

6/14/13 - Judge CHARLES V. HARRINGTON - CV 2011-3599 - CUELLAR (Henry G. Hester, III, of Phillips & Lyon, P.L.C.) v McCULLY (David L. Curl of Curl & Glasson, P.L.C.) - PERSONAL INJURY - LANE CHANGE - MOTORCYCLE MISHAP - FREEWAY. Case being tried on comparative fault. Plntf, in his late twenties or early thirties, a bodyguard, now disabled from unrelated causes, operating a motorcycle, without a helmet, was the lead biker in a group, was travelling approximately fifteen to twenty-five miles-per-hour, in the center lane. Plntf alleged Dfnt negligently and executed an unsafe lane change from the fast lane of Interstate 10 into Plntf's lane of travel, which caused Plntf to strike the right rear corner of Dfnt's van. Plntf also alleged the impact caused him to fall to the pavement, then he was struck in the head by the bumper of non-party motorist's vehicle. Plntf called Michael J. Shepston, an accident reconstructionist, who was of the opinion that the accident occurred when Dfnt's van moved into the center lane, blocking Plntf's motorcycle, which caused Plntf to collide with Dfnt's van. Dfnt, in her twenties, a student, denied liability, advancing the defense that, when she was unable to find an opening to merge into the center lane prior to the fast lane ending, she came to a stop, to avoid colliding with road barriers in the fast lane. Dfnt alleged she never left the fast lane, and Plntf rear-ended Dfnt's vehicle in her lane of travel. Dfnt called the investigating police officer. Dfnt also called Joseph D. Peles, Ph.D., a biomechanical engineer and accident reconstructionist, who was of the opinion that the impact occurred in the fast lane, not in the center lane. Plntf sustained a fractured tibial plateau of the knee, which required a leg brace from hip to ankle for six months; a closed head injury; plus facial lacerations, which required one-hundred-and-eight sutures. Plntf alleged he will require plastic surgery to repair residual scarring between the eyes. Additionally, Plntf alleged he has no feeling in the middle of his

forehead, and has residual hearing loss and blurred vision. Plntf called Marjorie L. Eskay-Auerbach, M.D., an orthopod, who was of the opinion that Plntf will probably require two knee replacement surgical procedures during his life. Plntf used the videotape deposition of Govind G. Acharya, M.D., a plastic surgeon, who was of the opinion Plntf will require reconstructive surgery to repair the scarring on his face, at a cost of \$12,000; plus two knee replacements, at a cost of \$50,000. Dfnt recalled Dr. Peles, who testified that, if Plntf had been wearing a helmet, he would not have sustained the lacerations to this head/face, which he received when he was struck on the head by non-party motorist. Prayer: Just and reasonable compensatory damages; \$28,399.98 past medical expenses; \$62,000 future medical expenses (per D); \$48,000 (per P) or \$52,800 (per D) lost wages; plus \$13,000 (per P) or \$23,000 (per D) property damage. Plntf made an \$89,999 (per P) or \$90,000 (per D) pretrial offer of judgment - Dfnt made a \$10,000 (per P) \$20,000 (per D) offer of judgment (P & D). (Carrier: State Farm Insurance.) During closing arguments, Plntf's counsel argued Dfnt was one-hundred percent at fault, and asked jury to award Plntf \$400,000. Defense counsel argued liability, and also argued Plntf's damages were caused by his failure to wear a helmet. Four day trial. Jury out one-plus hours. AWARDED PLNTF \$41,300 COMPENSATORY DAMAGES. UNANIMOUSLY (per P) or 6 - 2 (per D). (Found Plntf to be ninety percent at fault and Dfnt to be ten percent at fault; therefore; Plntf's award to be reduced to \$4,130.)
