

CASE INFORMATION SHEET
FLORIDA LEGAL PERIODICALS, INC.
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COUNTY AND COURT:

Miami-Dade County, Circuit Civil

NAME OF CASE:

TRACY MAGWOOD,

Plaintiff,

v.

VALLEYCREST LANDSCAPE
DEVELOPMENT, INC.,

Defendant

CASE DOCKET NO.: 09-91159 CA-25 **JUDGE:** Jorge Cueto

PLAINTIFF(S) ATTORNEY(S)/TRIAL COUNSEL:

William C. Ruggiero, Esquire
Law Offices of William C. Ruggiero
200 S. Andrews Avenue
Museum Plaza, Suite 703
Fort Lauderdale, FL 33301

DEFENDANT(S) ATTORNEY(S)/TRIAL COUNSEL:

F. Dean Hewitt, Esquire
Jeremy T. Palma, Esquire
Rissman, Barrett, Hurt,
Donahue & McLain, P.A.
201 E. Pine Street, 15th Floor
Orlando, FL 32801

AGE/SEX/OCCUPATION OF PLAINTIFF OR DECEDENT:

42-year old female/Probation Officer

FOR WRONGFUL DEATH CASES, PLEASE GIVE AGE AND RELATIONSHIP OF SURVIVORS:

N/A

DATE, TIME AND PLACE OF ACCIDENT OR OCCURRENCE:

December 1, 2008 at approximately 6:15 p.m., in the south bound lanes of State Road 817 in North Miami, Florida.

CAUSE OF INJURY:

Plaintiff, a motorist, claimed that she was injured when the Defendant rear-ended the Plaintiff's vehicle in the left lane of State Road 817.

Plaintiff, who was driving a minivan, was stopped in the left lane for a school bus in the right lane that had initiated its stop arm and stopped to drop off children. Plaintiff brought her vehicle to a complete stop in the left lane. Francisco Cuevas, an employee of ValleyCrest, was driving a pick-up truck directly behind Mrs. Magwood.

Mr. Cuevas brought his vehicle to a complete stop behind Mrs. Magwood's vehicle in the left lane. The ValleyCrest vehicle was then rear-ended by a phantom vehicle which pushed the ValleyCrest vehicle into the rear of the Magwood vehicle. The phantom vehicle fled the scene of the accident. It was dusk and the weather was clear.

NATURE OF INJURY:

Plaintiff claimed to have sustained a herniation at C4-5 which required a cervical diskectomy and fusion.

PLAINTIFF'S EXPERT WITNESSES:

Dr. Stephen Gervin
Neurosurgery, P.A.
2301 N. University Dr.
Suite 210
Pembroke Pines, FL

Plaintiff presented the testimony of her treating neurosurgeon, Stephen Gervin, M.D. Dr. Gervin was unable to testify that the herniation and need for the surgery were solely related to the

December 1, 2008 accident. Dr. Gervin's opinion was equivocal due to the Plaintiff's pre-accident medical history, which included two motor vehicle accidents for which she subsequently received treatment for her neck.

DEFENDANT'S EXPERT WITNESSES:

Michael J. Foley, M.D.
Radiographic Consultants, LLC
101 East Kennedy Boulevard
Suite 3900
Tampa, FL 33602

The defense presented the testimony of Dr. Foley, a triple board-certified radiologist, as a witness at trial. Dr. Foley testified that the Plaintiff did not sustain an injury at C4-5 as a result of the subject accident. Dr. Foley testified that the Plaintiff had degenerative changes at C4-5 which pre-dated the December 1, 2008 accident.

CHECK APPROPRIATE SPACE: √ Defense Verdict

DATE OF VERDICT:

April 30, 2013

VERDICT:

Defense verdict

COMPARATIVE NEGLIGENCE:

N/A

JUDGMENT:

For ValleyCrest Landscape Development, Inc.

DATE OF JUDGMENT:

Not yet entered

DEFENDANT'S OFFER:

On May 6, 2011, a Proposal for Settlement was sent to Plaintiff in the amount of \$1,000.

PLAINTIFF'S DEMAND:

Prior to trial, Plaintiff's counsel demanded \$47,500 to settle. Plaintiff's attorney requested \$69,000 in past economic damages during closing. Plaintiff requested an unspecified amount for pain and suffering.

ATTORNEY'S COMMENTS:

Defense counsel placed the fault for the accident on the phantom vehicle. Plaintiff would not concede at trial that the phantom vehicle was responsible for causing the accidents. Plaintiff disputed at trial whether the phantom vehicle was in any way involved in the accident.

Photographs of the rear of the Plaintiff's vehicle revealed minimal property damage. In fact, it was difficult to determine what, if any, property damage occurred to the rear of the Plaintiff's vehicle.

Plaintiff incurred \$187,000 in medical expenses. However, Plaintiff only requested \$63,000 in past medical expenses which was the net amount paid by Plaintiff's health insurance carrier. The remaining \$6,000 request for past economic damages was for wage loss.

The jury deliberated for 15 minutes before returning a defense verdict finding no negligence on the part of ValleyCrest.

Submitted by: F. Dean Hewitt, Esquire
Jeremy T. Palma, Esquire

Date: May 15, 2013

Firm: Rissman, Barrett, Hurt,
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FDH/JTP/ccp