

## FEDERAL COURT

Martin v. Mountain West Farm Bureau Mutual Ins., CV 96-138-GF, 10/22/97

VERDICT: Defense, bicycle/phantom motorist, arm/leg/shoulder fractures.

A 9-0 Great Falls jury found that a motorist was not negligent in connection with injuries sustained by Patricia Martin in 6/93 from a bicycle accident on Main St. in Lewistown while riding with her dog on a leash.

Martin claimed that an unidentified motorist had either hit her bike or come too close, causing her to wreck. Her insurance agent saw her at the Fergus Co. fair in July and she told him that she had been hit by a car. He turned in a claim for UM coverage, which under her Mountain West policy had a \$50,000 limit. Police were unable to find any clear physical evidence of vehicle involvement. Medical reports from the EMT, nurses, and doctors revealed statements by Martin that a car had come too close, but also that a car had passed by, causing her dog to rear in front of her bike, causing her to swerve and wreck. Martin published an ad in the Lewistown paper seeking witnesses. She claimed that in September she received an anonymous call from a man who admitted that it was his fault. She claimed that in 1/94 she received an anonymous greeting card with \$100 and the message: "I want to help. It was an accident." Her mother-in-law testified that she witnessed her receipt of the call and her son testified that he witnessed her receipt of the card. Despite Martin's requests, police refused to have the card analyzed for fingerprints. Mountain West denied the claim.

Martin sued in Fergus Co. Court for breach of contract and violation of the UTPA, and asked that coverages be stacked to \$157,000 based on 3 vehicles. Mountain West removed to Federal Court and moved for summary judgment on the UTPA claim.

The parties agreed to dismissal of the UTPA claim with prejudice in exchange for Mountain West not pursuing medical records from previous injuries and psychological treatment or mentioning any prior treatment at trial. They also stipulated to admission of all medical records to avoid the need to depose numerous health care providers. Mountain West moved for summary judgment on stacking, which was agreed to be a posttrial issue in the event of an award for Martin. It also asserted a collateral source offset based on Martin's health insurer's payment of medicals with no right of subrogation, which Martin disputed.

Martin, 50, sustained a fractured humerus, a 4-part comminuted open break tibia fracture, and a comminuted shoulder fracture. Medicals after 4 surgeries were \$84,000, and she likely will undergo another surgery at \$15,000-\$22,000.

Martin contends that Mountain West's med pay requirement of physical contact by a motor vehicle with Plaintiff or a bicycle to recover is void as against public policy. Martin claims, and Mountain West denies, that she is entitled to stack the med pay. The jury determined, after being instructed that its answers had nothing to do with its previous finding as to whether a motorist was negligent, that there was no contact between a motor vehicle and Martin's body or bicycle. This will be a posttrial issue.

Plaintiff's Expert: orthopedic surgeon Stephen Davenport, Billings (deposed).

Defendant's Experts: 4 Lewistown police officers.

Demand, \$50,000; offer, \$15,000. Jury request, left to discretion; jury suggestion, \$0.

Jury deliberated 2 hours 3rd day; Magistrate Holter.

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Larry Grubbs, Billings , for Martin; Randall Nelson (Nelson Law Firm), Billings , for Mountain West.

