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Jury Returns a Unanimous Defense Verdict of “No Cause for Action”

Farmington Hills, MI — John T. Eads, partner at Kopka, Pinkus, Dolin & Eads, P.L.C., successfully presented the defense of Bonnell Enterprises Inc., in a three-week Trial before the Honorable Warfield Moore of the Wayne County Circuit Court. Plaintiff, Michelle Darden had requested approximately \$4.2 million in damages resulting from a January 6, 2005, four-vehicle automobile accident which occurred on I-696 in Farmington Hills, MI. The jury of eight (8) was out for less than ten minutes before returning a unanimous defense verdict of "no cause for action".

The accident happened on a wet January afternoon and because the weather conditions were changing for the worse quickly, the traffic was moving at approximately fifty (50) mile per hour in all but the fast lane. The first vehicle involved in this chain reaction had spun out on a patch of ice on the roadway placing her vehicle directly facing oncoming traffic. The driver of the second vehicle was bracketed by cars on either side of him and was unable to avoid striking her, albeit at very low speed. The surrounding vehicles were all taking evasive action to avoid hitting the vehicles now spinning in the middle of the highway.

Plaintiff, Michelle Darden was a passenger in the third vehicle involved in the four-vehicle accident and was the only person with claimed injuries. The driver of the automobile in which she was riding had been traveling in the fast lane at approximately seventy (70) miles per hour. To avoid the hazard in front of him, he swerved from the fourth lane to the third and began a panic stop directly in front of the Defendant's vehicle, a Ford Pick-up equipped with a snow-plow owned by Bonnell Enterprises Inc. The operator of Defendant's snow-plow had been returning to Novi from Bonnell's home offices in Sterling Heights , after loading approximately one thousand (1000) pounds of salt into the bed of the truck. He was driving in the third lane of travel at approximately fifty (50) miles per hour and had left six (6) car lengths of space in front of him due to the weather conditions. He saw the spin out in front of him and immediately began braking, but he was unable to avoid striking the rear of the car now directly in front of him. Slush from the roadway had been thrown up in the air from the initial spin out obscuring the snow-plow operator's view of the roadway and he was unable to see the vehicle carrying the Plaintiff until after the impact.

Plaintiff alleged that the Defendant's driver was in violation of Michigan's rear-end collision statute, **MCL 257.402** , and also failed to maintain a safe assured distance ahead of him in violation of **MCL 257.627**, and therefore was negligent and liable for Plaintiff's injuries. The Defense countered with the presentation of the Sudden Emergency doctrine, in essence, that the sudden lane change and panic stop performed by the driver of Plaintiff's vehicle took away the buffer zone maintained by Defendant's driver, creating an unavoidable accident and relieving the operator of any responsibility for the accident. Plaintiff attempted to create a scenario wherein there were two accidents separated in time by at least five to ten (5 - 10) minutes to diminish the Sudden Emergency Defense. To support her theory, Plaintiff presented



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testimony by her accident reconstructionist, Thomas Bereza. Mr. Bereza relied on photos of the vehicles and the deposition testimony of the driver of the second vehicle to render his opinion that the vehicle carrying the Plaintiff was in clear view in front of Defendant's vehicle for at least nine (9) seconds. His conclusions were countered by the testimony of the three other drivers involved in the chain reaction and by the testimony of Michigan State Trooper, James Wojton. Trooper Wojton stated that he was on scene for an unrelated occurrence, he heard a noise and looked in his rear-view mirror and saw "four vehicles spinning simultaneously."

Ms. Darden was claiming injuries including a closed head injury, cervical disc injuries, lumbar disc injuries, carpal tunnel syndrome and permanent serious disfigurement related to surgical scars to her neck and wrist. Plaintiff's Counsel black-boarded damages consisting of wage loss beyond three years, and non-economic damages including pain and suffering for a total of \$4,200,000 adjusted for inflation. The jury was given the case at 3:40 pm., on the ninth day of Trial with instructions from the judge to retire at 4:00 pm., and resume deliberations the next morning. The jury of eight (8) returned in less than ten (10) minutes and indicated that they had reached a verdict. The jury answered "No" to the first question on the Verdict Form; Was the Defendant Negligent? A post-verdict interview of the jury indicated that they simply did not find Plaintiff's accident time frame credible based upon the testimony of Trooper Wojton. They further felt that the sudden lane change by the driver of the vehicle in which Ms. Darden was traveling created the Sudden Emergency in front on the Defendant's vehicle relieving him of any responsibility for the collision.

Kopka, Pinkus, Dolin & Eads is a multi state civil litigation defense firm that approaches litigation from the client's perspective. Among a diverse group of clients, including many of the nation's largest insurance companies, are a wide range of businesses, manufacturers, service and distribution companies, health care institutions and professionals. The firm's attorneys have extensive trial experience in numerous federal and state courts nationwide as well as appellate experience which includes the United States Supreme Court, federal appellate circuit courts, state Supreme Courts and various state appellate courts. For more information, please visit www.kopkcalaw.com.

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