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United States District Court, D. Massachusetts.
ROBERT ROUVELLAT, ET AL. vs. MIKE B. GUARCO, ET AL.
97-30026-KPN

DATE OF VERDICT/SETTLEMENT: July 24, 1998

TOPIC: REAR END COLLISION - CERVICAL INJURY - PLAINTIFF SUBSEQUENTLY DIAGNOSED WITH HERNIATED CERVICAL DISC ALLEGEDLY CAUSALLY RELATED TO THE ACCIDENT.

SUMMARY:

Result: Defendant's Verdict

EXPERT WITNESSES:

Plaintiff's: Anthony Kusiak, M.D. from Longmeadow, Ma.: Plaintiff's treating family practitioner.

Robert J. Bye, M.D. from Longmeadow, Ma. and Richard P. Anderson, M.D. from Springfield, Ma.: Plaintiff's neurosurgery experts.

Mitchell Clionsky, Ph.D. from Springfield, Ma.: Plaintiff's expert neuropsychologist.

Arthur O'Shea, Ph.D. from Needham, Ma.: Plaintiff's expert vocational consultant.

Defendant's: Cyril E. Shea, Jr. from West Springfield, Ma.: Defendant's expert orthopedic surgeon.

Martin J. Kelly, M.D. from Chestnut Hill, Ma.: Defendant's psychiatric expert.

ATTORNEY:

Defendant's: **John B. Stewart** of Moriarty, Donoghue & Leja in Springfield, Ma for defendant.

RANGE AMOUNT: \$0

STATE: Massachusetts

INJURIES:

REAR END COLLISION - CERVICAL INJURY - PLAINTIFF SUBSEQUENTLY DIAGNOSED WITH HERNIATED CERVICAL DISC ALLEGEDLY CAUSALLY RELATED TO THE ACCIDENT.

FACTS:

PLAINTIFF'S CAUSE

This action arose out of a rear end accident allegedly caused by the negligence of the defendant driver, who was operating a company vehicle when he struck the rear of the plaintiff's automobile while in heavy traffic. The plaintiff, a male in his mid-40's at the time, alleged that the defendant's negligence caused the subject accident and that he suffered a herniated cervical disc as a result.

The subject accident occurred at approximately 4:15 p.m. on the South End Bridge in Springfield, Massachusetts. The evidence established that both vehicles were traveling westbound on the bridge. The plaintiff was traveling in front of the

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defendant at the time of the accident and had stopped where traffic was backing up from an exit ramp. The plaintiff contended that the defendant was negligent in the operation of his vehicle because he failed to keep a proper lookout and failed to maintain a safe distance between the two vehicles. The plaintiff's vehicle sustained a broken taillight and a dented tailgate; damages to the plaintiff's vehicle were appraised at \$1,200. The defendant's Buick had significant grill and front end damage; damages to the defendant's vehicle were appraised at approximately \$3,900. The plaintiff did not report that he was injured at the scene of the accident. The plaintiff called in sick to work the following day, however, and was seen at his HMO that afternoon for complaints of neck pain. Examination revealed good range of motion in the neck, but complaints of significant pain upon movement. The plaintiff returned to the HMO the following week, at which time x-rays of the cervical area were taken. These films showed degenerative disc disease, osteophytes and foraminal narrowing. Two weeks later, the plaintiff commenced a physical therapy regimen at a motor vehicle treatment accident center. Six weeks post-accident, the plaintiff reported experiencing paresthesia. An MRI was ordered and confirmed that the plaintiff suffered from a herniated cervical disc. Surgical excision of the disc was performed by a neurosurgeon. The plaintiff underwent a second operation on the next level of the cervical spine, involving a bone graft fusion, approximately 14 months after the initial operation. The plaintiff testified that his neck pain was ongoing. The trial was held approximately 25 months post-accident and the plaintiff alleged that he continued to suffer severe pain. The plaintiff also underwent psychological counseling for depression and driving phobia, which was alleged to be causally related to the accident. The plaintiff claimed \$55,000 in medical specials, \$63,000 in past lost wages and an unquantified amount of future lost wages. The plaintiff's medical providers and vocational expert stated that he would have to make significant functional gains and achieve substantial pain relief in order to ever return to work.

DEFENDANT'S CONTENTIONS

The defendant stated that traffic was very heavy, that he had maintained a safe distance of approximately 20 feet between his and the plaintiff's vehicle, that he had stopped once before the accident, and that the subject collision was not the result of inattention, excessive speed or tailgating. The defendant denied negligence in the operation of his vehicle. The defendant's expert orthopedic surgeon opined that the plaintiff's cervical disc herniation was not causally connected to the subject motor vehicle accident, asserting that the herniated disc resulted from a combination of other factors including, progressive degenerative changes associated with age, a prior auto accident (approximately 12 - 20 years earlier) in which the plaintiff also suffered injuries to the neck, and a prior fall down a set of stairs. The defendant's expert psychiatrist opined that the plaintiff's severe continuing pain was psychogenic. While conceding that some level of pain would be expected given the nature of the injury, the expert maintained that there were psychological factors at play in the plaintiff's case which caused his pain to be augmented. The plaintiff's last settlement demand was \$1,100,000. The defendant's last settlement offer was \$140,000. After deliberating for three hours, the jury found for the defendant, making a specific finding of no negligence on the part of the defendant. The plaintiff's motion for new trial was denied.

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