

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

Brevard County, Circuit Civil

NAME OF CASE:

CARL FICKE,

Plaintiff,

v.

KYLE DAVIS,

Defendant.

CASE DOCKET NO.: 05-2015-CA-040620 **JUDGE:** Hon. Charles Roberts

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

Shane Smith
Matt Manning
David Disston

Shane M. Smith, P.A.
3845 W. Eau Gallie Blvd., Suite 104
Melbourne, FL 32934

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

Jeremy T. Palma
Michael C. Woodard

Rissman, Barrett, Hurt,
Donahue, McLain & Mangan, P.A.
201 E. Pine Street,
15th Floor
Orlando, FL 32801

AGE/SEX/OCCUPATION OF PLAINTIFF OR DECEDENT:

Plaintiff is a 39 year old male entrepreneur.

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

N/A

DATE, TIME AND PLACE OF ACCIDENT OR OCCURRENCE:

The case involved an April 23, 2014 low speed rear-end motor vehicle accident on Highway 192 in Brevard County at the intersection of Dairy Road.

CAUSE OF INJURY:

Plaintiff alleged that as a result of the motor vehicle accident he sustained injuries to his right shoulder, neck and low back.

NATURE OF INJURY:

Plaintiff alleged as a result of the accident, he permanently injured his lumbar spine at the L5-S1 level as well as sustaining permanent injuries to his cervical spine at the C4-5, C5-6, and C6-7 Levels. Plaintiff also complained of temporary injuries to his right shoulder.

Plaintiff received a surgical recommendation at L5-S1 from Dr. Devin Datta, with the possibility of a future surgical recommendation at L4-5 due to adjacent disc disease.

PLAINTIFF'S EXPERT WITNESSES:

**Dr. David Williams
Radiologist
NSI of Melbourne
222 South Harbor Blvd., Suite 520
Melbourne, FL 32901**

Plaintiff called Dr. David Williams as an expert radiologist to testify regarding his findings from the MRI studies of the cervical and lumbar spine taken closest to the MVA. Dr. Williams testified that he could not tell if the herniations in plaintiff's neck and back were acute or chronic

because he did not have an older study to compare. Moreover, he testified that the MRIs of the cervical and lumbar spine showed objective degenerative changes and had no opinion if the herniations were related to the MVA within a reasonable degree of medical probability.

Dr. Donald Vliegenthart
Orthopedic Specialist
First Choice Medical Group
709 S. Harbor City Blvd., # 100
Melbourne, FL 32901

Plaintiff called Dr. Donald Vliegenthart as an expert orthopedic specialist. Dr. Vliegenthart testified that plaintiff had not had any serious neck or low back complaints prior to the MVA and therefore, plaintiff's neck and low back injuries were related to the motor vehicle accident based on plaintiff's subjective complaints.

On cross examination, Dr. Vliegenthart conceded his medical records showed that plaintiff lied several times to him about his medical condition and the basic underlying facts of the case such as the speed at impact.

Dr. Devin Datta
Orthopedic Surgeon
The B.A.C.K. Center
222 S. Harbor City Blvd.
Melbourne, FL 32901

Plaintiff called Dr. Devin Datta as an expert orthopedic surgeon. Dr. Datta testified that, in his opinion, plaintiff suffered two traumatic herniations in his neck as well as a traumatic herniation in his low back at the L5-S1 level. Dr. Datta further testified that plaintiff would require a lumbar fusion surgery at L5-S1 as well as a future surgery at the L4-5 level due to adjacent disc disease.

On cross examination, the defense elicited testimony from Dr. Datta that his opinions were based entirely on plaintiff's subjective complaints of pain after the motor vehicle accident and that Dr. Datta could not tell whether the alleged injuries were related to the MVA based solely on the objective medical evidence.

**Dr. John Russell
Life Care Planner
Russell & Tolchin, PLLC
2210 Front Street, Suite 203
Melbourne, FL 32901**

Plaintiff presented the testimony of Dr. John Russell as a life care planner. Dr. Russell testified that plaintiff would need up to \$650,000 in future medical care and treatment to cover a L5-S1 fusion and subsequent L4-5 adjacent disc fusion.

On cross examination, Dr. Russell was severely impeached for failing to provide any of the underlying data upon which he based his cost analysis, as well as admitting that his costs were calculated for the central Florida area, rather than that of Saipan where Mr. Ficke lived.

**Dr. Srinivas Kadiyala
Accident Reconstruction
Florida Forensic Engineering, Inc.
6708 Benjamin Road, Suite 500
Tampa, FL 33634**

Plaintiff called Dr. Srinivas Kadiyala as a retained accident reconstruction expert to testify that defendant's vehicle "could have been traveling 5 - 10mph at impact." The court struck Dr. Kadiyala's biomechanical engineering opinions.

On cross examination, Dr. Kadiyala was impeached on his questionable reconstruction practices, and his testimony that he performed an inspection of a vehicle that he did not bill for, take pictures of, or otherwise document in any way; but which formed the basis of his opinions as to speed.

DEFENDANT'S EXPERT WITNESSES:

**Dr. Steven Weber
Orthopedic Surgeon
Orlando Orthopaedic Center
25 W Crystal Lake Street, Suite 200
Orlando, Florida 32806**

Defendant called Dr. Steven Weber to testify as defendant's orthopedic surgery expert. Dr. Weber testified that, based upon his CME examination and the objective medical evidence, the MVA did not cause any permanent injury to plaintiff's neck, back or

right shoulder. Instead, Dr. Weber testified that the findings on the objective examinations were likely related to pre-existing degenerative changes.

Dr. Weber expressed opinions that plaintiff likely did not suffer an aggravation or activation injury in any area of the plaintiff's body. Dr. Weber testified that if the plaintiff's subjective complaints of pain were true, they would have likely resolved within two to three months.

Dr. Marc Kaye
Radiologist
Collier Radiology Consultants
2805 E. Oakland Park Blvd. #452
Fort Lauderdale, FL 33306

The defense called Dr. Kaye to the stand as an expert radiologist. Dr. Kaye testified that plaintiff did not suffer any acute injuries as demonstrated by the objective medical evidence and that plaintiff's cervical and lumbar findings were related to long-standing degenerative conditions which pre-dated the MVA. Dr. Weber also testified that plaintiff did not suffer any aggravation or activation of a pre-existing injury.

CHECK APPROPRIATE SPACE: √ Defense Verdict

VERDICT: Defense Verdict

DATE OF VERDICT: October 16, 2017

COMPARATIVE NEGLIGENCE:

N/A

JUDGMENT:

For Defendant

DATE OF JUDGMENT:

October 27, 2017

