

(24) **JOSE ENRIQUE SIERRA vs. FLORENCE DYBLE**

**COUNTY/DOCKET #/JUDGE:** Hillsborough / 03-5423 / Perry Little

**PLAINTIFF(S) ATTORNEY(S):** Craig Anthony Huffman, Tampa

**DEFENDANT(S) ATTORNEY(S):** J. Gregory Giannuzzi of Rissman, Weisberg, et al., Tampa

**AGE/SEX/OCCUPATION OF PLAINTIFF:** 63 / M / Not Employed

**CAUSE OF INJURY: *Motor Vehicle Accident/Bicycle Collision.*** On October 18, 2000, Plaintiff was traveling on his bicycle on 22<sup>nd</sup> Street, attempting to cross Fowler Avenue in Tampa. Plaintiff was heading north with the green light when Defendant, who was traveling west on Fowler Avenue, allegedly went through a red light and struck Plaintiff's bicycle. Defendant, seventy-three years old, and her husband contended that they were stopped in the center lane at a red light on Fowler Avenue. When the light turned green, Defendant looked to her left. Although Defendant did not specifically recall looking to her left, her normal course was to do so. Defendant claimed that as she proceeded forward, at a few miles per hour, Plaintiff's bicycle darted in front of her vehicle. By coincidence, there was an ambulance on the scene. Defendant's position at trial was that Plaintiff just brushed himself off, got back on his bicycle, and left the scene.

**NATURE OF INJURY:** Low back pain; right wrist injury which required surgery. Defendant asserted that Plaintiff's right wrist problem was unrelated to this accident. Plaintiff had problems with his right wrist all his life, having suffered a fracture when he was young. Defendant was ultimately able to locate x-rays taken of Plaintiff's wrist fourteen days before this accident; those x-rays were taken because Plaintiff was complaining of problems in the wrist.

**EXPERT WITNESSES:**

**PLAINTIFF'S:** Nelson Mane, D.C., Chiropractic, Tampa (video depo)

**DEFENDANT'S:** Lutz Schlicke, M.D., Orthopedic Surgery, Tampa

**VERDICT:** *For the Defendant on May 10, 2005.*

**DEFENDANT'S ATTORNEY'S COMMENTS:** From a liability standpoint, the case probably turned on Plaintiff making such a poor witness. He came to the U.S. from Cuba in 1994. His employment history showed a termination for drug use, and his testimony was laced with inconsistencies. Plaintiff had an accident reconstruction expert. Defendant moved to strike the expert, claiming that the facts did not warrant the need for expert testimony; in addition, the expert retained, as determined from his deposition testimony, lacked the necessary information to formulate any opinions. For instance, he never examined the subject vehicle, did not perform any crush damage on the bike, and did not have any information regarding Defendant's version as to what had happened. The court struck the witness. The wrist injury was also eliminated during Motion in Limine argument. The physician who performed the wrist surgery was no longer practicing in Florida and was not going to testify at trial. Although there was an agreement to allow Plaintiff's medical records into evidence, the records did not contain any language linking the subject accident to Plaintiff's injury and need for surgery.

**HILLSBOROUGH COUNTY (Continued)****SIERRA (Continued)**

**DEFENDANT'S ATTORNEY'S COMMENTS (Continued):** Defendant also argued that Plaintiff's chiropractor could not be utilized as a conduit for the testimony of a surgeon. It was also learned during the chiropractor's videotape deposition for use at trial that he had not even seen the records of the surgeon. Judge Little debated whether Plaintiff could still claim that his right wrist problems were due to this accident. Defendant ultimately presented case law which held that for certain injuries which are not clearly observable, such as a brain injury, herniation, etc., expert testimony is needed to support causation. To allow such evidence to go to the jury without expert support would be prejudicial. The court agreed and ultimately only allowed the low back injury to go to the jury. Defendant withdrew her comparative negligence claim at the jury instructions stage. Defendant wanted the jury to either find for Plaintiff or Defendant, not split their verdict. Plaintiff demanded \$750,000 and then \$75,000; Defendant offered \$15,000.