

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:

JOSEPH GALLO and WANDA
GALLO

Plaintiffs,

v.

STATE FARM MUTUAL AUTOMOBILE
INSURANCE COMPANY and EDMUND
THOMAS SMITH

Defendants.

CASE DOCKET NO.: 2015-CA-003672-0 **JUDGE:** Hon. Renee A. Roche

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

John Romano
Eric Romano
Jeffrey Mansell

Romano Law Group
EcoCenter, the Living Building
1005 Lake Avenue
Lake Worth, FL 33460

DEFENDANT(S) ATTORNEY(S)/TRIAL COUNSEL

Vance R. Dawson
Jeremy T. Palma
Michael C. Woodard

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

Defendant Edmund Smith did not appear at trial.

AGE/SEX/OCCUPATION OF PLAINTIFF OR DECEDENT:

Dr. Joseph Gallo was 59 at the time of the March 9, 2012 Motor Vehicle Accident and employed as an anesthesiologist.

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

N/A

DATE, TIME AND PLACE OF ACCIDENT OR OCCURRENCE:

Plaintiff filed suit against State Farm for benefits under his underinsured motorist policy in this case involving two separate motor vehicle collisions. Plaintiff filed suit against Mr. Smith for negligence.

March 9, 2012 Accident:

The first motor vehicle collision occurred on March 9, 2012 at 4:54 p.m. on Sand Lake Road at or near the intersection of Interstate 4, in Orlando, Orange County, Florida, when the 2003 Acura RSX owned and operated by Jason James Yager rear-ended Plaintiff's vehicle. The airbags did not deploy in either vehicle.

The estimated property damage to Mr. Yager's Acura by the investigating officer was \$1,250. Mr. Yager was cited for careless driving.

Plaintiff owned and operated a 2009 Ford Mustang Cobra. The estimated property damage to the Mustang by the investigating officer was \$750. Pictures of the vehicles after the accident show mild damage to the rear of Plaintiff's Mustang, and moderate damage to the front of Mr. Yeager's Acura.

August 16, 2013 Accident:

The second motor vehicle collision occurred on August 16, 2013 at 2:00 p.m. on Interstate 4 approximately 300 feet south of the West Anderson Street entrance ramp, in Orlando, Orange County, Florida. A 2004 Infinity G35 owned and operated by defendant Edmund Thomas Smith rear-ended Plaintiff's 2013 Toyota land cruiser in stop and go traffic. Plaintiff was a front seat passenger. The airbags did not deploy in either vehicle.

Mr. Smith was cited for following too closely. The officer did not estimate the damage to either vehicle. However, there was minimal damage to Plaintiff's rear bumper as shown by the photographs taken at the scene of the accident.

Because Plaintiff requested that he be extricated from his vehicle, the Orlando Fire Department cut the roof of plaintiff's land cruiser off to remove him and the vehicle was ultimately declared a total loss.

CAUSE OF INJURY:

Dr. Joseph Gallo was involved in two separate accidents, March 9, 2012 and August 16, 2013, which are the bases of this lawsuit. Dr. Gallo claimed that his injuries and resulting damages were difficult or impossible to apportion between the two separate accidents and further claimed that the tortfeasor in each accident was under-insured.

Dr. Gallo's claims included bodily injury and resulting pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, aggravation of pre-existing condition, loss of earnings in the past, and loss of ability to earn money in the future. Plaintiff claims these losses were either permanent or continuing in nature.

Plaintiff's wife, Wanda Gallo, made a consortium claim for past and future loss of services and companionship.

NATURE OF INJURY:

Dr. Gallo's injuries alleged as a result of the motor vehicle accidents included:

1. Permanent cognitive brain injury including short term memory loss;
2. Post concussive syndrome and intractable headaches;
3. Cervical Sprain;
4. Vestibular nerve damage;
5. Permanent pituitary damage and associated decreased growth hormone and testosterone production;
6. Chronic gastroenterology problems from pain medication;
7. A subsequent fall and right ankle trimaleolar fracture caused by his post concussive syndrome which necessitated surgical intervention.

Based on these alleged injuries, Plaintiff claimed that he was no longer able to work as an anesthesiologist and claimed up to \$6,100,000 in lost wages and lost future earning capacity. Plaintiff also claimed \$171,290 in past medical expenses and \$1,000,000 in future medical care allegedly related to the motor vehicle accidents.

PLAINTIFF'S EXPERT WITNESSES:

**Dr. Julie Bauer
Endocrinologist
Orlando Diabetes & Endocrine Specialists
6150 Metrowest Blvd., Suite 105
Orlando, FL 32835**

Dr. Bauer was Plaintiff's treating endocrinologist and testified via video for trial. Dr. Bauer testified at trial that Dr. Gallo suffered a non-specific injury to his pituitary gland during the second accident of August 16, 2013. Dr. Bauer's opinions were limited to her treatment of Dr. Gallo for decreased growth hormone production and his responses to growth hormone supplements.

On cross examination, Dr. Bauer admitted it would not be possible for her to opine that the pituitary damage was caused by either motor vehicle collision within a reasonable degree of medical probability.

