

Auto Negligence - While the defendant rear-ended plaintiff, the crash resulted in minor damage, the jury then rejecting the claim on a liability instruction that had a specific causation provision

* *Johnson v. Steckel*, 00 CI 4091

Plaintiff: John W. Hardin, *Stuart & Hardin*, Versailles

Defense: J. Dale Golden and Timothy C. Feld, *Golden & Walters*, Lexington

Verdict: Defense verdict on causation

Circuit: *Fayette* (6), J. Paisley, 10-30-02

On 11-25-98, Lisa Johnson, age 37, was stopped at a red light on Harrodsburg Road. She was then a delivery driver for Zip Express. A moment later, she was rear-ended by Pamela Steckel. It occurred as Steckel looked away from the roadway for a moment, letting her foot off the brake.

Photographs of the two vehicles indicate nearly invisible damage. Still, Johnson treated that day for soft-tissue symptoms. She has since complained of a C6-7 disc injury, Dr. John Vaughan, Orthopedics, Lexington, later performing a repair surgery.

Johnson's medical bills were \$24,649, Vaughan linking the injury to the MVA. An intervening plaintiff, Johnson's worker's compensation insurer, AIK, sought the medicals, plus paid lost wages of \$8,236. Johnson claimed another \$13,586 in unpaid medicals, plus \$175,000 for pain and suffering.

Besides defending the case on liability, Steckel also minimized the claimed damages. She relied on an IME, Dr. Daniel Primm, Orthopedics, Lexington. He looked to pre-existing degenerative conditions, concluding one-half of her present condition was related to arousal, remainder to the degenerative process. In any event, he found her well-healed following Vaughan's fusion surgery.

Besides pointing to the photographs of minor damage, Steckel looked to proof developed late in this case. After all the

medical proof was in, Johnson having testified she had no prior neck pain, Steckel learned something new -- medical records from Good Samaritan that pre-existed this wreck contradicted Johnson, indicating she had complained of pain. Defendant then argued that all the testifying doctors lacked a full picture of her history. Then at the day of trial, Steckel successfully raised a *Frazier* challenge, with plaintiff's claims for impairment and future medicals being dismissed.

Tried to a Lexington jury, the first instruction asked if Steckel had violated the standard of care and as importantly, if that deviation was a substantial factor in causing injury. Next, the panel would consider Johnson's duties in being rear-ended as she sat a red light, apportionment and damages. It never got that far as a Lexington jury rejected the claim pursuant to the liability instruction just described. While not specifically delineating its finding, presumably Johnson's case was rejected on causation, especially in light of the minor vehicle damage. A defense judgment was entered by the court.