

GREATER METRO AREA

SUFFOLK COUNTY

MOTOR VEHICLE

Passenger — Rear-ender — Multiple Vehicle

Minor car crash didn't cause injuries, defense contended

VERDICT Defense

CASE Linda Johnson v. Norine A. Boland, No. 12141/09
COURT Suffolk Supreme
JUDGE Hector D. LaSalle
DATE 2/6/2013

PLAINTIFF
ATTORNEY(S) Daniel J. Solinsky, Salenger, Sack, Kimmel, & Bavaro, trial counsel, Bragoli & Associates, P.C., Melville, NY

DEFENSE
ATTORNEY(S) John R. Ferretti, Nicolini, Paradise, Ferretti & Sabella, Mineola, NY

FACTS & ALLEGATIONS On April 21, 2006, plaintiff Linda Johnson, 35, a driving instructor, was a passenger of a vehicle that was traveling on Route 25A, in Stony Brook. While the vehicle was stopped, its rear end was struck by a trailing vehicle that was being driven by Norine Boland. Johnson claimed that she sustained an injury of her back.

Johnson sued Boland. Johnson alleged that Boland was negligent in the operation of her vehicle.

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

INJURIES/DAMAGES *aggravation of pre-existing condition; chiropractic; discectomy; fusion, lumbar; herniated disc at L4-5; pins/rods/screws; plate*

After several days had passed, Johnson presented to a chiropractor. She underwent minor treatment.

Johnson ultimately claimed that she sustained an aggravation of a pre-existing herniation of her L4-5 intervertebral disc. She initially underwent chiropractic treatment, but she contended that the treatment did not resolve her pain. In October 2007, she underwent surgery that included discectomies, which involved the excision of her L4-5 and L5-S1 discs, fusion of the corresponding levels of her spine, and the implantation of stabilizing hardware: plates and screws.

Johnson claimed that she suffers residual pain and limitations. She sought recovery of a total of \$750,000 for past medical expenses and past and future pain and suffering.

Defense counsel contended that the accident involved a merely minor impact that could not have caused the injury that Johnson claimed to have sustained. He claimed that Johnson's injury predated the accident, and he contended that her medical records demonstrated back ailments that dated to her pre-teen years. He noted that Johnson had been deemed permanently and partially disabled by the New York State Workers' Compensation Board after sustaining injuries of her back and neck in 1990. He further noted that Johnson was injured in a motor-vehicle accident that occurred in 1998 and that a subsequent MRI scan revealed a herniation of her L4-5 disc. He claimed that she had been undergoing chiropractic treatment of that injury at the time of the instant accident.

The defense's expert radiologist agreed that Johnson's injury predated the accident, and the defense's expert biomechanical engineer agreed that the instant accident could not have aggravated the pre-existing injury.

RESULT The jury rendered a defense verdict.

DEMAND None
OFFER \$40,000 (insurance coverage's limit was \$1,300,000)

INSURER(S) State Farm Mutual Automobile Insurance Co.

TRIAL DETAILS Trial Length: 10 days
 Trial Deliberations: 1 hour

PLAINTIFF
EXPERT(S) Sebastian Lattuga, M.D., orthopedics, Rockville Centre, NY (treating doctor)

DEFENSE
EXPERT(S) Marc B. Chernoff, M.D., orthopedic surgery, Stony Brook, NY
 Melissa Sapan Cohen, M.D., radiology, Mineola, NY
 Robert J. Fijan, Ph.D., biomechanical, West Chester, PA

POST-TRIAL Judge Hector LaSalle denied plaintiff's counsel's oral motion to set aside the verdict.

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

-Kirk Maltais