

CASE INFORMATION SHEET
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COUNTY AND COURT:

Ninth Judicial Circuit in and for Orange County

NAME OF CASE:

CHANTEL CHIU,

Plaintiff,

v.

VICTORIA RICHARDSON, as Personal
Representative for the Estate of SIBBALD
MICHAEL SMITH, and JOSHUA D. SMITH,

Defendants.

CASE DOCKET NO.: 2013-CA-9671-O

JUDGE: Chad K. Alvaro

PLAINTIFF'S ATTORNEYS / TRIAL COUNSEL:

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DEFENDANT'S ATTORNEYS / TRIAL COUNSEL:

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AGE/SEX/OCCUPATION OF PLAINTIFF:

Plaintiff was an 18-year-old female student at the time of the July 30, 2009 auto accident and was 29 years old at the time of trial in January of 2020.

DATE, TIME AND PLACE OF ACCIDENT OR OCCURRENCE:

The subject motor vehicle accident occurred at approximately 12:21 AM on July 30, 2009 on Alafaya Trail at the intersection of Mendel Drive in Orlando, Orange County, Florida.

CAUSE OF INJURY:

Defendant, Joshua Smith, was travelling south in the middle of three available southbound travel lanes of Alafaya Trail when Plaintiff pulled her vehicle from the eastbound lane of Mendel Drive partially into the middle lane of Alafaya Trail and into the path of Defendant's oncoming vehicle. Defendant was travelling at approximately 50 miles per hour at the time of impact. The front of Defendant's vehicle collided with the left driver's side quarter panel of Plaintiff's vehicle and caused Plaintiff's vehicle to spin clockwise.

The impact caused Plaintiff's face to strike the steering wheel, resulting in the immediate loss of multiple teeth in Plaintiff's upper jaw and causing the need for multiple oral surgical procedures to replace the lost teeth. Plaintiff also treated for neck and back pain following the collision and underwent an initial lumbar surgery in 2010 followed by a second lumbar surgery in 2017 to address lumbar disc herniations Plaintiff related to the subject accident.

NATURE OF INJURY:

The subject accident caused immediate orofacial trauma as a result of Plaintiff's face striking the steering wheel. Plaintiff received treatment at the scene by paramedics and was transported by ambulance to the emergency department of Florida Hospital East. The following day, Plaintiff began treating with a chiropractor for neck and back pain.

Within days of the accident, Plaintiff also began receiving dental treatment to address her orofacial injuries and missing teeth. Plaintiff underwent an initial surgical procedure to install temporary false teeth in August of 2009 under the care of Dr. Zakir Shaikh. Plaintiff later underwent a series of oral surgeries under the care of Drs. Sean Walcott and Brian Ramski in December of 2011 to place permanent implanted teeth in her upper jaw.

With respect to her neck and back injuries, Plaintiff eventually came under the care of Dr. Robert Masson, a neurosurgeon, after her neck and back pain failed to respond to chiropractic treatment. A lumbar MRI obtained in March of 2010 was interpreted by Dr. Sean Mahan to demonstrate a

disc herniation at the L5-S1 level. Thereafter, Plaintiff underwent an L5-S1 lumbar microdiscectomy performed by Dr. Masson in June of 2010. Plaintiff continued to complain of neck and back pain following Dr. Masson's initial surgery.

Plaintiff eventually came under the care of Dr. Scott Katzman of Advanced Orthopedics in December 2012 after Plaintiff relocated to South Florida. Plaintiff continued treating intermittently for neck and back pain through July of 2017, at which point she returned to Dr. Katzman for surgical evaluation. Dr. Katzman performed a lumbar laminectomy and partial discectomy at L4-5 and L5-S1 in October of 2017.

Plaintiff testified at trial in January of 2020 that she continued to experience ongoing residual neck and low back pain as a result of her accident-related injuries.

PLAINTIFF'S EXPERT WITNESSES:

Dr. Robert Masson: Dr. Masson performed Plaintiff's initial lumbar surgery at L5-S1 in 2010. Dr. Masson's surgery was billed under a letter of protection. Dr. Masson testified at trial that the need for surgery was solely caused by acute disc injuries Plaintiff sustained during the July 2009 subject accident.

Dr. Scott Katzman: Dr. Katzman performed Plaintiff's second lumbar surgery at the L4-5 and L5-S1 levels in 2017. Dr. Katzman testified that the need for his surgery, which was also performed under a letter of protection, was causally related to the 2009 subject accident. Dr. Katzman also opined that Plaintiff would likely require future lumbar surgery as a result of her accident injuries.

Dr. Victor Lasa: Dr. Lasa was the chiropractor who initially treated Plaintiff for post-accident neck and back pain complaints. Dr. Lasa testified that Plaintiff had sustained neck and back injuries in the accident and related the need for his treatment and bills to the accident. Dr. Lasa also drew a diagram of the subject collision during his initial consultation with Plaintiff and testified as to the details of the accident as relayed to him at the time by Plaintiff.

Dr. Sean Mahan: Dr. Mahan testified as an expert radiologist for Plaintiff. Dr. Mahan testified that Plaintiff's post-accident cervical and lumbar MRIs demonstrated acute disc bulges and herniations as a direct result of trauma sustained during the subject accident. Specifically, Dr. Mahan related the L5-S1 herniation, which was the target of Dr. Masson's initial surgery, to the subject accident.

