

DEBORAH BIRCHFIELD vs. FATIMA CUNNINGHAM

Docket No.: 05-CA-0737; FJVR Reference No. 08:7-47

Verdict Date: **March** 4, 2008; Publication Date: **July** 2008

TOPIC: Defense Verdicts - Motor Vehicles - Motor Vehicle Accident - Rear-end Collision

RESULT: For the Defendant. (verdict)

STATE: Florida

COUNTY: Orange

JUDGE: Cynthia Z. MacKinnon

PLAINTIFF PROFILE: Age: 57
Sex: Female
Occupation: Realtor

PLAINTIFF ATTORNEY: John W. Dill and Mark A. Humphrey of Morgan & Morgan, P.A., Orlando

DEFENDANT ATTORNEY: Paul S. Jones and Joseph F. Scarpa, Jr. of **Luks, Santaniello**, et al., Orlando

CAUSE OF INJURY: On October 23, 2002, Plaintiff was a seat belted passenger in a vehicle stopped at a traffic light at the intersection of E. Colonial Drive and Irman Avenue in Orlando when her vehicle was allegedly rear-ended by a vehicle owned by Defendant and operated by a teenage driver. Defendant contended that a phantom vehicle pulled out in the path of the driver operating her vehicle, causing him to veer into the adjacent lane where Plaintiff's vehicle was stopped waiting for the light. The driver of Defendant's vehicle did not have time to stop before colliding with Plaintiff's vehicle. The driver of the phantom vehicle did not stop. There were no other witnesses, other than the teenage driver, that testified to the presence of the phantom vehicle.

NATURE OF INJURY: Torn rotator cuff (right shoulder); right shoulder internal derangement, including impingement syndrome; bulging discs at C3-C4, C4-C5, and C5-C6; herniated disc at C6-C7; cervical sprain/strain; lower back pain radiating to buttocks and legs. Plaintiff had no prior documented injuries to these areas. Plaintiff received pain management treatment by Dr. Michael Creamer, who prescribed Hydrocodone and Flexeril. Plaintiff was also treated by Dr. Diego Guerrero at Florida Hospital Pain Management Center, who administered epidurals to her lower back and continued to prescribe Hydrocodone. Dr. Tom Winters administered trigger point injections for Plaintiff's shoulder pain. Dr. Brooks testified that Plaintiff should undergo three additional epidurals for her neck and back. Dr. Brooks assigned a 14% impairment rating for Plaintiff's neck and back, and Dr. Winters assigned a 5% impairment rating for Plaintiff's shoulder. Plaintiff was a real estate agent at the time

of the accident, and claimed that she lost wages resulting from the accident. Plaintiff applied for social security disability benefits from her injuries and was awaiting a response. Plaintiff asked the jury for \$ 13,497 for past medical expenses, approximately \$ 60,000 for future medical expenses, \$ 50,000 for past pain and suffering, and \$ 100,000 for future pain and suffering.

PLAINTIFF EXPERT WITNESSES: Francis W. Brooks, D.O., Pain Management, Orlando

DEFENDANT EXPERT WITNESSES: Lawrence S. Halperin, M.D., Orthopedic Surgery, Orlando

EDITOR'S NOTE: Plaintiff served a Proposal for Settlement for policy limits of \$ 10,000.