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TEXAS

Vol. 19 Issue 7 • February 4, 2019

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FEATURED VERDICT

Fraud

Guarantor claimed he was defrauded by lender

Verdict $4,395,634

Imel v. Legacy Texas Bank, N.A.

Dallas County District Court

Plaintiff's Attorneys Michael K. Hurst; Lynn Pinker Cox & Hurst; Dallas; and Julie Pettit, Jane Cherry and David Urteago; The Pettit Law Firm; Dallas

Defense Attorneys Marty Brimmage, Keertan Chauhan and Molly Whitman; Akin Gump Strauss Hauer & Feld; Dallas; and John Leininger, Alexis Reller and Stephen B. Shapiro; Shapiro Bieging Barber Otteson LLP; Dallas

Full report on page 13

CASES *of* NOTE

Motor Vehicle — Red Light Brazos County
Motorist ignored traffic signal, caused crash, lawsuit alleged 5

Motor Vehicle — Rear-ender Harris County
Plaintiff: Rear-ender resulted in lingering back pain 7

Motor Vehicle — Rear-ender Collin County
Plaintiff claimed concussion, neck, back injuries in car crash 8

Motor Vehicle — Rear-ender Dallas County
Plaintiff claimed disc bulge, protrusion after car crash 9

Motor Vehicle — Rear-ender Dallas County
Defense said plaintiff slammed on brakes, causing car crash 10

Motor Vehicle — Passenger Dallas County
Motorists rejected liability for collision in intersection 11

Motor Vehicle — Lane Change Tarrant County
Defendants claimed speeding driver caused accident 14

Motor Vehicle — Rear-ender Tarrant County
Defense: Plaintiff didn't suffer brain injury in auto accident 16

Motor Vehicle — Rear-ender Tarrant County
Auto accident caused back and neck injuries, plaintiff claimed 17

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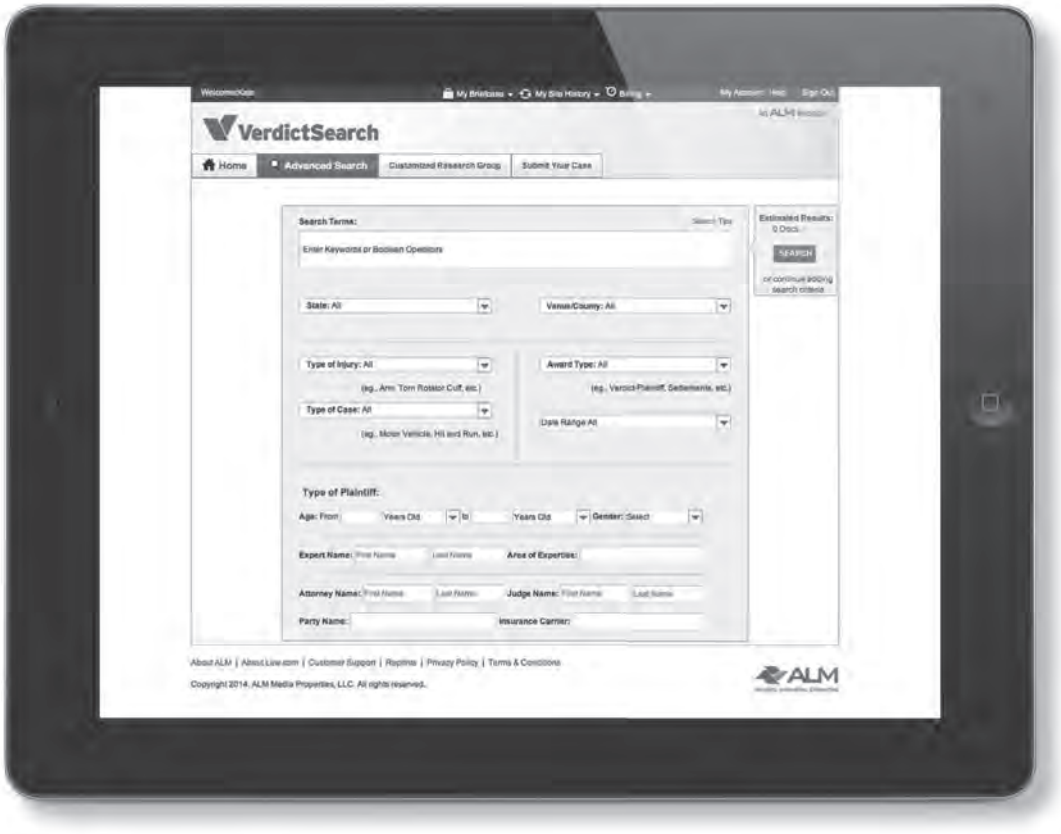

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SOUTHEAST

BRAZOS COUNTY

MOTOR VEHICLE

Red Light

Verdict $14,690 5

HARRIS COUNTY

MOTOR VEHICLE

Speeding

Verdict Defense 6

MOTOR VEHICLE

Rear-ender

Verdict $10,107 7

NORTHEAST

COLLIN COUNTY

MOTOR VEHICLE

Rear-ender

Verdict $255,500 8

DALLAS COUNTY

MOTOR VEHICLE

Rear-ender

Verdict $53,610 9

MOTOR VEHICLE

Rear-ender

Verdict Defense 10

MOTOR VEHICLE

Passenger

Verdict Defense 11

FRAUD

Misrepresentation

Verdict $4,395,634 13

TARRANT COUNTY

MOTOR VEHICLE

Lane Change

Verdict Defense 14

MOTOR VEHICLE

Rear-ender

Verdict Defense 16

MOTOR VEHICLE

Rear-ender

Verdict (D) $2,700 17

ET AL...

Attorney Services Directory 18

Index 20

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SOUTHEAST

BRAZOS COUNTY

MOTOR VEHICLE

Red Light — Broadside — Intersection

Motorist ignored traffic signal, caused crash, lawsuit alleged

VERDICT **$14,690**

CASE Michael Franklin v. Jared Wyatt Scott, Lisa Scott and Jeff Scott, No. 16-001478-CV-361
COURT Brazos County District Court, 361st
JUDGE Steve Smith
DATE 1/29/2019

PLAINTIFF ATTORNEY(S) **Rolando de la Garza**, Reyes Browne Reilley, Dallas, TX

DEFENSE ATTORNEY(S) **Keith Dorsett**, Fulbright Winniford, Waco, TX

FACTS & ALLEGATIONS On Oct. 9, 2015, plaintiff Michael Franklin, 42, a salesman, was driving a pickup truck south on North Avenue, in Bryan. Jared Wyatt Scott was driving east on South College Street and broadsided Franklin on the right. Franklin claimed that he suffered injuries of his back and neck.

Franklin sued Scott and the owner of Scott's vehicle, Scott's parents, Jeff and Lisa Scott. Franklin alleged that Jared Scott was negligent in operating his vehicle. He further alleged that Jeff and Lisa Scott negligently entrusted their vehicle and were vicariously liable for their son's actions.

Jeff and Lisa Scott were nonsuited before trial.

Franklin testified that when he yelled at Scott after the accident, Scott backed up with his hands up in an apologetic manner. Plaintiff's counsel argued this action showed that Scott knew he was at fault.

Plaintiff's counsel noted that, according to the police report, Scott told police that he saw the red light and knew he did not have time to stop.

Franklin also testified that Scott appeared to be talking to a passenger before the accident.

Franklin also testified that he was very familiar with the area and had lived there a long time, and that Scott, who was 18 years old, testified that he had lived in the area less than two months.

The defense denied negligence. Scott testified that he never told police what color the light was.

The defense also argued that the police report was generally unreliable, specifically noting that the police report incorrectly said both drivers were on South College Street.

Plaintiff's counsel contended that the report was reliable despite the street error. Franklin testified that he himself may have given police the wrong street information since his blood pressure shot way up after the accident, and that paramedics were worried about a possible stroke and putting him on a gurney while he was giving his statement.

Plaintiff's counsel also contended that Franklin's testimony about how the accident happened was more credible than Scott's, given their respective ages and how long he lived in the area.

INJURIES/DAMAGES *chiropractic; decreased range of motion; hypertension; physical therapy; sprain, cervical; sprain, lumbar; sprain, thoracic; strain, cervical; strain, lumbar; strain, thoracic*

Franklin, whose car was totaled in the accident, went by ambulance to the emergency room and complained of cervical, thoracic and lumbar pain. His blood pressure was lower at the hospital than it had been at the time of the accident. Franklin underwent cervical, thoracic and lumbar X-rays and cervical and lumbar CT scans at the hospital, and they were negative for fractures or disc problems. He was diagnosed with sprains and strains, prescribed pain medication and released.

