

CASE INFORMATION SHEET
FLORIDA LEGAL PERIODICALS, INC.
P.O. Box 3370, Tallahassee, FL 32315-3730
(904) 224-6649/(800) 446-2998 * FAX (850) 222-6266

COUNTY AND COURT:

Orange County, Circuit Civil

NAME OF CASE:

TIFFANY GILCHRIST,

Plaintiff,

v.

JOSEPH ALLEN,

Defendant.

CASE DOCKET NO.: 14-CA-008061-0 **JUDGE:** Hon. Keith Carsten

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

Jeffrey Byrd
Jennifer Andrews

Jeffrey M. Byrd, P.A.
2620 E. Robinson Street
Orlando, FL 32803

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 30 year old unemployed female.

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

N/A

DATE, TIME AND PLACE OF ACCIDENT OR OCCURRENCE:

The case involved a July 29, 2010 motor vehicle accident at the intersection of Primrose and Anderson St. in Orlando, Orange County, FL. Defendant, Joseph Allen, ran a red light in his father's 2005 Subaru Forester and T-boned plaintiff's 2000 Ford Expedition on the driver side door.

CAUSE OF INJURY:

Plaintiff alleged that as a result of the motor vehicle accident she sustained permanent injuries to her cervical and lumbar spine, left arm and left shoulder.

NATURE OF INJURY:

Plaintiff alleged she permanently injured her cervical spine, lumbar spine, left arm and left shoulder. Plaintiff underwent four different surgical procedures performed by Dr. Richard Smith at Florida Center of Orthopedics under letters of protection which she related to the MVA. These procedures included:

- April 11, 2012 Left Ulnar Release;
- April 15, 2015 Left Arthroscopic Shoulder Repair;
- November 9, 2016 Cervical Artificial Disc Replacement at C5-6 and C6-7 Levels;
- March 15, 2017 Laminectomy and Fusion at L5-S1 Level.

At trial, the plaintiff claimed \$525,000 in past medical expenses that she related to the MVA. Plaintiff also claimed damages for future medical expenses, past lost wages and future lost earning capacity, as well as non-economic damages related to pain and suffering from permanent injuries.

PLAINTIFF'S EXPERT WITNESSES:

**Dr. Richard Smith
Orthopedic Surgeon
Florida Center for Orthopaedics
1555 Boren Drive
Ocoee, FL 34761**

Plaintiff called Dr. Richard Smith, her orthopedic surgeon, as her first witness. Dr. Smith spent the majority of his time on the stand commenting on her presentation in the first few weeks after the MVA and how her complaints were consistent in the months and years thereafter. He finally recommended surgery on her left shoulder in September of 2013 and further recommended surgery on her cervical and lumbar spine in January of 2014.

Dr. Smith testified that plaintiff sustained permanent injuries as a result of the July 29, 2010 MVA that necessitated the April 11, 2012 Left Ulnar Release, April 15, 2015 Left Arthroscopic Shoulder Repair, November 9, 2016 Cervical Artificial Disc Replacement at C5-6 and C6-7 Levels and March 15, 2017 Laminectomy and Fusion at L5-S1 Level.

Dr. Smith also testified that plaintiff would likely need an additional lumbar fusion and estimated her future medical care and treatment to be in excess of \$10,000 per year in addition to the cost of the future lumbar fusion surgery.

Defendant's cross examination of Dr. Smith focused on the letters of protection he had for both Florida Center for Orthopedics as well as Millennia Surgery Center - a combined sum of over \$424,000. Dr. Smith admitted that he has worked on as many as 21 cases for Mr. Byrd in the last three years as a treating physician in Orange County, that 40-50% of his practice focuses on patients in litigation, and that he does 50-100 depositions per year.

Further, the defense used the initial notes from Dr. Smith's physician assistant in August of 2010 who diagnosed plaintiff with a sprain/strain and refused to provide plaintiff with narcotic pain medication that plaintiff specifically requested. Finally, Dr. Smith admitted that there was nothing preventing plaintiff from working after the MVA, and that his records did not demonstrate that plaintiff was on any work restrictions.

Dr. James Shea
Pain Management Physician
Physical Medicine Pain Center
300 N. Mills Avenue
Orlando, FL 32803

Plaintiff called Dr. James Shea, her pain management physician as an expert witness. On direct examination, Dr. Shea testified that he saw plaintiff on 73 occasions between October 27, 2010 and July 18, 2013. During those treatments, Dr. Shea testified that plaintiff consistently complained of left sided radiculopathy and pain in her shoulder, neck and low back. Dr. Shea also testified that he performed EMG/NCV studies in January 2011 which indicated a possible L5 radiculopathy.

Based on plaintiff's presentations to him, Dr. Shea diagnosed her with permanent injuries to her left shoulder, neck and low back and opined she had a 10% whole person permanent impairment rating. He further testified that he continued to treat her from February 2011 through July 2013 with prescription narcotics which included Percocet, Soma and Lunesta.

The defense focused on Dr. Shea's financial interest in the outcome of the litigation by way of his letter of protection. The defense further used Dr. Shea's intake records to establish that plaintiff was referred by her attorney, and contrasted his medical records with those of her non-LOP medical providers who documented normal physical examinations.

