

FEDERAL COURT

McWilliams v. Ortiz and Estate of Frye, CV-99-148-M, 3/30/2001

VERDICT: \$93,500 as to first low-impact rear-end auto, defense as to 2nd, admitted liability, TOS/RSD.

A Missoula jury found that Debra McWilliams suffered an injury that was legally caused by a collision with Chad Ortiz in Kalispell in 11/96 but that she did not suffer any injury that was legally caused by a collision with Jack Frye in Kalispell in 12/96. It awarded \$93,500 for injuries incurred in the Ortiz collision: \$30,000 past medicals, \$0 future medicals, \$50,000 pain & suffering, \$7,500 course of life, and \$6,000 lost income.

Both collisions were rear-enders; the Ortiz collision was on a dry road, the Frye collision was on ice. Ortiz and Frye both admitted liability. Their experts testified that impacts were under 5 mph and that McWilliams could not have been injured in such low-impact collisions --- that the forces were no greater than those encountered in ordinary events such as stepping off a curb or sitting down in a chair.

McWilliams testified that impact was greater in the Ortiz collision, but vehicle damages were less: \$300 in the Ortiz collision, \$850 in the Frye collision.

McWilliams, 43, claimed left (non-dominant) TOS which triggered reflex sympathy dystrophy. She claimed that she experienced numbness in her hand after the first accident and that it was worse after the 2nd. She is a clothing store buyer/clerk and also is an artist who for a time had her own art shop. She incurred \$30,000 medicals, more than \$20,000 of it in the 90 days before trial.

Defendants contended that TOS is often idiopathic or a result of repetitive motion. Dr. Gary testified that in his experience accidents of this minor nature could not have produced TOS or RSD, but that he did not know what caused McWilliams's TOS or RSD.

Ortiz was at sea in the Navy and Frye was deceased at time of trial. Magistrate Erickson allowed McWilliams to testify that an unknown man told her at the scene that she was hit at 35 mph, over Ortiz's hearsay objection.

McWilliams's position was that it was offered not for the truth of the matter asserted, but in rebuttal for any implication that she was fabricating or in error for reporting to her medical providers that she was hit at 35 mph.

Pre-litigation demand, \$120,000 total from both defendants; demand of Ortiz in 12/99, \$25,000 (letter to Farm Bureau adjuster: "Your policy limits coupled with a contribution from the other driver might well settle this lawsuit."); no further demand of Frye;

\$6,000 offer of judgment by each defendant. Jury request, \$200,000; jury suggestion by Ortiz, 0 or an amount of medicals and pain & suffering to compensate McWilliams for a period of temporary strain and soreness since the experts admitted that this could have occurred from the accidents. Plaintiff requested a settlement conference, which Defendants declined.

Plaintiff's Expert: Vascular Surgeon Michael Judd, Spokane .

Defendant Ortiz's Experts: John Jurist, Billings (Biomechanics); Neurosurgeon Henry Gary, Missoula (joint expert, called in following death of orthopedic surgeon Robert Snider 2 weeks before trial).

Defendant Frye's Experts: Alan Tencer, U. of Wash. (Biomechanics).

Jury deliberated 2 hours 4th day.

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Lee Henning & James McCubbin (Henning & Keedy), Kalispell, for McWilliams; Randall Nelson (Nelson Law Firm), Billings , for Ortiz (Farm Bureau Ins.); Gary Kalkstein & C.J. Johnson (Kalkstein Law Firm), Missoula , for Frye (State Farm Mutual Auto Ins.).