Complaining of continuing back and neck pain, Franklin returned to the emergency room on his own on Oct. 12, saw his family doctor on Oct. 13, and then returned to the emergency room again on Oct. 20.

He started physical therapy with a chiropractor on Oct. 21. The chiropractor noted pain and limited range of motion in Franklin's neck and back.

Franklin went back to his family doctor on Oct. 26 and Nov. 24, and his last visit to the chiropractor was on Dec. 2.

He testified that he later went to another medical doctor, but no records or bills from him were produced.

Franklin claimed that impairments to his daily life included being unable to reach or do heavy lifting as before. He also wore a back brace on the job. However, his only ongoing complaint at trial was continuing lumbar pain.

Franklin sought past medical bills of $9,940.45. He also sought $4,000 to $8,000 for past physical pain and mental anguish; $1,000 to $5,000 for future physical pain and mental anguish; $1,000 to $5,000 for past physical impairment; and $1,000 to $5,000 for future physical impairment.

The defense noted that Franklin did not complain of immediate pain at the time of impact; but alleged the pain started only after he went back to his truck and reached for his phone. The defense therefore argued that his pain was caused by reaching for his phone and not by the accident itself.

The defense also denied that the accident significantly increased his blood pressure.

If the jury reached damages, the defense suggested an unspecified award of medical bills and nothing else.

RESULT The jury found Scott negligent and awarded Franklin $14,690.45.

MICHAEL FRANKLIN	$9,940 past medical cost $4,000 past physical pain and mental anguish $750 future physical pain and mental anguish $14,690
DEMAND	None
OFFER	$500
INSURER(S)	**Allstate Insurance Co.** for all defendants
TRIAL DETAILS	Trial Length: 1 day Trial Deliberations: 4 hours Jury Vote: 12-0 Jury Composition: 2 male, 10 female

EDITOR'S NOTE This report is based on information that was provided by plaintiff's counsel. Defense counsel did not respond to the reporter's phone calls.

–John Schneider

HARRIS COUNTY

MOTOR VEHICLE

Speeding — Tailgating — Rear-ender

Defense argued rear-ender was not result of negligence

VERDICT	**Defense**
CASE	Tracy N. Johnson v. Nonye Cordella Nwankwo, No. 2015-43703
COURT	Harris County District Court, 333rd
JUDGE	Daryl Moore
DATE	2/7/2019
PLAINTIFF ATTORNEY(S)	**Bridgit A. White**, The Midani Law Firm, Houston, TX
DEFENSE ATTORNEY(S)	**Karl D. Drews**, Cooper, Jackson & Boanerges, Houston, TX

FACTS & ALLEGATIONS On April 30, 2014, plaintiff Tracey Johnson, 36, a call-center supervisor, was driving a sport utility vehicle west on Interstate 10, near its interchange at Taylor Street, in Houston. Nonye Cordella Nwankwo, in a sedan, rear-ended her. Johnson claimed that she suffered injuries of her back and a shoulder.

Johnson sued Nwankwo. Johnson alleged that Nwankwo was negligent in the operation of her vehicle.

Johnson testified that she was going 10 to 15 mph, with the flow of traffic, when Nwankwo hit her. Plaintiff's counsel argued that Nwankwo admitted going 50 mph, which plaintiff's counsel claimed was too fast for a weekday morning and the accident's location. Plaintiff's counsel further argued that Nwankwo also admitted that she could have avoided the accident if she had not been following as closely as she was.

Nwankwo testified that traffic was going about 50 mph when Johnson stopped suddenly and unexpectedly.

Defense counsel argued that the accident was not a result of negligence by either party.

INJURIES/DAMAGES *bursitis; chiropractic; epidural injections; herniated disc at L4-5; herniated disc at L5-S1; herniated disc at T7-8; physical therapy; shoulder*

On the date of the accident, Johnson went to a chiropractor in Houstob and a general practitioner and began physical therapy with the chiropractor. Her second physical therapy session was on May 2.

She then took a job assignment in Paris, Texas, and treated with a chiropractor there from May 7 to June 27.

She then returned to Houston and, on July 3, had a consultation with the chiropractor there. He ordered lumbar, thoracic and left shoulder MRIs. The spinal MRIs were read as showing herniated discs at L4-5, L5-S1 and T7-8. The shoulder MRI was read as showing bursitis and was negative for any tear.

She then underwent physical therapy with the Houston chiropractor from July 10 to Sept. 16.

The chiropractor referred her to a pain management doctor, whom Johnson saw on July 11. He performed a lumbar epidural steroid injection and lumbar facet injection on July 17, and Johnson followed up with him on Aug. 1. The doctor performed a thoracic epidural steroid injection on Aug. 14, and Johnson followed up with him on Sept. 12.

The Houston chiropractor testified about all the chiropractic treatment and said it was reasonable and necessary and related to the accident.

Johnson sought damages for past medical expenses, past and future physical pain and mental anguish, and past and future physical impairment. Plaintiff's counsel suggested an award of $75,017.

Defense counsel noted that the records at the end of the chiropractic care in Paris indicated minimal pain levels. Johnson then drove five hours to Houston for further treatment, which defense counsel argued may have aggravated her pain.

The defense also denied that the subsequent treatment was related to the accident.

Defense counsel suggested an award of $3,341 in medical bills, solely for the first two months of treatment.

RESULT The jury rendered a defense verdict. It did not find Nwankwo negligent.

DEMAND $30,000
OFFER $22,500

INSURER(S) **Allstate Insurance Co.**

TRIAL DETAILS Trial Length: 1 day
Trial Deliberations: 40 minutes
Jury Vote: 11-1
Jury Composition: 4 male, 8 female

PLAINTIFF EXPERT(S) **Jason McNeese, D.C.**, chiropractic, Houston, TX (treating doctor)

DEFENSE EXPERT(S) None reported

EDITOR'S NOTE This report is based on information that was provided by plaintiff's and defense counsel.

–John Schneider

MOTOR VEHICLE

Rear-ender — Multiple Vehicle

Plaintiff: Rear-ender resulted in lingering back pain

VERDICT **$10,107**
ACTUAL **$14,132**

CASE Melissa Scott v. Carlos Torres Jr., No. 2015-55390
COURT Harris County District Court, 295th
JUDGE Donna Roth
DATE 1/23/2019

PLAINTIFF ATTORNEY(S) **Brooksie Bonvillain Boutet**, Terry Bryant PLLC, Houston, TX

DEFENSE ATTORNEY(S) **Karl D. Drews**, Cooper, Jackson & Boanerges, Houston, TX

FACTS & ALLEGATIONS On Nov. 1, 2013, plaintiff Melissa Scott, 37, a building manager, was driving a sport utility vehicle south on the 610 West Loop in Houston. She stopped in traffic in the exit lane for San Felipe Street. Carlos Torres Jr., in a pickup truck, rear-ended her. Scott then struck the car ahead of her. Scott claimed injuries to her neck, back and arm.

Scott sued Torres. She alleged that Torres was negligent in the operation of his vehicle.

Torres denied negligence. He said traffic stopped suddenly and that he could not stop in time to prevent the accident.

INJURIES/DAMAGES *arm; chiropractic; disc protrusion, lumbar; epidural injections; physical therapy; sprain, cervical; sprain, lumbar; strain, cervical; strain, lumbar; wrist*

Scott went to the emergency room on the day of the accident, on her own. She claimed that she had arm and wrist pain, primarily right-sided, that were a result from bracing herself against the steering wheel at the time of the impact.

Seven days after the accident, she went to a chiropractor, who treated her with physical therapy for about five weeks for neck and back pain. The neck pain mostly resolved, but Scott continued to complain of lower back pain.

She then underwent a lumbar MRI, which was read as showing disc protrusions at L4-5 and L5-S1. Scott then saw an orthopedic surgeon and a pain management specialist.

In February 2014, she underwent lumbar epidural steroid injections. After two follow-up visits with the pain management doctor, she sought no treatment for six months. She then underwent additional lumbar epidural steroid injections in December 2014, followed by 10 months without any treatment.

She then returned to the orthopedic surgeon in October 2015 and underwent a two-month course of physical therapy.

After another 10-month gap, she saw the orthopedic surgeon one more time, in October 2016.

Scott testified that she could no longer do high-intensity exercise, such as Zumba and cardio, and that gardening and cleaning house were more difficult than before.

For past medical expenses, Scott sought $12,696, and for past lost earning capacity, she sought $1,986. She also sought past and future physical pain and mental anguish and past and future physical impairment. Her attorney asked the jury for a total of $115,058.

