

(Summary of Verdict/Settlement)

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Superior Court, Los Angeles County, California.

Bob Stein vs. City of Los Angeles, et al.

TOPIC:

Synopsis: Man injures spine during Venice Beach intersection accident caused in part by defective Los Angeles City traffic signal. Government claim, passenger car accident, spinal fusion. Improper maintenance, failure to warn, catastrophic injuries.

DOCKET NUMBER: SC 096872 c/w SC 095276

Case Name: Stein v. City of Los Angeles, et. al.

Court: Los Angeles Superior Court - Beverly Hills

Judge: Judge Lisa Hart Cole

Case Type: Personal Injury - Auto, Government Claim/Negligence Maintenance/Dangerous Condition on Public Property

Settlement : \$1,000,000.00

Year of Settlement: 2009

Plaintiff Counsel: Michael Ehline of Ehline Law Firm PC, et al.

Defense Counsel: Honey Lewis, Esq., for City of Los Angeles, et al.

Facts provided by Plaintiff:

On February 5, 2007, a work crew of the City of Los Angeles was constructing wheelchair access to the sidewalks at the intersection of Pacific Avenue and Rose Avenue in the Venice section of the City of Los Angeles. In the course of excavating the sidewalks, the crew from the Bureau of Street Services damaged the cable that powered and controlled the traffic signals at this intersection.

As a result, the traffic signals began to malfunction. Shortly thereafter, an employee of the City of Los Angeles went to the traffic signal controller box and placed the signals into a flashing red mode for all directions of travel. Business records of the City of Los Angeles indicate that on February 6, 2007, a crew from the City worked on repairing the traffic signals from 9:00 a.m. to 3:00 p.m.

At approximately 7:00 p.m. on February 6th, a Tuesday, plaintiff Robert Stein was operating his Nissan Frontier pickup truck westbound on Rose Avenue, approaching its intersection with Pacific Avenue. Mr. Stein was headed home from work and intended to turn left from westbound Rose Avenue onto southbound Pacific Avenue.

As Mr. Stein approached the subject intersection, the traffic signal facing him was green. Just as he was about to enter the intersection, the traffic signal started to flash red. Mr. Stein applied his brakes and stopped his vehicle, with the front of his pickup protruding slightly into the intersection. Plaintiff looked to his left and saw the headlights of a car approaching. Assuming that the approaching car also had a flashing red light and would stop, Mr. Stein pulled forward to the point where he could begin his left

turn.

Unbeknownst to plaintiff, the traffic signal was malfunctioning, and the signal facing northbound Pacific Avenue, that is for traffic coming from his left, was a round green light. A Jeep Cherokee, driven by Eileen Koster, going about 30-35 miles per hour, slammed into the left (driver's side) front of plaintiff's vehicle, causing the Nissan to rotate before coming to rest.

Robert Stein's body was on the receiving end of the massive transfer of energy created by such a powerful impact, his seatbelt confined him to the driver's area of the vehicle, but his body, particularly his head and neck, were whipped about. After realizing that he was stuck within a dark vehicle in the middle of an intersection, plaintiff forced open the damaged driver's door, and exited his vehicle. Local residents came to the scene after hearing the noise of the crash. A video was made at the time by a resident of the aftermath of the accident, the video depicts the traffic signal as it malfunctions like a flashing and variable Christmas tree light.

Some time later, officers of the Los Angeles Police Department arrived. A report was written which memorialized that the traffic signal was malfunctioning and that there had been three collisions at the intersection that day. Shortly after his arrival, a police officer walked over to the traffic signal controller box and placed all of the signals in flashing red mode.

PLAINTIFF'S CONTENTIONS

That on February 6, 2007, the intersection of Pacific Avenue and Rose Avenue was in a dangerous condition, because of its malfunctioning traffic signals. A dangerous condition is a "a condition of property that creates a substantial (as distinguished from a minor, trivial or insignificant) risk of injury when such property is used with due care in a manner in which it is reasonably foreseeable that it will be used." Government Code section 830(a).

