

January 2018

An ALM Publication

PENNSYLVANIA

PHILADELPHIA COUNTY

MOTOR VEHICLE

Rear-ender — Lane Change — Contributory Negligence

Collision resulted in permanent radiculopathy, motorist alleged

VERDICT **\$300,000**
ACTUAL **\$180,000**

CASE Shana Leedie v. Damien Diaz
 No. 160401654
COURT Philadelphia County Court of Common
 Pleas
JUDGE Frederica A. Massiah-Jackson
DATE 10/4/2017

PLAINTIFF
ATTORNEY Kenneth F. Fulginiti, Duffy +
 Partners, Philadelphia, PA

DEFENSE
ATTORNEY(S) Jillian Vukson, Goldberg, Miller & Rubin
 P.C., Philadelphia, PA

FACTS & ALLEGATIONS On April 21, 2014, plaintiff Shana Leedie, 35, a salesperson, was driving a sport utility vehicle on north Interstate 95, in Philadelphia. When she was near the Front Street on-ramp, she became stopped in traffic and her SUV was rear-ended by a sedan. She claimed injuries to her neck, left shoulder, and back.

Leedie sued the driver, Damien Diaz, alleging that he was negligent.

Leedie testified that, before impact, she had looked in her rearview mirror and saw Diaz driving erratically,

weaving in and out of lanes, until he came into her lane and rear-ended her.

Diaz and his front-seat passenger testified that that Diaz was not driving erratically and that Leedie had suddenly entered his lane and cut him off. He was unable to stop in time and struck her vehicle.

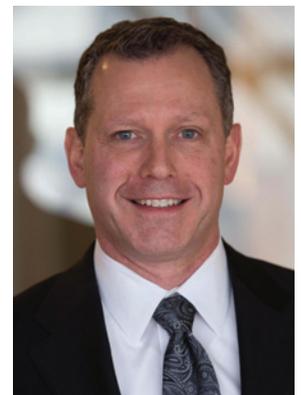
Diaz' expert in accident reconstruction cited photographs of Leedie's damaged rear bumper and testified that the damage supported Diaz' version of how the accident occurred.

Leedie's expert in accident reconstruction maintained that it was not possible by solely looking at the photographs to form an opinion about the cause of the impact.

INJURIES/DAMAGES *buttocks; chiropractic; epidural injections; facet syndrome; fibromyositis; foot; leg; lower back; massage therapy; neck; physical therapy; radicular pain / radiculitis; radiculopathy; rotator cuff, injury (tear); shoulder; soft tissue; sprain, cervical; sprain, lumbar; strain, cervical; strain, lumbar; supraspinatus muscle/tendon, tear; trigger point injection*

Leedie was taken by ambulance to an emergency room, where she was examined and released.

On April 23, Leedie, who was employed at the time of the accident, presented to a workers' compensation



KENNETH F. FULGINITI

physician with complaints of pain to her neck, left (non-dominant) shoulder, and low back.

From May 7 to mid-August, she treated with 22 sessions of physical therapy, including massage and exercise.

Leedie had an MRI of her spine which was unremarkable. She was diagnosed with strains and sprains to her cervical and lumbar spine, post-traumatic cervical and lumbar facet syndrome, and fibromyositis. She later had a shoulder MRI and a lumbar EMG, and was diagnosed with a tear of the supraspinatus tendon, which is a part of the rotator cuff, and radiculopathy stemming from lumbar vertebra L5. She experienced radicular pain into her buttocks, right leg, and right big toe.

In December 2014, Leedie started a course of chiropractic care, including deep-tissue massage and spinal manipulation, which she treated 128 times through July 2016. After her initial course of physical therapy, Leedie treated with another course, for 71 visits, through February 2015. She treated with a pain-management specialist, a neurologist, and an orthopedic surgeon.

In the ensuing years, through the time of trial, Leedie underwent 16 painkilling injections, comprising five epidural injections of a steroid-based painkiller at L4-5, a facet-joint block injection at L5-S1, an epidural injection at C5-6, two nerve-root injections at L4-5 and L5-S1, three facet medial branch block injections at C3-4 and C4-5, and four trigger-point injections. She sought to recover a workers' compensation lien of \$278,922.35.

Leedie's neurologist causally related her injuries and treatment to the accident, and opined that her L5-sourced radiculopathy was permanent.

Leedie was unable to return to her job as a salesperson. She later received a realtor's license. She began practicing in February 2016, but she earned less than she had at her previous job. Leedie's expert in vocational rehabilitation determined that she sustained future lost earnings of \$2,211,591.

Leedie testified that the accident had upended her life. In addition to no longer being able to work as a salesperson, which she enjoyed, she became less independent. Her mother had to move in with her and help her with activities of daily living. She said she is

no longer as physically and socially active, and she has difficulty paying for her home, which she had recently purchased at the time of the accident. Leedie sought damages for past and future pain and suffering.

Diaz' expert in radiology opined that Leedie's radiographic studies showed no evidence of a traumatic injury.

RESULT The jury found that Leedie was 40 percent liable for the accident and Diaz was 60 percent liable. Leedie was determined to receive \$300,000, which was accordingly reduced to \$180,000.

INSURER(S) State Farm Insurance Cos.

TRIAL DETAILS Trial Length: 3 days
Trial Deliberations: 3 hours

PLAINTIFF

EXPERT(S) Frank M. Costanzo, accident reconstruction, Chester Springs, PA
Steven E. Mazlin, M.D., neurology, Langhorne, PA
Philip Spergel, Ph.D., vocational rehabilitation/counseling, Jenkintown, PA

DEFENSE

EXPERT(S) Stephen L. Fedder, M.D., neurosurgery, Wynnewood, PA
(was not called to testify)
Steven M. Schorr, P.E., accident reconstruction, Abington, PA
Andrew H. Shaer, M.D., radiology, Jenkintown, PA

EDITOR'S NOTE This report is based on information that was provided by plaintiff's counsel. Defense counsel did not respond to the reporter's phone calls.

—Aaron Jenkins