Dr. Zakir Shaikh: Dr. Shaikh testified as an oral surgeon and was the first dental specialist to treat Plaintiff for the missing upper teeth caused by the subject collision. Dr. Shaikh performed the initial procedure to install temporary implants during August of 2009. Dr. Shaikh related all of his treatment and medical bills to the injuries Plaintiff sustained in the subject accident.

Dr. Brian Walcott: Dr. Walcott was the second dental specialist to treat Plaintiff for her missing teeth and first examined Plaintiff in May of 2010. Dr. Walcott performed oral surgery to prepare Plaintiff for permanent tooth implants and referred Plaintiff to Dr. Brian Ramski for a follow up

procedure to place the implants. Dr. Walcott related Plaintiff's orofacial trauma and missing teeth to injuries she sustained in the subject accident.

Dr. Brian Ramski: Dr. Ramski was the third dental specialist to testify at trial on Plaintiff's behalf. Dr. Ramski performed the procedure to place permanent tooth implants in December of 2011 in conjunction with Dr. Walcott. Dr. Ramski related the need for his treatment and medical bills to the trauma Plaintiff sustained in the subject accident.

DEFENDANT'S EXPERT WITNESSES:

Dr. John Jenkins: Dr. Jenkins is a neurosurgeon and testified as Defendant's only medical expert. Dr. Jenkins opined that Plaintiff had not sustained any acute spinal injury in the subject accident. Dr. Jenkins' opinions were limited to Plaintiff's claimed spinal injuries and did not address Plaintiff's orofacial injuries which resulted from her mouth striking the steering wheel.

Dr. Ying Lu, Ph.D.: Dr. Lu was Defendant's biomechanical expert and testified that Plaintiff was not wearing a seatbelt during the subject accident. Dr. Lu's opinions were based on Plaintiff's pattern of injuries and a study of an exemplar vehicle. Dr. Lu testified that Plaintiff's failure to wear a seatbelt was the only explanation for the injury pattern to Plaintiff's mouth.

Steven W. Mitchell, Ph.D., P.E.: Dr. Mitchell testified as Defendant's accident reconstruction expert and testified that the subject collision occurred at an impact angle of approximately 38 degrees as a result of the front of Plaintiff's vehicle projecting out into the path of Defendant's oncoming vehicle. Dr. Mitchell also testified that the time that Ms. Chiu's vehicle first entered the right southbound outside lane of Alafaya Trail to the moment of impact would have been approximately 1.2 seconds.

CHECK APPROPRIATE SPACE: X Verdict

DATE OF VERDICT:

February 6, 2020.

VERDICT:

Defense verdict for Joshua Smith and the Estate of Sibbald Michael Smith.

COMPARATIVE NEGLIGENCE:

The defense argued that Plaintiff was solely at fault for causing the accident by pulling out into the path of Defendant's vehicle while he had the right-of-way. The defense also argued that Plaintiff was comparatively negligent for failing to wear a seatbelt.

Prior to trial, Plaintiff stipulated to some degree of comparative negligence in contributing to the accident but denied that she had failed to wear a seatbelt.

JUDGMENT:

Final judgment has not yet been entered for Defendants.

DEFENDANT'S OFFER:

On April 12, 2019, Defendants served a \$25,000 proposal for settlement to Plaintiff.

PLAINTIFF'S DEMAND:

On March 15, 2019, Plaintiff served a \$50,000 Proposal for Settlement to Defendant Victoria Richardson as personal representative for the Estate of Sibbald Michael Smith.

On March 15, 2019, Plaintiff served a \$250,000 Proposal for Settlement to Defendant Joshua Smith.

During closing arguments, Plaintiff suggested that the jury award a range of \$3.9 million to \$4.1 million in total damages. Plaintiff had stipulated to negligence prior to trial and suggested that the jury apportion approximately 50% to 86.6% of negligence onto Joshua Smith.

ATTORNEY'S COMMENTS:

At the time of the accident, Joshua Smith was operating a vehicle owned by his father, Sibbald Michael Smith. Sibbald Michael Smith subsequently passed away. The Estate of Sibbald Michael Smith, through estate representative Victoria Richardson, was named as a defendant solely based on vicarious liability through vehicle ownership.

The defense contested negligence throughout trial. Defendant, Joshua Smith, admitted that he was travelling 50 miles per hour when the posted speed limit where the accident occurred was 45 miles per hour. Defendant Smith testified that Plaintiff pulled her vehicle into the middle travel lane into the path of his vehicle without warning and that he had no time to react and avoid the collision. It was undisputed that Smith took no evasive action prior to the time of impact. Plaintiff testified that she looked to the left (in the direction of Defendant's oncoming vehicle) before making her turn onto Alafaya but did not see the Smith vehicle.

Plaintiff stipulated to some degree of comparative fault prior to trial but argued during trial that Defendant should have seen her vehicle and taken evasive action as the Chiu vehicle pulled out into the travel lanes of southbound Alafaya. Plaintiff also argued that Defendant's unlawful speed contributed to the accident.

Submitted By: **Jeremy T. Palma/Aaron E. Eagan** **Date: February 18, 2020**

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