

TRIALS DIGEST®

THE COMPREHENSIVE SOURCE FOR CALIFORNIA CIVIL TRIAL RESULTS

AUGUST 14, 2006

Vol. 9, No. 33

SETTLEMENT RESULT: \$212,000

VEHICLE NEGLIGENCE

33 TD 9th 28

SETTLEMENT—Plaintiff injured in two separate accidents

VEHICLE NEGLIGENCE

Motor Vehicle v. Motor Vehicle/Rear-End/Parked/Stalled/
Stopped Vehicle/Left Turn

No COURT/UNFILED SETTLEMENT

Gioia v. Mercury Insurance. Settlement date: 4/14/2005.

SETTLEMENT RESULT: \$212,000

COUNSEL

Plaintiff: **Scott J. Corwin, Law Offices of Scott J. Corwin, Los Angeles.**

Defendant: Scott M. Leavitt, Daniels, Fine, Israel & Schonbuch, Los Angeles.

FACTS/CONTENTIONS

According to plaintiff: The subject suit involved two motor vehicle accidents with overlapping injuries. On December 9, 2001, plaintiff Gioia, a 59-year-old homemaker, was a passenger in a vehicle that was eastbound on Telegraph Road in the number one of two lanes in Montebello, stopped for a red light, when the first defendant (an uninsured driver), who was also eastbound on Telegraph Road, rear-ended plaintiff.

The second accident occurred on June 6, 2003 when plaintiff was northbound on San Pedro Street in Los Angeles. The second defendant, who was parked northbound on San Pedro Street suddenly turned left into plaintiff's vehicle.

Plaintiff had been declared disabled by her orthopedic surgeon as a result of pre-existing neck, back, right shoulder, and left hip problems prior to the 2001 accident.

Plaintiff alleged that the drivers were negligent in the operation of a motor vehicle and that all of plaintiff's claimed injuries were a direct result of the trauma the patient sustained in both the 2001 and 2003 accidents. The third-party defendant in the 2003 accident accepted liability and paid its policy limits. The third-party defendant in the 2001 accident was uninsured. Plaintiff then brought uninsured motorist claims against her driver and against her insurance company, Mercury Insurance, for the 2001 accident and an underinsured motorist claim on the 2003 accident.

Defendant uninsured/underinsured motorist carrier, Mercury Insurance, admitted liability for both the 2001 and 2003 accidents but disputed the nature and extent of plaintiff's claimed injuries and the need for future surgeries. Mercury Insurance further contended that most, if not all, of plaintiff's claimed injuries were caused by neither the 2001 nor the 2003 accidents but rather from pre-existing neck, back, hip, and shoulder problems that predated the 2001 accident.

Mercury Insurance contended that plaintiff had a long history of orthopedic problems, culminating in a total of four left hip surgeries, the last in 1990, a right shoulder injury in 1997, and longstanding neck and back problems. Medical records of plaintiff's orthopedic surgeon were replete with documentation of the pre-existing complaints in areas of her body that plaintiff claimed were injured in 2001 and 2003. There was also significant discovery and argument concerning which of the two accidents caused what claimed injuries.

Mercury Insurance also contended that there were significant problems with the claimed left and right shoulder injuries, since MRI scans were not obtained until nearly four months and 10 months after the 2003 accident and that plaintiff never complained about right shoulder pain until nine months following the 2003 accident.

Additionally, Mercury Insurance claimed that both the 2001 and 2003 accidents were moderate impacts, resulting in a few thousand dollars in property damage.

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CLAIMED INJURIES

According to plaintiff: Plaintiff sustained cervical lumbar injuries at her right shoulder as a result of the 2001 accident, requiring physical therapy. MRI scans revealed a C3-C4 4 mm disk protrusion, a C4-C5 5 mm disk protrusion, and an L4-L5 3 mm disk protrusion. While plaintiff had ceased treating in 2002, she continued to have pain and symptoms in her cervical and lumbar spine at the time of the 2003 accident.

Following the second accident, her cervical and lumbar spine injuries were exacerbated, and MRI and CT scans revealed additional injuries, including left and right shoulder rotator cuff tears, as well as particle disease in her left hip where she had a 1990 unrelated hip replacement surgery.

Plaintiff claimed that, as a result of both the 2001 and 2003 accident, she would require neck, back, right shoulder, and left hip surgeries.

CLAIMED DAMAGES

According to plaintiff: \$25,879 past medical; \$100,000 future medical.

SETTLEMENT DISCUSSIONS

According to plaintiff: There were multiple layers of insurance coverage for the 2001 and 2003 accidents. Plaintiff first settled the 2001 UM case for \$15,000 UM policy limits of the driver of plaintiff's vehicle, which also happened to be Mercury Insurance. In addition, plaintiff collected \$2,000 medical payments from that policy and an additional \$5,000 medical payments coverage from her own insurer for the 2003 accident. Plaintiff then demanded the remaining available \$85,000 policy limits from her uninsured carrier for the 2001 accident and an additional \$85,000 from her underinsured carrier for the 2003 accident.

Defendant UM/UIM carrier Mercury Insurance sent the matter to its defense counsel for UM/UIM litigation and arbitration proceedings. After extensive discovery, including depositions of plaintiff and her orthopedic surgeon of 25 years and two defense medical examinations, Mercury Insurance tendered the \$85,000 and \$85,000 policy limits. This made the total settlement for both accidents \$212,000, which exhausted all available policy limits.

EXPERTS

Plaintiff: Stanford Noel, M.D., orthopedic surgeon, Los Angeles (213) 744-1911.

Defendant: Arthur Kreitenberg, M.D., orthopedic surgeon/neurologist, Center for Orthopedic & Sports Excellence, Los Angeles (310) 659-3400.