

Pima County Superior Court Jury Trials

THE TRIAL REPORTER of Southern Arizona

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5/20/04 - Judge CARMINE CORNELIO - CV 2002-2587 - LERUM and BROWN (Richard L. Keefe, a sole practitioner) v MYERS (David L. Curl of William B. Blaser & Associates) - PERSONAL INJURY - REAREND. *Case being tried on Plntfs' appeal of Plntf Lerum's \$10,000 arbitration award, and Plntf Brown's \$7,000 arbitration award.* Plntf Lerum, in her fifties, and Plntf Brown, in his forties, a chef, alleged that, while stopped northbound on Kolb Road, they were rear-ended by Dfnt, in October, 2001. Dfnt, male, admitted negligence, but argued causation. Dfnt argued that, as he slowed for traffic, his foot slipped off the brake pedal, and he rear-ended Plntfs' vehicle. Dfnt also argued the impact was minor, and Plntfs' vehicle sustained only \$919.41 in damage to the rear bumper. Plntf Lerum alleged she sustained cervical, thoracic, and lumbar soft tissue injuries, with secondary headaches, and residual pain; plus a torn meniscus of the knee, which required surgical repair; and a shoulder injury. Plntf Lerum also alleged that, as a result of her knee injury, she now requires a crutch to ambulate. Additionally, Plntf Lerum alleged that, as a result of her injuries, her graduate studies were delayed by two years. Plntf Lerum called Kenneth Young, D.O., a physiatrist, who testified Plntf Lerum's complaints were causally related. Dr. Young also testified he performed diagnostic testing to ascertain if there was nerve damage, and administered injections into Plntf's hip. On cross, Dr. Young admitted he never diagnosed or suspected a torn meniscus. Dr. Young also admitted that Plntf was not using a crutch, when he examined her six months post-accident. Plntf used the deposition of Thomas J. Wall, M.D., Ph.D., an orthopod, who performed arthroscopic surgery to repair Plntf Lerum's meniscus tear, and found degeneration in the knee and chondromalacia, which were

consistent with her age. It was Dr. Wall's opinion the instant accident could have contributed to the need for surgery, since Plntf Lerum's left knee was symptomatic, and her right knee was not. On cross, Dr. Wall admitted Plntf Lerum did not inform him she fell down stairs, a subsequent automobile accident, or having Osgood Schlatter's syndrome of the left knee. Dr. Wall agreed that a fall down stairs was more consistent with a meniscus tear, rather than a bump on the knee during a automobile accident. Plntf Lerum also used the deposition of Robert Sands, P.T., who performed physical therapy, ordered by Plntf Lerum's physicians, as a result of the instant accident. On cross, Mr. Sands admitted he adopted the opinion expressed in the records of another person, and had no opinion of his own. Mr. Sands also admitted Plntf Lerum advised him that she had fallen down stairs, and had been transported to an emergency department for treatment. Plntf Brown alleged he sustained cervical and left shoulder soft tissue injuries, with residual stiffness and pain, which affects his ability to golf and bowl. (Plntfs planned to call Arnold A. Orbach, D.C., who failed to appear at trial.) Dfnt argued Plntf Lerum had preexistent knee and back complaints. Dfnt also argued that, while Plntf Lerum lived with her daughter, from May, 2003, to October, 2003, Plntf Lerum fell down stairs. Additionally, Dfnt argued Plntf Lerum began using a crutch in December, 2001, due to preexistent knee pain. Dfnt argued Plntf Lerum advised her physical therapist, in June, 2003, that she had fallen down stairs at her daughter's apartment. Dfnt also argued Plntf sought the services of a chiropractor, in January, 2001, and advised him that she had almost constant back pain and numbness in the toes, from an accident which occurred in 1983. Additionally, Dfnt argued

Plntf Lerum advised her physician at the University of Arizona Student Health Center that she had had back pain for the past three years. Dfnt argued Plntf Brown had preexistent shoulder complaints, and he had received treatment three weeks prior to the instant accident, for thoracic outlet syndrome. Dfnt also argued Plntf Brown's neck stiffness could be a result of an alleged altercation with police officers after the instant accident. Additionally, Dfnt argued that all physical therapy treatment, after January 14, 2004, was not causally related. (Dfnt planned to call Debra A. Walter, M.D., a physiatrist; and Gary A. Love, D.C.; but did not do so.) Plntf Lerum's Prayer: Just and reasonable compensatory damages; plus \$27,000 medical expenses. Plntf Brown's Prayer: Just and reasonable compensatory damages; \$5,861 medical expenses; plus \$730 lost wages (D). (Carrier: State Farm Insurance.) During closing arguments, Plntfs' counsel asked jury to award Plntf Lerum \$27,000 for medical expenses, a fair and reasonable amount for the loss of two years of her graduate studies, plus a fair and reasonable amount for pain and suffering. Plntfs' counsel also asked jury to award Plntf Brown \$5,861 in medical expenses, \$730 in lost wages, plus a fair and reasonable amount for pain and suffering. Defense counsel argued Plntfs were not injured in the instant accident, and they did not seek medical treatment until forty-eight hours post-accident. In the alternate, if jury believed Plntfs were injured in the instant accident, defense counsel suggested \$2,500 to \$3,500, at most, was adequate compensation. Two day trial. Jury out two hours. AWARDED PLNTF LERUM \$2,824 COMPENSATORY DAMAGES, AND AWARDED PLNTF BROWN \$0 COMPENSATORY DAMAGES. UNANIMOUSLY.