The defense emphasized the gaps in treatment. If the jury reached damages, defense counsel suggested an award of between $1,384, representing the cost of the emergency room visit, and $6,313, representing the emergency room visit and some of the chiropractic care.

RESULT The jury found Torres negligent and awarded Scott $10,107 for past damages only..

MELISSA SCOTT
$5,400 past medical cost
$1,000 past physical impairment
$1,826 past physical pain and mental anguish
$1,881 past lost earning capacity
$10,107

DEMAND $25,000
OFFER $11,500

INSURER(S) **Allstate Insurance Co.**

TRIAL DETAILS Trial Length: 2 days
Trial Deliberations: 5 hours
Jury Vote: 12-0
Jury Composition: 4 male, 8 female

POST-TRIAL With prejudgment interest and taxable costs, the judgment was $14,131.56.

EDITOR'S NOTE This report is based on information that was provided by plaintiff's and defense counsel.

–John Schneider

NORTHEAST

COLLIN COUNTY

MOTOR VEHICLE

Rear-ender — Multiple Vehicle

Plaintiff claimed concussion, neck, back injuries in car crash

VERDICT **$255,500**
ACTUAL **$283,916**

CASE Jordan Radcliffe v. Robert Barnett, No. 366-05715-2016
COURT Collin County District Court, 366th
JUDGE Ray Wheless
DATE 1/15/2019

PLAINTIFF ATTORNEY(S) **Wade A Barrow**, Barrow Law, PLLC, Fort Worth, TX
Ben Westbrook, Westbrook Law, Fort Worth, TX

DEFENSE ATTORNEY(S) **Robert T. Walls Jr.**, Fanaff, Hoagland, Clark & Gonzales, Irving, TX

FACTS & ALLEGATIONS On March 1, 2015, plaintiff Jordan Radcliffe, 19, a student, was driving a pickup truck in Allen. He was stopped at a light when Robert Barnett rear-ended him in a sports car. Radcliffe claimed that he suffered injuries of his back, his head and his neck.

Radcliffe sued Barnett. He alleged that Barnett was negligent in the operation of his vehicle.

Barnett denied negligence and contended that his brakes failed. However, he acknowledged that he did not have his brakes checked after the accident.

INJURIES/DAMAGES *brain damage; bulging disc, lumbar; cognition, impairment; epidural injections; hand; headaches; herniated disc at C5-6; memory, impairment; physical therapy; post-concussion syndrome; sprain, cervical; sprain, lumbar; strain, cervical; strain, lumbar; traumatic brain injury*

Radcliffe's father came to the scene and took Radcliffe to the emergency room. Radcliffe claimed neck, back and head pain. At the hospital, he was diagnosed with a concussion, and a CT scan of the brain was unremarkable. He was released the same day.

Soon after, Radcliffe went to his primary care doctor, who referred him to physical therapy for his neck and back. Radcliffe underwent physical therapy for about a month. During that time, he also underwent cervical and lumbar MRIs, which were read as showing a 2-millimeter herniation at C5-6 and two bulging lumbar discs. After finishing physical therapy, he sought no further treatment until October 2017.

In October 2017, Radcliffe went to both a pain management specialist and an orthopedic surgeon and complained of ongoing neck pain. The pain management specialist administered an epidural steroid injection, and the orthopedic surgeon recommended a discectomy and fusion at C5-6.

Radcliffe then went to a neuropsychologist and complained of headaches and memory problems, and the doctor diagnosed him with post-concussion syndrome.

The neuropsychological and lower back problems later resolved, but the neck problems persisted, Radcliffe claimed.

The orthopedic surgeon testified at trial that all of Radcliffe's medical treatment was reasonable and necessary and related to the accident; that Radcliffe would need a discectomy and fusion; and that the surgery would cost around $150,000.

Plaintiff's counsel asked the jury for $30,500 for past medical expenses, $150,000 for future medical expenses, $50,000 for past physical pain and suffering, $25,000 for past mental anguish, and $40,000 for past physical impairment. He asked the jury to award damages for future physical pain, future mental anguish and future physical impairment, but only if the jury did not award future medical expenses.

The defense expert, an orthopedic surgeon, opined that the cervical MRI showed only a disc bulge, not a herniation, and that the lumbar findings were minor. He opined that Radcliffe would not need additional surgery.

The defense argued that the neck injury and neuropsychological problems were likely a result of playing football, as Radcliffe had played on a prominent high school team.

The defense also noted that Radcliffe was referred by an attorney to the doctor who recommended surgery.

The defense also emphasized the gap in treatment from mid-2015 until October 2017.

If the jury reached damages, defense counsel suggested that it award about $5,000 for past medical expenses, representing the treatment before the gap; about $5,000 for past physical pain and suffering; and no other damages.

RESULT The jury found Barnett negligent and awarded Radcliffe $255,500.

JORDAN RADCLIFFE
$30,500 past medical cost
$150,000 future medical cost
$25,000 past physical impairment
$25,000 past physical pain
$25,000 past mental anguish
$255,500

DEMAND $175,000
OFFER $50,000

INSURER(S) **Farmers Insurance Group of Cos.**

TRIAL DETAILS Trial Length: 2 days
Trial Deliberations: 1.25 minutes
Jury Vote: 12-0
Jury Composition: 10 male, 2 female

PLAINTIFF EXPERT(S) **Andy Indresano, M.D.**, orthopedic surgery, Keller, TX (treater)

DEFENSE EXPERT(S) **Michael F. Duffy, M.D.**, orthopedic surgery, Mansfield, TX

POST-TRIAL With prejudgment interest and taxable costs, the judgment would have been $283,915.76. In lieu of a judgment being entered, the parties settled for that amount, post-verdict.

EDITOR'S NOTE This report is based on information provided by plaintiff's and defense counsel.

–John Schneider

DALLAS COUNTY

MOTOR VEHICLE

Rear-ender — Multiple Vehicle — Underinsured Motorist

Plaintiff claimed disc bulge, protrusion after car crash

VERDICT **$53,610**
ACTUAL **$32,869**

CASE Donna Trotman v. Luis Benitez Diaz, Leo Alberto Marquina, Jose B. Mata, Tonja Hess and Allstate Fire and Casualty Insurance Co., No. DC-16-02908
COURT Dallas County District Court, 162nd
JUDGE Maricela Moore
DATE 1/23/2019

PLAINTIFF ATTORNEY(S) **Jill Herz**, Dallas, TX

DEFENSE ATTORNEY(S) **David G. Allen**, Stacy Conder Allen LLP, Dallas, TX (Allstate Fire and Casualty Insurance Co., Tonja Hess)
None reported
(Luis Benitez Diaz, Jose B. Mata, Leo Alberto Marquina)

FACTS & ALLEGATIONS On April 8, 2015, plaintiff Donna Trotman, 30, a court reporter and real estate agent, was driving a compact car south on Preston Road, in Dallas. Traffic came to a stop, and Leo Alberto Marquina rear-ended her in a minivan. Trotman claimed neck and back injuries.

Trotman sued Marquina, Luis Benitez Diaz and Jose B. Mata, the owners of his vehicle, Trotman's own insurer, Allstate Fire and Casualty Insurance Co, and its adjuster Tonja Hess. Trotman alleged that Marquina, who was insured, was negligent in the operation of his vehicle. Trotman further alleged that Diaz and Mata had negligently entrusted the vehicle to Marquina and were vicariously liable for his actions. Trotman also alleged that Allstate was responsible for her underinsured motorist benefits.

Trotman also sued Allstate and Hass on extra-contractual theories, but those charges were abated and severed.

Marquina, Diaz and Beta did not answer or appear. The case went to trial against Allstate on the UIM claim only.

Allstate stipulated to Marquina's negligence. The trial continued on the issues of causation and damages.

INJURIES/DAMAGES *bulging disc, cervical; chiropractic; disc protrusion, cervical; hand; numbness; sprain, cervical; sprain, lumbar; strain, cervical; strain, lumbar*

Trotman first sought treatment the day after the accident, when she went to a chiropractor. He diagnosed her with cervical and lumbar sprains and strains and treated her until July 2015, when he released her. During this period, she also complained of numbness and tingling in her dominant hand.

During the chiropractic treatment, she underwent cervical and lumbar X-rays and a cervical MRI and, on one occasion, saw a pain management doctor. The X-rays were unremarkable, and the MRI was read as showing a disc bulge and disc protrusion. The pain management doctor did not recommend injections.

She returned to the chiropractor 14 months after he had released her, and he treated her sporadically thereafter.

Trotman claimed her impairments to daily living included difficulty typing as a court reporter. She also claimed that she continued to suffer hand numbness and tingling and lower back pain.

