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Chiropractor Wins 'No Cause' Verdict

Full- Size Photos, Video Corroborated Account

The plaintiff, a 41-year-old massage therapist, was offered an adjustment by the defendant chiropractor. The adjustment was to take place on a Zenith Hi-Lo table that hydraulically lowers from vertical to horizontal. When approaching such a table, the patient's feet are placed on a platform, hands are to be placed on pads just above shoulder level and the face is cradled between face pads. The chiropractor then activates a switch that causes the table to rotate from vertical to horizontal. There is a pinch point between bars underneath the table.

The plaintiff alleged she did not place her hands on the pads and was not instructed to do so by the chiropractor. The chiropractor testified the plaintiff initially placed her hands on the pads (as she had done on three prior adjustments) and then moved them from the pads to the bars as the table was going down. While the table was being lowered, the defendant's attention was directed toward the plaintiff's child, who was also present in the room. The plaintiff's hands were caught between the bars beneath the table and the housing for the motor.

After an initial concern about possible fractures, the subsequent treating hand surgeon indicated the X-rays did not confirm fractures.

The incident occurred on Oct. 7, 2002. By Oct. 10, 2002, the hand surgeon confirmed there was no evidence of acute bony or soft tissue injury and that the plaintiff suffered primarily from contusion injuries to the hands. The plaintiff was returned to light duty work on Oct. 10, 2002, and returned to work without limitation on Oct. 31, 2002.

The plaintiff chose not to return to work at that time and never did return to any full-time job. Additional complaints led to a referral for a bilateral EMG and nerve conduction study, which returned a negative on Dec. 11, 2002.

A family practitioner noted normal sensation, no muscle atrophy, good range of motion, good strength, and no objective signs of reflex sympathetic dystrophy (RSD) on Jan. 23, 2003, yet concluded there was an "impression of RSD." He referred the plaintiff to a pain clinic, but she elected not to go.

Much of the evidence at trial related to the question of RSD/CRPS. The defense physiatry expert examined the plaintiff twice and found no evidence of RSD/CRPS. The plaintiff utilized the treating pain doctor to promote the argument that the plaintiff had the ailment and was disabled from full-time employment.

As to the negligence issue, the plaintiff argued the defendant was aware the table had pinch points that could result in severe hand injuries and did not tell the plaintiff or any of his other patients that those dangers existed. The defendant acknowledged that he never told the plaintiff there was any safety reason to place her hands on the pads. On the day of the injury, he did not tell the plaintiff to place her hands on the pads or to keep them there.

The defendant admitted he lowered the table for a full four to five seconds with his back turned to the table (while watching the child) without monitoring the plaintiff.

The plaintiff also argued that the defendant admitted reading the owner's manual with its numerous warnings and instructions to avoid harm.

Defense counsel argued that several factors favored a finding of no negligence, including: (1) the defendant had adjusted the plaintiff on the same table on three prior occasions without incident (which the plaintiff denied); (2) the defendant testified he demonstrated to the plaintiff how to properly position herself at the time of her first adjustment; (3) the defendant told the plaintiff to keep her hands on the pads as the table was being lowered at the time of her first adjustment; (4) the defendant knew that there was a clearly visible warning sign, which also contained a diagram of hands being pinched if they were not kept in the proper position; (5) the defendant testified the plaintiff's hands were on the pads when he pressed the button to lower the table and the patient had moved her hands while the plaintiff was being lowered; and (6) the defendant argued that the plaintiff had been adjusted on several prior occasions, by another chiropractor, on an identical table, before the incident in question.

Moreover, defense counsel said that, after the incident occurred, the defendant testified the plaintiff admitted she could not believe she had been so stupid.

Defense counsel told Lawyers Weekly the key to winning was using several near full-size photographs of the table in its raised and lowered position to support the argument that the warning sign would have been visible to the plaintiff.

In addition, defense counsel explained that a videotape of a patient being placed on the table corroborated the defendant's account that he had observed the plaintiff's hands as he was activating the hydraulic mechanism.

Type of action: Ordinary negligence

Type of injuries: Crush injury to fingers; claimed reflex sympathetic dystrophy/ chronic regional pain syndrome

Name of case: Salee v. Messamore

Court/case no./date: Kalamazoo County Circuit Court; #D-03-000267-NO; Feb. 14, 2005

Name of judge: Philip D. Schaefer

Verdict amount: \$0 (no cause of action)(The court ordered costs to the defendant in the amount of \$6,992.)

Allocation of fault: N/A

Attorney for the plaintiff: Withheld

Attorneys for the defendant: Brian R. Whitelaw and Timothy Buchalski

Name/city of most helpful experts: N/A

Insurance carrier(s): TIG Specialty Insurance Solutions

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