

SOUTHERN

restrictions imposed on him in January 2005 due to the neck injury he suffered. He also contended that he could no longer golf, surf or ski.

Papale sought recovery of \$30,000 in past medical bills, \$150,000 in future medical bills and pain and suffering, and \$650,000 in future lost earnings.

The defendants argued that Papale had preexisting degenerative disc injury, that the injury caused only soft-tissue damage, with no radiculopathy and a negative EMG, and surgery will not be necessary. The defense further contended that Papale's injury complaints were not consistent with the head injury he received.

The defense also contended that Papale was fully capable of finding a job with the same earning capacity as his previous occupation.

The State Compensation Insurance Fund (SCIF) dismissed its complaint-in-intervention a week before trial and filed a Notice of Lien instead. Papale had been requesting authorization from SCIF for surgery over the past two years and authorization was approved while trial was in progress.

RESULT The jury found for the plaintiff and determined that his damages totaled \$890,000.

JOEL E. PAPALE	\$30,000 past medical cost \$150,000 future medical cost \$460,000 future lost earnings <u>\$250,000 past pain and suffering</u> \$890,000
DEMAND	\$400,000
OFFER	\$300,000
INSURER(S)	ARCH Insurance Co. for all defendants
TRIAL DETAILS	Trial Length: 5 days Trial Deliberations: 7 hours Jury Vote: 9-3
PLAINTIFF EXPERT(S)	Jack Akmakjian, M.D., orthopedic surgery, Riverside, CA Richard H. Anderson, Ph.D., vocational rehabilitation, Westminster, CA Darren Bergey, M.D., orthopedic surgery, Colton, CA David T. Fractor, Ph.D., economics, Pasadena, CA Thomas A. Schweller, M.D., neurology, San Diego, CA
DEFENSE EXPERT(S)	Jeffrey A. Bounds, M.D., neurology, Loma Linda, CA

Alfred D. Chichester, M.B.A., vocational rehabilitation, Mentone, CA
Ronald C. Gable, economics, Fountain Valley, CA

EDITOR'S NOTE This report is based on information provided by plaintiff's counsel and defense counsel.

—Kristen Brown

SAN BERNARDINO COUNTY

MOTOR VEHICLE

Multiple Vehicle — Speeding

Suit: Amputations were result of accident two years prior

SETTLEMENT	\$4,100,000
CASE	Dana Bouchard v. Javier Gonzalez and Roberta Ybarra, No. CIVSS705674
COURT	Superior Court of San Bernardino County, San Bernardino, CA
NEUTRAL(S)	Jeffrey Krivis
DATE	5/25/2010
PLAINTIFF ATTORNEY(S)	Arash Homampour, The Homampour Law Firm, APLC, Beverly Hills, CA Shahab Sean Shamsi, The Shamsi Law Firm, APC, North Hollywood, CA
DEFENSE ATTORNEY(S)	A. Bennett Combs, Law Offices of A. Bennett Combs, Mission Viejo, CA (Javier Gonzalez) None reported (Roberta Ybarra)

FACTS & ALLEGATIONS On Sept. 30, 2006, plaintiff Dana Bouchard, 49, was southbound on Auto Center Drive in the No. 1 lane, when her vehicle was struck by a vehicle operated by the Javier Gonzalez, who was driving northbound on Auto Center Drive in San Bernardino.

Bouchard sued Roberta Ybarra, the driver of another vehicle allegedly involved in the incident, and Gonzalez for motor vehicle negligence.

Bouchard settled with Ybarra for the \$100,000 limits on her insurance policy.

Bouchard alleged that Gonzalez was driving too fast for the roadway conditions and that he was liable for the incident and her subsequent injuries.

Gonzalez claimed he struck Bouchard's vehicle in an attempt to avoid striking the vehicle operated by Ybarra, who made a left turn from the left turn lane of southbound Auto Center Drive onto Showcase Drive North. Gonzalez contended that he was driving under the 55 mph speed limit at the time of the crash.

The defense contended that Gonzalez only struck Bouchard's vehicle after rebounding off Ybarra's truck, when Ybarra turned left in front of him.