She sought $13,610 for past medical costs. She also sought damages for future medical costs, past physical pain/mental anguish, future physical pain/mental anguish, past physical impairment and future physical impairment.

The defense argued that there was no evidence of how fast Marquina was driving at the time of the accident and that photos of the front of the minivan showed he was braking. The defense further noted that the back of Trotman's vehicle sustained only minor damage; that Trotman remained on her hands-free cell phone during the impact; and that no air bags deployed during the collision.

The defense also argued that Trotman was able to drive her car from the scene; declined medical attention at the scene; and did not go to the emergency room.

The defense also noted that the chiropractor was attorney-referred; that no injections were recommended;

and that Trotman returned to the chiropractor only after her deposition.

The defense argued that the injuries were minor and soft-tissue; that Trotman reached maximum medical improvement when released by the chiropractor in July 2015; and that the full amount of past medical costs she requested was unreasonable and unnecessary.

The defense expert, a chiropractor, also denied reasonableness, necessity and causation in terms of her damages; he also denied that Trotman needed any future treatment.

RESULT The jury awarded Trotman $53,600. However, her recovery was limited to her $30,000 policy limit, plus taxable costs.

DONNA TROTMAN	$13,600 past medical cost $20,000 future medical cost $5,000 past physical impairment $5,000 future physical impairment $5,000 past physical pain and mental anguish $5,000 future physical pain and mental anguish $53,600
DEMAND	$30,000 (from Allstate; insurance coverage's limit)
OFFER	$6,500 (by Allstate)
INSURER(S)	**Allstate Insurance Co.**
TRIAL DETAILS	Trial Length: 2 days
PLAINTIFF EXPERT(S)	**Ronald John Lehrer, D.C.**, chiropractic, Carrollton, TX (treating doctor)
DEFENSE EXPERT(S)	**Monte J. Horne, D.C.**, chiropractic, Sulphur Springs, TX

POST-TRIAL With taxable costs of $2,869.29, the judgment is expected to be $32,869.29.

EDITOR'S NOTE This report is based on information provided by plaintiff's counsel. Defense counsel did not respond to the reporter's phone calls.

–John Schneider

MOTOR VEHICLE

Rear-ender — Cell Phone — Multiple Vehicle

Defense said plaintiff slammed on brakes, causing car crash

VERDICT	**Defense**
CASE	Janice Holmes v. Britney Jones, No. DC-17-05328
COURT	Dallas County District Court, 14th
JUDGE	Eric Moye
DATE	1/22/2019
PLAINTIFF ATTORNEY(S)	**Jonathan Hernon**, Juan Hernandez Law P.C., Dallas, TX
DEFENSE ATTORNEY(S)	**John W. Breeze**, The LeCrone Law Firm, P.C., Sherman, TX

FACTS & ALLEGATIONS On Oct. 31, 2015, plaintiff Janice Holmes, 51, a juvenile corrections officer, was driving a sedan in Mesquite. Britney Jones rear-ended her in a sedan. Holmes told police that the impact pushed her into a pickup truck ahead of her. Holmes claimed injuries to her neck, shoulder, knee and back.

Holmes sued Jones. She alleged that Jones was negligent in the operation of her vehicle.

Holmes claimed that Jones stated she was looking down at her cell phone at the time of accident.

The defense argued that Jones was not looking down at her cell phone and that she never said she was.

The defense also argued that Holmes was in the lane to Jones' right, and that Holmes cut her off and slammed on her brakes.

The defense also claimed that Holmes had testified in her deposition that she was going with the flow of traffic at the time of the accident, but that she testified at trial that she was not and that she was braking instead.

INJURIES/DAMAGES *bulging disc, lumbar; chiropractic; disc protrusion, lumbar; knee; physical therapy; shoulder; steroid injection*

Holmes drove home from the scene, and her son then took her to the emergency room. The hospital diagnoses were cervical and lumbosacral sprains and strains, and she was prescribed pain medication.

She began treatment at an injury clinic on Nov. 2, complaining of back, left knee and bilateral shoulder pain. She was evaluated and diagnosed with sprains and strains.

She underwent physical therapy with a chiropractor 31 times from Nov. 16 to Feb. 26, with periodic re-evaluations. She also underwent cervical, thoracic and lumbar X-rays on Nov. 16; the X-ray report indicated degenerative conditions,

and the lumbar MRI report indicated 1- to 2-millimeter disc bulges at L2-3 and L4-5.

She saw a medical doctor on Nov. 23 for prescriptions; and underwent a lumbar MRI on Dec. 28.

She treated at a pain management clinic from Jan. 29 to June 3, 2016. She underwent lumbar and left knee MRIs on March 31, which indicated a 4-millimeter broad-based disc protrusion at L4-5, and the knee MRI report indicated degenerative conditions. She underwent a steroid injection in her knee on June 3.

At trial, her ongoing complaints were occasional lower back and left knee pain, when the weather was bad. At such times, she was prevented from performing activities of daily living, water aerobics, household chores and duties as a juvenile corrections officer.

Holmes claimed past medical expenses of $26,337.48; past physical pain and mental anguish of $8,779.16; $4,396.25 for future physical pain and mental anguish; $4,396.25 for past physical impairment; and $4,396.25 for future physical impairment, for a total of $48,305.48.

The defense argued that there were no objective findings of injury stemming from the accident. The defense further argued the impact from the accident was minor. Police gave Police gave Jones' vehicle a damage rating of 2 out of 7, due to crumpling of the hood, while Holmes' vehicle received a damage rating of 1 out of 7 for both the front and rear of the car. Photos of both cars came into evidence.

The defense also noted that police gave Holmes an injury code of only a C; that the police narrative mentioned her neck only; and that she refused transport by ambulance.

The defense argued that any pain, impairment or mental anguish was from the plaintiff's Nov. 3, 2015 right knee replacement, which was not accident-related, and its complications, which included a damaged popliteal artery and a MRSA infection. After the knee replacement, Holmes was in inpatient rehabilitation for 2.5 months; was then in a wheelchair for six months; and used a cane and walker until January 2018.

The defense also noted that the plaintiff has prior left knee problems, including surgery in 2012 and occasional pain shortly before the accident.

The defense also filed controverting affidavits from both a physical medicine specialist and a radiologist. The physical medicine specialist opined that only the emergency room and some of the treatment at the injury clinic was reasonable and necessary. The radiologist opined that all of Holmes' conditions were degenerative in nature, and that any MRI charges of more than $600 each were unreasonable.

RESULT The jury rendered a defense verdict. It found Jones 75 percent liable and Holmes 25 percent liable but awarded no damages.

DEMAND	$30,000
OFFER	$7,000
TRIAL DETAILS	Trial Length: 1 day Trial Deliberations: 1.75 hours Jury Vote: 11-1
PLAINTIFF EXPERT(S)	None reported
DEFENSE EXPERT(S)	**Lennard Albert Nadalo, M.D.**, radiology, Dallas, TX (did not testify; submitted counteraffidavit) **Don West, M.D.**, physical medicine, Dallas, TX (did not testify; submitted counteraffidavit)

EDITOR'S NOTE This report is based on information that was provided by defense counsel. Plaintiff's counsel did not respond to the reporter's phone calls.

–John Schneider

MOTOR VEHICLE

Passenger — Question of Lights — Broadside

Motorists rejected liability for collision in intersection

VERDICT	**Defense**
CASE	Susan Panter and Sara H. McClendon v. Yellow Checker Cab Company of Dallas/ Fort Worth, Inc. and Irving Holdings, Inc., d/b/a Yellow Cab Co. Basilos Teklehaimanot; Dallas Car Leasing, No. DC-15-06311
COURT	Dallas County District Court, 44th
JUDGE	Bonnie Lee Goldstein
DATE	1/17/2019
PLAINTIFF ATTORNEY(S)	**J. Martin Futrell**, Eberstein Witherite, LLP, Dallas, TX **Kristofor Heald**, Eberstein Witherite, LLP, Fort Worth, TX
DEFENSE ATTORNEY(S)	**John M. Fowler**, Lauren S. Shaw & Associates, Dallas, TX (Jennifer Kunofsky) **Greg Scott**, The Scott Law Firm, Dallas, TX (Yellow Checker Cab Company of Dallas/ Fort Worth Inc., Irving Holdings Inc., Basilos Teklehaimanot, Dallas Car Leasing) **None reported** (USAA Casualty Insurance Co.)

FACTS & ALLEGATIONS On March 3, 2014, plaintiff Susan Panter, a sales manager in her late 50s, was a passenger in a taxi that was being driven by Basilos Teklehaimanot, in Dallas. The cab entered an intersection that was controlled by a stoplight. Jennifer Kunofsky, in the right lane of the cross street, entered the intersection and broadsided the cab's right side. Panter claimed that she suffered injuries of her head and neck.

