

Koenig v. Emerson, D.D.S. continued — Monterey County

Plaintiff Expert: Donald Missirlian, D.D.S. (Prosthodontist) San Francisco
 Defendant Expert: John J. Eisinger, D.D.S. (Orthodontist) Monterey/Marina
 Warden H. Noble, D.D.S. (Prosthodontist) San Francisco
 S.N. Bhaskar, D.D.S. (Periodontist) Monterey

Trial Judge: Hon. Jonathan R. Price

DENTAL MALPRACTICE (Failure to Diagnose Bruxism)

Between January of 1989 and January of 1994, plaintiff, a 57-year-old English teacher from Monterey, was treated by defendant prosthodontist in Carmel Valley, over a course of 230 dental procedures and appointments. Successive treatment plans failed and three partials failed. Veneers, temporaries and permanent crowns broke off and dislodged, and two upper front teeth fractured at the gum line. All of the full mouth dental reconstruction had to be redone.

Plaintiff contended that defendant was negligent for failing to recognize bruxism (nocturnal grinding of teeth); that he failed to provide earlier posterior support and protection for the teeth and crowns; and that he failed to control the treatment and analyze the vertical dimension.

Dr. Missirlian testified that it was below the standard of care not to recognize bruxism and provide earlier posterior support, analyze the vertical dimension, and control the treatment for four years; and that the veneers, partials and crowns were also substandard.

Defendant contended that bruxism was not an issue; that posterior support was provided and not required earlier; and that the vertical dimension was properly analyzed, but difficult to control because of plaintiff's unique problems.

Defendant's doctors testified that there was no evidence of bruxism prior to or during defendant's treatment; that adequate posterior support was provided and the vertical dimension was properly analyzed; and that the veneers, crowns and partials were within the standard of care.

Plaintiff attorney asked the jury to award a substantial sum to compensate.

Jury out three hours after an eight-day trial.

Injuries: Plaintiff's full mouth dental reconstruction had to be redone, with the loss of three upper front teeth replaced by a bridge.

Specials: Failed treatment \$27,000. Retreatment \$32,000.

Settlement talks: Demand \$300,000. No offer.

Result: **DEFENDANT VERDICT.** 9-3
 Motion for new trial not made. November 8, 1995

Napa County Superior CourtsAmalia Belanger v. Frances Delgado et al.

Number: 71019

Plaintiff Attorney: Douglas A. Smith, Napa, by Montgomery G. Frankel
 Defendant Attorney: McNamara, Houston, Dodge, McClure and Ney, Fairfield, by Guy D. Borges—for Michael and Ronnie Hatfield

Belanger v. Delgado et al. continued — Napa County

Plaintiff Medical: Freeman C. Brackett, D.C. (Chiropractor) Napa
 Amy Elliot, D.C. (Chiropractor) Napa
 Valerie S. Fox, Ed.D. (Psychologist) Napa
 Defendant Medical: Richard J. Barry, M.D. (Orthopedist) Davis
 Alan D. Shonkoff, Ph.D. (Neuropsychologist) Berkeley
 Douglas Weed, D.C. (Chiropractor) Napa
 Plaintiff Expert: None
 Defendant Expert: Leo McIntyre (Civil & Traffic Engineer) Monterey
 Trial Judge: Hon. Francisca P. Tisher

RIGHT-ANGLE PARKING LOT ACCIDENT

November 27, 1993, plaintiff, a 29-year-old preschool teacher, was a passenger in a vehicle operated by defendant Frances Delgado, who was driving along a parking lot travel lane that paralleled a public street in Napa. The parking lot entrance to Kmart and the travel lane formed an uncontrolled intersection within the parking lot. As defendant Delgado was passing through the intersection, defendant Michael Hatfield's auto broadsided the right, passenger side of the vehicle where plaintiff was seated.

Plaintiff settled before trial with defendant Delgado for \$25,000 policy limits.

Plaintiff contended that Delgado had the right of way in the parking lot intersection prior to defendant Hatfield's entrance; that Hatfield was 100% liable for the accident, or was at least significantly more responsible than Delgado; and that Hatfield was inattentive, traveling too fast for the conditions, and did not see Delgado's vehicle until just before impact.

