

9/14/06 - Judge CHARLES V. HARRINGTON - CV 2004-5188 - BAUDER (David W. Rees of Rees & Levy) v ZORN (David L. Curl of Barassi & Curl, P.L.C.) - PERSONAL INJURY - INTERSECTION - LEFT TURN. Plntf, female, age 68, retired, alleged that, while travelling on Duval Mine Road, oncoming Dfnt negligently executed a left turn to enter I-19, into Plntf's path, and caused collision. Dfnt, male, a general surgeon, admitted negligence, but argued causation. Plntf sustained an injury to the right wrist, which required a sling for six weeks, then a thumb brace; cervical, thoracic, and lumbar soft tissue injuries; an injury to the hip; plus an injury to the knee, which required arthroscopic surgery, and, ultimately, a total knee replacement. Plntf also alleged that, as a result of her injuries, she was unable to perform in Sweet Adelines, as a dancing and singing member. Plntf called Kerry L. Knapp, Ph.D., a biomechanist, who testified the collision caused microtrauma to the knee, when the vehicle's floorboard intruded into the passenger compartment. Dr. Knapp also testified the impact occurred at twenty-five to thirty-five miles-per-hour, and had a very high incidence of leg, knee, and foot injuries. It was Dr. Knapp's opinion that Plntf's hip injury probably caused Plntf to change her gait. However, on cross, Dr. Knapp admitted he had never seen Plntf walk before or after the collision, and had no knowledge of her gait from chronic back pain or left leg numbness. Dr. Knapp also admitted he had no knowledge of any herniated disks. Dr. Knapp conceded he could not state that the vehicle's floorboard had intruded into the passenger compartment, but assumed it had done so. Dr. Knapp also conceded that one of the studies he cited showed an injury rate of less than five percent to the knee, hip, and thigh, for comparable speeds. Plntf used the videotape deposition of Edward J. Berghausen, III, M.D., an orthopod, who was of the opinion that, although he believed the collision was a direct cause for the knee replacement surgery, he admitted Plntf would have probably required a knee replacement, even if the collision had not occurred. Dfnt argued Plntf's knee complaints, and subsequent surgeries, were unrelated. Dfnt also argued Plntf had a long history of preexistent chronic back pain, and had two or four herniated disks, for which she never had surgery. Dfnt called Jon T. Abbott, M.D., an orthopod, who reviewed Plntf's medical records. It

was Dr. Abbott's opinion Plntf sustained a minor injury to the knee, which did not require arthroscopic surgery or a knee replacement. On cross, Dr. Abbott admitted that surgery is only performed when the knee is symptomatic, and there was no way to know if Plntf would have actually required a knee replacement, sans the collision. Prayer: Just and reasonable compensatory damages; plus \$67,900 medical expenses. Plntf's husband made claim for loss of consortium. Plntf made a \$180,000 pretrial offer of judgment - Dfnt made a \$70,000 offer of judgment to Plntf, and a \$5,000 offer of judgment to Plntf's husband (D). (Carrier: State Farm Insurance.) During closing arguments, Plntf's counsel asked jury to award Plntf \$67,900 for medical expenses, plus \$180,000 to \$200,000 for pain and suffering, disability, and impairment, including loss of enjoyment of life. Plntf's counsel also asked jury to award Plntf's husband a fair and reasonable amount for loss of consortium. Defense counsel suggested \$25,000 to \$30,000 was adequate compensation. Three day trial. Jury out one-plus hours. AWARDED PLNTF \$95,000 COMPENSATORY DAMAGES, AND AWARDED PLNTF'S HUSBAND \$5,000 FOR LOSS OF CONSORTIUM. UNANIMOUSLY.

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