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Motor Vehicle

Car crash caused neck injuries, plaintiff alleged

Verdict: (P) \$135,000.00

Case Type: No-Fault Case, Motor Vehicle - Rear-ender, Motor Vehicle - Multiple Vehicle, Civil Practice - Summary Judgment

Case: Jhon Vargas v. Renee M. Marquis and Laurence G. Marquis, No. 2545/05

Venue: Dutchess Supreme, NY

Judge: Thomas J. Dolan

Date: 12-22-2008

PLAINTIFF(S)

Attorney:

- Anthony Pirrotti, Jr.; Pirrotti Law Firm LLC; Scarsdale, NY, for Jhon J. Vargas

Expert:

- Richard Radna M.D.; Neurosurgery; New York, NY called by: Anthony Pirrotti, Jr.

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DEFENDANT(S)

Attorney:

- Richard G. Corde; Boeggeman, George, & Corde; White Plains, NY, for Renee M. Marquis, Laurence G. Marquis

Expert:

- Sondra Pfeffer M.D.; Radiology; New York, NY called by: Richard Corde

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- Ralph Purcell M.D.; Orthopedic Surgery; Tarrytown, NY called by: Richard Corde

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Insurer:

- New York Central Mutual Fire Insurance Co. for both defendants

Facts:

On Aug. 28, 2003, plaintiff Jhon Vargas, 36, a laborer, was driving on State Route 299, near its interchange at the New York State Thruway, in New Paltz. While her vehicle was stopped in traffic, its rear end was struck by a trailing vehicle that was being driven by Renee Marquis. Vargas claimed

that he sustained injuries of his neck.

Vargas sued Marquis and the owner of Marquis' vehicle, Laurence Marquis. Vargas alleged that Renee Marquis was negligent in the operation of her vehicle. He further alleged that Laurence Marquis was vicariously liable for Renee Marquis' actions.

Vargas' counsel moved for summary judgment of liability, and the motion was granted. The trial addressed damages.

Injury:

Vargas claimed that he sustained herniations of his C3-4, C4-5 and C5-6 intervertebral discs, with compression of the associated nerve roots. He also claimed that he suffered post-traumatic cervical myelo-radiculopathy. He was hospitalized for three days immediately following the accident and exhausted conservative treatment options, including treatment with a chiropractor and acupuncture. Vargas was ultimately referred for a neurosurgical evaluation by the treating physician.

On June 24, 2004, the treating physician performed a decompressive laminotomy/facetectomy C3-4 surgery, a decompressive laminotomy/facetectomy C4-5 surgery, and a decompressive laminotomy/facetectomy C5-6 surgery, which was extended to full laminectomy at C4 and C5.

Vargas was involved in a motor-vehicle accident five months before the subject accident and was still receiving chiropractic treatment on the actual day of the subject accident. He was able to return to his job as a laborer after prior accident. However, Vargas was unable to return to work as a laborer following the subject accident.

Vargas sought recovery of damages for his past and future pain and suffering. He made no claim for lost earnings because of his illegal immigrant status and receiving payments for his work in cash. Vargas asked the jury for \$200,000 for past pain and suffering and \$300,000 for future pain and suffering.

Defense counsel contended that Vargas did not sustain a serious injury, as defined by the no-fault law, Insurance Law § 5102(d). He argued that Vargas' condition was the result of the prior accident, which caused a herniation and/or degenerative changes, not the subject accident. Two prior neurosurgeons' records indicated that Vargas was normal or that his complaints could not be explained, and the chiropractor record said that he complained of severe pain one month before the accident.

The defense's radiologist testified that the C4-5 herniation was present on the prior MRI and that Vargas had a ridge/disc complex, which indicated he had a herniation and preexisting disc disease.

The defense's orthopedic surgeon testified that the herniation was from the prior accident and that Vargas' surgery was not related to the subject accident. The orthopedic surgeon also conceded that his report does not say that.

Verdict Information The jury found that Vargas' damages totaled \$135,000. Judge Thomas Dolan added interest of \$28,895.72. He also added costs of \$2,521.57. Thus, Vargas' recovery totaled \$166,417.29.

Jhon J. Vargas

\$75,000 Personal Injury: Past Pain And Suffering

\$60,000 Personal Injury: Future Pain And Suffering

Post-Trial: Defense counsel has indicated that he will move to strike Vargas' bill of costs.

Editor's Comments This report is based on information that was provided by plaintiff's and defense counsel.