

MOTOR VEHICLE

Rear-ender — Multiple Vehicle

Bus driver's back injury not related to rear-ender: defense

VERDICT **Defense**

CASE Richard Losie and Barbara A. Losie v. Edward J. Keen and Keens Craftsmen Inc., No. G-4801-CI-201106504-000

COURT Lucas County, Court of Common Pleas, OH

JUDGE Michael R. Goulding

DATE 10/1/2014

PLAINTIFF

ATTORNEY(S) Arnold N. Gottlieb, Arnold N. Gottlieb, Attorney at Law, Toledo, OH

DEFENSE

ATTORNEY(S) Glenn E. Wasielewski, Manahan, Pietrykowski, Delaney & Wasielewski, Toledo, OH

FACTS & ALLEGATIONS On Aug. 21, 2006, plaintiff Richard Losie, 62, a retired factory worker and part-time bus driver, was operating his vehicle in Toledo. Losie stopped for a traffic light at the intersection of LaGrange and Seneca Streets. The vehicle stopped behind him (non-party) was rear-ended by a vehicle driven by Edward J. Keen and owned by Keens Craftsmen Inc. The impact pushed the non-party vehicle into the back of Losie's van. Losie claimed the impact broke the driver's seat of his vehicle and resulted in a thoracic compression fracture.

Losie filed suit against Keen for motor vehicle negligence. He also sued Keens Craftsmen for vicarious liability, but Keens Craftsmen was dismissed early in the case.

Losie alleged that Keen failed to maintain an assured clear distance ahead and failed to keep a proper lookout.

Keen admitted liability for causing this accident, but argued that Losie began to move forward from the light and then stopped abruptly. The case proceeded on the issues of injury causation and damages.

INJURIES/DAMAGES *compression fracture; depression; fracture, T11; kyphoplasty; loss of consortium; physical therapy*

Losie sought emergency treatment for complaints of back pain. X-rays revealed no fracture at the time. He continued to experience discomfort, including an episode several months post-accident while driving a bus, which he described as the worst pain after the accident. In April 2007, he was diagnosed with a compression/insufficiency fracture at T11.

Losie underwent kyphoplasty (injection of cement into the vertebral space), followed by physical and aquatic therapy, as well as pain management therapy. Losie maintained he would

need pain management into the future. He also claimed depression as a result of his injuries.

Losie denied any pre-existing back problems. He argued that any injuries from accidents that occurred two decades earlier had resolved and his injury after the 2006 accident was new.

Losie sought \$90,894 in past medical expenses (\$50,558 under Robinson v. Bates) and \$30,000 for future medical expenses, plus damages for pain and suffering. His spouse, Barbara A. Losie, sought damages for loss of consortium.

Defendant contended that Losie suffered from osteopenia (bone mineral density), a precursor to osteoporosis, and that his complaints were unrelated to the subject accident. Defendant maintained that X-rays immediately post-accident were negative for a fracture and that his back likely fractured from his degenerative condition while he was subsequently driving a bus. Defendant also argued that Losie had sustained serious injuries in two prior accidents and had long-standing back problems that were unrelated to the 2006 accident.

RESULT The jury returned a defense verdict and awarded nothing to the plaintiffs.

DEMAND \$250,000

OFFER \$40,000

INSURER(S) Auto-Owners Insurance Co. for Keens Craftsmen

TRIAL DETAILS Trial Length: 3 days
 Trial Deliberations: 90 minutes
 Jury Composition: 8-member panel

PLAINTIFF

EXPERT(S) Rebecca Marshall, M.D., family medicine, Rossford, OH
 Kiran C. Tamirisa, M.D., pain management, Oregon, OH

DEFENSE

EXPERT(S) James E. Sander, M.D., neurology, Toledo, OH