The police report determined that Ybarra was the sole cause of the accident for making an unsafe left turn and did not attribute any comparative fault on Gonzalez.

The defense claimed that Gonzalez was brought in as a Doe defendant once Bouchard realized Ybarra only had a \$100,000 policy.

INJURIES/DAMAGES *amputation, above-the-knee; cuboid fracture; fasciotomy; fracture, calcaneus; fracture, fibula; fracture, patella; fracture, tibia; internal fixation; open reduction*

Bouchard sustained a right tibia-fibular fracture, a left patellar fracture, and bilateral calcaneus and cuboid fractures. She underwent open reduction and internal fixation of patella and open reduction and internal fixation of the tibial plateau.

Two years after the incident, Bouchard underwent right and left above the knee amputations. She alleged that the September 2006 incident proximately caused the amputations. On Aug. 22, 2008, Bouchard underwent an angiogram that showed a left superficial femoral artery that was completely occluded with moderate disease in the right popliteal vein. She was diagnosed with multifocal disease bilaterally. On Oct. 18, 2008, she had an above-the-knee amputation of her right leg. On March 8, 2009, she had an above-the-knee amputation of her left leg.

The plaintiff's experts in biomedicine and vascular surgery both opined that the loss of the plaintiff's lower extremities was proximally and directly related to the injuries she sustained in the accident on Sept. 30, 2006. The biomedical expert opined, in part, that: the subject incident resulted in a total lifestyle change for the plaintiff, as prior to the accident she had a job that required routine manual labor and heavy lifting and following the accident, but due to her injuries she became essentially completely sedentary; being sedentary and immobile are two things which historically have been shown through research and studies to cause acceleration of atherosclerosis; the plaintiff never achieved the level of health and physical well being that she enjoyed prior to the accident; the plaintiff had an ongoing, cascading series of medical events that involved multiple medical treatments and surgeries and this culminated in the loss of her lower extremities; the pathology of atherosclerosis has been investigated for years and there are a number of research articles based on animal and human studies which clearly establish a relationship between vascular trauma and not only the occurrence of, but the acceleration of atherosclerotic process; as stated

by the expert in vascular surgery, it would be unusual for someone of plaintiff's age at the time of the subject incident to have isolated severe atherosclerosis primarily of the popliteal and adjacent vessels; the trauma she sustained in the motor vehicle accident was to her knees and ankles and the popliteal arteries and adjacent vasculature in these areas received stretch injury as well as direct vascular trauma from displacement due to the fractured bones, as well as the forces of the subject incident sustained by the ankle and knee joints; because of post-traumatic swelling, fasciotomies were done in an attempt to preserve the viability of tissues and this surgical trauma, as well as the accident trauma, damaged small vessels and precluded their ability to revascularize tissue at a later date; and atherosclerosis has been proven to be a consequence of an inflammatory reaction to intimal vessel injury and the stress and strain on the vascular walls in the crash resulted in intimal injury that led to the beginning of or the acceleration of the atherosclerotic process at the site of trauma.

The defense contended that the amputations were unrelated to the incident but were the result of Bouchard's preexisting medical conditions, poor lifestyle and health habits, excessive smoking, hypertension and peripheral vascular disease.

The defendant's expert, also a vascular surgeon, and the plaintiff's expert in vascular surgery's partner, opined that the amputations that were two years and 2.5 years after the incident were unrelated to the incident. The defendant and the vascular surgeon contended that plaintiff would have suffered the amputations irrespective of the subject motor vehicle incident as she had hypertension, peripheral vascular disease and was a heavy smoker.

RESULT The parties agreed to a settlement of \$4 million policy limits prior to trial.

Including the earlier settlement with Ybarra, Bouchard recovered a total of \$4.1 million.

