) v MOHR (David L. Curl of William B. Blaser & Associates) - PERSONAL INJURY - REAREND. Plntf, male, alleged he was rear-ended by Dfnt. Dfnt, male, admitted negligence, but argued causation. Plntf alleged he sustained soft tissue injuries, with radiating pain into the leg; plus a herniated disk at L-4, L-5, which required surgical intervention. Following surgery, Plntf alleged he continued to have pain, and was diagnosed with an annular tear at L-5, S-1. Plntf also alleged he continues to have ongoing pain and residual impotence. Plntf called Trudy Walker, D.C., who testified she treated Plntf eleven times, over a four-year period, before the instant accident, for acute sporadic back problems, which were not serious. Dr. Walker also testified that, after the instant accident, Plntf had multiple and serious problems, with radiating pain into the leg, which developed five days post-accident. Plntf also called Kenneth B.

Gossler, M.D., a pain control specialist, who testified Plntf's annular tear at L-5, S-1 was probably causally related. Dr. Gossler also testified that injections and IDET were not successful, and the only viable option was a surgical fusion. Additionally, Dr. Gossler testified Plntf is totally disabled, and unable to work, in any capacity. However, on cross, Dr. Gossler admitted the annular tear was not present on the MRI performed five weeks post-accident, and was first seen on the MRI performed fifteen months post-accident. Additionally, Plntf called David Jacobs, M.D., a physiatrist and pain control specialist, who testified Plntf is permanently disabled, and will probably require a fusion, in addition to future physical therapy and prescription medications for life. Dr. Jacobs also testified Plntf will require future MRIs, and pain blocks. On cross, Dr. Jacobs admitted he had worked with Plntf's attorney on twenty-two cases, in the past three years. Plntf also called his treating psychologist, Richard J. Gellerman, Ph.D., who testified Plntf's depression was causally related. However, on cross, Dr. Gellerman admitted Plntf had missed three of his six appointments. Plntf called his spouse, who testified Plntf had ongoing pain, and became depressed and impotent. However, on cross, Plntf's spouse admitted she had requested x-rays of Plntf's back, two years before the instant accident. Plntf also called Timothy K. Putty, M.D., a neurosurgeon, who testified Plntf's herniated disk was either caused by, and/or aggravated by, the instant accident. Dr. Putty also testified the surgery for the herniation was successful. On cross, Dr. Putty agreed Plntf's annular tear was not present on the first MRI, in August, 2000, and was not apparent until September, 2001. Additionally, Plntf called his supervisor, who testified Plntf was an exemplary employee, who showed management potential.

Supervisor also testified Pntf was on the "management track", but now is only able to perform light duty. However, on cross, Supervisor admitted he was not aware of Pntf's disk problems, and was not aware Pntf was taking prescription pain medication. Supervisor also stated he believed Pntf lifted ladders, and, at a minimum, Pntf would be required to pick up coils of wire, weighing forty pounds, and wear a tool belt, which could be heavy, while on light duty. Dfnt called Kenneth Young, D.O., a physiatrist and neurologist, as an adverse witness. Dr. Young testified he did not recommend or order the MRI, and was impeached by his previous testimony. Dr. Young admitted there was no evidence of radiating pain, at the time he ordered the MRI or EMGs. Dr. Young also admitted he had filed at least one-hundred-and-thirty liens on behalf of different Pntfs, in the past five years. Dfnt also called Debra A. Walter, M.D., a physiatrist, who testified Pntf's

back failure was inevitable, and Pntf would have been in the same situation, even had the accident not occurred. Prayer: Just and reasonable compensatory damages; \$72,019.64 medical expenses; \$144,000 future medical expenses; \$9,280 lost wages; plus \$31,200 future lost wages. Pntf's spouse made claim for loss of consortium. Pntf made a \$750,000 pretrial offer of judgment - Dfnt made a \$200,000 offer of judgment (D). (Carrier: State Farm Insurance.) During closing arguments, Pntf's counsel asked jury to award Pntf \$1,500,000, and award Pntf's spouse \$150,000 for loss of consortium. Defense counsel argued Pntf had chronic preexistent back complaints, and the annular tear at L-5, S-1 was not diagnosed until fifteen months post-accident. Five day trial. Jury out two-plus hours. AWARDED PLNTF \$120,000 COMPENSATORY DAMAGES. UNANIMOUSLY. (Post-trial, Dfnt filed motion for doubled taxable costs, and expert fees.)
