

7/27/06 - Judge MICHAEL D. ALFRED - CV 2004-4007 - RADTKE (Eric A. Thomson, a sole practitioner) v LEE (David L. Curl of Barassi & Curl, P.L.C.) - PERSONAL INJURY - REAREND. *Case being tried on Dfnt's appeal of Plntf's \$40,000 arbitration award.* Plntf, male, age 18, unemployed, was a passenger in a vehicle, travelling on Mission Road, which had stopped for red light. Plntf alleged that, after Plntf's driver pulled forward, then stopped, Plntf's vehicle was rear-ended by Dfnt, after he exited the frontage roadway. Plntf also alleged the impact lifted Plntf's vehicle, which then dropped to the pavement, when Dfnt backed up. Dfnt, male, admitted negligence, but argued he was stopped behind Plntf's vehicle, which started forward, then stopped, as Dfnt looked over his shoulder. Dfnt argued that, at most, he was travelling five miles-per-hour, at time of impact. Dfnt called Robert D. Anderson, B.S.E., a biomechanist, who testified impact occurred at two miles-per-hour, with potentially no forward movement of Plntf's vehicle, and, therefore, no "whipping" action occurred to Plntf's body. Mr. Anderson also testified the forces generated in the collision were similar to those of a rough road, or a bumper car at an amusement park. Plntf alleged he sustained cervical, thoracic, and lumbar soft tissue injuries, with secondary headaches and radiating pain into the arms and hands; plus an injury to the wrist. Plntf used the videotape deposition of his treating physician, Charles S. Kaplan, M.D., an internist, who saw Plntf, who was in good health, two years prior to the instant collision. Dr. Kaplan treated Plntf two months post-collision for cervical pain and headaches. Plntf's condition deteriorated, and Dr. Kaplan referred Plntf for prolotherapy, after ordering MRIs, EMGs, X-rays, bone scans, medication, and different modalities, which included physical therapy and chiropractic manipulation. It was Dr. Kaplan's opinion Plntf was in a vicious cycle of inflammation and pain, which did not improve, despite different modalities of treatment explored. Dr. Kaplan indicated that all treatment was based on a referral from him, and was causally related. Plntf called Michael A. O'Connor, D.C., who treated Plntf for eighteen months. Dr. O'Connor testified Plntf had hypermobility and significant spasms in the lumbar spine. However, on cross, Dr. O'Connor admitted that range of motion testing, performed in November

and December 2002, showed almost normal range, while the range of motion testing performed in January 2003, four months post-collision, showed significant limited range in all areas. Dr. O'Connor also admitted that hypermobility of the lumbar spine was not noted in the January examination. Plntf used the videotape deposition of Richard M. Petronella, M.D., a physiatrist, who performed an independent medical examination. It was Dr. Petronella's opinion that Plntf was overtreated, and any treatment after January 2003, was unrelated. It was also Dr. Petronella's opinion that Plntf's back complaints, which manifested in late January 2003 were unrelated, as were the wrist and arm therapies performed. Additionally, it was Dr. Petronella's opinion that window washing, posture, and working long hours at a computer could cause the same or similar complaints. On cross, Dr. Petronella concurred that Plntf continued to complain of numbness and tingling, and that, ultimately, it was reasonable to perform MRIs, additional X-rays, EMG, and a bone scan. Dfnt argued impact was minor. Dfnt alleged Plntf participated in dirt bike riding, while receiving treatment. Prayer: Just and reasonable compensatory damages; plus \$29,116.09 medical expenses. Plntf made a pretrial demand of \$40,000 - Dfnt offered \$5,000 (D). (Carrier: State Farm Insurance.) During closing arguments, Plntf's counsel argued Dr. Kaplan and Dr. Petronella agreed Plntf was injured in the collision, and the first three months of treatment were reasonable and necessary. Plntf's counsel also argued that Dr. Kaplan and Dr. O'Connor were in a better position to evaluate Plntf's injuries. Plntf's counsel asked jury to award Plntf \$29,000 in medical expenses, plus a fair and reasonable amount for pain and suffering. Defense counsel argued Plntf was not injured in the collision. In the alternate, defense counsel suggested \$5,000 to \$6,000 was adequate compensation. Three day trial. Jury out one-plus hours. FOUND FOR DFNT. 6 - 2. (Post-trial, Dfnt filed motion for \$5,635 in costs.)
