

8/8/06 - Judge MICHAEL OWEN MILLER - CV 2004-5729 - SKAGGS (Bradley E. Thrush of Thrush, Clark & Pahl) v PATE (David L. Curl of Barassi & Curl, P.L.C.) - PERSONAL INJURY - MULTIPLE-VEHICLE REAREND. Parties entered into a \$25,000/\$10,000 high/low agreement. Case being tried as a Summary jury trial. Plntf, female, age 26, unemployed, alleged she was rear-ended by Dfnt. Plntf also alleged the impact propelled her vehicle into the vehicle in front of her. Dfnt, female, age 22, a swimming pool service representative, admitted negligence, but argued causation. Impact was estimated at thirty-five miles-per-hour, and Dfnt's vehicle was totalled. Plntf alleged she sustained cervical, thoracic, and lumbar soft tissue injuries, with secondary headaches; plus an injury to the jaw, resulting in residual temporomandibular joint dysfunction. Plntf also alleged she has ongoing neck, back, and jaw pain. Plntf used the videotape deposition of her treating physician, Stephen J. Harkins, D.D.S., a temporomandibular joint specialist, who was of the opinion that the ten-month gap in Plntf's temporomandibular joint complaints were not unusual, because many physicians do not know that cervical pain and headaches can be the result of jaw problems. It was also Dr. Harkins' opinion that Plntf's jaw was probably partially dislocated in the collision, then worsened over time. Additionally, it was Dr. Harkins' opinion that Plntf is one of the three to seven percent of patients whom he refers for surgery, because conservative treatment was not effective. On cross, Dr. Harkins admitted he had not reviewed Plntf's medical records from other physicians; that Plntf's condition worsened under his care; and that Plntf had an abnormally wide opening of her mouth, but, after treatment, she had decreased opening ability. Dr. Harkins also acknowledged that a pharmacist, who was concerned about Plntf presenting an extra prescription for Percodan, contacted him. Dfnt argued Plntf's temporomandibular joint dysfunction, which did not manifest until ten months post-collision, was unrelated. Dfnt also argued Plntf went to work two weeks post-collision. Dfnt used the videotape deposition of Michael S. Apfel, D.D.S., who was of the opinion that the ten-month delay in symptoms was too long to link the instant collision to Plntf's temporomandibular joint dysfunction. It was also Dr. Apfel's opinion that, since Plntf had no signs of

relief, Dr. Harkins failed to properly diagnose Plntf's problem. Additionally, it was Dr. Apfel's opinion that, if Plntf's jaw had been dislocated in the instant collision, symptoms, such as swelling, would have developed immediately. On cross, Dr. Apfel acknowledged he had not examined Plntf. Prayer: Just and reasonable compensatory damages; plus \$17,500 medical expenses. Dfnt made a \$10,000 offer of judgment (D). (Carrier: State Farm Insurance.) During closing arguments, Plntf's counsel argued Plntf's temporomandibular joint dysfunction was causally related, and asked jury to award Plntf \$52,500. Defense counsel argued Plntf's initial treatment, as well as the first six months of treatment, were reasonable, but that Plntf's temporomandibular joint dysfunction was unrelated. Defense counsel suggested \$8,500 to \$10,000 was adequate compensation. One day trial. By stipulation, four jurors deliberated. Jury out forty-five minutes. AWARDED PLNTF \$10,000 COMPENSATORY DAMAGES. UNANIMOUSLY.
