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Motor Vehicle

Woman was in two accidents within seven months

Verdict: Defense

Case Type: Rear-ender, Motor Vehicle - Truck, Motor Vehicle - Multiple Impact

Case: Melissa Wendt v. Steven Montoya, Bradley Parker & Parker Electric, No. 2003-17658

Venue: Harris County District Court, 281st, TX

Judge: David J. Bernal

Date: 08-23-2006

PLAINTIFF(S)

Attorney:

- Michael M. Essmyer; Essmyer & Tritico; Houston, TX, for Melissa Wendt
- Jason L. Fowell; Essmyer & Tritico; Houston, TX, for Melissa Wendt

Expert:

- David Tomaszek M.D.; Neurosurgery; The Woodlands, TX called by: Jason Fowell, Michael Essmyer

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DEFENDANT(S)

Attorney:

- Brian C. Lopez; Engvall & Hlavinka LLP; Houston, TX, for Parker Electric, Bradley Parker
- Dennis S. Dresden; Benckenstein, Norvell & Nathan; Houston, TX, for Severo Montoya

Expert: None

Insurer:

- Employers General for Bradley Parker and Parker Electric

Facts:

On Nov. 28, 2002, plaintiff Melissa Wendt, 40, a hairstylist, was in an accident with Severo Montoya

in Harris County, and on May 14, 2003, she was rear-ended by Brad Parker in Willis. In the 2002 accident, Montoya pulled out in front of Wendt in an attempt to make a right turn, and Wendt rear-ended him. In the 2003 accident, Wendt slowed for traffic and was rear-ended by Parker and knocked into the vehicle ahead. Wendt was driving a van both times. Montoya was in a sedan, and Parker, employee and owner of Parker Electric, was in a pickup. Montoya and Parker were at fault for the respective collisions.

Claiming injuries, Wendt sued Montoya and Parker for negligently causing the respective collisions and sued Parker Electric, Houston, under respondeat superior.

Montoya settled for his policy limit, \$20,000, before trial.

The Parker defendants stipulated negligence and course and scope.

Parker did not appear or testify at trial.

Injury:

In each accident, Wendt sustained multiple soft-tissue injuries, followed by medical treatment and physical therapy. At trial, she argued that the second accident was the cause of a lumbar and a cervical herniation and of all treatment, pain and suffering, physical impairment and disfigurement that occurred the second accident. In December 2005, because she was still complaining of pain, she underwent a cervical fusion, and in February 2006, she underwent a lumbar fusion. Her neurosurgeon testified that there were slight herniations from the first accident, but that they did not require surgery until the second accident made their symptoms worse. He also said MRIs showed that the cervical herniation went from 2 millimeters before the second accident to 7 millimeters afterward.

Wendt's medical bills since the second accident were about \$115,000, including about \$100,000 for the surgeries.

Wendt also had a 2-inch scar in the front of her neck and a 7-inch scar on her lower back. She said she can no longer move as well as she used to and still has some pain. Before the neck operation, one leg was dragging, which her doctor said was because of the cervical herniation.

Wendt's attorneys argued for \$680,000 total.

The Parker defendants argued that the first accident, not the second, caused the herniations and pain that required the fusions. They also argued that chiropractic traction after the second accident may have made the cervical herniation bigger.

The defense introduced photos of Wendt's vehicle after the second accident, and they showed minor damage.

Verdict Information The jury found Montoya negligent, not Parker, and found no damages for Wendt.

According to both Wendt's and Parker's attorneys, the photos were important because Wendt's testimony at trial made the second accident seem much more severe than the photos of the plaintiff's vehicle indicated. Although Parker's property damage was substantial, Wendt's was very minor.

Jurors told Parker's counsel afterward that they believed that Wendt was seriously hurt in the first accident.

Post-Trial: Wendt intends to move for a new trial.

Editor's Comments Counsel for Montoya did not respond to a faxed draft of this report and a phone call.