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COURT AWARDS DAMAGES CAUSED BY FLOOD CONTROL PROJECT

Several owners of residential properties in Orleans Parish, Louisiana filed suit after their properties were damaged as a result of a nearby flood control project.

**LOUISIANA GENERAL
LIABILITY NEWSLETTER**
RECENT CASES AND NEWS

The project was run by SELA – a project of the Army Corps of Engineers. The flood project physically damaged plaintiffs’ properties, resulting in diminution in their value and loss of enjoyment of those properties by their respective owners.

The Sewerage & Water Board of New Orleans was reportedly the local sponsor of the project, and allegedly had overall responsibility and control over the project. In plaintiffs’ suit, they asserted claims against the SWB for inverse condemnation and negligence.

Plaintiffs sought monetary damages, which included compensatory damages, legal interest, attorney fees, and costs of court. Two groups of plaintiffs recently went to trial and were awarded damages in the amount of \$1,474,614.82. *Sewell, et al. v. Sewerage & Water Board of New Orleans*, 2020 WL 4350088.

Attorney Spotlight



Heidel Schneider

Heidel Schneider is a partner in the Baton Rouge office. She graduated from LSU School of Law in 1999, and joined the firm in 2010. Her practice over the past 20 years has primarily focused on workers’ compensation matters. In her free time, Heidel enjoys hiking, camping, and spending time with her husband, Jeff and her daughter, Lauren.



RECENT LOW VELOCITY IMPACT AWARDS:

Recently, the Louisiana Supreme Court explained that expert testimony becomes more relevant in low velocity crashes where the plaintiff alleges serious injuries. In that case, the plaintiff alleged that he was rear-ended while stopped at a traffic signal. The defendant sought to introduce expert testimony disproving a causal connection between the plaintiff's alleged injuries and the accident. The plaintiff sought to exclude the expert's testimony as irrelevant, unreliable, and unduly prejudicial.

The Supreme Court began its analysis by explaining that, "specifically in the context of claims related to vehicular collisions, [a]s the force of impact in a collision lowers, and the seriousness of the injury rises, expert testimony becomes more relevant." Although potentially relevant, the Supreme Court excluded the expert testimony because it was not based upon sufficient facts or data. Specifically, the court held that it was significant that the expert did not inspect the vehicles involved in the collision or speak with the appraisers, but relied upon photographs and measurements of exemplar vehicles.

Additionally, the proposed expert's opinions were offered without condition or stipulation that the conclusions were premised upon certain assumptions.

Justice Weimer issued a concurring opinion "to emphasize that with proper proof, an opinion may be admissible regarding speed of collision and the level of force likely felt by the occupant of a vehicle." *Blair v. Coney*, 2019-00795 (La. 4/3/2020), 2020 WL 1675992.



The Supreme Court's ruling cited an appellate decision holding that evidence of speed, force of impact, and studies correlating level of impact, with possible injuries were relevant where a treating physician opined that a low force of impact could cause a herniated disk depending upon how far forward the car was moved upon impact. *Fussell v. Roadrunner Towing and Recovery, Inc.*, 765 So. 2d 373, 376 (La. App. 1 Cir. 3/31/00). In more recent decisions, the admission of expert testimony on causation in low-velocity impact accidents has hinged upon the sufficiency of the evidence on causation and whether there is evidence that the plaintiff is feigning injury with courts noting that defendants should not be prohibited from offering a reasonable alternative theory of causation.

Plaintiff filed suit against the City of Alexandria and the lieutenant police officer who rear-ended her at a stoplight. The lieutenant involved estimated that he was driving "two or three miles per hour" when he hit the back of plaintiff's vehicle. The airbags did not deploy and the damage to both vehicles was minor – limited to paint chips and minor nicks. Plaintiff claimed to sustain a lumbar herniation at L3-4, L4-5 and radiating pain into her right leg. Plaintiff underwent injection therapy and ultimately, a hemilaminectomy and discectomy. The appellate court affirmed the lower court's decision awarding plaintiff \$285,000 in general damages and \$74,963.63 in special damages – a total amount of \$359,963.63. *Taylor v. City of Alexandria*, 2019-25 (La. App. 3 Cir. 6/5/19), 274 So. 3d 206, 213.

Plaintiff was sitting parked in a handicapped spot when the defendant backed into plaintiff's vehicle. Imaging taken after the accident showed disc injuries at the cervical, thoracic, and lumbar levels of plaintiff's spine. Plaintiff thereafter underwent 18 months of treatment and though she was recommended to undergo epidural steroid injections, she did not ultimately go forward with them due to a cancer diagnosis. The court evaluated plaintiff's injuries as aggravations from a prior more serious motor vehicle accident, and ultimately awarded \$18,000 in general damages and \$14,498.50 in special damages. *Rihner v. Habeeb*, 792-326 (24th JDC 07/02/20).



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