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APRIL 16, 2007

Vol. 10, No. 16

SETTLEMENT RESULT: \$250,000

VEHICLE NEGLIGENCE

16 TD 10th 29

SETTLEMENT—Driver's pre-existing back injury aggravated in rear-end collision

VEHICLE NEGLIGENCE

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

No COURT/UNFILED SETTLEMENT

Nedwick v. Davis. Trial type: Settlement.
Settlement date: 3/23/2007.

SETTLEMENT: \$250,000

COUNSEL

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

Defendant: None.

FACTS/CONTENTIONS

According to plaintiff: On May 20, 2006, plaintiff Michael Nedwick was operating his 2000 Mercedes-Benz in stop and go traffic southbound on Pacific Coast Highway in the vicinity of Topanga Canyon in Los Angeles County. As traffic came to a stop, plaintiff also came to a full stop. His vehicle was then rear-ended.

Plaintiff alleged that defendant Elisabeth Davis was negligent in the operation of her vehicle and that all of plaintiff's claimed injuries were a direct result of the subject accident. Defendant third-party carrier, Mercury Casualty Company, and subsequently, plaintiff's underinsured motorist carrier accepted liability, but disputed the nature and extent of plaintiff's claimed injuries. Specifically, the underinsured motorist carrier contended that the vehicle impact was moderate and that all of plaintiff's claimed lumbar spine injuries were pre-existing. The underinsured motorist carrier further contended that

plaintiff had previously been recommended surgery for the pre-existing injury six to seven years prior to the subject accident, and therefore it would be impossible for plaintiff to argue his need for surgery was a result of the subject accident. Plaintiff's medical records corroborated this position.

CLAIMED INJURIES

According to plaintiff: As a direct result of the collision, plaintiff suffered injury to his neck, shoulders, and low back. He received physical therapy to the injured areas. He had a large 7 mm L4-L5 herniated disc diagnosed approximately six to seven years previously, when his body twisted as he picked up a large mirror. Further, plaintiff had an existing cervical spine herniated disc as the result of falling and hitting the back of his head at a ski resort two years prior. His pre-existing complaints had essentially resolved prior to the May 20, 2006, accident. However, as a direct result of this accident, he sustained an exacerbation of his pre-existing lumbar spine pathology.

Plaintiff's primary care physician, an orthopedist, advised that he was a candidate for lumbar spine surgery as a direct result of the subject accident. His orthopedist reviewed all of plaintiff's prior medical records and opined that while plaintiff had a pre-existing lumbar spine disc injury, it had been essentially asymptomatic for quite some time as pain was moderate and tolerated, and there were no radiating symptoms into his lower extremities. Essentially, his low back condition had resolved, and only subsequent to the May 20, 2006 accident did his symptoms worsen substantially, become intolerable, and cause radiating symptoms in his lower extremities.

Plaintiff elected not to have surgery at this time.

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16 TD 10th 29 (continued)

CLAIMED DAMAGES

According to plaintiff: \$9,533 past medical; \$50,000 future medical.

SETTLEMENT DISCUSSIONS

According to plaintiff: Defendant paid the available \$25,000 liability policy which plaintiff demanded. Plaintiff had \$250,000 underinsured motorist coverage with his carrier, Farmers Insurance Exchange, thereby providing \$225,000 in available coverage for his first-party loss. Although Farmers requested an independent medical examination initially, it subsequently tendered the \$225,000 policy limits without having plaintiff examined, thereby making the total recovery \$250,000.

EXPERTS

None.

COMMENTS

According to plaintiff: Defendant's insurance carrier was Mercury Casualty Company.

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