INSURER(S) Old Republic for Gonzalez

**PLAINTIFF
EXPERT(S)**

Joseph L. Burton, M.D., injury biomechanics, Alpharetta, GA
David T. Fractor, Ph.D., economics, Northridge, CA
Timothy J. Long, M.S., accident investigation & reconstruction/ failure analysis/product liability, Valencia, CA
Lawrence S. Miller, M.D., physical therapy, Los Angeles, CA
Jan Roughan, B.S.N., P.H.N., R.N., life care planning, Monrovia, CA
Keith E. Vinnecour, C.P.O., prosthetics, Beverly Hills, CA
Willis Wagner, M.D., vascular surgery, Los Angeles, CA

SOUTHERN

Lester Zacker, M.D., psychiatry,
Sherman Oaks, CA

**DEFENSE
EXPERT(S)**

Ed Cababa, accident reconstruction,
Yorba Linda, CA
David V. Cossman, M.D., vascular surgery,
Los Angeles, CA
William Kunzman, P.E., traffic safety
consulting, Orange, CA

EDITOR'S NOTE This report is based on information that was provided by plaintiff's counsel and defense counsel.

—Priya Idiculla

CONSTRUCTION

Accidents — Workplace — Construction Site

Concrete finisher knocked unconscious in incident

DECISION **\$3,279,098**
ACTUAL **\$4,204,098**

CASE Danny Arriola Sr. v. Fleming Concrete
Pumping Inc., Dennie Manning Concrete,
Inc., and JRD Construction, Inc.,
No. CIVSS 812981

COURT Superior Court of San Bernardino County,
San Bernardino, CA

JUDGE John P. Wade

NEUTRAL(S) Alan G. Saler

DATE 5/14/2010

**PLAINTIFF
ATTORNEY(S)** Stephen C. Ball, Ball & Roberts,
Pasadena, CA
Andrea R. Williams, Ball & Roberts,
Pasadena, CA

**DEFENSE
ATTORNEY(S)** Todd R. Becker, Johnson, Cebula & Rygh
APC, Long Beach, CA (Dennie Manning
Concrete, Inc.)
John P. Donovan, Koeller, Nevecker,
Carlson & Haluck, L.L.P., Irvine, CA
(Fleming Concrete Pumping Inc.)
None reported (JRD Construction)

FACTS & ALLEGATIONS On Aug. 14, 2008, plaintiff Danny Arriola Sr., 64, a concrete finisher, was engaged in a concrete pour at Frisbee Middle School in Fontana. JRD Construction was the contractor for the job, and the concrete was purchased and delivered to the job site by Dennie Manning Concrete. The concrete was to be pumped by Fleming Construction via a boom pump. Shortly after the pour began, the boom pump operator encountered a plug and as pressure mounted in the hose, the plug suddenly ejected and the whipping boom struck Arriola on the side of his head, knocking him unconscious.

Arriola sued Fleming Concrete Pumping, Dennie Manning Concrete and JRD Construction, alleging negligence. He contended that the contractor and subcontractor negligently pumped the concrete and negligently managed a plug in the pump.

The defendants all blamed each other.

INJURIES/DAMAGES *head; headaches; hemorrhage; subdural hematoma; unconsciousness*

Arriola was immediately transported to Arrowhead Regional Medical Center in Colton. Although there was radiographic evidence of subdural bleeding, the hemorrhage appeared stable and surgical intervention was deferred. He was discharged from Arrowhead approximately four days later.

Complaining of headaches, Arriola was admitted to Kaiser Fontana on Nov. 6, where scans showed active subdural bleeding and surgical evacuation of the bleed was performed.

Arriola claimed \$228,987.35 for past medical expenses.

RESULT In January 2010, the plaintiff reached a \$925,000 settlement with Fleming Concrete and Dennie Manning Concrete. Under the settlement, \$900,000 was paid on behalf of Fleming Concrete and \$25,000 was on behalf of Dennis Manning Concrete.

JRD's attorneys withdrew before the settlement. In May 2010, the plaintiff obtained a default judgment against JRD for \$3,279,097.92.

In total, the plaintiff is to recover \$4,204,097.92.

EDITOR'S NOTE This report is based on information that was provided by plaintiff's counsel. Defense counsel did not respond to the reporter's phone calls.

—Priya Idiculla

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