

CASE INFORMATION SHEET
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COUNTY and COURT: Orange County, Ninth Circuit Civil

NAME OF CASE [complete style]: Venus M. Saltsman v. Carmelo Santiago and Tasha E. Santiago

CASE/DOCKET NO.: 07-CA-10121 JUDGE: Honorable Maura T. Smith

PLAINTIFF(S) ATTORNEY(S)/TRIAL COUNSEL [full names, firm and city]:

Carolyn Salzman, Esquire
Mike Sutton, Esquire
Morgan & Morgan, P.A.
20 N. Orange Avenue
Suite 1000
Orlando, FL 32802

DEFENDANT(S) ATTORNEY(S)/TRIAL COUNSEL [full names, firm and city]:

Vance R. Dawson, Esq.
David A. Fifner, Esq.
Rissman, Barrett, Hurt, Donahue & McLain, P.A.
Post Office Box 4940
Orlando, FL 32802-4940

AGE/SEX/OCCUPATION OF PLAINTIFF or DECEDENT [at time of accident or occurrence]: Ms. Saltsman was born on December 18, 1971. She was 35 years old at the time of the accident. She was a Hispanic female and at the time of the accident she was employed at Sea World as a vendor.

For WRONGFUL DEATH cases, please give age and relationship of survivors:

DATE, TIME, and PLACE OF ACCIDENT or OCCURRENCE:

This accident occurred on November 28, 2006 at approximately 5:00 p.m. Ms. Saltsman was in the left-hand turn lane on International Drive preparing to make an entrance onto the acceleration ramp of State Road 528 in an eastbound direction.

Ms. Tasha Santiago was operating a 2002 Toyota automobile immediately behind Ms. Saltsman. Ms. Santiago's car bumped into the back of Ms. Saltsman's automobile when Ms. Saltsman stopped suddenly to allow an approaching ambulance to pass through the intersection.

Defendants contended that the presumption of negligence did not apply to Ms. Santiago because Ms. Saltsman made a sudden and unexpected stop. Ultimately, the court granted a directed verdict in favor of Plaintiff, concluding that there was negligence on the part of Ms. Santiago.

CAUSE OF INJURY [factual description including allegations and defenses on liability]:

Ms. Saltsman contended that the minor rear-end collision caused her to sustain a shoulder impingement injury that resulted in arthroscopic subacromial decompression and partial distal clavicle excision. Ms. Saltsman contended that she was wearing a seatbelt at the time of the accident and that once the collision occurred, she initially went backward and then forward thereby causing her injury. Of note, the shoulder harness would have been across her left shoulder but it was her right shoulder which was supposedly injured in the accident.

NATURE OF INJURY [please be specific concerning injuries, treatment, and medical testimony]:

Ms. Saltsman contended that she sustained an injury to her right shoulder; however, when she presented at the emergency room on November 28, 2006, she did not make any complaints regarding her right shoulder. The only complaints she made were with respect to her neck.

However, three days after the date of accident, Plaintiff presented to Dr. Alison Hanley complaining of difficulty raising her right arm. She also mentioned pain that radiated down to her right hand.

An MRI examination dated March 15, 2007 revealed a rotator cuff impingement and sprain of the superior glenoid labrum. X-rays showed a type III acromion and distal clavicular spur. An arthroscopic and subacromial decompression and debridement of the superior glenoid labrum and partial distal clavicle excision was performed by Dr. Robert Roberts on May 9, 2007.

Defendants contended that Plaintiff's right shoulder condition was not traumatically related to the subject accident and therefore neither was the surgery. The MRIs with regard to the patient's right shoulder performed both on January 26, 2007 and March 15, 2007 did not demonstrate any traumatic injury. The MRIs were interpreted by Defendants' expert, Dr. Michael Foley,

who indicated that there were degenerative changes including fraying of the glenoid labrum. There was no evidence of a frank tear nor evidence of trauma associated with the accident.

Dr. Roberts, an orthopedic surgeon, testified conversely that the labrum was repaired and that he had the best opportunity to evaluate the Plaintiff's injury and he saw no evidence of a degenerative process but rather, saw evidence with respect to a traumatic injury to the right shoulder.

PLAINTIFF'S EXPERT WITNESSES [include full name, degree, specialty and city]:

Alison Hanley, M.D.
Medical Alternatives of America, Inc.
Hanley Pain & Rehab
5979 Vineland Road, Suite 209
Orlando, FL 32819

Dr. Hanley is an internal medicine physician who first saw Ms. Venus Saltsman on December 1, 2006. Dr. Hanley testified at trial that the patient had a permanent residual injury associated with her neck but deferred any opinion regarding the right shoulder. Defendants objected to Dr. Hanley's testimony with respect to the neck because Plaintiff had previously indicated in her Answers to Interrogatories and in her deposition that she was not making a claim with regard to her neck injury. Plaintiff specifically stated that the only injury about which she was making a claim in the instant litigation was that associated with her right shoulder.

