

AGENOR SAINT CYR vs. MARK T. JAKUBOWYCZ

Docket No.: 05-13645 CA 21; FJVR Reference No. 07:10-38

Verdict Date: **June** 19, 2007; Publication Date: **October** 2007

TOPIC: Motor Vehicles - Motor Vehicle Accident - Pedestrian Struck

RESULT: \$ 799 for Plaintiff. (verdict)

(\$ 623 - past medical expenses; \$ 176 - past lost earnings).

STATE: Florida

COUNTY: Miami-Dade

JUDGE: Mary Barzee Flores

PLAINTIFF PROFILE: Age: 35

Sex: Male

Occupation: Busboy

PLAINTIFF ATTORNEY: David A. Comras of Comras & Comras, P.A., Ft. Lauderdale

DEFENDANT ATTORNEY: Daniel J. **Santaniello** and William J. Peterfriend of **Luks, Santaniello**, et al., Ft. Lauderdale

CAUSE OF INJURY: On December 2, 2002, at the intersection of NE 123rd Street and N. Bayshore Drive in North Miami, Defendant allegedly veered off the road and struck Plaintiff, a pedestrian. Plaintiff claimed that Defendant was not paying attention; he dropped something in his vehicle, reached to retrieve it, and his vehicle went off the road into a guard rail subsequently hitting Plaintiff who had pulled his truck over and gotten out of it. Defendant admitted liability, but alleged that the accident was not the legal cause of loss, injury, or damage to Plaintiff. Defendant further alleged that Plaintiff jumped over the railing, causing his injuries. The case was tried on damages only.

NATURE OF INJURY: Right hip, neck, and lower back injuries. Plaintiff maintained that the injury to his neck left him unable to enjoy life and relations with his spouse and severely limited his future earning capacity as a busboy. Plaintiff claimed to have missed fourteen days of work, totaling \$ 616. Plaintiff's treating physician, Dr. Perez, opined that Plaintiff had a 6% impairment rating. Dr. Perez based his entire opinion regarding permanency on Plaintiff's complaints of occasional neck pain; in his final evaluation, he noted that the rest of Plaintiff's complaints had resolved. Dr. Chayet testified that Plaintiff had no objective findings to substantiate his subjective complaints. At no time did Plaintiff seek treatment from an orthopedic surgeon or neurologist. Dr. Chayet noted that all objective evidence pointed to Plaintiff's injuries as pre-existing. Dr. Chayet noted X-rays of the cervical spine from a 1998 motor vehicle accident revealed normal lordosis, with mild spondylosis and changes of degenerative disc disease at C5-C6. Plaintiff never admitted to having these prior

neck and back complaints or to having the prior accident.

PLAINTIFF EXPERT WITNESSES: Benjamin Perez, D.C., Chiropractic
Henry R. Sanon, D.C., Chiropractic, N. Miami

DEFENDANT EXPERT WITNESSES: Brad S. Chayet, M.D., Orthopedic Surgery,
Plantation

EDITOR'S NOTE: The jury found that the negligence on the part of Defendant was a legal cause of loss, injury, or damage to Plaintiff. The jury also found that Plaintiff did not sustain a permanent injury within a reasonable degree of medical probability as a result of this accident. Defendant served two Proposals for Settlement to Plaintiff in the amounts of \$ 1,401 and \$ 3,001. Plaintiff served a Proposal for Settlement to Defendant in the amount of \$ 7,500 and demanded \$ 5,500 immediately prior to trial.

DEFENDANT'S ATTORNEY'S COMMENTS: Plaintiff requested payment for past pain and suffering, past lost wages, future medical expenses, and future pain and suffering. The court entered a directed verdict in favor of Defendant regarding loss of future earning capacity. Plaintiff requested a total award of \$ 30,000, including \$ 7,000 in past medical expenses and \$ 616 in lost wages.