**Dr. Andrew Akerman
Neuro-radiologist
Elite Radiology Inc.
5840 Red Bug Lake Rd., Suite 185
Winter Springs, FL 32708**

Dr. Akerman was a hybrid treating physician who testified based on his review of a November 2014 MRI of the Brain with Diffusion Tensor Imaging ("DTI") that abnormal findings were present consistent with a mild traumatic brain injury.

During cross examination at trial, Dr. Akerman admitted he had not compared his 2014 findings to the Brain MRI with DTI taken 6 days after the second MVA (which was read as normal) or any of the multiple other films of the head and neck. Further, Dr. Akerman admitted that he did not perform a quantitative analysis of the DTI images in order to relate his opinions to recognized scientific standards.

Dr. Michael Rubies
Pain Management Physician
JLR Center for Pain Medicine
711 E. Altamonte Drive, Suite 100
Altamonte Springs, FL 32701

Dr. Rubies treated Dr. Gallo as far back as December 2007 for headache and neck pain with narcotics and epidural steroid injections. Dr. Rubies testified that Dr. Gallo had chronic headaches and neck pain prior to the initial motor vehicle accident and that Dr. Gallo's symptoms were exacerbated by the motor vehicle accidents.

Like many of Plaintiff's treating physicians, Dr. Rubeis had a long personal relationship with Dr. Gallo offered some before and after testimony. Dr. Rubeis was also a partner of JLR anesthesia where Dr. Gallo had worked as an anesthesiologist for more than 20 years.

On cross examination, Dr. Rubies testified he could not say that the aggravations caused by the first and second MVAs were permanent within a reasonable degree of medical probability. Additionally, Dr. Rubeis shockingly testified that he did not know how Dr. Gallo's pain medication (oxycodone, diluadid, fentanyl, soma, and lyrica) would interact with one another, or whether Dr. Gallo should have been drinking while on the pain medicine.

Dr. Marc Sharfman
Neurologist
Headache and Neurological Treatment Institute
2137 W. State Road 434

Longwood, FL 32779-4983

Dr. Sharfman testified that despite treating Dr. Gallo for 5 years prior to the March 9, 2012 accident for migraine headaches, those headaches resolved sometime after December 2010 with medication.

Dr. Sharfman further testified that when he saw Dr. Gallo for the first time after the accident on May 8, 2012, approximately 3 months after the accident, he diagnosed Dr. Gallo with post-traumatic headache, exacerbation, post-concussion symptomatology, and post-traumatic cervical sprain.

On cross examination, Dr. Sharfman was significantly impeached with his own medical records indicating that Dr. Gallo was treating with him for migraine type headaches through December of 2012. Dr. Sharfman had no idea that Dr. Gallo went to a neurologist 6 days after the first accident who diagnosed him with analgesic headaches caused by chronic use of pain medication to treat his pre-existing migraine headaches and degenerative neck pain.

**Dr. Reginald Tall
Orthopedic Surgeon
Jewett Orthopaedic Clinic
1285 Orange Ave
Winter Park, FL 32789**

Dr. Tall testified at trial that due to Plaintiff's subjective complaints he is not able to work as a result of the March 9, 2012 MVA. Dr. Tall also testified that based upon the pre-existing degenerative changes in Dr. Gallo's cervical spine, in conjunction with post-accident complaints, Dr. Gallo was a surgical candidate and that Dr. Gallo likely suffered a permanent injury.

Like many of Plaintiff's treating physicians, Dr. Tall had a personal relationship with Dr. Gallo and offered some before and after testimony.

On cross examination, Dr. Tall testified in that there was no objective evidence of any findings on the post-accident cervical MRI's related to either accident. Further, Dr. Tall conceded that Dr. Gallo would likely never have a cervical surgery in the future based on past treatment history.

Dr. Patrick Gorman
Neuropsychologist
Florida Hospital
136 Benmore Drive
Winter Park, FL 32792

Dr. Gorman testified that Dr. Gallo suffered a cognitive disorder not otherwise specified related to a traumatic brain injury after the March 9, 2012 automobile accident. Furthermore, Dr. Gorman diagnosed Dr. Gallo with adjustment disorder with depressed mood secondary to severe pain and cognitive decline. Finally, Dr. Gorman had the opinion that Dr. Gallo's cognitive disorder and adjustment disorder were exacerbated after the August 16, 2013 auto accident, however, Dr. Gorman was not able to state with any specificity how the second accident of August 16, 2013 specifically affected Dr. Gallo since Dr. Gorman did not provide any follow-up testing after the second accident.

Gerri Pennachio
Life care planner
Counseling & Rehabilitation Associates, Inc.
811 S Missouri Ave.
Lakeland, FL 33815

Fredrick Raffa
Economist
Raffa Consulting Economists, Inc.
17 S. Osceola Ave., Suite 200
Orlando, FL 32801

Dr. Gallo also presented the testimony of Ms. Gerri Pennachio, a life care planner, and Dr. Fredrick Raffa, an economist. In their combined testimony, Dr. Gallo's past and future lost wage and lost earning capacity claims were estimated to be between \$6,000,000 and \$6,500,000 depending on the age he would have retired. Additionally, Dr. Gallo's future medical expenses would be in excess of \$1,000,000.

