

3/10/06 - Judge LESLIE B. MILLER - CV 2004-6114 - BAILEY (William G. Walker, a sole practitioner; and Daniel P. Price of Price and Price) v KAZANDJIAN (David L. Curl of Barassi & Curl, P.L.C.) - PERSONAL INJURY - PARKING LOT COLLISION. Plntf, female, alleged that, as she was travelling in the parking lot aisle, after purchasing groceries, Dfnt negligently backed from a parking space, and caused collision. Plntf also alleged she was struck by boxes of food, as a result of the impact, and twisted her knee when she turned to hold the food back. Dfnt, female, admitted negligence, but argued causation. Dfnt also argued Plntf sat in the passenger seat while they exchanged information post-collision, and there was no food present. Plntf, who had undergone an arthroscopic procedure three weeks prior, alleged she had made an excellent recovery until the instant collision, in which she alleged she sustained injuries to both knees. Plntf also alleged she now requires crutches to ambulate, and is unable to drive. Plntf called John A. Meaney, M.D., an orthoped, who testified Plntf was recovering well after her initial arthroscopic surgical procedure, and the subsequent arthroscopic surgeries were causally related to the instant collision. Dr. Meaney also testified Plntf sustained a causally related bruise to the hip, and made fibromyalgia complaints. However, on cross, Dr. Meaney admitted Plntf would have required a knee replacement even had the instant collision not occurred. Dr. Meaney also admitted Plntf would require a second procedure, due to age. Additionally, Dr. Meaney admitted the physical therapy notes reflected Plntf had normal range of motion, two weeks post-collision. Plntf used the medical report of Marjorie L. Eskay-Auerbach, M.D., an orthoped, who performed an independent medical examination. Dr. Eskay-Auerbach was of the opinion that all of Plntf's complaints were causally related, and Plntf will require future knee replacement surgery. It was also Dr. Eskay-Auerbach's opinion that Plntf has a forty percent permanent impairment of the whole person. Dfnt argued Plntf, who was receiving Social Security disability benefits for a preexistent bipolar disorder and depression, was not injured in the minor impact to the passenger side of Plntf's vehicle. Dfnt also argued that, on cross, Plntf admitted she was still collecting disability benefits, even though she was no longer on medication for the disability and was not

disabled prior to the collision. Plntf also admitted she had no spinal injuries, or headaches, but told her treating physical therapist that she did. Additionally, Plntf admitted she did not claim an injury to her left knee, even though she stated in her deposition she had. Plntf claimed she had never been treated for fibromyalgia, but admitted she stated she had when she filled out paperwork at Dr. Meaney's office, prior to the instant collision. Dfnt called Robert L. Anderson, M.S., a biomechanical engineer, who testified Dfnt was travelling at two to five miles-per-hour, and the forces generated in the collision were minimal, which would have caused a rocking motion in Plntf's vehicle. Mr. Anderson also testified the impact would cause Plntf to be jostled away from the door, and would have caused any food in the vehicle to strike the passenger side door, not be thrown across the vehicle. Dfnt also called Douglas P. Hartzler, M.D., an orthoped, who was of the opinion there was no mechanism of injury in the collision, and Plntf could not have injured her knee. Dr. Hartzler testified Plntf would require future knee replacement due to her degenerative joint disease, regardless of the collision, and the collision did not cause a meniscal tear of the knee. Prayer: Just and reasonable compensatory damages; \$105,000 medical expenses; plus \$40,000 to \$45,000 future medical expenses. Plntf made a pretrial demand of \$150,000 - Dfnt made a \$75,000 offer of judgment at time of the Answer (D). (Carrier: State Farm Insurance.) During closing arguments, Plntf's counsel asked jury to award Plntf \$106,659 for past medical expenses, \$40,000 for past pain and suffering, \$40,000 for future medical expenses, plus \$20,000 per year, for life, for future pain and suffering (\$450,000). Defense counsel argued liability. Four day trial. Jury out thirty minutes. FOUND FOR DFNT. 7 - 1. (Post-trial, Dfnt filed motion for \$20,000 in costs.)
