POLK COUNTY

(62) GARY BURBACK vs. BARTOW FORD CO.

COUNTY/DOCKET #/JUDGE: Polk / 53-2002-000267 / Michael E. Raiden

PLAINTIFF(S) ATTORNEY(S): Joseph R. Rowe, Jr., Tampa

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

AGE/SEX/OCCUPATION OF PLAINTIFF: 56 / M / Retired

CAUSE OF INJURY: ***Falldown/Building.*** On January 21, 1998, Plaintiff contended that he fell while at Defendant's main sales building in Bartow. There were glass doors leading outside; once a person passed through the glass doors, there was an immediate step down of about seven inches. Plaintiff claimed that as he walked through the door, he did not see the step down, and tripped. Plaintiff alleged that Defendant failed to have a "Watch Step" sign before the glass doors. There was an eyewitness, Defendant's employee, who was no longer an employee at the time of trial. The eyewitness offered testimony that Plaintiff was already outside, awkwardly reaching for a chair, when he fell. There was also evidence that about four years after the incident, Plaintiff told his treating chiropractor that he did not remember what had happened. Moreover, Plaintiff's memory was challenged. One of many surprising items was Plaintiff's failure to remember a motor vehicle accident he had been in two years before this incident. He also did not remember having prior low back pain or prior neck pain, and there was a litany of inconsistencies regarding treatment with chiropractors, statements made at the hospital on the day of the accident, and the amount of time Plaintiff was off from work.

NATURE OF INJURY: Torn medial and lateral meniscus in left knee; low back injury. Defendant asserted that Plaintiff's hospital records on the day of the accident showed Plaintiff's left knee was non-tender, non-swollen, non-painful, and that he had full range of motion; the records did not indicate any complaints of low back pain. Plaintiff saw another chiropractor (who did not testify) for a two year period after the accident, whose records made no mention of left knee pain. Plaintiff first saw a chiropractor four months later as a result of pulling something in his lower back while lifting a box. Plaintiff testified that on various occasions before this incident, his back would pop out while working. He worked for a coffee service company, which also provided bottled water. Through a large portion of his adult life, he had been required to carry forty-five pound bottles of water in each hand, a total of ninety pounds.

EXPERT WITNESSES:

PLAINTIFF'S: Doug Price, D.C., Chiropractic, Tampa

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

VERDICT: ***For the Defendant on June 2, 2005.***

POLK COUNTY (Continued)

BURBACK (Continued)

DEFENDANT'S ATTORNEY'S COMMENTS: Judge Raiden seriously considered granting a directed verdict not only on liability but causation. Plaintiff's expert, Dr. Price, first saw Plaintiff two years and two months after the accident. He offered testimony that Plaintiff's low back and left knee problems were caused by this accident. During cross-examination, it was established that Dr. Price did not have the hospital records on the day of the accident (which made no mention of low back complaints), nor the first chiropractor's records of the first two years (which made no mention of the left knee complaints and also documented the box incident that occurred four months after the accident where Plaintiff injured his back). With this information, Dr. Price ultimately conceded on cross that he was unable to offer an opinion that the low back and left knee problems were caused by this accident. After that testimony, Judge Raiden stated, outside of the jury's presence and in anticipation of a directed verdict, that such testimony could be fatal to Plaintiff's case. Defendant moved for a directed verdict. The judge heard arguments on both liability (open and obvious condition) and causation. The judge took it under advisement. On the third day of trial, he ultimately struck Plaintiff's low back claim. As for the left knee, the judge stated that perhaps, during redirect, Dr. Price had offered some additional help to Plaintiff. However, the judge wondered aloud whether this meant that the jury could award damages for Plaintiff bumping his knee on the date of the accident, but nothing beyond that date. Judge Raiden ultimately ruled that he was going to allow the left knee claim to go to the jury. The jury was out for approximately ten to fifteen minutes before returning with a defense verdict. Defendant withdrew its 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 $65,000; Defendant's Proposal for Settlement was for $10,000.