The phasing of the traffic signals is governed by the Manual on Uniform Traffic Control Devices. This manual provides that if a traffic signal is to be placed in a flashing red mode, the flashing red phase shall face all directions of traffic. Brian Chan, an engineer for the City, confirmed in his deposition that the use of flashing red light for all directions is the policy of the City. The City considers a signal that has red, yellow and green phases for one direction, and a flashing red for the other direction, a safety hazard.

In this case, the traffic signal's role at the subject intersection was to provide for the safe and orderly movement of traffic, without conflicts, between the opposing directions of travel. However because of the damage caused by the wheelchair access construction, and the improper repair to the damaged signal, the signal acted to bring opposing directions of traffic together, directly causing this accident.

Plaintiff acted reasonably in the expectation that all directions of traffic had a flashing red signal, he believed that the vehicle of Eileen Koster, the Jeep Cherokee, would come to a complete stop before entering the intersection. The investigating police officer, Officer Reems of the Los Angeles Police Department, testified that it was reasonable for plaintiff to assume the intersection had become a four way stop when he saw the flashing red light.

If the signal had functioned as required, Ms. Koster's vehicle would have stopped. Eileen Koster although a plaintiff in this action against Mr. Stein, has also sued the City of Los Angeles for the defective traffic signal.

DAMAGES

After the accident, plaintiff was shaken and in discomfort. The following day, Wednesday, Robert Stein, the 38 year old Executive Director of Research, Home Entertainment, for Nielsen Entertainment in Hollywood, went to work. Nielsen Entertainment is best known for the Nielsen ratings system, which measures the number of viewers of television programs, but the company is involved in many other aspects of the entertainment industry. At work, Mr. Stein was bothered by headaches and back pain, but thought they would go away. Plaintiff continued to go to work but noticed that the headaches became more troublesome and his back was beginning to give him substantial discomfort.

By Friday, the headaches became severe and plaintiff made plans to go to the hospital on Saturday morning. On February 10, 2007, plaintiff presented himself at the emergency room of Saint John's Hospital in Santa Monica complaining of headaches and neck pain. An MRI of the brain was taken, which was negative, but Mr. Stein was told he had a contusion of the neck, provided pain medication and referred to a neurologist, Dr. Khan.

Plaintiff followed-up with Dr. Khan and other physicians who ordered scans of his spine. The MRI revealed disc herniations at levels C3-4, C5-6 and C6-7. The formal diagnosis was "cervical spine myoligamentous sprain/strain with major disc protrusion/extrusion and left side neurological deficit at the levels of C/5 and C6/7."

Prior to this accident, Robert Stein was healthy, active and pain free. Over time, plaintiff's condition deteriorated. In addition to the pain in his neck that would radiate down into his shoulders and arms, plaintiff's left arm began to convulse involuntarily. Mr. Stein was placed in a program of physical therapy and underwent epidurals. By early spring, plaintiff was under the care of an orthopedic surgeon, Dr. Hyun Bae of The Spine Institute in Santa Monica.

Dr. Bae had plaintiff continue with physical therapy for a short period of time. This doctor noted on April 12, 2007 "At this point he certainly displays true C7 radiculopathy more on his left than his right. Looking over his MRI, he certainly has a very large disc bulge at the C6-7 level, more to the left side, and I think this certainly is the cause of his pain."

On May 29, 2009, plaintiff had spinal surgery which fused levels C5-6 and C6-7. But the surgery only provided limited relief, the left arm stopped convulsing, but plaintiff continued to experience major headaches and pain and tingling and numbness in his arms.

Dr. Bae referred plaintiff to Dr. Guven Uzun for pain management. Dr. Uzun has injected plaintiff with cortisone and other medications in the cervical region almost every month since the summer of 2007 so that he could remain somewhat functional, as well prescribed powerful oral pain medications. The medications taken include Norco, morphine sulfate, Hydrocodone, Tizanidine, Topomax, Carisoprodol, Meloxicam, Gabapentin and the use of Fentanyl patches.

Less than one year after the first surgery, plaintiff was watching a baseball game with his girlfriend and felt a pop in his neck. The fusion of his cervical vertebrae had come apart on one side of the neck. The headaches Robert Stein experienced became worse. As of July, 2008, plaintiff could no longer travel for his new employer Energy Pro U.S.A. (he left Nielsen in January, 2008).

