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**Negligence - Automobile Accident - Soft Tissue - Chronic Pain**

From *Virginia Lawyers Weekly*, 2001

Type of Action Personal injury - automobile accident - soft tissue injury - chronic pain

Type of Injuries Soft tissue - severe neck and back strain - shoulder dislocation

Name of case Whitford V. Murtland and Embry

Court Circuit Court of Loudoun County

Special Damages Medical and therapy, \$27,000; lost income and benefits, \$246,227.

Awarded or settled Settled

Amount \$600,000

Attorney for Plaintiff Roger L. Amole, Alexandria

Plaintiff's Experts Richard Falkenstein, M.D. (family practitioner); Michael Dennis, M.D. neurologist); Mayo Friedlis, M.D. (physiatrist); Francis Thomas (vocational rehabilitation counselor); Richard Edelman (economist).

Defendant's Experts Joseph B. Linehan, M.D. (orthopedic surgeon).

Insurance Carrier USAA for defendant Murtland and Travelers for defendant Embry.

The plaintiff was a 44-year-old sales account manager at Siemens with a successful work history, earning as high as \$178,000 in 1997. She and her husband, an airline pilot, also operated together a small horse farm, breeding and training horses for dressage competitions.

On Dec. 15, 1998, the plaintiff was driving home northbound on Rt. 50 near the intersection with Rt. 600. As she approached the intersection, she could see a portion of a tractor in an eastbound lane without lights or reflectors. Suddenly, a vehicle swerved from behind the tractor into the westbound lane, forcing the plaintiff's vehicle off the road and into a telephone pole. The plaintiff's vehicle was a total loss. The tractor driver, defendant Embry, left the scene after the accident without attempting to assist the victims. He was later charged with a felony and two misdemeanors related to leaving the scene of the accident. The defendant Embry claimed he was not in the eastbound lane at any time prior to the accident and fled the scene because he was "scared." But the plaintiff, defendant Murtland, and other witnesses placed all or some portion of the tractor in the eastbound lane without lights or reflectors at the time of the accident. Several witnesses did testify that the tractor was off of the roadway in a parking area shortly before the accident.

As a result of the accident, the plaintiff was never able to return to her sales account position at Siemens. She tried returning on a part time basis in February 1999, but was unable to work at a computer for long periods of time as the job required. An ergonomic analysis was performed by Siemens, which implemented a number of recommendations designed to relieve the stress of using the computer and minimizing her travel time. In addition, a new position was created for her, entitled, "business development manager," which was a lower stress job but involved decreased opportunity for achieving high income through commissions and bonuses. Despite these changes, the plaintiff was still unable to perform duties of the new position without significant pain and discomfort. She lacked the energy and focus which were her former strengths as a worker. As a consequence, she had to resign as a Siemens employee in August 2000.

Dr. Francis Thomas, a vocational rehabilitation specialist, estimated due to her limitations as a result of chronic pain, the plaintiff's future earning capacity in an administrative support position was \$36,535 per year. Using this as a basis of calculations of future loss of income, Dr. Edelman computed the present value of the plaintiff's future economic loss as \$2,586,745.

Although the plaintiff described her present condition to Dr. Friedlis as 50 percent to 60 percent improved in the neck area and 75 percent improved in the low back area, she still experiences pain to such degree that she has to have periodic trigger point injections and takes daily pain medication (Vicodin). Surgery was not recommended, but she is being considered for a new type of pain management called "proliferant injections" which will be administered by Dr. Friedlis.

Dr. Linehan, the defendant's expert, was prepared to testify that the plaintiff had sustained a neck and back strain but had no current residuals from the auto accident and was capable of working at her old position or any position which involved work at a computer; that her cervical disc bulges predated the accident and developed over a long period of time beginning with a previous neck and back problem 15 years earlier.