Dr. Shea testified that plaintiff had reported falling to Dr. Shea in December 2011 and again in January 2012. Further, Dr. Shea admitted that he ultimately discharged the plaintiff from his practice in July 2013 because he was not comfortable continuing to prescribe her narcotic medications without any objective evidence of injury on her MRI studies.

Dr. Sean Mahan
Radiologist
Elite RAD
5840 Red Bug Lake Road, Suite 185
Winter Springs, FL 32708

Plaintiff called Dr. Sean Mahan as an expert radiologist and treating physician. On direct examination, Dr. Mahan

testified that he was a treating physician who read some of plaintiff's MRI studies, and that he also reviewed the remaining MRI studies that he did not initially read as a treating physician. Additionally, Dr. Mahan testified that he requested plaintiff's medical records from Mr. Byrd so that he could clinically correlate his findings on the MRIs to the MVA of July 29, 2010.

Dr. Mahan testified that the initial MRI studies were done with a lesser tesla strength magnet and were therefore not as optimal as the later MRIs. He also testified that the initial MRI studies were done with the patient in the supine position, and that because the studies were not weight bearing, they did not show the herniations which were actually present, but not visible.

Accordingly, Dr. Mahan testified that the August 2016 MRIs were the best studies to review because they showed, for the first time in his opinion, permanent herniations in the cervical and lumbar spine. He also testified that the August 2010 MRIs taken 2 weeks after the MVA that only showed minimal disc bulges were inferior.

On cross examination, Dr. Mahan admitted that he did not see any evidence of a labral tear of the left shoulder in either MRI. Further, Dr. Mahan testified that he did not have any opinion within a reasonable degree of medical probability whether the disc herniations he ultimately called in 2016 at C5-6 or C7-T1 were related to the MVA.

Dr. Mahan was significantly impeached with respect to his "clinical correlation" of the plaintiff's medical records because he did not recall what any of the pertinent medical records actually showed. Moreover, Dr. Mahan refused to accept that he was a retained expert for the plaintiff because he reviewed additional MRIs and medical records that went beyond the scope of his initial involvement as a reading radiologist.

DEFENDANT'S EXPERT WITNESSES:

Dr. Steven Bailey
Neurosurgeon
SIMED Spine and Neurosurgery
4741 NW 8th Avenue, Suite A
Gainesville, FL 32605

Dr. Bailey testified that plaintiff's cervical and lumbar imaging studies taken on August 11, 2010 did not show any abnormality whatsoever and essentially looked like normal studies of a 22 year old. Dr. Bailey further testified that, in his review of all the subsequent MRI studies, nothing appeared to have changed over time, and therefore, he did not relate the cervical and lumbar surgeries to the MVA.

Furthermore, Dr. Bailey testified that, based solely on plaintiff's subjective pain complaints, she likely suffered a sprain or strain injury which would have resolved in three months. Dr. Bailey also testified that plaintiff would not have any work restrictions after the initial 90 days after the MVA.

On cross examination, plaintiff's counsel attacked Dr. Bailey's testimony that the sprain/strain should have resolved within 90 days and used Boecher impeachment materials to paint Dr. Bailey as a hired gun for the defense.

Dr. Michael Jablonski
Orthopedic Surgeon
Jewett Orthopaedic Clinic
1717 S. Orange Avenue, Suite 103
Orlando, FL 32806

Defendant called Dr. Michael Jablonski as an expert in the field of orthopedic surgery to discuss plaintiff's claimed injuries to her shoulder and the subsequent shoulder surgery. He testified that plaintiff did not suffer any type of permanent injury to her left shoulder as a result of the MVA.

Dr. Jablonski testified that plaintiff's MRI images did not show a tear in plaintiff's labrum, but instead showed that she had multiple congenital abnormalities which were addressed in Dr. Smith's arthroscopic surgery.

Specifically, Dr. Jablonski testified that plaintiff had a sub-labral foramen and a downward sloping acromion that had nothing to do with the MVA. Accordingly, Dr. Jablonski did not relate her shoulder surgery to the MVA, and found that she likely suffered a soft tissue injury based solely on her subjective complaints.

**Dr. Paul Koenigsberg
Radiologist
4775 North Bay Road
Miami Beach, FL 33140**

Dr. Koenigsberg opined that the cervical and lumbar imaging studies after the MVA essentially looked normal and did not change over time. He stated that if he had to call anything, he would say there were minimal disc bulges at the C6-7 and L5-S1 levels that were degenerative in nature and in no way related to the July 29, 2010 MVA. Dr. Koenigsberg further testified that plaintiff did not aggravate any pre-existing degenerative condition.

With respect to the left shoulder, Dr. Koenigsberg testified that plaintiff had a downward sloping acromion which was a normal finding of a congenital condition and would explain her impingement syndrome.

CHECK APPROPRIATE SPACE: √ Plaintiff Verdict

VERDICT: \$165,738.

DATE OF VERDICT: March 13, 2018

COMPARATIVE NEGLIGENCE:

N/A

JUDGMENT:

After collateral source payments are set-off, the jury award will be reduced to \$90,738 plus taxable costs.

DATE OF JUDGMENT:

Not yet entered.

DEFENDANT'S OFFER:

On August 24, 2017 Joseph Allen filed a proposal for settlement to plaintiff for \$25,000.

