



9/20/04 - Judge CHARLES S. SABALOS - CV 2002-2711 - SCHWAM (Joseph H. Watson, a sole practitioner) v TUCSON CAR CARE TOWING, INC.; and SNOWDEN (William A. Udall of Udall, Zachreson & Smith, P.L.C.; and Cynthia Dawn Beck, a sole practitioner); and ORT (David L. Curl of Barassi & Curl, P.L.C.) - PERSONAL INJURY - REAREND. Plntf, male, age 47, a self-employed architect, alleged that, on June 3, 2000, while stopped at Pontatoc and River roads, Dfnt Snowden, who was in the course and scope of his occupational duties for Dfnt Tucson Car Care, struck a two-by-four, which was protruding from the back of Plntf's pickup truck. Plntf also alleged there was contact between the vehicles. Plntf called an eyewitness, who testified the lights from Plntf's truck were visible, and Plntf's and Dfnts' vehicles were stopped, then started forward. Additionally, Plntf alleged that, on November 29, 2001, he was rear-ended by Dfnt Ort, who was travelling thirty miles-per-hour, at the time of impact. Plntf alleged the rear window of his vehicle was fractured in the collision. Dfnts admitted negligence, but argued causation. Plntf alleged he sustained an aggravation of his preexistent cervical condition in the first accident. Plntf also alleged he sustained

soft tissue injuries to the lumbar spine in the second accident, plus an aggravation of his preexistent cervical condition. Additionally, Pntf alleged he has ongoing neck and back pain, radiating into the leg. Pntf called Debra A. Walter, M.D., a physiatrist, who was of the opinion that, based on history, Pntf sustained an exacerbation of his cervical condition in the first accident, and sustained a lumbar injury in the second accident. Dr. Walter testified that Pntf's treatment was reasonable. It was also Dr. Walter's opinion Pntf will have future periods of exacerbation, which will require treatment; however, Dr. Walter was unable to predict, with any degree of medical certainty, how often the exacerbations would occur. Dfnts argued Pntf's complaints were related to his preexistent degenerative disk disease, which was diagnosed in 1998, and injuries sustained in a December, 1998, accident. Dfnts used the medical report of Edward J. Berghausen, III, M.D., an orthoped, who preformed an independent medical

examination. Dr. Berghausen was of the opinion Pntf did not have any permanent injuries from either accident. During closing arguments, Pntf's counsel did not ask for a specific amount. Dfnt Tucson Car Care's counsel argued Pntf was partially at fault, was not injured in the first accident, and his medical treatment was unreasonable and unnecessary. Dfnt Ort's counsel argued Pntf's activities had changed very little as a result of either accident. Dfnt Ort's counsel suggested an award of Pntf's medical bills until the end of 2002, and a fair and reasonable amount for pain and suffering, was adequate compensation. Prayer: Just and reasonable compensatory damages; approximately \$3,000 medical expenses from the first accident; plus \$13,000 medical expenses from the second accident. Dfnt Tucson Car Care made a \$10,000 pretrial offer of settlement; Dfnt Ort made a \$15,000 pretrial offer of judgment (D Curl). Five day trial. Jury out ? hours. FOUND FOR DFNTS TUCSON CAR CARE

AND SNOWDEN; AWARDED PLNTF \$16,300
COMPENSATORY DAMAGES AGAINST
DFNT ORT. UNANIMOUSLY.
