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11/5/03 - Judge RICHARD S. FIELDS - CV 2001-4357 - TAYLOR (Michael Swart of Orchard Park, New York) v SHALLENBARGER (David L. Curl of William B. Blaser & Associates) - PERSONAL INJURY - REAREND. *Case being tried on Dfnt's appeal of Plntf's \$65,000 arbitration award, with a finding that Dfnt was seventy percent at fault.* Case also being tried on comparative fault. Plntf, female, age 57, operating a 1993 Ford Taurus, travelling ten miles-per-hour, northbound on I-10 Frontage Road, at Orange Grove, alleged she was rear-ended by Dfnt, operating a 1995 Toyota pickup truck, as she executed a turn. Dfnt, female, age 17, a university nursing student, argued Plntf stopped twice, while merging onto Orange Grove. Dfnt alleged the first time Plntf stopped, Dfnt stopped behind her. Dfnt also alleged that, as she looked over her shoulder, Plntf stopped a second time, and Dfnt applied her brakes and swerved, but could not avoid colliding with the left rear of Plntf's vehicle. Plntf alleged she sustained lumbar soft tissue injuries; plus injuries to the shoulder, hip, left hand and thumb. Plntf also alleged she has ongoing spontaneous spasms, approximately every five minutes for several seconds, which cause her entire left side to twist. Additionally, Plntf alleged she has permanent chronic lumbar pain on the left side and is totally disabled. Plntf used the deposition of her treating physician, Rizwan Safdar, M.D., an internist and gastroenterologist, who was of the opinion Plntf's injuries were causally related, and her treatment was reasonable and necessary. However, Dr. Safdar admitted he could not explain Plntf's

spasms neurologically. Dfnt argued Plntf's complaints were psychogenic. Dfnt also argued Plntf had not treated for her alleged injuries for eighteen months. Dfnt called William Gary Stewart, a counselor, who testified Plntf was referred to him by her physician, two years post-accident. Mr. Stewart alleged Plntf advised him that the only contact Plntf had with people was when she went to clean other persons' homes. Prayer: Just and reasonable compensatory damages; plus \$17,945 medical expenses. Plntf's husband made claim for loss of consortium. Plntf made a \$50,000 pre-arbitration demand - Dfnt made a \$4,500 offer of judgment prior to arbitration (D). (Carrier: State Farm Insurance.) During closing arguments Plntf's counsel argued Dfnt was one-hundred per cent at fault; and asked jury to award Plntf \$49,945; representing \$17,945 in medical expenses; \$10,000 past pain and suffering, \$16,000 future pain and suffering, plus \$6,000 to Plntf's husband for loss of consortium. Defense counsel argued liability and credibility. Two day trial. Jury out two hours. AWARDED PLNTF \$10,000 COMPENSATORY DAMAGES. UNANIMOUSLY. (Found Plntf to be fifty percent at fault and Dfnt to be fifty percent at fault; therefore, Plntf's award to be reduced to \$5,000.)

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