Dr. Hanley testified on cross-examination that she was unaware Plaintiff had a preexisting injury to her neck. Dr. Hanley then testified that Plaintiff received multiple treatments from her office with respect to the treatment of her neck and back and that, as a result, she had exhausted her \$10,000 in PIP benefits.

Robert S. Roberts
Roberts Orthopedic Clinic
453 North Kirkman Road, Suite 201
Orlando, FL 32811

Dr. Roberts testified via videotape that Plaintiff had a permanent residual injury to her right shoulder which was causally related to the accident and so, too, was his surgery that he performed on May 9, 2007.

Dr. Roberts received a Letter of Protection and Assignment of Benefits and therefore, the balance of his treatment and operative procedure in the amount of \$9,000 remained outstanding at the time of the trial.

Dr. Roberts also conceded that he had an interest in the outcome of the case and that if Plaintiff did not make a recovery, it was unlikely that he was going to receive payment from Ms. Saltsman.

DEFENDANTS' EXPERT WITNESSES [include full name, degree, specialty, and city]:

Michael J. Foley, M.D.
Radiographic Consultants
11300 4th Street North, Suite 140
St. Petersburg, FL 33716

Dr. Foley reviewed the two magnetic resonance imaging studies of Ms. Saltsman's right shoulder performed on January 26, 2007 and March 15, 2007. Dr. Foley testified that the films did show degenerative changes and that the Plaintiff did not have an injury to her right shoulder which was causally related to the accident and that the surgery performed by Dr. Roberts was to repair a preexisting degenerative condition.

CHECK APPROPRIATE SPACE : x Verdict

DATE OF VERDICT: February 19, 2009

VERDICT:

Defense verdict based upon causation. The jury concluded that there was negligence on the part of Defendant, Tasha Santiago, which was the legal cause of damage to the Plaintiff but, the jury likewise concluded that the Plaintiff did not sustain any damages because any of the medical bills which would have been reasonable, related and necessary were less than \$10,000, the amount of Plaintiff's PIP benefits already paid.

The jury concluded Plaintiff did not have a permanent residual injury and hence, it had to have concluded that the right shoulder injury about which the Plaintiff complained and for which she had received surgical treatment was not causally related to the accident.

The verdict was technically for the Plaintiff but the jury indicated that there were no damages, special or otherwise, which the Plaintiff would recover. She had already had PIP benefits paid in the case and this was a fact to which Plaintiff stipulated at trial.

COMPARATIVE NEGLIGENCE [if applicable]: Not applicable.

JUDGMENT: For Defendants, Carmelo and Tasha Santiago.

DATE OF JUDGMENT: April 28, 2009

DEFENDANTS' OFFER: Defendants filed a Proposal for Settlement in the amount of \$5,001 on September 15, 2008.

PLAINTIFF'S DEMAND: Plaintiff demanded \$95,000 at mediation. During closing argument, Plaintiff asked the jury to award in excess of \$300,000.

DEFENSE ATTORNEY'S COMMENTS: During the course of discovery, Plaintiff denied in Answers to Interrogatories and in deposition that she had been involved in any prior automobile accidents or had any workers' compensation claims except for one automobile accident on June 24, 1999 for which she had lumbar disc surgery.

Investigation revealed that Plaintiff had been involved in five prior automobile accidents and had made two prior workers' compensation claims.

Defendants filed a Motion to Dismiss Plaintiff's claim for fraud. The court denied the motion but Plaintiff's counsel made it clear that the other accidents were not relevant because they did not involve an injury to the Plaintiff's right shoulder. As mentioned above, Plaintiff's Answers to Interrogatories and deposition indicated that the only bodily injury the Plaintiff was claiming as a result of the subject accident was the right shoulder.

Therefore, even though the Plaintiff might have received treatment as a result of the November 2006 accident with respect to her neck and back, Plaintiff was only making a claim for the injury to her right shoulder and the surgery which Plaintiff claimed was causally related.

Defendants' Motion to Tax Costs and Fees is scheduled for hearing on March 3, 2010. Defendants should be entitled to costs and fees both as the prevailing party and as a result of Plaintiff's failure to accept the \$5,001 Proposal for Settlement served on September 16, 2008.

Submitted By: Vance R. Dawson
David A. Fifner Date: December 29, 2009

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