

DISTRICT COURT

Smith v. Bechtel, Fergus DV 98-136, 9/30/99

VERDICT: \$1,446, open intersection auto, knee/hip / shoulder/neck, admitted liability.

A 12-0 Lewistown jury awarded \$1,446 to Nephi Smith for injuries suffered when the car in which he was riding collided with another in an open intersection in Lewistown 1/11/98 .

Smith, then 21, and 2 friends went sledding. Smith's left knee struck a rock. He went to the ER 172 hour later. Dr. James found a sore left knee and abrasion on the patella with joint line tenderness. Justin Bechtel, then 17, was giving Smith a ride home from the ER when the collision occurred. Smith returned to the ER where James found a sore right hip, right shoulder, and neck. He made no findings as to the knee and testified that had there been new or additional complaints he would have noted them.

Smith followed up for these conditions with FP Laura Bennett 1/13 and 1/20. He saw Dr. Isackson 1/22. He told Isackson that the knee was fine after the sledding accident but was severely injured and painful after the car accident. He testified that his knee slammed into the dashboard.

He and Bechtel were unrestrained. Bechtel and the other car's driver were uninjured. Based on the history from Smith Isackson attributed 80-90% of the knee condition to the car accident and 10-20% to the sledding accident. Dr. Jurist testified that as a T-bone accident Smith would have been thrown into the passenger door, not the dash, and his injuries of neck, shoulder, and hip were consistent with the accident but that there was very little forward deceleration and the medial meniscus tear was inconsistent with the kinematics of the accident. Dr. Snider attributed none of the knee condition to the accident.

Bechtel admitted liability for the accident and admitted responsibility for a 2-week sore neck, a week of headaches, and the sore right hip, all of which resolved. Meds for these were \$1,445.

Smith challenged Jurist and Snyder as Daubert- deficient on grounds that they were not the treating physician and could not know whether he was injured.

Witnesses testified in depositions that Smith had fabricated a slip & fall at his apartment 2/23 /98 by using a hammer to break a step and then claim that he fell on it. Smith testified that he fell on the step because his knee was unstable from the car accident, and attributed 50% of his low back condition (fusion surgery) to the car accident.

He filed a "notice of abandonment of claim" for the slip & fall and moved in limine to preclude evidence that he had fabricated the slip & fall, which Judge Christensen granted.

His claim was limited to date of the accident to date of the slip & fall.

Plaintiff's Experts: Orthopedic Surgeon Ronald Isackson, Lewistown (deposed); ER Doctor Tom James, Lewistown (deposed); FP Laura Bennett, Lewistown (deposed).

Defendant's Experts: Biophysicist John Jurist, Billings ; Orthopedic Surgeon Robert Snider, Billings .

Initial demand, \$40,000, final demand, \$15,000; offer, \$5,000. Jury request, \$8,100 medicals, \$800 wage loss, pain & suffering in jury's discretion "from \$1 to \$30,000"; jury suggestion, \$1,445 medicals, \$1,000 pain & suffering or less at jury's discretion.

Jury deliberated 2 hours 2nd day.

Smith v. Bechtel, Fergus DV 98-136, 9/30/99 .

Torger Oaas, Lewistown, for Smith; Randall Nelson, Billings , for Bechtel (State Farm Ins.).