
2/27/08 - Judge MICHAEL OWEN MILLER - CV 2006-1670 - GODWIN (Michelle E. Lespron and Yuri Nielsen of Pincus & Lespron, P.L.C.) v LOCKERMAN (David L. Curl of Barassi, Curl & Abraham, P.L.C.) - PERSONAL INJURY - REAREND. *Prologue: Prior to trial, parties entered into a stipulation to shorten the trial. Dfnt filed motion to prohibit mention of the electrodiagnostic testing because Avinash S. Khatter, M.D., a neurologist, failed to produce the raw data. Dfnt also filed motion to preclude Alan M. Immerman, D.C., from testifying as a biomechanical trauma specialist. Parties agreed that, if Plntf withdrew the electrodiagnostic testing expense of \$770, and Dr. Khatter as an expert, Dfnt would withdraw Todd D. Levine, M.D., a neurologist, as an expert, and agree not to mention the electrodiagnostic testing. Additionally, Dfnt filed motion to ask for a Frye hearing on Dr. Immerman. Parties stipulated that Dr. Immerman would not be called, but Plntf would be able to cross-examine Dfnt's expert with studies from Dr. Immerman's report. Case being tried on Dfnt's appeal of Plntf \$9,000 arbitration award, with a finding that Plntf was twenty-five percent at fault and Dfnt was seventy-five percent at fault. Case also being tried on comparative fault. Plntf, female, age 42, a family and child therapist/counselor, alleged that, as she moved into the turn lane, on Prince Road, she was rear-ended by Dfnt. Dfnt, male, age 40, an automotive technician, denied liability, advancing the defense that Plntf executed a sudden stop, in stop-and-go traffic, to move into the turn lane, and Dfnt was unable to avoid rear-ending Plntf's vehicle. Plntf alleged she sustained cervical, thoracic, and lumbar soft*

tissue injuries; plus an injury to the shoulder. Plntf also alleged she has ongoing residual complaints. Plntf called William G. Lay, D.C., who testified Plntf's injuries were causally related. It was Dr. Lay's opinion that Plntf's treatment was reasonable, necessary, and customary. Dfnt argued the collision occurred at four to five miles-per-hour, and Plntf was not injured. Dfnt also argued Plntf's vehicle sustained only \$461.94 in property damage, and there was no damage to Dfnt's vehicle, Dfnt called Robert D. Anderson, B.S.E., a biomechanist, who testified the Delta V forces generated in the collision were similar to normal activities of daily living, and there was a low probability of injury. Prayer: Just and reasonable compensatory damages; plus \$4,333.95

(per P) or \$5,500 (per D) medical expenses. Plntf made a pretrial demand of \$7,550 - Dfnt offered \$500 (P & D). (Carrier: State Farm Insurance.) During closing arguments, Plntf's counsel argued Dfnt had accepted responsibility during his testimony and was one-hundred percent at fault. Plntf's counsel asked jury to award Plntf \$10,000 to \$15,000. Defense counsel argued Dfnt was partially at fault, but Plntf was also at fault for executing a sudden stop. Defense counsel also argued Plntf was not injured, and should take nothing. Two day trial. Jury out one-plus hours. AWARDED PLNTF \$0 COMPENSATORY DAMAGES. UNANIMOUSLY. (Found Plntf to be fifty percent at fault, and Dfnt to be fifty percent at fault.)
