

February 19, 2018

An ALM Publication

TEXAS

BEXAR COUNTY

MOTOR VEHICLE

Rear-ender — Multiple Impact — Multiple Vehicle

Plaintiff claimed she will need decompression surgeries

VERDICT **\$291,550****CASE** Elma Jane Guerrero v. Benjamin Soloman, No. 2014-CI-13452**COURT** Bexar County District Court, 166th, TX**JUDGE** Laura Salinas**DATE** 11/1/2017**PLAINTIFF****ATTORNEY(S)** Candelario S. Trevino, Jr. (lead), Trevino Injury Law, San Antonio, TX
Andrew E. Toscano, Gene Toscano, Inc., San Antonio, TX**DEFENSE****ATTORNEY(S)** David W. Jewett, Susan L. Florence & Associates, San Antonio, TX

FACTS & ALLEGATIONS On May 14, 2013, plaintiff Elma Jane Guerrero, 43, a special education teacher, was driving her 2012 Volkswagen Jetta in the far left of four eastbound lanes on Interstate 410 (Connally Loop) near Exit 24 in San Antonio. She was slowing for traffic when Benjamin Soloman rear-ended her. Guerrero said she then tried to brake, but her foot slipped onto the gas pedal, and she rear-ended the vehicle ahead of her. Guerrero's vehicle sustained front and rear-end damage. Guerrero claimed neck and lower back injuries.

Guerrero sued Soloman for negligently failing to keep a proper lookout and failing to control

his speed. The investigating officer testified that Soloman's inattention and failure to control his speed were the only factors contributing to the accident, and that Soloman rear-ending Guerrero was the cause of the second impact.

Soloman testified that, just before the accident, he took his eyes off of the road to check his vehicle's temperature gauges, and that traffic suddenly slowed in front of him. He argued that he acted reasonably under the circumstances.

The defense also argued that, even assuming the first impact was Soloman's fault, the second impact was the result of Guerrero's own actions and not any negligence on the part of Soloman.

INJURIES/DAMAGES *back and neck; bulging disc, lumbar; chiropractic; epidural injections; facet syndrome; headaches; herniated disc at C5-6; herniated disc at L4-5; leg; lower back; myospasm; physical therapy; radicular pain / radiculitis; radiculopathy; sciatica; soft tissue; steroid injection; strains and sprains*

Guerrero did not complain of pain at the scene or seek immediate medical attention. She claimed neck and back sprains and strains, muscle spasms, headaches, herniated discs at L4-5 and C5-6, an annular disc bulge at L5-S1, right L5-S1 facet syndrome and lumbar radicular pain.

She went to an injury clinic two days after the accident and complained of neck and lower back pain.

On May 23, she began chiropractic care and physical therapy, undergoing 10 treatments over

the course of about a month. She also underwent a medical evaluation by an osteopath.

MRIs showed a 3-millimeter left subarticular disc herniation at L4-5 flattening the thecal sac and with narrowing of the left neuroforamen; an annular disc bulge at L5-S1; and a 4-millimeter focal subligamentous disc herniation at C5-6.

She saw a pain management specialist on Nov. 6. He administered a lumbar epidural steroid injection on Dec. 26 and a second one on Feb. 7, 2014.

Guerrero went to one orthopedic surgeon on June 23, 2014, and to another orthopedic surgeon on Nov. 15, 2016. She called the second one to testify at trial, and he opined that Guerrero is a candidate for cervical and lumbar decompression surgeries, which would cost \$140,000 and \$230,000, respectively. Guerrero testified that the other orthopedic surgeon, too, had told her that she would be a candidate for neck and back surgery if her condition did not improve.

Guerrero testified that she continues to suffer from lower back pain radiating into her legs, especially the right one. She said her injuries hinder her ability to perform her daily activities and her job duties, which include restraining children when they have seizures. She further claimed that the injuries hinder her ability to run, walk for long distances and hike.

She sought \$14,725.20 for past medical expenses and \$370,000 for future medical expenses. For past and future physical pain and mental anguish and past and future physical impairment, she sought a total of \$1,154,175.60, which was three times the combined past and future medical of \$384,725.20.

The defense contended that the claimed injuries were inconsistent with the amount of damage to the rear of Guerrero's vehicle, and that her conditions were degenerative in nature and did not warrant the amount of treatment she underwent or any future care. The defense noted that Guerrero had not sought any treatment in the past three years, other than a consultation with an orthopedic surgeon in 2016.

Defense counsel also argued that any alleged injuries resulted from the second impact only, which the defense argued that Guerrero caused.

RESULT The jury found Soloman alone negligent and awarded Guerrero \$291,550.20.

ELMA JANE GUERRERO \$14,050 past medical cost
\$190,000 future medical cost
\$4,500 past physical impairment
\$80,000 future physical impairment
\$3,000 past physical pain and mental anguish
\$291,550

DEMAND OFFER \$50,000 (policy limit)
\$25,000

INSURER(S) Allstate Insurance Co.

TRIAL DETAILS Trial Length: 3 days
Trial Deliberations: 4 hours
Jury Vote: 10-2

PLAINTIFF EXPERT(S) Stephen E. Earle, M.D., orthopedic surgery, San Antonio, TX

DEFENSE EXPERT(S) None reported

POST-TRIAL The parties reached a post-verdict settlement at mediation for a confidential amount.

EDITOR'S NOTE This report is based on information that was provided by plaintiff's counsel. Defense counsel declined to contribute.

—John Schneider