Panter sued Teklehaimanot, Yellow Checker Cab Company of Dallas/Fort Worth Inc. and Irving Holdings Inc., both doing business as Yellow Cab Co, who were the owners of the vehicle and Teklehaimanot's employer, and Dallas Car Leasing, which also allegedly owned the cab. She alleged that Teklehaimanot was negligent in the operation of his vehicle. She further alleged that the other defendants were vicariously liable for his actions.

A co-worker of Panter's, plaintiff Sara H. McClendon, was also in the cab, but McClendon settled her claims before trial.

The claim against Dallas Car Leasing was dropped before trial. Yellow Checker Cab and Irving Holdings remained defendants solely on the theory of respondeat superior.

After the defendants filed a third-party claim against Kunofsky, Panter added her as a defendant, in case the jury found Kunofsky responsible, as well as her underinsured motorist carrier, USAA Casualty Insurance Co. That claim was abated and severed before trial.

Panter claimed that Teklehaimanot intended to go straight, but had left his left blinker on. Therefore, oncoming drivers turning left were not yielding to him, which forced Teklehaimanot to stop in the middle of the intersection. His light then turned red, and he tried to clear the intersection, but Kunofsky entered the intersection on a green light and broadsided him on the right, Panter claimed.

Kunofsky generally agreed with Panter's description of the accident. Kunofsky said she was about 75 yards from the intersection when she saw her green light, and she entered the intersection without stopping. The cab came out of nowhere, she said.

The police report was essentially in agreement with Kunofsky's recollections of the accident.

Kunofsky also testified that traffic in the lanes to her left may have obstructed her view of the cab, and her attorney obtained jury instructions on sudden emergency and unavoidable accident.

Teklehaimanot denied that his blinker was on. He said he stopped on a red light. He alleged that the light then turned green and he entered the intersection, after which Kunofsky ran a red light and hit him.

INJURIES/DAMAGES *anxiety; chiropractic; concussion; depression; fatigue; head; headaches; post-concussion syndrome; speech/language, impairment of; sprain, cervical; strain, cervical; traumatic brain injury; vertigo*

Panter and McClendon were treated by emergency personnel at the scene. Five hours post-accident, Panter had a coworker drive her to the emergency room, where she was diagnosed with a cervical strain and released the same day.

On March 6, after returning to her home in Atlanta, Panter went to her primary care provider, a nurse practitioner, who diagnosed a concussion. Panter testified that she was having migraines, dizziness, vertigo, balance problems, dizziness, speech problems, fatigue, anxiety, depression and sensitivity to light at that time.

On March 9, she began treating at an ear clinic for vertigo. She treated there for about a year and then began treating with a neurologist. He ordered a brain MRI on March 23, 2015, and it was unremarkable.

Panter also treated with her longtime chiropractor from March 10, 2014, to January 2017. She testified, however, that this treatment was for neck pain resulting from the accident.

Panter testified that she had suffered a traumatic brain injury that was life-changing and which had a major impact on her ability to work. Three co-workers, the chiropractor and Panter's daughter and husband all testified about Panter's pre- and post-accident condition and activities. Panter and her husband used to travel internationally, for business and pleasure, and play golf and tennis together, but could not do so as often or as long as before, they said.

Panter nonsuited her claim for past medical bills before trial. At trial, she sought $96,300 for past loss of earning capacity; $96,300 for future loss of earning capacity; $254,000 for past physical impairment; $254,000 for future physical impairment; $254,000 for past physical pain; $254,000 for future physical pain; $254,000 for past mental anguish; and $254,000 for future mental anguish.

Her husband, plaintiff James M. Panter, filed derivative claims. He sought $50,800 for past loss of consortium; $203,200 for future loss of consortium; $50,800 for past loss of household services; and $203,200 for future loss of household services.

The total amount sought by both plaintiffs was $2,224,600.

The defense denied that Ms. Panter sufffered a brain injury, noting that the only medical evidence to support such a conclusion was the initial concussion diagnosis. The defense also noted that the only complaints Panter made at the emergency room were discomfort and neck pain. The defense further noted that no imaging of the head or neck was ordered until more than a year after the accident, and when it was, it was unremarkable.

The defense further argued that her medical records prior to the accident reflected many of the same neurological complaints she was blaming on the accident.

The defense also argued that the plaintiffs were seeking an excessive amount of damages.

RESULT The jury rendered a defense verdict. It did not find either driver negligent.

DEMAND	$500,000 (total, from Irving Holdings, Teklehaimanot and Yellow Checker Cab Company of Dallas/Fort Worth; insurance coverage's limit); $30,000 (from Kunofsky; insurance coverage's limit)
OFFER	None

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1. CASE NAME (please give full caption, including all parties)

2. INDEX NO.	3. JUDGE	4. COURT AND COUNTY
5. ARBITRATOR/ MEDIATOR	6. DATE OF VERDICT OR SETTLEMENT	7. LENGTH OF TRIAL (excluding jury selection)

8. PLAINTIFF(S) ATTORNEYS (include firm & address)

9. DEFENDANT(S) ATTORNEYS (include firm & address)

10. TOTAL AWARD (if structured settlement, please give details)

11. BREAKDOWN OF AWARD (e.g., pain and suffering, lost wages, etc., for each plaintiff)

12. LIABILITY PERCENTAGES

13. JURY POLL	14. TIME JURY WAS OUT

15. COMPOSITION OF JURY (e.g., gender, race)

16. POST-TRIAL MOTIONS AND RESULTS (please be as specific as possible)

17. HAS NOTICE OF APPEAL BEEN FILED?	18. IF SO, BY WHOM?

19. INSURANCE CARRIER(S) (it is essential that you indicate each insurer and what party it insured)

20. DATE, TIME AND PLACE OF ACCIDENT OR OCCURRENCE

21. AGE AND OCCUPATION OF PLAINTIFF(S)
(please list age at time of incident. For wrongful-death cases, please give ages of decedents and survivors.)

22. DESCRIPTION OF CASE
(please include ALLEGATIONS AND DEFENSES on liability. Be as comprehensive as possible. Identify all parties to the case, specify makes and models of motor vehicles, etc. Remember to list the result for all defendants: who was found liable, who was dismissed, etc.)

23. PLAINTIFF'S INJURIES, TREATMENT AND RESIDUALS
(please include ALLEGATIONS AND DEFENSES on damages. Be specific concerning MEDICAL TESTIMONY)

24. SPECIALS

25. AMOUNT ASKED OF JURY

26. DEMAND	27. OFFER

28. PLAINTIFF'S EXPERTS
(please include expert's specialty, city, company affiliation and, if called, the name of attorney who called the witness)

29. DEFENDANT'S EXPERTS
(please include expert's specialty, city, company affiliation and, if called, the name of attorney who called the witness)

30. OTHER COMMENTS
(especially concerning matters critical to the outcome of the case. In your opinion, what was the TURNING POINT in the case? What were the results of POST-VERDICT JURY INTERVIEWS? If necessary, use paragraph numbers to add more information from previous pages. Please use additional page if needed)

Thank you!

INSURER(S) **United Auto Insurance Group** for Kunofsky
Atlas Financial for Irving Holdings, Teklehaimanot and Yellow Checker Cab Company of Dallas/Fort Worth

TRIAL DETAILS Trial Length: 4 days
Trial Deliberations: 3.5 hours
Jury Vote: 10-2
Jury Composition: 6 male, 6 female; 2 black, 2 Hispanic, 8 white

PLAINTIFF EXPERT(S) **Stacey Davis, D.C.**, chiropractic, Blue Ridge, GA (treating doctor)
Allyn Needham, Ph.D., economics, Fort Worth, TX

DEFENSE EXPERT(S) **Russell Packard, M.D.**, neuropsychiatry, Palestine, TX

EDITOR'S NOTE This report is based on information that was provided by plaintiffs' and defense counsel.

