

# Pima County Superior Court Jury Trials

THE TRIAL REPORTER of Southern Arizona

January 15, 1999

1/7/99 - Judge CHARLES S. SABALOS - CV 320535 - LOPEZ (Howard T. Roberts, Jr., of Goering, Roberts, Berkman, Rubin & Brogna, P.C.) v PHINIZY (David L. Curl of William B. Blaser & Associates) - PERSONAL INJURY - INTERSECTION - CONTROLLED - STOP SIGN - NO CONTACT ACCIDENT. *Case being tried on Dfnt's appeal of Plntf's \$22,500 arbitration award. Case also being tried on comparative fault.* Plntf was southbound on Thornydale Road, road testing a vehicle he was selling. Dfnt, male, a high school junior, employed part-time as a bagger at Safeway, was westbound on Lambert Lane, a gravel road. Dfnt had stop sign. Plntf alleged Dfnt's vehicle entered the roadway and caused Plntf to brake, which caused his vehicle to swerve to the right, and collide with a telephone pole. Plntf left seventy feet of skid marks. Plntf alleged he observed Dfnt's vehicle as it approached the intersection, and, therefore, knew it was going too fast. Plntf also alleged Dfnt made a "California stop" and proceeded into Plntf's lane of traffic and Dfnt came within three feet of colliding with Plntf's vehicle. Plntf denied telling the investigating officer, that Dfnt only went one or two feet into the roadway and never came into his lane. Plntf called Patrick DeJonghe, an accident reconstructionist, who testified it was impossible to reconstruct the accident from the physical evidence available. Mr. DeJonghe also stated he had reviewed the police report, and noted that Plntf had given two versions of how far Dfnt entered into the paved road. Mr. DeJonghe agreed with the physical dimensions of the report prepared by Dfnt's expert Clifton L. McCarter, as to speed and skid marks. Dfnt called the investigating officer who testified, Plntf told him that Dfnt's vehicle came one to two feet onto the pavement. Dfnt called Clifton L. McCarter, an accident recon-

structionist, who testified it would have taken about four seconds for Dfnt to stop at the sign, start up, and stop again. It was Mr. McCarter's opinion that Dfnt could have reached the speed of five to ten miles, but no more, and Plntf was travelling thirty-eight to forty miles per hour. However, on cross, Mr. McCarter opined there was no way to reconstruct the accident without eyewitness testimony. Dfnt also called his father, who testified he arrived at the scene within a few minutes, post-accident, and sent someone home to get his camera, because he had been trained by his employer to take pictures after an accident. Plntf sustained a fractured bone in his left hand. Plntf used the videotape deposition of Scott V. Slagis, M.D., an orthopod, who opined that, after surgery on Plntf's left hand, Plntf will recover full use of his hand, within twelve to eighteen months, without any permanent problems. Prayer: Just and reasonable compensatory damages; \$4,500 medical expenses; \$3,000 lost wages; plus \$5,000 property damage. Plntf made a pretrial demand of \$15,000 - Dfnt offered \$10,000 (D). (Carrier: State Farm Insurance.) Three day trial. Jury out two-plus hours. AWARDED PLNTF \$13,500 COMPENSATORY DAMAGES. UNANIMOUSLY. (Found Plntf to be ninety-nine percent at fault, and Dfnt to be one percent at fault; therefore, Plntf's award to be reduced to \$135.)