

MOTOR VEHICLE

Rear-ender — Multiple Vehicle

Defense: Motorist failed to promptly move van after crash**VERDICT** Defense**CASE** Rachel M. & Mark Bouchard v. Daniel Grant, No. 1776/09**COURT** Suffolk Supreme**JUDGE** Andrew Tarantino**DATE** 5/18/2011**PLAINTIFF****ATTORNEY(S)** Andrew Lieb, David K. Lieb, P.C.,
Center Moriches, NY**DEFENSE****ATTORNEY(S)** David J. Sobel, David J. Sobel, P.C.,
Smithtown, NY

FACTS & ALLEGATIONS At about 6 a.m. on Jan. 20, 2008, plaintiff Rachel Bouchard, 40, a restaurant's manager, was driving on the eastbound side of Sunrise Highway, near its interchange at County Road 51, in Eastport. Her van skidded on ice, struck a guardrail and came to rest in a travel lane. While Bouchard was attempting to restart the vehicle, its rear end was struck by a trailing vehicle that was being driven by Daniel Grant. Bouchard claimed that she sustained injuries of her neck and a shoulder.

Bouchard sued Grant. She alleged that Grant was negligent in the operation of his vehicle.

Bouchard claimed that Grant could have braked or veered around her vehicle.

Defense counsel noted that the collision occurred two to three minutes after Bouchard's vehicle had struck the guardrail. He claimed that her van was stopped in traffic because of a negligent act that led to the first accident, and he contended that her inability to restart her vehicle was merely a product of her failure to recognize that the vehicle's transmission was still engaged in the drive gear.

Grant also contended that Bouchard had not activated her van's headlights or emergency lights, but Bouchard claimed that the headlights were operating when the accidents occurred.

INJURIES/DAMAGES *aggravation of pre-existing condition; bulging disc, cervical; carpal tunnel syndrome; decreased range of motion; hand; herniated disc at C5-6; herniated disc at C6-7; numbness; physical therapy; torn rotator cuff; torn supraspinatus tendon*

The trial was bifurcated. Damages were not before the court.

Bouchard claimed that she sustained a herniation of her C6-7 intervertebral disc, an aggravation of a pre-existing herniation of her C5-6 disc and a tear of her left, nondominant shoulder's supraspinatus tendon, which is an element of the rotator cuff. She also claimed that she developed a bulge of her C4-5 disc, and she contended that her injuries led to her left wrist's development of carpal tunnel syndrome that caused numbness of her left hand.

Bouchard sought medical treatment during the day that followed the accident, and she underwent about 12 weeks of physical therapy that was typically rendered three times a week. She also underwent the administration of painkilling injections that were directed to her left shoulder.

Bouchard claimed that she suffers residual pain and a residual reduction of her range of motion. She contended that her residual injuries limit her performance of household chores that include cleaning, cooking and dishwashing. She sought recovery of damages for her past and future pain and suffering. Bouchard's husband presented a derivative claim.

Defense counsel contended that Ms. Bouchard did not sustain a serious injury, as defined by the no-fault law, Insurance Law § 5102(d). The defense's expert neurologist and expert orthopedist determined that Bouchard did not suffer herniated discs, and defense counsel contended that Bouchard's injuries did not significantly interrupt her ability to work.

RESULT The jury rendered a defense verdict.

INSURER(S) Progressive Casualty Insurance Co.

TRIAL DETAILS Trial Length: 1 day
Trial Deliberations: 45 minutes
Jury Vote: 6-0
Jury Composition: 5 male, 1 female

**PLAINTIFF
EXPERT(S)** None reported

**DEFENSE
EXPERT(S)** Matthew Chacko, M.D., neurology,
Smithtown, NY
Lee M. Kupersmith, M.D., orthopedics,
Valley Stream, NY

EDITOR'S NOTE This report is based on information that was provided by plaintiffs' and defense counsel.

—Max Mitchell