

When You Have To Believe The Plaintiff: Court of Appeal Affirms Defense Verdict In Automobile Accident Case Where Defense Medical Doctor Conceded That Accident Caused Plaintiff A New Neck Injury – "If One Were To Believe The Plaintiff"

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Very often, in personal injury cases, a defense medical doctor, performing an independent medical exam, will opine that a Plaintiff suffered a soft tissue injury based solely on representations of the Plaintiff. And, in cases where liability is not contested, Plaintiff counsel will also argue that a recovery is mandated based on the testimony of the defense medical doctor. In a case with significant import, Anthony Davis v. Tyler Ray Harano (2022) Westlaw 2062883 ("Davis case"), this exact situation occurred.

The Davis case involves an often found fact pattern.

In the Davis case, the Plaintiff had been involved in a 2016 automobile accident which had totaled Davis' vehicle. Davis retained counsel, sued for neck injuries and elsewhere, and settled the 2016 accident case. The following year, in 2017, Tyler Ray Harano's vehicle made contact with Mr. Davis' rear bumper (of his new car). Photos showed only slight damage to the Davis' bumper, no airbags went off, both vehicles were drivable, and Davis walked around the accident scene without discomfort. Davis told Harano there was no need to call the police and Davis drove himself home. Davis did not seek medical attention until five (5) days after the 2017 accident.

Davis then filed suit against Harano claiming the 2017 rear-ender caused him \$1.5 million in damages. At trial, defense counsel for Harano conceded negligence. Counsel for the defendant driver (Harano) had also retained Dr. Steve Nagelberg to perform an independent medical exam of Davis. Dr. Nagelberg testified that the 2017 accident had caused Davis a new neck injury, different from a previous injury, but only on the basis "if and only if you believe Davis was telling the truth about his supposedly new neck pain." Counsel for Harano, while conceding negligence, argued there were no damages. The counsel for Davis moved for a directed verdict on causation, but the trial court denied the Motion.

The jury awarded no damages.

On appeal, Davis argued that Trial Court should have given a directed verdict on the issue of causation. Davis cited the testimony of Dr. Nagelberg. However, the Court of Appeal affirmed finding that the jurors had simply adopted the defense perspective, and held that the Trial Court had correctly denied Davis' Motion for Directed Verdict.

The Davis case is important in that it demonstrates that the defense examination doctor may concede a soft tissue injury based upon the representations of the Plaintiff, but, so long as the medical testimony is couched on the basis that one had to believe the Plaintiff, liability, even in an admitted negligence situation, can still be at issue.

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