



Defense Lawyers
Association

November 2018 Verdict

Submitted By	William R. Anderson Law Offices of Daniel G. Acosta william.anderson@farmersinsurance.com (575) 522-4127
Court	State Court
County	Bernalillo
Judge	Nancy Franchini
Defense Counsel	Kristen Murphy-Kollar
Plaintiff Counsel	Grant Marek
Trier	12 Person Jury
Style	Bonnie Segura v. Ngoc Diep Nguyen and Farmers Insurance Company of Arizona
Statement of Facts	<p>This trial was a claim for bodily injury related to a motor vehicle accident in which Defendant stipulated to liability. The only issues to be presented to the jury were causation of injury and damages. The motor vehicle accident occurred when Plaintiff was traveling eastbound on Central and the Defendant, not seeing her, made a left hand turn into Plaintiff's vehicle. Plaintiff was transported from the scene by ambulance to the ER, was diagnosed with a soft tissue sprain/strain type injury and was released. She followed up with her PCP and then received chiropractic care for approximately 3 weeks. Almost a year after the accident Plaintiff followed up with her PCP and began receiving trigger point injections in her cervical spine. Plaintiff's records related her injections to a different motor vehicle accident. Plaintiff also had multiple medical issues between her last chiropractic visit and her first trigger point injection, which she was attempting to claim related to the accident. These medical issues included having kidney stones and a surgery to remove them.</p>
Verdict	Defense
Comments	<p>This matter was set with a Scheduling Order and Plaintiff's counsel, Mr. Marek, blew the discovery deadline forgetting to provide additional medical records and bills as well as items he had obtained via a subpoena. At mediation Plaintiff's counsel provided Defendant's cell phone records via subpoena, which he never served on the defense. Defense moved to exclude these and the Motion was granted. Mr. Marek moved for a continuance of the original trial date so he could obtain additional medical records and bills. The Court granted his Motion allowing him additional time on discovery of medical records and bills and allowing him to amend his Witness List to include additional medical providers. Mr. Marek provided additional records, but never amended his Witness List. Defense never agreed to the admissibility of the records and bills, Mr. Marek never asked, and his original witness list did not include any records custodians and only included one of the treating providers, a physician's assistant. Defense made a Motion to exclude all records and bills a proper foundation could not be established for and the Court allowed Plaintiff to call the necessary records custodians. However, Mr. Marek was stuck with only being allowed to call the single medical provider. At trial Mr. Marek informed the Court he would not have any medical provider, or records custodian, to testify and that Plaintiff would be his only witness. He attempted in more ways than one to admit Plaintiff's bills and records through the Plaintiff and the Court several times instructed him at the bench that he would not be able to do so. Judge Franchini continually instructed him that he would be required to establish causation and reasonableness and necessity of bills and records. He eventually rested his case with his client only having testified to lost wages and her pain and suffering, but not having established any causation of injury related to the accident or pain and suffering. The Court granted the directed verdict motions of defense and found that the only testimony giving rise to damages was Plaintiff's lost wages. Judge Franchini indicated she would not waste the jury's time with deliberations and ordered Judgment for the Plaintiff in the amount of \$500. Mr. Marek was continually shocked by the Court's instructions on the need of a doctor to testify and regularly argued with the Judge about her granting Defendants' Motions. In his opening Mr. Marek asked</p>

the jury for \$150,000. Overall Mr. Marek seemed to be unprepared for trial and also seemed to lack the overall knowledge of the civil trial process. He regularly indicated it was his first civil jury trial. In Voir Dire he attempted to ask the Court for permission to discuss insurance with the jury panel indicating that the trial hadn't started yet so the selection process was excluded from the stipulated order excluding insurance. Since trial he has continued to be difficult to work with. He refused to agree to the form of Judgment prepared and instead filed a Motion to Reconsider with the Court. Without giving an opportunity to respond he sent the Motion to the Judge along with a proposed Order. Overall his lack of knowledge of the process and lack of preparedness has made his opposing counsels have to remain hyper-aware at all times. Most recently he has returned the verdict funds of \$500 stating he mistakenly deposited the check as a Judgment hadn't been formally entered yet.

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November 2018 Verdict

Submitted By	William R. Anderson Law Offices of Daniel G. Acosta william.anderson@farmersinsurance.com (575) 405-8257
Court	State Court
County	Eddy County
Judge	Lisa B. Riley
Defense Counsel	Raymond J. Baeza
Plaintiff Counsel	James Klipstine
Trier	12 Person Jury
Style	Alice Cervantez v. Shelbi Martin
Statement of Facts	Plaintiff was at the intersection of West Main Street and South 11th Street in Artesia, New Mexico. Plaintiff claims there was a pedestrian crossing 11th Street so she had to stop and wait for him to cross. Plaintiff was struck from the rear when she was at a complete stop on Main Street. Defendant was cited for following too closely and driver's license required.
Verdict	Defense

Plaintiff was evaluated in the ER on the date of loss. A CT scan of the neck revealed only degenerative changes. Plaintiff subsequently was evaluated and treated for soft tissue injuries, but subsequently began complaining of radiating symptoms into her right shoulder and hands. Plaintiff declined physical therapy which was recommended, and instead was treated at Zia Chiropractic. She claimed medical expenses of approximately \$11,000.00, together with pain and suffering and loss of enjoyment of life.

Plaintiff's counsel argued that all of Plaintiff's symptoms and injuries were caused by the accident. Silas Bennett was the chiropractor that testified on the Plaintiff's behalf from Zia Chiropractor in Hobbs. The chiropractor testified that he reviewed the Plaintiff's medical records and believed that the injuries were caused by the accident. He testified that the Plaintiff would have to have future chiropractic care for the rest of her life (28 years) at \$1,200 a year.

Comments Plaintiff testified that she was still feeling pain from the accident and didn't have any of this pain before the accident. Plaintiff also testified that the reason she didn't see any additional medical treatment was because she didn't have money.

The defense argued that the Plaintiff was not really injured as a result of this accident because it was a "fender bender." The defense also argued that the Plaintiff failed to mitigate her damages and attacked Plaintiff's credibility.

The defense pointed out that the CT scan revealed degenerative changes that occur because of normal wear and tear. Plaintiff then treated with a primary care doctor and there were some inconsistencies in those records. Plaintiff chose not to admit those records so the defense used them for impeachment purposes only. The defense referenced a chiropractic record that indicated the Plaintiff sought treatment because she played basketball two days in a row. Plaintiff then had a significant gap in treatment before she saw Zia Chiropractic. Mr. Baeza was able to effectively cross examine the chiropractor and their questionable business practices. The chiropractor admitted that he didn't even review the Plaintiff's medical records before the trial. He also admitted that his facility treats people equally but charges them differently if they are in an accident. Plaintiff was impeached with her income because she claimed that

she didn't have money for medical treatment. Plaintiff and her husband owned two different businesses and made a significant amount of money.

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