HENRY HEWITT, JR. : NUMBER: 568,902-B

VERSUS : FIRST JUDICIAL DISTRICT COURT

JC FODALE ENERGY SERVICES, : CADDO PARISH, LOUISIANA

LLC AND RONALD KEITH AMEND

**REASONS FOR JUDGMENT**

Trial was held April 2, 2014. The evidence consisted of testimony from the plaintiff, Henry Hewitt, Jr., the defendant, Ronnie Amend, and two exhibits: (1) Yokem Auto Collision Center repair estimate; and (2) reports of Waltemate Wellness Center/Chiropractice Scott Waltemate. In closing arguments, plaintiff counsel argued that liability was proven, that the Court should render monetary damage amounts of $2,793.00 (for chiropractic services), $279.66 (for property repair), and $6,000.00 (for general pain and suffering damages). Defense counsel conceded liability but argued that the plaintiff proved that he was entitled to property damage reimbursement, and that he failed to prove that the minor impact truly caused injuries.

Finding that the parking lot impact was extremely minimal, concluding that legal causation between the June 26, 2012 minor impact and the chiropractic services between July 2, 2012 and August 27, 2012 to be attenuated, and for reasons that follow, the Court concludes liability and orders only the amount of $279.66 as damages.

In any tort case the plaintiff bears the burden of proving liability and damages. In this case, the plaintiff’s version and the defendant’s version are vastly different:

(1) Hewitt claims there was 12 feet between the two trucks prior to impact while Amend claims there was three feet;

(2) Hewitt claims it was a “pretty strong impact” and that it “banged me around pretty good” while Amend claims it was a “slight little bump”;

(3) Hewitt claims that upon impact he sat in his truck for a minute, that he was “dazed” and/or “out of it” before he had a “vague” discussion with Amend while Amend suggests otherwise;

(4) Following the event, Amend claims that Hewitt called him at least several times with the last call or so being extortive in nature, while Hewitt claims that he called Amend’s employment once and very little, if any, conversation was had.

The Court finds that the property damage from this parking lot event is extremely minor, consistent with the ball of Amend’s trailer hitch impacting Hewitt’s bumper and leaving an indentation, all as evidenced by the Yokem estimate. The damage is consistent with minimal and slight contact between the two vehicles and consistent with Amend’s testimony.

There are other issues of concern which bear on the plaintiff’s burden of proof:

(1) There is no corroboration of Hewitt’s testimony (admittedly no corroboration of Amend’s testimony either–but Hewitt, not Amend, has the burden of proof);

(2) The in court testimony of Hewitt is inconsistent in several key respects from his deposition testimony;

(3) Apparently, Hewitt chose not to see his primary internal medicine doctor, James May, but instead–and after talking to New Orleans lawyer Morris Bart (who apparently declined the case), Hewitt began a treatment regimen with Chiropractic Waltemate along with the free services of an unidentified massage therapist;

(4) Waltemate’s report provides the following somewhat inconsistent history:

(a) Hewitt stated that “the other vehicle struck his vehicle head on”; and

(b) In one section of the report it is written that “immediately following the

accident, the patient’s main complaints included stiffness in the neck,

headaches, pain in the mid back, neck pain and pain in the low back...”

yet in another section the “initial onset” of all of those complaints are

listed as “next day”.

While the chiropractor’s report lists a diagnosis and prognosis, Dr. Waltemate was not called to testify on what the court deems to be a curious claim. It is the Court, not an expert witness report, that determines legal causation.

The bottom line is that, again, Mr. Hewitt has the burden of proof in this civil action. While he has carried his burden of proof with regard to liability and property damages of $279.66, he has not carried his burden of proof as to personal injury–and certainly not an award of $8,793.00 (specials of $2,793.00 and general pain and suffering damages of $6,000.00).

Counsel shall submit a formal Judgment consistent with La. D. Ct. R. 9.5.

Signed this 7th day of April, 2014, in Shreveport, Caddo Parish, Louisiana.

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SCOTT J. CRICHTON

DISTRICT JUDGE

DISTRIBUTION:

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