–John Schneider

FEATURED VERDICT

FRAUD

Misrepresentation — Contracts — Breach of Contract

Guarantor claimed he was defrauded by lender

VERDICT **$4,395,634**

CASE LegacyTexas Bank, N.A. v. Robert A. Imel, No. DC-16-01372

CASE Energy Reserves Group LLC v. Robert A. Imel, No. DC-16-15557

COURT Dallas County District Court, 134th

JUDGE Dale Tillery

DATE 12/28/2018

PLAINTIFF ATTORNEY(S) **Michael K. Hurst** (co-lead), Lynn Pinker Cox & Hurst, Dallas, TX
Julie Pettit (co-lead), The Pettit Law Firm, Dallas, TX
Jane Cherry, The Pettit Law Firm, Dallas, TX
David Urteago, The Pettit Law Firm, Dallas, TX

DEFENSE ATTORNEY(S) **Marty Brimmage**, Akin Gump Strauss Hauer & Feld, Dallas, TX (Energy Reserves Group LLC)
Keertan Chauhan, Akin Gump Strauss Hauer & Feld, Dallas, TX (Energy Reserves Group LLC)
John Leininger, Shapiro Bieging Barber Otteson LLP, Dallas, TX (LegacyTexas Bank N.A.)
Alexis Reller, Shapiro Bieging Barber Otteson LLP, Dallas, TX (LegacyTexas Bank N.A.)
Stephen B. Shapiro, Shapiro Bieging Barber Otteson LLP, Dallas, TX (LegacyTexas Bank N.A.)
Molly Whitman, Akin Gump Strauss Hauer & Feld, Dallas, TX (Energy Reserves Group LLC)
None reported (AIX Energy Partners Inc. and Antero Energy Partners LLC Liquidating Trust)

FACTS & ALLEGATIONS Plaintiff Robert A. Imel was the personal guarantor of two loans from LegacyTexas Bank N.A. to Imel's companies, AIX Energy Partners Inc. and Antero Energy Partners LLC. In mid-2015, the bank sent a notice of default as to both loans. According to Imel, the bank's head of energy finance subsequently promised that the bank would release Imel from the guaranties under certain conditions, including the sale of Antero's assets by Dec. 31, 2015. He further claimed that the bank indirectly prevented Imel from selling Antero's assets before the deadline, in part by assigning the Antero loan and guaranty to Energy Reserves Group LLC, the company with which Imel was negotiating for the sale of the assets. Neither guaranty was released, and both AIX and Antero filed Chapter 11 bankruptcy.

The bank sued Imel. It alleged breach of contract regarding the guaranties to AIX Energy Partners and Energy Reserves. While the lawsuits were originally filed separately, they were consolidated before trial.

Imel counterclaimed against the bank for fraud, fraud by nondisclosure, fraudulent inducement, negligent misrepresentation, breach of fiduciary duty, breach of contract and a declaratory judgment. He also counterclaimed against Energy Reserves for fraud, fraud by nondisclosure, fraudulent inducement and a declaratory judgment.

In November 2016, the bankruptcy court in the AIX and Antero bankruptcies ordered that the bank's and Energy Reserves' claims against Imel be transferred to the AIX Energy Partners Inc. and Antero Energy Partners LLC Liquidating Trust. The trust then intervened against Imel in the state court case, and Imel paid the trust $600,000.

The state court case then went to trial on Imel's claims after the parties were realigned, with Imel as the plaintiff and the bank and Energy Reserves as the defendants.

Imel claimed that, to prevent him from selling the Antero

assets, the bank falsely represented that it would broker a sale of the Antero assets to Energy Reserve; that Imel would have until Dec. 31 to close that deal; and that he relied on those statements while negotiating with Energy Reserves.

However, a few days before Dec. 31, the bank reached a deal of its own with Energy Reserves, in which it accepted assignment of the Antero loan and guaranty from the bank. Imel testified that, by the time he learned of that deal, it was too late for him to try to find another buyer for the Antero assets.

The bank and Energy Reserves denied liability. They denied any fiduciary duty to Imel. In addition, they denied the existence of an enforceable contract to release him from the guaranties.

INJURIES/DAMAGES Imel claimed that, barring the bank's actions, he would have able to sell Antero's assets and, from that sale, would have received $3 million from the buyer once he signed a non-compete agreement. He therefore sought an award of that amount, plus the $600,000 that he had paid to settle the trust's claims on the guaranties. He also sought punitive damages and attorney fees.

RESULT After a bench trial, the court found fraud, fraud by nondisclosure, breach of fiduciary duty, fraudulent inducement, negligent misrepresentation and breach of contract by LegacyTexas. The court also found for Imel on his claim for a declaratory judgment.

The court also issued a declaratory judgment against Energy Reserves, but did not find for Imel on his claims against Energy Reserves for fraud, fraud by nondisclosure and fraudulent inducement.

The court entered judgment for Imel in the amount of $4,395,634.12.

Based on the declaratory judgment claim, the court further ordered that the purported assignment to Energy Reserves of the Antero loan and guaranty was void.

ROBERT IMEL
$3,000,000 actual damages (LegacyTexas, tort claims)
$600,000 actual damages (LegacyTexas, contract claim)
$636,507 attorney fees through trial (LegacyTexas)
$159,127 attorney fees through trial (Energy Reserves)
$4,395,634

TRIAL DETAILS Trial Length: 10 days

PLAINTIFF EXPERT(S) **Scott Ellington**, fiduciary duty, Dallas, TX

DEFENSE EXPERT(S) **Richard Leucht, J.D.**, loans, Dallas, TX

EDITOR'S NOTE This report is based on information that was provided by Imel's counsel. LegacyTexas' counsel did not respond to the reporter's phone calls. Energy Reserves' counsel expressed that the report is "inconsistent with the judgment" but did not provide clarification.

–John Schneider

TARRANT COUNTY

MOTOR VEHICLE

Lane Change — Left Turn — Multiple Vehicle

Defendants claimed speeding driver caused accident

VERDICT **Defense**

CASE Cory Zappia v. Deborah Robison and Douglas Johnson, No. 153-279602-15
COURT Tarrant County District Court, 153rd
JUDGE Susan Heygood McCoy
DATE 1/17/2019

PLAINTIFF ATTORNEY(S) **Brian W. Butcher**, Noteboom, The Law Firm, Hurst, TX

DEFENSE ATTORNEY(S) **Jay McGregor**, Witt, McGregor & Bourland, PLLC, Waco, TX (Deborah Robison)
Mark A. Teague, The LeCrone Law Firm P.C., Sherman, TX (Douglas Johnson)

FACTS & ALLEGATIONS On Nov. 15, 2013, plaintiff Cory Zappia, 39, an aircraft parts service technician, was driving a compact car in the right westbound lane of North Tarrant Parkway, in Keller. There were three westbound lanes. Deborah Robison, in a minivan, made a left turn into Zappia's lane. Zappia entered the middle lane, passed Robison and re-entered the right lane. Douglas Johnson, in a sport utility vehicle, was in the middle lane. Zappia claimed that Johnson suddenly entered the right lane and hit him. Zappia claimed that he suffered injuries of his back and neck.

Zappia sued Robison and Johnson. He alleged that they were negligent in the operation of their respective vehicles.

Zappia testified that Robison cut him off when she turned into his lane and that, after he passed Robison and re-entered the right lane, Johnson suddenly changed lanes and hit him. Johnson's right rear-quarter panel hit Zappia's left front-quarter panel, plaintiff's counsel claimed. Plaintiff's counsel argued that Johnson was 75 percent responsible and Robison was 25 percent responsible for the accident.

Johnson testified that Zappia rear-ended him. Johnson testified that he was never in the middle lane and that he was in the right lane the whole time.

Johnson's counsel argued that Zappia's vehicular damage included buckling of the hood and mangling of the metal around the left headlight and that Johnson's damage was to the rear only, which bolstered Johnson's version of the events. Johnson's counsel also alleged Zappia may have been going too fast.

Robison testified that she stopped and looked before making her turn, and that, when she entered the right lane, she was six car lengths ahead of Zappia. Robison's counsel argued that Zappia was looking over his right shoulder while re-entering the right lane and that traffic stopped in front of him. Robison's counsel also argued that Zappia may have been going too fast.

Robison further testified that she stopped only because she was a witness. She testified that she gave Johnson her contact information and that Zappia did not ask for her information at the scene.

Robison's counsel also noted there was no police at the scene nor was an accident report filed.

INJURIES/DAMAGES *atrophy; chiropractic; epidural injections; leg; nerve damage/neuropathy; physical therapy; radicular pain / radiculitis; sciatica; sprain, cervical; sprain, lumbar; strain, cervical; strain, lumbar*

Three days after the accident, Zappia went to an urgent care clinic. He complained primarily of lower back pain and neck pain. He was diagnosed with neck and back sprains and strains and possible nerve damage at L5-S1. He was prescribed pain medication.

He underwent physical therapy from Nov. 25 to Jan. 29. The records indicated neck pain, lower back pain, right shoulder pain and radicular left leg pain and that the lumbar and radicular pain did not resolve.

In February, he went to a pain management specialist and underwent an electromyography and nerve-conduction study, which indicated acute S1 radiculopathy. He then underwent a lumbar MRI, which showed minor disc desiccation but no evidence of nerve root compression. He then underwent three lumbar epidural steroid injections. After the last injection, he had no further leg pain.