By this time, Dr. Bae had opined that problems with the disc at C3-4 were causing most of plaintiff's

symptoms and recommended the replacement of the disc at that level with an artificial disc. Frustrated with his physical condition and the loss of the life he had before the subject accident, plaintiff consulted with Dr. J. Patrick Johnson of the Cedars-Sinai Spine Institute for a second opinion in the fall of 2008. Dr. Johnson ordered a myelogram of the cervical spine. After reviewing the results of the test, Dr. Johnson recommended a foraminotomy at C3-4 to relieve pressure on the spinal nerves and the repair of the prior fusion.

Understandably concerned about the risks of surgery and the prospect of permanent disability in the event the surgery was unsuccessful, plaintiff elected to continue pain management and make the best of it. As time went on, Robert Stein felt it increasingly difficult to cope with a condition that not only caused pain, but that sharply restricted his professional and personal activities. Mr. Stein returned for evaluation by Dr. Bae, his original surgeon, towards the end of 2008. Dr. Bae recommended that plaintiff undergo another surgery to correct the disunion of the spinal fusion at C5-7 and to see what amount of relief from his symptoms this may bring him.

On January 15, 2009, Robert Stein underwent 3 hours of surgery on his neck to repair the fusion. Dr. Bae has advised plaintiff that he'll need several months to judge the success of the surgery, but that he may need another procedure in the next six months to replace the disc at C3-4. Plaintiff is currently working about 3 hours a day, and as it has been the case for the last two years, his professional and personal activities have been restricted to only the most basic things.

Robert Stein is an avid fisherman who loved to ocean fish from the beach, he had been doing it since he was a child growing up in Maryland. In addition to fishing, Mr. Stein played soccer once a month and participated in pickup basketball games. For the last two years, plaintiff has been unable to participate in these activities, he has lost the enjoyment of life.

Mr. Stein lives with his girlfriend and her son in Venice. His girlfriend has helped him immensely with the many tasks we all take for granted. As he is on pain medication, plaintiff does not normally drive a car, his girlfriend transports him around town. Professionally, Robert Stein is a statistical whiz. At Nielsen, he would work in a room by himself with 6 computers, sometimes working with as many as 9 computers, as he worked on statistical models and analysis.

Among the many tasks plaintiff would do, would be to forecast the opening box office for major motion pictures (opening and total gross), forecast DVD and video game sales domestically and internationally. He would also track the success of entertainment products every week products using metrics such as awareness, interests and purchase intensity. He was responsible for automating each part of tracking product from title list creation, survey data pull, data processing and output to web portal. Mr. Stein was the architect and programmer for standard tracking products such as video games, home entertainment and international box office.

As Mr. Stein's injury limitations manifested themselves in the workplace, his job responsibilities were reduced at Nielsen. He elected to leave the company and work for Energy Pro U.S.A., where he does statistical modeling to increase the efficiency of power plants and factories. By his own estimate, plaintiff is nowhere near the worker he once was, and is limited to working on one computer at a time. Currently, Mr. Stein has billed medicals of \$195,177, and has paid out of pocket or is responsible for \$14,838. A disc replacement surgery would cost about \$70,000. His medical monitoring costs will be substantial.

Robert Stein has lost \$31,466 in earnings and a bonus of approximately \$40-50,000. As plaintiff is only

working part time, he is losing additional income every day. It is not clear that Mr. Stein will be unable to remain in his current area of employment. A vocational rehabilitation consultant is currently evaluating plaintiff for the positions he may be able to retrain into.

SETTLEMENT NEGOTIATIONS

A mediation through the courts was held on October 21, 2008 before Robert Graham, Esq. The City of Los Angeles did not make an offer at that time, and no offer was until after a mediator's proposal. The case was scheduled for trial on April 6th before Judge Lisa Hart Cole in the Beverly Hills courthouse. Case settled for \$1,000,000.00.

Facts Provided by Defendant(s): None provided.

Medical Bills : Approximately \$195,177.00 (see also above).

Plaintiff Experts : None reported, except as above.

Defense Experts : None reported, except as above

Mediator : Michael D. Moorehead, Esq.

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