

State Trial Courts

VERDICT: \$204,192.80, truck/auto, admitted liability, lungs/ribs/patella.

A 12-0 Billings jury awarded Frank Oset \$204,192.80 for injuries sustained in a collision with Melissa Zentner in 8/02: \$34,192.80 medicals, \$55,000 services other than medical, \$85,000 past & future pain & suffering, \$30,000 past & future course of life. Judge Gustafson deducted \$27,933 advance-paid for medicals and \$994 for services rendered after he was released from the hospital and entered judgment for \$175,266.68 plus interest & costs.

Zentner pulled her farm truck onto Hwy 87 north of Billings into the path of Oset's Plymouth Voyager minivan. She admitted that she was negligent and that her negligence was the cause of the accident.

Oset, a retired farmer/rancher who was 81 at the time of the accident and a month short of 85 at the time of trial, suffered a collapsed left lung, broken ribs, and a fractured right patella. The parties stipulated that he incurred in total \$34,192.80 medical expenses. The last stipulated expense was incurred 4/1/03. There was no claim of lost income, wages, economic loss, or future medicals. Gustafson ruled that even though liability was admitted and Oset's medical treatment and expenses for the accident were agreed to by stipulation, he was still permitted to discuss the circumstances of the accident.

Oset claimed ongoing complications from the patella injury. He had had severe preexisting arthritis in both knees for 10 years and had undergone a left knee replacement in 1996 (Dr. Scott), and a right knee replacement had been recommended on several occasions before the accident. 4½ months after the accident, when his patella fracture had healed, Dr. Lang performed a right knee replacement. Oset claimed that the patella fracture complicated recovery from the right knee replacement and was continuing to cause problems, including anterior right knee pain and loss of flexion. He contended that the pain and complications precluded activities he had previously enjoyed such as part-time farming, hunting, fishing, water witching, and woodworking. He also presented testimony that because of his limitations his daughter-in-law had to live with him to help with any activities that require substantial knee bending. He acknowledged that he had a handicapped license plate before the accident.

Defense counsel stated during opening stated that Zentner and her husband were in the process of purchasing a small ranch, and during closing that if Oset had submitted more pharmaceutical bills Zentner would have paid them, she and her counsel felt bad and were prepared to pay the jury's verdict, and they were prepared to accept personal responsibility for what damages the jury awarded. In response to Plaintiff's objection, Gustafson instructed that: "You are not to consider in any way who may ultimately be responsible for paying any judgment against the Defendant. You are merely to determine the full amount of damages incurred by the Plaintiff."

Plaintiff's experts: orthopedic surgeon James Scott, Billings (deposed); orthopedic surgeon Christopher Lang, Billings (video); FP Steven Gerstner, Billings

(deposed).

Demand, \$228,926 at settlement conference with Guy Rogers; offer, \$103,926 at settlement conference, \$118,962 2nd day of trial, \$150,000 after close of evidence. (All demands/offers were in gross money terms.) Jury request, \$648,192.80; jury suggestion, \$57,190.80-\$98,190.80.

Jury deliberated 4 hours 3rd day.

Oset v. Zentner, Yellowstone DV-04-1194, 11/30/05.

Joseph Cosgrove & Zander Blewett (Hoyt & Blewett), Great Falls, for Oset; James Halverson (Halverson & Gilbert), Billings, for Zentner (Farmers Union Mutual Ins.).