He then went to a chiropractor, on Sept. 29, 2014. The chiropractor performed physical therapy for Zappia's lower back 23 times over an approximately three-month period.

Zappia testified that the pain continued after this treatment, and he went back to the pain management doctor, who recommended implantation of a spinal cord stimulator. The doctor testified that the cost would be $95,428. Zappia testified that he could not afford the procedure and that his health insurance would not pay for it. He sought no further treatment.

He testified that his left leg had atrophied since the accident. He also testified that he was unable to work since the accident, and that his job required standing for long periods.

He sought $27,465.96 for past medical expenses; $95,428 for future medical expenses; $500,000 to $1 million for past physical pain and mental anguish; $500,000 to $1 million for future physical pain and mental anguish; $250,000 for past physical impairment; $250,000 for future physical impairment; a small unspecified amount for past disfigurement; a small unspecified amount for future disfigurement; $270,000 for past loss of earning capacity; and $500,000 to $1 million for future loss of earning capacity.

The defense argued that the pain management doctor acknowledged that the pain stimulator would have only a 50 percent chance of resolving Zappia's pain. Also, the defense noted the doctor did not opine on whether the accident was the cause of Zappia's injuries.

Also, Zappia had testified that the pain management doctor said Zappia's EMG results were the worst he had ever seen, However, the doctor testified that they were not, nor had he ever said they were.

RESULT The jury rendered a defense verdict. It found that Zappia was the only party negligent with regard to the accident.

DEMAND	$250,000 (total, from both defendants)
OFFER	None
INSURER(S)	**State Farm Insurance Cos.** for both defendants
TRIAL DETAILS	Trial Length: 3 minutes Trial Deliberations: 35 minutes
PLAINTIFF EXPERT(S)	**Amit Darnule, M.D.**, pain management, Southlake, TX
DEFENSE EXPERT(S)	None reported

EDITOR'S NOTE This report is based on information that was provided by defense counsel. Plaintiff's counsel declined to contribute.

–John Schneider

MOTOR VEHICLE

Rear-ender — Multiple Vehicle

Defense: Plaintiff didn't suffer brain injury in auto accident

VERDICT **Defense**

CASE Daniel Koh v. Kenneth Seale, No. 352-282347-15
COURT Tarrant County District Court, 352nd
JUDGE Josh Burgess
DATE 1/9/2019

PLAINTIFF ATTORNEY(S) **Paul A. Bezney,** Adkerson Hauder & Bezney, P.C., Dallas, TX

DEFENSE ATTORNEY(S) **Ashley G. Whatley,** Walters Balido & Crain, Dallas, TX

FACTS & ALLEGATIONS On Dec. 5, 2013, plaintiff Daniel Koh, about 50, a mortgage broker, was the driver of a sedan in Southlake on the service road of Highway 114. He stopped at a red light. Kenneth Seale, in a pickup truck, struck a vehicle that was further back from the light and then rear-ended Koh's vehicle. Koh claimed he suffered a concussion as well as neck, hand and back injuries.

Koh sued Seale for negligently operating his vehicle.

Koh's car was totaled in the accident and photos of the car came into evidence.

Seale attended the trial, but his testimony was only presented via video deposition due to his age and physical conditions, including Parkinson's disease. His testimony reflected that he had little recollection of the accident.

The defense did not strongly dispute liability.

INJURIES/DAMAGES *aggravation of pre-existing condition; back; brain damage; cognition, impairment; concussion; contusion; hand; head; headaches; memory, impairment; neck; physical therapy; post-concussion syndrome; traumatic brain injury*

A co-worker drove Koh from the scene to the emergency room, where he was diagnosed with neck pain and a left (non-dominant) hand contusion and sprain. The hospital records did not mention any complaints of loss of consciousness or possible brain injury.

Koh then went to his primary care doctor 11 days post-accident. He testified that he was having short-term memory problems and constant headaches. The doctor ordered a CT scan of the brain, but the results were inconclusive. He diagnosed possible post-concussion syndrome.

Koh next went to a neurologist, who recommended a brain MRI without contrast, but it was inconclusive.

Koh, still complaining of headaches and memory issues, subsequently underwent a brain MRI with contrast, and it was read as ruling out a brain injury. The neurologist recommended a PET scan and neuropsychological testing, but Koh did not undergo the PET scan or neuropsychological testing at that time.

In October 2016, Koh's counsel retained a neuropsychologist, who examined Koh and performed neuropsychological testing. The doctor diagnosed a mild traumatic brain injury and recommended Koh see a neurologist, but Koh did not do so.

After October 2016, Koh sought no further treatment for the claimed brain injury. Other than the emergency room visit, the only treatment for his neck, back or hand injuries was eight physical therapy sessions with a chiropractor from 2014 to 2017.

Koh testified that he had difficulty focusing and concentrating and that his job performance and earnings were negatively affected as he was paid on a commission basis. He also testified that his relationship with his two daughters, ages 17 and 20 at the time of trial, was negatively affected by his injury. The daughters testified that he spent all his time sleeping or using his cell phone or computer.

Koh did not seek past medical expenses, but did seek $62,000 for past lost earning capacity. He also sought damages for past and future physical pain, past and future mental anguish and past and future physical impairment. Plaintiff's counsel suggested a total award of $662,000.

The defense denied that Koh had suffered a brain injury, emphasizing that there was no diagnosis of a brain injury by a medical doctor and that the neuropsychologist who diagnosed it was retained by plaintiff's counsel.

The defense also noted Koh's prior medical records reflected similar complaints, due to attention deficit hyperactivity disorder. Koh testified that he had made up the complaints reflected in the prior records in order to get prescription medication that he thought would improve his job performance. The defense then argued that if Koh made up the prior complaints, the jury should also doubt the credibility of his complaints since the accident.

The defense also questioned how frequent and severe his headaches were, given how little was said about them in the medical records.

The defense further noted that, after the retained neuropsychologist recommended he see a neurologist, Koh did not do so.

RESULT The jury rendered a defense verdict. It found Seale negligent with regard to the accident, but it awarded no damages.

DEMAND $200,000
OFFER $150,000

INSURER(S) USAA

TRIAL DETAILS Trial Length: 3 days
Trial Deliberations: 15 minutes
Jury Vote: 12-0

PLAINTIFF EXPERT(S) **Dale E. Boisso, Ph.D.**, economics, Dallas, TX
Richard L. Fulbright, Ph.D., neuropsychology, Dallas, TX

DEFENSE EXPERT(S) None reported

EDITOR'S NOTE This report is based on information that was provided by defense counsel. Plaintiff's counsel did not respond to the reporter's phone calls.

–John Schneider

MOTOR VEHICLE

Rear-ender — Multiple Vehicle

Auto accident caused back and neck injuries, plaintiff claimed

VERDICT (D) **$2,700**

CASE Katrina Smith v. Nicolas Pedroza and Nicanor Pedroza, No. 342-281877-15
COURT Tarrant County District Court, 342nd
JUDGE Kimberly Fitzpatrick
DATE 12/3/2018

PLAINTIFF ATTORNEY(S) **Brian K. Truncale**, Rolle Law, Dallas, TX

DEFENSE ATTORNEY(S) **Adam B. LeCrone**, The LeCrone Law Firm, P.C., Sherman, TX

FACTS & ALLEGATIONS On Nov. 16, 2013, plaintiff Katrina Smith, 38, a certified community health worker, was driving a sedan in Hurst. She stopped at a red light, and Nicolas Pedroza, in a sport utility vehicle, stopped behind her. The light turned green, and Smith did not go because she was momentarily distracted by talking on her cell phone. Pedroza rear-ended her. Smith claimed neck and back injuries.

Smith sued Pedroza and his father Nicanor Pedroza, the owner of the vehicle. She alleged that Nicolas Pedroza was negligent in the operation of his vehicle. She further alleged that Nicanor Pedroza had negligently entrusted his vehicle to his son and was vicariously liable for his son's actions

Pedroza's father was nonsuited before trial.

The defense argued that Pedroza's actions did not rise to the level of negligence and that he just took his foot off the brake because he thought Smith was going to go through the green light.

INJURIES/DAMAGES *bulging disc, lumbar; chiropractic; leg; radicular pain / radiculitis; sciatica; sprain, cervical; sprain, lumbar; stenosis; strain, cervical; strain, lumbar*

Smith went to the emergency room on her own from the scene. She then treated with a chiropractor, who diagnosed her with cervical and lumbar sprains and strains. During her chiropractic treatment, Smith also complained of radicular pain in the legs, had a lumbar MRI and X-rays and went a single time to an orthopedic surgeon at a pain management clinic. The X-rays were negative for any fracture, and the MRI was read as showing 2- to 3-millimeter broad-based bulge at L4-5 with stenosis.

