

**VERDICT: \$19,000, 2 plaintiffs, car/semi, fractures, soft-tissue, intestine tear, contusion.**

An 8-4 Bozeman jury awarded William & Yvonne McDonald \$19,000 for injuries suffered in an auto accident in 11/90 while passengers in a car operated by Elaine Hume. It specified for William \$3,000 for past medicals, \$1,000 for past, present, and future pain & suffering, and 0 for future medicals, loss of enjoyment of life, and loss of consortium. It specified for Yvonne \$4,000 for past medicals, \$6,000 for future medicals, \$3,000 for past, present, and future pain & suffering, \$2,000 for other general expenses, and 0 for loss of enjoyment of life and consortium.

Hume was driving south on Hwy 191 near the Big Sky turnoff. It was dark, the road was dry and essentially straight and level. Skip Tinder, an employee of Kenyon-Noble Ready-Mix, was driving a 1971 Peterbilt semi with a black 63' low-boy trailer. He was entering 191 from a private road, turning north. Testimony conflicted as to whether the trailer lights were lit and whether the rear reflector was mud-covered. Hume and McDonalds testified that they saw no lights or reflectors. Hume drove into the rear of the trailer, which was fully blocking her lane. Her car, equipped with anti-lock brakes, left no skid marks. Patrolman Zarske inspected the trailer a half hour later and found the lights and reflectors in working order and compliance with Montana law. He opined that Hume could have avoided the accident, but that Tinder had not yielded. Tinder testified that he believed he had time to safely enter the highway, and that when he saw Hume's headlights he believed the car was 1/4 mile away near the Big Sky turnoff. Evidence as to separation distance at pull out ranged from 660' to 924'.

McDonalds contended that Tinder negligently operated his semi by not yielding to oncoming traffic. Defendants contended that he acted reasonably in entering the highway since he had "adequate separation distance" and that Hume did not keep a lookout.

Judge Olson instructed that a driver about to enter a highway shall yield to all approaching vehicles. He did not instruct that a driver having the right of way cannot rely absolutely on that right of way. He instructed that drivers have a duty to keep a proper lookout. He did not let the jury apportion fault to Hume pursuant to §27-1-703, even though there was an issue as to joint & several liability pursuant to §703(2). He instructed on "substantial factor" rather than "but for" causation.

Yvonne, 72, incurred \$19,882 medicals. William, 80, incurred \$14,933 medicals. She suffered comminuted femoral head and femoral neck fracture requiring an Austin Moore prosthesis, soft tissue injury to the right tibia, fractured ribs, chipped teeth, and concussion. He suffered a tear of his small intestines which required removal of 16" inches, and a large contusion from shoulder to hip. Both had preexisting medical problems, including heart conditions. She previously suffered degenerative disk disease, fibromyositis, migraine headaches, and ulcers.

Plaintiffs' experts: Richard Robiscoe, Bozeman

(accident reconstruction); orthopedic surgeon Lowell Anderson, Bozeman (deposed); surgeon/internist Kelly Banks, Bozeman; surgeon/internist Robert Flaherty, Bozeman.

Defendants' expert: Bob Caldwell, Denver (accident reconstruction).

Demand in fall 1993, \$135,000; offer, \$70,000. Demand last day of trial, \$175,000; no counter offer.

Jury deliberated 5 hours 4th day.

*McDonald v. Kenyon-Noble Ready-Mix and Tinder, Gallatin DV 92-807, 6/23/94.*

Thomas White (Morrow, Sedivy & Bennett), Bozeman, for McDonalds; James Halverson (Herndon, Hartman, Sweeney & Halverson), Billings, for Defendants (New Hampshire Ins.).