

DISTRICT COURT

Dana v. Daniels and Essex, Rosebud DV 96-131, 2/22/99

VERDICT: \$6,876 net (59/41), SUV/tractor, disk herniation/TOS.

A 10-2 Forsyth jury found that Gordon Daniels was 59% negligent and a cause of injuries suffered by his passenger Mariann Dana in a collision with Aaron Essex's tractor east of Forsyth on Hwy 446 in 2/94, and that Dana was 41% negligent and a cause of her injuries. It awarded \$11,654 gross damages: \$3,134 past medicals, \$1,440 future medicals, \$80 out-of-pocket expenses, \$7,000 lost earnings, and nothing for pain & suffering, course of life, or lost earning capacity. Net award, \$6,876. It found that Essex was not negligent and (12-0) refused to assess punitives against him.

Daniels's Toyota 4-Runner collided with Essex's John Deer tractor 30' onto a 20'-wide bridge over Rosebud Creek at 5 a.m.

Dana sued both Daniels and Essex. Daniels and Dana had been drinking. The investigating patrolman attributed the cause of the accident to impaired driving but interviewed only Essex. Essex was 1-3' over the center line on the bridge, exceeded the allowable width for nighttime operation by 3', and 4 headlights could not be dimmed. Dana claimed that Essex's tractor did not have its lights on and was stopped on the bridge.

Daniels's girlfriend Raina Van Pelt, who was seated in the middle of the 4-Runner and who had not been drinking, testified that she saw Essex come out of the creek, ascend to the tractor, and turn on the headlights following the impact. Essex argued that his statutory violations were not a substantial factor in bringing about the accident.

Dana asked the jury to apportion all fault to Essex since Daniels, who was uninsured, was judgment-proof. Dana, 39, contended that her central disk herniation and TOS were caused by the accident, which Essex's expert disputed.

Plaintiff's Experts: Chiropractor Robert Larson, Billings ; Orthopedic Surgeon Gregory McDowell, Billings (deposed); Physicist Denman Lee, Bozeman ; Juanita Hooper, Billings , (Rehab).

Defendant's Expert: Biophysicist John Jurist, Billings .

Demand, \$96,000; offer, \$10,000. Jury request, \$150,000; jury suggestion, \$7,500.

Jury deliberated 3 hours 4th day, Judge Hegel.

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Robert Johnson, Lewistown, Steven McPherson, Glendive, and R.W. Heineman, Wibaux, for Dana; Randall Nelson (Nelson Law Firm), Billings , for Essex (Mountain West Farm Bureau Mutual Ins.). Daniels was not represented and did not appear.