On cross examination, neither expert was aware that in Dr. Gallo's Examination Under Oath from November of 2013 he admitted he was 95% of the way to his 401k retirement goal as of June 2012, six months before the first motor vehicle accident.

DEFENDANT'S EXPERT WITNESSES:

**Dr. Paul Koenigsberg
Neuroradiologist
Baptist Hospital Radiology Department
8900 North Kendall Drive
Miami, Florida 33176**

Dr. Koenigsberg reviewed and compared the multitude of Plaintiff's pre and post accident imaging studies, particularly the imaging studies of the brain. In his opinion, there was not any evidence of an acute injury secondary to trauma in Plaintiff's head or cervical spine after either motor vehicle accident. Dr. Koenigsberg specifically opined that all of Plaintiff's brain studies are normal going back to February 8, 2007.

**Dr. Brad Herskowitz
Neurologist
The Neurology Group
9090 SW 87th Court, Suite 200
Miami, FL 33176**

Dr. Herskowitz reviewed all of Plaintiff's medical records and testified he did not believe Plaintiff's neurologic complaints were related to either accident. Dr. Herskowitz commented on Plaintiff's significant pre-accident history of cervical neck pain and headaches as a basis for concluding that the neck pain and headaches were not causally related to the subject motor vehicle accidents. In Dr. Herskowitz' opinion, Plaintiff's treatment history after the accident was consistent with his pre-accident condition and that the headaches and neck pain are likely cervicogenetic and could be related to the long term use of opiate pain medication.

Dr. Herskowitz did not believe that Plaintiff could have suffered even a mild TBI after either accident without the plaintiff striking his head, suffering a concussion, or losing consciousness.

**Dr. Glenn Larrabee
Neuropsychologist
Florida Psychological Association
408 Office Plaza Drive**

Tallahassee, FL 32301

Dr. Larrabee performed a compulsory neuropsychological examination of Plaintiff and was critical of Plaintiff's alleged brain injury and the cognitive dysfunctions that Plaintiff associates with it. Dr. Larrabee essentially opined that Plaintiff suffered from somatic symptom disorder (SSD formerly known as "somatization disorder" or "somatoform disorder") and illness anxiety disorder (formerly known as "hypochondria"). Both diseases are forms of mental illness that causes one or more bodily symptoms, including pain, and pre-dated the subject accidents. Dr. Larrabee testified that Plaintiff may not be "faking" his symptoms in the typical malingering fashion, but is experiencing distress related to his pre-existing mental condition.

Dr. David DeLonga
Biomechanical Engineer and accident reconstruction
Bloomberg Consulting
3416 Gulf Breeze Pkwy.
Gulf Breeze, FL 32563

Dr. DeLonga testified the change in velocity (Delta V) of the two motor vehicle accidents was 7.6 mph and 6.4 mph respectively. He also testified that it was extremely unlikely that either accident could have caused a closed head injury, especially in light of Dr. Gallo's repeated testimony that he did not strike his head on the head rest or lose consciousness in either accident. Accordingly, Dr. DeLonga believed the only injury Dr. Gallo suffered was a cervical sprain after the 2d MVA which resolved within 1 to 3 months.

CHECK APPROPRIATE SPACE: √ Plaintiff Verdict

VERDICT:

The jury deliberated 4 hours, 12 minutes before returning a total verdict of \$8,865 for past medical expenses related to the ambulance ride and initial ED visit from the second accident, as instructed by the defense during closing. The jury did not award any damages for future medical expenses, past and future lost earnings, pain and suffering or consortium. After collateral source set-offs, the net verdict will be zero.

DATE OF VERDICT: April 28, 2017

COMPARATIVE NEGLIGENCE:

N/A

JUDGMENT:

After collateral sources are set-off from the verdict, judgment will be entered in favor of Defendant.

DATE OF JUDGMENT:

Not yet entered as collateral source set off issues have yet to be resolved.

DEFENDANT'S OFFER:

Defendant's March 17, 2016 proposals for settlement for a combined amount of \$30,000 have been triggered and State Farm will be entitled to recover of taxable costs and attorney's fees upon a finding of entitlement by the Court.

PLAINTIFF'S DEMAND:

Immediately prior to trial, State Farm rejected Plaintiff's inside the policy limit demand of \$1,500,000. Plaintiffs' counsel, John Romano, requested \$12,000,000 in closing for the claims of Dr. and Ms. Gallo.

ATTORNEY'S COMMENTS:

At trial, Dr. Gallo presented the testimony of his friends (who were also his treating physicians) who knew him personally and professionally for 25+ years. All of Dr. Gallo's treating physicians related the TBI and cognitive deficits to the first MVA. Yet, none of the treating physicians had reviewed neurologist Mark Klafter's records of a normal neurologic examination taken 6 days after the first MVA, or were even told about the treatment by Dr. Gallo.

During the defendant's case in chief State Farm presented the testimony of four expert witnesses and focused heavily on the side effects of the 22+ medications that Dr. Gallo was taking both before and after the subject MVAs as an explanation for his headaches and allegations of brain injuries.

