

DISTRICT COURT

Fleming v. Smith, Yellowstone DV 02-517, 8/26/03.

VERDICT: Defense, liability apportionment following \$100,000 settlement with co-defendant, interstate highway auto, pelvis/hip.

A 12-0 Billings jury found no negligence by Richard Smith in connection with an auto accident in 9/01 in which William Fleming was injured.

Richard Smith, 58, a retired semi driver with 2 million road miles, claimed that he was headed east in the right lane of I-90 when Dennis Bramlette, 20, suddenly swerved from the left lane directly into his path. Smith lost control, his car hit a highway sign, a rear tire blew, the hood opened covering the windshield, and he came back onto the highway where he hit Fleming. Fleming's vehicle rolled 6 times and he was ejected after the seat belt failed. Bramlette claimed that he believed that he had made a safe lane change and was unaware of Smith, and that Smith did not honk or brake and immediately left the road on the right. Bramlette stopped, but left the scene claiming that he saw the MHP coming and there was nothing he could do. When Bramlette saw a TV report that the MHP was seeking the driver of a black Ford Contour he called his mother, then his lawyer, who identified him to the MHP. Fleming sued Bramlette and Smith. A month before trial Fleming settled with Bramlette for \$100,000 policy limits. Fleming and Smith stipulated to bifurcate liability and damages so that only fault for the accident was tried. The jury was asked to apportion liability between Bramlette and Smith. Fleming suggested 90% for Bramlette and 10% for Smith. Bramlette was not represented at trial.

Fleming, 43, sustained injuries which resulted in 2 pelvic surgeries and an artificial hip, and other serious injuries that subsequently resolved.

Judge Watters denied Smith's motion for summary judgment, which both Fleming and Bramlette opposed.

Plaintiff's expert: Patrolman Brian Sampson.

Jury deliberated ½ hour 2nd day; Judge Watters.

W.A. Forsythe (Moulton, Bellingham, Longo & Mather), Billings, for Fleming; Randall Nelson & Christie Hobbs (Nelson Law Firm), Billings, for Smith (State Farm Mutual Auto Ins.); Steve Reida (Lando, Brown, Braaksma, Planalp & Reida), Bozeman, for Bramlette (Allstate Ins.).