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# Pima County Superior Court Jury Trials

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THE TRIAL REPORTER of Southern Arizona

January, 2017

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1/10/17 - Judge CYNTHIA T. KUHN - CV 2015-1798 - SHERMAN (Kyle B. Sherman of Curry, Pearson & Wooten, P.L.L.C.) v GEICO GENERAL INSURANCE COMPANY (Douglas W. Glasson of Curl & Glasson, P.L.C.) - BREACH OF CONTRACT - BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING - INSURANCE PROVIDER. *Prologue: Plntf was passenger on a motorcycle operated by her spouse, travelling westbound on Baseline Road. Plntf's spouse began a left turn when the leading left arrow turned green to travel southbound on Dobson Road. Oncoming unknown motorist stopped, then accelerated or "jack-rabbit" into the intersection, then stopped again. Plntf's spouse took evasive action and laid the motorcycle down. Unknown motorist exited his vehicle, then left the scene without providing any information. Plntf filed claim with Dfnt for uninsured motorist coverage. Case being tried on comparative fault. Plntf, female, age 55, a clerical/administrative worker, alleged Dfnt breached the contract and breached the covenant of good faith and fair dealing when Dfnt unreasonably delayed and failed to reasonably evaluate or make an adequate offer to resolve Plntf's claim. Plntf called Patrick R. DeJonghe, an accident reconstructionist, who was of the opinion that there were no roadway markings or photographs, and no information regarding where the motorcycle went down or how far it slid after it went down in order for Dfnt's accident reconstructionist to reach the opinions he reported. (PRIOR TO TRIAL, PLNTF SETTLED FOR HER SPOUSE'S POLICY LIMITS OF \$50,000.) Dfnt denied liability, advancing the defense that it acted properly. Dfnt argued that, if there was no physical contact with the unknown motorist's vehicle, Plntf failed to provide the required corroboration that the unidentified*

motorist caused the collision. Dfnt also argued Plntf's spouse bears the majority, if not all, of the liability for the accident. COURT GRANTED DFNT'S MOTIONS FOR JUDGMENT, AS A MATTER OF LAW, ON THE ISSUES OF PUNITIVE DAMAGES AND BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING AS A SEPARATE TORT CLAIM. Dfnt called James J. Botsko, an accident reconstructionist, who was of the opinion that, if Plntf's spouse was travelling twenty-one miles-per-hour, which is not slow or cautious when coming from a stop and executed a left turn, Plntf's spouse still could have stopped prior to reaching the phantom vehicle without laying down the motorcycle. It was also Mr. Botsko's opinion that, although there was a lack of physical evidence, one significant fact was that the motorcycle, even though sliding on its side, did not impact the phantom vehicle or any other vehicle. Additionally, it was Mr. Botsko's opinion that motorcycles stop faster when they are upright and brakes are properly applied, compared to sliding on the ground after falling down. Mr. Botsko opined that Plntf's spouse lost control of the motorcycle. Plntf, who had a history of Freeman-Sheldon syndrome (also known as Freemans dysplasia), which results in short stature and multiple bony deformities, previously underwent a thoracolumbar spinal fusion with implantation of Harrington rods for severe scoliotic deformity, multiple bone osteotomies, and bilateral rotator cuff repairs. Plntf alleged she sustained a lumbar strain and sprain, with a disk injury; a right clavicle fracture, and two non-displaced pubic rami fractures. Plntf also alleged she is unable to perform her occupational duties. Plntf called Scott C. Forrer, M.D., a neurologist, who diagnosed Plntf's lumbar strain and sprain with a lumbosacral disk injury at

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L-5, S-1. It was Dr. Forrer's opinion that Plntf suffered from activity related myofascial pain and facet pain syndrome as a result of the lumbar strain and sprain. It was also Dr. Forrer's opinion that Plntf's complaints were causally related. Dfnt argued Plntf sustained a closed head injury, shoulder and spinal contusions, and a bruised right eye. Dfnt also argued that Plntf treated conservatively by limiting activities, and she had returned to all activities without pain three months post-accident. Additionally, Dfnt argued there was a one-year gap in treatment when Plntf made additional complaints. Dfnt argued there was no objective evidence to correlate Plntf's current lumbar complaints to the instant accident, and her ongoing complaints were related to her preexistent conditions. Dfnt also argued that Plntf continued to work for over eighteen months following the accident, and her inability to now perform her occupational duties is unrelated. Dfnt called Anthony C. Theiler, M.D., an orthoped, who performed an independent medical examination. It was Dr. Theiler's opinion that Plntf had sustained an acute right clavicle fracture, plus superior and inferior right-side pubic rami fractures in the collision, which healed within three months post-accident without any residuals. Additionally, it was Dr. Theiler's opinion that only \$6,900 of Plntf's medical expenses were causally related, and any subsequent complaints and treatment performed after three months post-accident were unrelated. Prayer: Just and reasonable compensatory damages; \$1,800 per year future medical expenses; \$85,000 past lost wages; plus \$240,000 future lost wages. Plntf made a pretrial demand for policy limits of \$50,000 - Dfnt offered \$12,500 (D). During closing arguments, Plntf's counsel argued Plntf's spouse only had a split second to react to the phantom vehicle and he did the best he could to avoid a collision. Plntf's counsel asked jury to award Plntf \$600,000. Defense counsel argued Plntf's spouse overreacted and was one-hundred percent

at fault, and asked jury to return a defense verdict. Four day trial. Jury out one-plus hours. AWARDED PLNTF \$25,000 COMPENSATORY DAMAGES. UNANIMOUSLY. (Found Plntf's spouse to be ninety percent at fault, and unknown motorist to be ten percent at fault; therefore, Plntf's award to be reduced to \$2,500.)

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