

cheal tube, resulting in cricoarytenoid ankylosis, a rare condition in which the joint responsible for movement of the vocal cords is fixated from scar tissue. The claimants argued *res ipsa loquitur*. The claimants' medical expert, Dr. E. David Manace, testified that based upon Dr. Kendall's evaluation, the plaintiff has cricoarytenoid ankylosis that was proximately caused by the knee surgery. The claimants' psychological expert, Dr. Robert Flint, testified that Skaggs suffers from major depression and not conversion disorder as claimed by the respondents.

**Respondents contended** that the care rendered to the claimant was appropriate, that it met the standard of care and that it did not cause him any injury. The claimant has full motility of his cricoarytenoid joint without any abnormal pathology. The claimant's inability to work (he has been unable to work since 1994 because of multiple orthopedic problems) is not related to his dysphonia. The respondents' medical experts, Dr. Herbert Dedo, Dr. Willard Fee and Dr. Krzysztof Izdebski, testified that the claimant has full motility of his vocal cords and there is no physical explanation for why he cannot make audible sound and transfer that sound to speech. The respondents' medical expert, Dr. Katherine Kendall (the surgeon who performed the surgery on the claimant's vocal cords), testified that the vocal cords come together in a manner consistent with producing sound. She believes that the claimant suffers from a functional/behavioral overlay, which interferes with his ability to make sound. The respondents' psychiatric expert, Dr. Michel Mandel, testified that the claimant has classic conversion disorder symptoms based upon psychological testing, psychiatric evaluation and past medical history, including functional (behavioral) seizure disorders on multiple occasions. The claimant's own expert, Annette Eisenberg-Smith, testified that the claimant could work in many occupations without the need for a strong voice.

**Injuries:** Damage to vocal cords from endotracheal tube or laryngeal mask used during knee surgery.  
Wife sued for loss of consortium  
**Treatment:** Speech pathology treatment, otolaryngology evaluations, surgery on vocal cords.  
**Residuals:** Inability to speak, severe episodic pain in throat and periodic aspiration, inability to communicate with family (wife is deaf in one ear) and friends, inability to gain employment.

**Specials:** Medical to date (paid by collateral source). Wage loss \$750,000.

**Settlement talks:** Demand \$1,900,000 at arbitration hearing. Offer None.

**Result:** **RESPONDENT arbitration award.**

**Note:** The respondents report that the outcome was most impacted by the psychological testing results and the lack of physical findings of damage to the claimant's vocal cords.

August 13, 2001

**Rhoda MacDonald v. Dona Taylor—Martinez**

**Number:** C00 03099

**Plaintiff Attorney:** Daniel M. Crawford  
(Crawford Law Firm) San Francisco (415) 433-1442

**Defense Attorney:** Guy D. Borges  
(McNamara, Dodge, Ney, Beatty, Slattery & Pfalzer) Fairfield (707) 427-3998

**Plaintiff Medical:** Vincent Yamamoto, M.D. (Orthopedic Surgery) Walnut Creek  
Alan G. Greenwald, M.D. (Orthopedic Surgery) San Francisco

**Defense Medical:** Dave Miles Atkins, M.D. (Orthopedic Surgery)  
John Mattson, M.D. (Orthopedic Surgery—treating) Berkeley  
Sean White, D.C. (Chiropractic—treating) Berkeley

**Plaintiff Expert:** None

**Defense Expert:** Bahram Ravani, Ph.D. (Accident Reconstruction) Sunnyvale

**Insurance Carrier:** State Farm

**Trial Judge:** Hon. Peter Spinetta (Contra Costa—Martinez)  
**Trial Time:** 7 Days **Deliberation Time:** 30 Minutes

**AUTO/AUTO: REAR-ENDER IN HEAVY TRAFFIC/ADMITTED LIABILITY**

July 22, 1999, at 9 a.m., the plaintiff, a 50-year-old college professor, and her husband were driving on Moraga Way in the city of Orinda. The defendant was also driving on Moraga Way. As the plaintiff slowed for traffic due to construction, the defendant failed to stop in time and rear-ended the plaintiff's vehicle. Over the next two months, the plaintiff treated with a chiropractor and at Kaiser Hospital with complaints of left knee and left ankle pain. On Sept. 27, 1999, the plaintiff fell, twisting her left leg and landing on her left knee. In July 2000, the plaintiff had another fall. In December 2000, nearly one year after the accident, she had surgery to her left knee and made an excellent recovery. The plaintiff's vehicle had \$637 in property damage and the defendant had \$1,539 in property damage. The plaintiff's husband sued for personal injury and was awarded \$3,282 at the arbitration hearing. The plaintiff's husband accepted the award but the plaintiff requested a trial de novo and proceeded to trial.

**Plaintiff contended** that she had no prior problems or pre-existing instability in her left knee before this accident. The plaintiff's medical experts testified that the ankle instability resulted from the accident, which caused her subsequent fall. The fall caused tears to the anterior cruciate ligament and medial meniscus, leading to knee surgery, and was thus a "natural consequence" of the injury sustained in the car accident.

**Defendant contended** that there was no causal relationship between the minor automobile accident and the subsequent fall leading to the knee surgery. Defense expert, Dr. Bahram Ravani, testified that the plaintiff would not have struck or injured her knee or ankle given the physics and forces involved in this accident. The plaintiff's knee injury was more consistent with the mechanics of the subsequent fall. Dr. Ravani did acknowledge, however, that some degree of soft tissue neck strain was reasonably probable. Defense medical expert, Dr. Dave Atkins, testified that based on a review of the medical records, the plaintiff had a pre-existing problem with knee pain and instability, and that her injuries were consistent with a prior and/or subsequent injury to the knee. No significant knee or ankle injury could be tied to this accident. He considered that some neck injury may have been sustained and that a limited degree of treatment therefore would be appropriate.

**Injuries:** Soft tissue to neck, completely torn anterior cruciate ligament and partially torn medial meniscus in left knee.

**Treatment:** Chiropractic treatment, orthopedic evaluation, surgery on left knee.

**Residuals:** Pain and some degree of limited function in left knee.

**Specials:** Medical to date \$24,143. Future medical None. Wage loss \$50,000.

**Arbitration:** Arbitration award of \$3,282 by David Lucchesi; Trial de Novo by plaintiff.

**Settlement talks:** Demand \$75,000 per the defendant; \$15,000 per the plaintiff. Offer \$3,282 (arbitration award) per the defendant; None with no waiver of costs if the plaintiff voluntarily waived costs per the plaintiff.

**Result:** **DEFENSE VERDICT.** **12-0**

**Note:** The defense reports filing a memorandum of costs of \$18,000+. September 7, 2001

**SAN FRANCISCO COUNTY**

**Ilana Barth v. Tamara Merry—San Francisco**

**Number:** 313553

**Plaintiff Attorney:** Joseph K. Bravo & Timothy A. Larsen  
(Bravo & Margulies) San Francisco

(415) 512-6700

**Defense Attorney:** Tamara Merry, In Pro Per