Smith treated with the chiropractor 32 times from Nov. 19 to April 17, 2014. During treatment, she said the pain was worse while doing household activities, but she recovered before trial.

She claimed paid or incurred medical costs of $14,729.80 and past lost wages of $384, and also sought damages for past physical pain.

The defense argued that the impact was minor. Post-accident photos of both vehicles came into evidence, and there was no visible damage to Smith's vehicle.

The defense also noted that Smith did not treat with her primary care doctor at any time.

The defense further argued she was involved in a prior accident that resulted in lower back treatment.

The defense controverted the reasonableness and necessity of the plaintiff's medical treatment with an affidavit from a physical medicine and rehabilitation specialist. The defense expert opined that the chiropractor charged too much and that the total reasonable, necessary and related medical costs charges were $2,713.80.

RESULT The jury found Pedroza negligent and awarded Smith $2,700 for past medical bills only.

DEMAND $16,700
OFFER $5,000

PLAINTIFF EXPERT(S) None reported

DEFENSE EXPERT(S) **Dorothy Leong, M.D.**, physical medicine, Dallas, TX
(did not testify; submitted counteraffidavit)

EDITOR'S NOTE This report is based on information that was provided by defense counsel. Plaintiff's counsel did not respond to the reporter's phone calls.

–John Schneider

Attorneys

Allen, David G. 9
Barrow, Wade A 8
Bezney, Paul A. 16
Boutet, Brooksie Bonvillain 7
Breeze, John W. 10
Brimmage, Marty. 13
Butcher, Brian W. 14
Chauhan, Keertan 13
Cherry, Jane 13
Dorsett, Keith 5
Drews, Karl D. 6,7
Fowler, John M. 11
Futrell, J. Martin 11
Garza, Rolando de la 5
Heald, Kristofor 11
Hernon, Jonathan 10
Herz, Jill. 9
Hurst, Michael K. 13
LeCrone, Adam B. 17
Leininger, John 13
McGregor, Jay 14
Pettit, Julie 13
Reller, Alexis 13
Scott, Greg 11
Shapiro, Stephen B. 13
Teague, Mark A. 14
Truncale, Brian K. 17
Urteago, David 13
Walls, Robert T. Jr. 8
Westbrook, Ben 8
Whatley, Ashley G. 16
White, Bridgit A. 6
Whitman, Molly 13

Cases

Franklin v. Scott 5
Holmes v. Jones 10
Johnson v. Nwankwo 6
Koh v. Seale. 16
LegacyTexas Bank, N.A. v. Imel 13
Panter v. Yellow Checker Cab Company of Dallas/Fort Worth Inc. 11
Radcliffe v. Barnett 8
Scott v. Torres 7
Smith v. Pedroza 17
Trotman v. Diaz. 9
Zappia v. Robison 14

Courts

Brazos County 5
Collin County. 8
Dallas County 9
Harris County 6
Tarrant County 14

Experts

CHIROPRACTIC

Davis, Stacey D.C. 13
Horne, Monte J. D.C. 10
Lehrer, Ronald John D.C. 10
McNeese, Jason D.C. 7

ECONOMICS

Boisso, Dale E. Ph.D. 17
Needham, Allyn Ph.D. 13

FIDUCIARY DUTY

Ellington, Scott. 14

LOANS

Leucht, Richard J.D. 14

NEUROPSYCHIATRY

Packard, Russell M.D. 13

NEUROPSYCHOLOGY

Fulbright, Richard L. Ph.D. 17

ORTHOPEDIC SURGERY

Duffy, Michael F. M.D. 9
Indresano, Andy M.D. 9

PAIN MANAGEMENT

Darnule, Amit M.D. 15

PHYSICAL MEDICINE

Leong, Dorothy M.D. 17
West, Don M.D. 11

RADIOLOGY

Nadalo, Lennard Albert M.D. 11

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Injuries

aggravation of pre-existing condition....16
anxiety....12
arm....7
atrophy....15
back....16
brain damage....8,16
bulging disc, cervical....9
bulging disc, lumbar....8,10,17
bursitis....6
chiropractic....5,6,7,9,10,12,15,17
cognition, impairment....8,16
concussion....12,16
contusion....16
decreased range of motion....5
depression....12
disc protrusion, cervical....9
disc protrusion, lumbar....7,10
epidural injections....6,7,8,15
fatigue....12
hand....8,9,16
head....12,16
headaches....8,12,16
herniated disc at C5-6....8
herniated disc at L4-5....6
herniated disc at L5-S1....6
herniated disc at T7-8....6
hypertension....5
knee....10
leg....15,17
memory, impairment....8,16
neck....16
nerve damage/neuropathy....15
numbness....9
physical therapy....5,6,7,8,10,15,16
post-concussion syndrome....8,12,16
radicular pain / radiculitis....15,17
sciatica....15,17
shoulder....6,10
speech/language, impairment of....12
sprain, cervical....5,7,8,9,12,15,17
sprain, lumbar....5,7,8,9,15,17
sprain, thoracic....5
stenosis....17
steroid injection....10
strain, cervical....5,7,8,9,12,15,17
strain, lumbar....5,7,8,9,15,17
strain, thoracic....5
traumatic brain injury....8,12,16
vertigo....12
wrist....7

Insurers

Allstate Insurance Co....6,7,10
Atlas Financial....13
Farmers Insurance Group of Cos....9
State Farm Insurance Cos....15
United Auto Insurance Group....13
USAA....16

Judges/Neutrals

Burgess, Josh....16
Fitzpatrick, Kimberly....17
Goldstein, Bonnie Lee....11
McCoy, Susan Heygood....14
Moore, Daryl....6
Moore, Maricela....9
Moye, Eric....10
Roth, Donna....7
Smith, Steve....5
Tillery, Dale....13
Wheless, Ray....8

Topics

Breach of contract....13
Broadside....5,11
Cell phone....10
Contracts....13
Fraud....13
Intersection....5
Lane change....14
Left turn....14
Misrepresentation....13
Motor vehicle....5,6,7,8,9,10,11,14,16,17
Multiple vehicle....7,8,9,10,14,16,17
Passenger....11
Question of lights....11
Rear-ender....6,7,8,9,10,16,17
Red light....5
Speeding....6
Tailgating....6
Underinsured motorist....9

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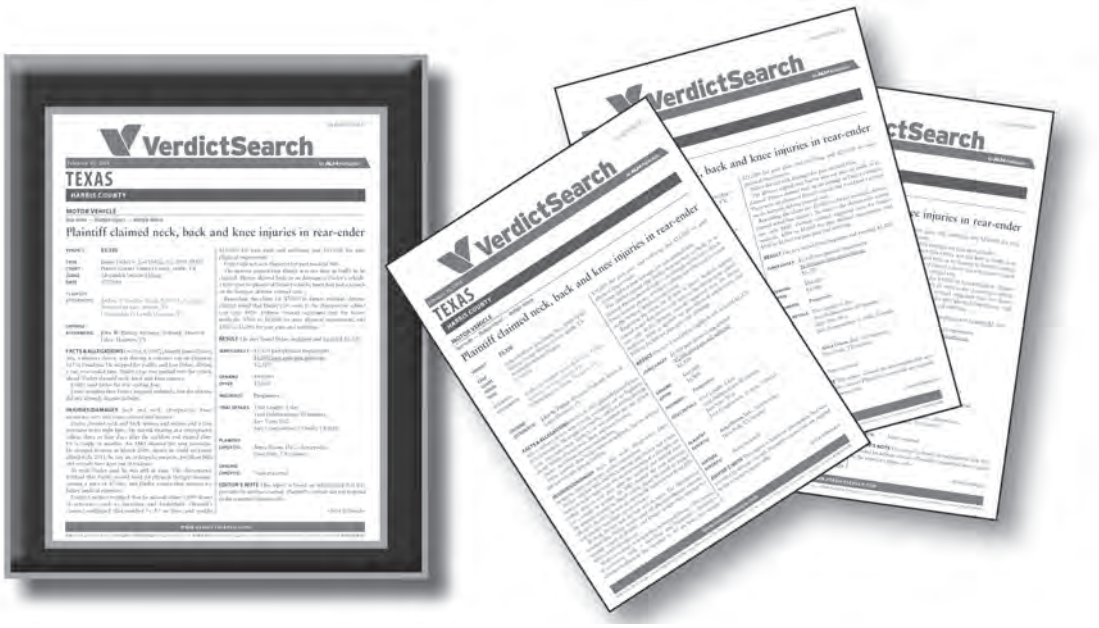

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