Defendant Hatfield contended that the entrance to the parking lot that defendant driver used was the primary travel way within the lot; that the interior travel lane used by Delgado was the secondary lane, which was required by design and common sense to yield to the vehicles entering or exiting the lot via the primary travel lane; and that Delgado was inattentive, traveling at an unsafe speed for the conditions, and did not see Hatfield's vehicle prior to impact.

Plaintiff attorney asked the jury to award \$175,000.

Defendant attorney asked the jury for a defense verdict, but if liability found to award no more than the appropriate percentage of reasonable special damages.

Jury out one to two hours after a nine-day trial over two weeks.

Injuries: Plaintiff's doctors testified that as a result of the subject accident, she suffered from soft tissue neck and back injuries resulting in chronic, disabling pain, dizziness and, on occasion, loss of consciousness. Chronic neck and upper back pain, headaches and post-traumatic stress disorder.
 Defendants' doctors testified that plaintiff's soft tissue injuries predated the accident, or alternatively, should have resolved within 6 to 12 weeks with an appropriate course of medical and/or chiropractic care; and that no more than two to four weeks of disability were appropriate.

Specials: Medical \$25,857. Wage loss \$43,200 for 36 months.

Settlement talks: Demand \$25,000 to Hatfield. Offer \$501 C.C.P. 998 approximately one year before trial.

Belanger v. Delgado et al. continued — Napa County

Result: DEFENDANT VERDICT (no negligence as to Hatfield). 11-1
 Plaintiff attorney notes that Mr. Borges conducted the trial in a professional, and in fact, exemplary fashion; and that he was extremely thorough and well-prepared in a difficult case, and is to be congratulated. Motion for new trial or appeal not made.
 Defendant was awarded costs of approximately \$20,000 pursuant to C.C.P. 998. November 3, 1995

San Luis Obispo County Superior Courts

Bonnie Grizzle v. Janet K. Miller, Ph.D. et al.

Number: CV075652

Plaintiff Attorney: Bennett and Johnson, Oakland, by Richard C. Bennett; and Esteban L. Valenzuela, Santa Maria

Defendant Attorney: McCarthy and Associates, Santa Barbara, by Robert Christopher Kroes; and Keppleman and Associates, San Luis Obispo, by Richard D. Keppleman

Plaintiff Medical: Thor C. Gjerdrum, M.D. (Orthopedist) Santa Maria

Defendant Medical: Brendan V. McAdams, Jr., M.D. (Orthopedist) San Luis Obispo

Plaintiff Expert: Ted Kobayashi (Physicist/Safety Engineer) Livermore
 Patrick Ford (Physical Therapist) Arroyo Grande

Defendant Expert: None

Trial Judge: Hon. Paul H. Coffee

PREMISES LIABILITY — FALL DOWN STAIRS

June 23, 1993, at about 9:00 p.m., plaintiff, a 37-year-old bus driver, was injured when she allegedly tripped on the stairway after leaving the office of defendant Sharon A. Rippner, who shared office space with defendant Janet Miller, two psychologists who leased the office space owned by defendant William J. Schanberger.

Plaintiff contended that she was in the process of walking down a flight of stairs and believed that the third stair was actually the sidewalk; and that when she stepped forward, she lost her balance, started to fall and landed on her buttocks facing the stairway.

Plaintiff further contended that her fall was caused by a dangerous condition of the stairway, created by the lack of exterior photosensitive lighting and a second handrail, the latter constituting a violation of the Uniform Building Code (UBC); that defendant Schanberger was negligent per se for having violated the UBC; and that defendant Rippner was negligent for not turning on the manual light switch to illuminate the exterior area.

Defendants contended that they were not negligent; that the building and stairway were exempt from UBC requirements since the building was older; that the accident did not occur at all, or alternatively, it did not occur as a result of any negligence on the part of defendants; and that plaintiff was negligent for not watching where she was walking and failing to take reasonable measures to care for her own safety.

Plaintiff attorneys asked the jury to award \$35,000.

Jury out eight hours after a seven-day trial.