

NORTHERN CALIFORNIA

PLAINTIFF
EXPERT(S) Daniel Martin, M.D.; orthopedics; Santa Clara, CA
 Rajeev Kelkar, Ph.D.; accident investigation; Menlo Park, CA

DEFENSE
EXPERT(S) None

INSURER(S) Farmers Insurance Co.

SANTA CRUZ COUNTY

FRAUD

Customer Alleges Midas Did Superfluous Work on Vehicle

VERDICT Defense

CASE Wanda Conway-Knight v. Wardell Industries Inc. dba Midas Repair Shop, CV139262

COURT Superior Court of Santa Cruz County, Santa Cruz

JUDGE Robert B. Atack

DATE 09/28/01

PLAINTIFF
ATTORNEY(S) Sharon L. Kinsey; Law Office of Sharon L. Kinsey; Soquel, CA
 Amanda K. Wilson; Law Office of Sharon L. Kinsey; Soquel, CA

DEFENSE
ATTORNEY(S) Jeffrey M. Vucinich; Clapp Moroney Bellagamba & Vucinich; Daly City, CA

FACTS A Santa Cruz court gave a goose egg to a Midas customer who claimed that she did not need the automotive repairs they charged her for. While finding that Midas committed violations such as misstating the car's mileage on the plaintiff's invoice, the court turned down her motion for attorney fees and costs in the amount of \$137,198, on the ground that such a minor finding did not make her the prevailing party.

Plaintiff Wanda Conway-Knight filed a complaint alleging fraud and violations of the Automotive Repair Act, Consumer Legal Remedies Act and Unfair Business Practices Act arising out of repairs made to her 1989 Isuzu I-Mark automobile by defendant Wardell Industries Inc. dba Midas Repair Shop in November 1999.

The plaintiff's vehicle, with 94,469 miles on it, had transmission problems. She brought her vehicle into the defendant's shop for repairs. Afterward, she alleged that the repair shop misrepresented the vehicle's need for a new transmission, clutch and shift plate.

Auto repair expert Robert Malpedes testified that the services were unnecessary, that there was no need for a new transmission,

and that Midas never gave the original parts back to the plaintiff.

Clutch installation expert Mike Madrigal testified that the clutch work was appropriate and that the clutch had been replaced.

INJURIES The plaintiff sought reimbursement of the \$900 she paid for the repairs.

VERDICT The jury returned a defense verdict, finding that Midas did not commit fraud. It did find some minor violations by the defendant, such as misstating the mileage of the plaintiff's vehicle on the invoice.

The plaintiff's motion for restitution and injunctive relief was denied on Oct. 19, 2001. Motions for new trial and JNOV were also denied at the same time. Judgment was entered on Feb. 11, 2002.

Plaintiff's attorney Sharon L. Kinsey moved for attorney fees of \$126,333 and costs of \$10,865, on the basis that the plaintiff was the prevailing party due to the minor violations found by the jury. The defendant argued that it was the prevailing party on the basis that the plaintiff obtained no relief from her lawsuit.

The plaintiff's motion for attorney fees and costs was denied on April 17, 2002.

DEMAND \$25,000
OFFER \$2,000 (inclusive of costs and attorney fees)

PLAINTIFF
EXPERT(S) Robert Malpedes; auto repair shops; Santa Cruz, CA

DEFENSE
EXPERT(S) Mike Madrigal; auto repair shops; Santa Cruz, CA

SOLANO COUNTY

MOTOR VEHICLE

Motorcycle — Truck — Left Turn

Parties Dispute Sudden Left Turn Involving Freeway Crash

VERDICT Defense

CASE Matthew Gracy and Valerie Gracy v. Brady William Shamp and Harold Shamp, 14433

COURT Superior Court of Solano County, Fairfield

JUDGE James F. Moelk

DATE 02/28/02

PLAINTIFF**ATTORNEY(S)** Thomas B. Gill; Barwick & Gill; Napa, CA**DEFENSE****ATTORNEY(S)** Guy D. Borges; McNamara, Dodge, Ney, Beatty, Slattery & Pfalzer LLP; Fairfield, CA

FACTS A jury in Solano County found in a favor of a defendant driver in a case where a pair of motorcycle riders alleged that as they were following a Ford Explorer, the defendant driver made a sudden left turn in front of them and the motorcycle was unable to avoid colliding with the side of the Ford.

On March 13, 1999, plaintiff Matthew Gracy was driving a Suzuki 850 motorcycle with his wife, plaintiff Valerie Gracy, riding as a passenger. They were driving on Interstate Highway 80 and exited onto a single lane off-ramp that connected Interstate 80 to Highway 12 in Fairfield. Defendant Brady Shamp, who was driving a 1998 Ford Explorer owned by defendant Harold Shamp, was with three other occupants immediately in front of the plaintiffs on the off-ramp. The defendant was slowing his vehicle at the crest of the ramp when the vehicles collided.

The plaintiffs asserted that the defendant driver veered to his right and then made an abrupt left turn over a double yellow line, failing to signal.

The defendant driver denied that he veered one way and turned another. He claimed that he intended to cross over the double yellow line to the opposite shoulder to read a map. He could not recall whether he had activated his turn signal but one of his passengers testified that he saw the flashing signal light on the defendant driver's dash before the accident. Defense expert Frank Perez, Ph.D., testified that only the defendant driver's version of the facts was consistent with the physics of the accident (the angle of impact, the damage to the vehicles, the continued motion of the motorcycle and the point of impact).

INJURIES Plaintiff Valerie Gracy, who struck her right knee, leg and right side of her head against the defendants' vehicle during the accident, claimed that she suffered a pes anserine bursa contusion leading to bursitis in her right knee. The plaintiff's expert, Dr. Joseph Pramuk, testified that she also sustained some surface nerve damage in her right leg along and aggravated a long-standing pre-existing back problem. Plaintiff Matthew Gracy sustained 2 dislocated toes. Valerie Gracy's past medical specials were \$12,119 and Matthew Gracy claimed \$1,704 in past medical specials.

Defense expert John Lange, M.D., stated that Valerie Gracy suffered a mild contusion to her knee, but there was no aggravation or change of her long-standing back symptoms and treatment. On cross-examination, the plaintiff's doctors conceded that her post-accident back complaints were 75% related to her pre-existing condition.

VERDICT The jury returned with a defense verdict for both defendants. Prior to trial, a nonbinding arbitration was heard by David Lucchesi, Esq., who awarded \$2,500 to Valerie Gracy and \$700 to Matthew Gracy. The plaintiffs requested trial de novo.

The defense counsel reported filing a memorandum of costs of approximately \$24,000. The plaintiffs filed a motion to tax costs and a hearing is now pending.

DEMAND \$75,000 reduced to \$12,000 before trial from Valerie Gracy, \$7,500 reduced to \$3,000 before trial from Matthew Gracy
OFFER \$8,001 CCP 998 (withdrawn) to Valerie Gracy, \$3,001 CCP 998 (withdrawn) to Matthew Gracy

TRIAL DETAILS Trial length: 5 days
 Deliberations: 40 minutes

PLAINTIFF EXPERT(S) Gary Penir, D.C.; chiropractic; Napa, CA
 Joseph Pramuk, M.D.; general practice; Napa, CA

DEFENSE EXPERT(S) John R. Lang, M.D.; orthopedic surgery; Concord, CA
 Frank Perez, Ph.D.; accident investigation; Livermore, CA

INSURER(S) State Farm Insurance Co.

*Before you settle or
 go to trial, call*

Search

1-866-44-SEARCH

*Get the information you need
 on the Experts, Cases,
 Judges and Attorneys.*