

## State Trial Courts

**VERDICT: \$9,000, auto, admitted negligence, soft-tissue, post-accident heart attack.**

A 12-0 Great Falls jury found that Carmen Kincheloe's admitted negligence was a cause of injuries sustained by Carl Strozewski in a collision in 12/94 in Great Falls and awarded \$4,000 past & future medicals and \$5,000 past & future pain & suffering. It awarded nothing for past & future benefits and wage loss or course of life, and rejected Tanya Strozewski's consortium claim.

Strozewski was driving a 1992 Ford Explorer north on 57th St. Kincheloe was driving a 1990 GMC 3/4-ton truck east on 3rd Ave. Strozewski alleged that Kincheloe negligently struck his vehicle on the left side after failing to yield. Kincheloe was cited for failure to yield.

Strozewski, 57, claimed soft-tissue injuries from the accident, the heart attack he suffered 2½ years after the accident, and lost income & benefits allegedly suffered after having to retire early from Motorola. His vehicle was totaled. In his pleading he claimed \$33,974 past and \$15,000 future medicals for the soft-tissue injury and heart attack, \$500,000 for pain & suffering, and \$500,000 for allegedly having to retire early. Mrs. Strozewski claimed \$50,000 for loss of consortium.

Kincheloe alleged that Strozewski's damages were attributable in part or in whole to factors other than the accident and were not caused by her, they failed to mitigate, their consortium claim does not meet Montana law, and any award must be offset by Strozewski's settlement (for an undisclosed amount) with Motorola of his age discrimination claims that he was forced into early retirement. They claimed that if the jury award exceeded \$50,000 it should be reduced pursuant to §27-1-308 (collateral source), Strozewski's heart attack was not caused or related to the accident, his retirement from Motorola was not caused by the accident, and the claim for punitives is barred or limited by §§ 27-1-220 & 221. Strozewski's withdrew their punitives claim the 3rd day of trial.

Judge Johnson precluded evidence of Strozewski's heart attack and Kincheloe's 2 prior auto accidents.

Plaintiffs' experts: FP John Malloy, Billings (video); William Shaw, Billings (occupational medicine, video-telephonic); internist/rheumatologist Enrico Arguelles, Billings (video).

Defendant's expert: orthopedic surgeon Steven Rizzola, Billings (deposed, called by Plaintiffs in their case).

Demand, \$250,000; offer of judgment, \$30,000. Jury request, approximately \$250,00 for lost wages and benefits, the rest for the jury to decide; jury suggestion, \$10,200.

Jury deliberated 1 hour 15 minutes 4th day.

***Strozewski v. Kincheloe, Cascade BDV-97-614, 3/4/99.***

David Veeder (Veeder Law Firm), Billings, for Strozewski; James Halverson & Jeffrey Koch (Herndon, Sweeney & Halverson), Billings, for Kincheloe.