



WEEKLY SUMMARIES OF COLORADO JURY VERDICTS including verdicts from the district courts in Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, El Paso, Jefferson, Larimer, Mesa, Pueblo and Weld Counties and the U.S. District Court for the District of Colorado.

TABLE OF CONTENTS

LARIMER COUNTY DISTRICT COURT
Personal injury - auto/semi and trailer collision 1

LARIMER COUNTY DISTRICT COURT

Mark Dunlap v. Split Shot Hauling, LLC and Kirk Smith

Case No: 2018 CV 117
Judge: Gregory M. Lammons
Trial Dates: February 17 – 26, 2021
Plaintiff’s Attorneys: Peter M. Anderson and Carlo Bonavita (The Law Offices of Peter M. Anderson), Longmont, Colorado
Defendants’ Attorneys: Miles M. Dewhirst and Steven R. Helling (Dewhirst & Dolven, LLC), Colorado Springs, Colorado

Type of Claim: Personal injury – auto/truck and trailer collision. Vicarious liability against Split Shot Hauling. On May 25, 2016, plaintiff Mark Dunlap was driving an SUV southbound on I-25 near the Owl Canyon entrance ramp (Exit 281). Plaintiff claimed he was traveling in the left fast lane and attempted to pass defendant Split Shot Hauling’s semi, driven by defendant Kirk Smith. The semi was in the right lane, and plaintiff claimed defendant Smith made an improper lane change and caused the 45 foot belly dump trailer to crash into plaintiff’s SUV in the left lane; plaintiff’s SUV then headed down the embankment, crossed the grassy median at a high rate of speed and entered the northbound lanes, before plaintiff steered his vehicle back into the median where it came to rest next to the northbound lanes, facing south. Plaintiff claimed he had always been traveling in the left fast lane and denied having changed lanes before attemptig to pass defendant Split Shot’s semi. The plaintiff alleged that the defendants were negligent and were the cause of his injuries and damages. The Colorado State Patrol gave the defendant driver a ticket for an improper lane

change and the CSP officer testified at trial. The defendants alleged that the plaintiff was traveling in the right lane behind defendants’ trailer at 79 mph before plaintiff changed lanes to the left lane and then accelerated to pass the semi while the defendant driver was making his lane change. The defendants claimed that when the plaintiff realized he would be unable to complete his pass, he braked and the rear of his SUV collided with the trailer’s tandem and then passenger side with the trailer. The defendant disputed liability and damages. The only claim against defendant Split Shot Hauling, LLC, was a vicarious liability claim based on the actions of its driver. Split Shot Hauling admitted that Smith was within the course and scope of his employment at the time of the accident. The defendant driver testified he turned on his left turn signal, checked his mirror and saw no traffic in the left lane for half a mile back before making his lane change. Defendant’s accident reconstruction expert opined that the plaintiff was at fault for the accident because he was driving aggressively and had the last clear chance to avoid the accident. Plaintiff admitted in two of his medical records he had changed lanes before attempting to pass.

Injuries Alleged: Mild Traumatic Brain Injury, neck and back injuries, T-1 fracture and injury to facet joints. Plaintiff, who was 48 years old at the time of the accident, claimed past lost wages of \$61,800, and \$546,000 for future lost earnings and approximately \$300,000 for future medical care and treatment. He did not seek past medical expenses at trial. He claimed emotional distress and physical impairment. The plaintiff requested a total of \$6 million in damages.

Final Demand Before Trial: Plaintiff agreed to consider a policy limits offer of \$1 million, if made, according to the defendants’ attorneys.

Final Offer Before Trial: \$175,000 statutory offer of settlement on May 1, 2020, preceded by a \$100,000 statutory offer of settlement on August 10, 2018, according to the defendants’ attorneys.



7396 South Garfield Ct.
Centennial, CO 80122

Plaintiff’s Expert Witnesses:

Elizabeth F. Yurth, MD (physiatrist), Boulder, Colorado
W. Ashley Ahrens, PhD (economist), Lyons, Colorado
Alissa H. Wicklund, PhD (neuropsychologist),
Fort Collins, Colorado
Randall Eldridge, DC (biomechanical expert and
accident reconstructionist), Parker, Colorado
Doris J. Shriver, OT/L, FAOTA, QRC, CLCP
(occupational therapist), Denver, Colorado

She testified by Webex.

Twyla J. Osler, LMT (medical massage therapist),
Fort Collins, Colorado

Defendants’ Expert Witnesses:

Tim O’Brien, MD (orthopedic surgeon)
Colorado Springs, Colorado
Carla J. Werder, PE (regarding accident
reconstruction), Littleton, Colorado
Michael S. Thakor, MD (plaintiff’s former rheumatolo-
gist), Fort Collins, Colorado. Dr. Thakor was called as
a witness by the defense.

Verdict: For the defendants.

Note: The jury found that the plaintiff was injured, but
defendant Kirk Smith was not negligent and was not a
cause of plaintiff’s claimed injuries and damages.

The defense will seek costs to August 10, 2018, and
actual costs from August 10, 2018 to the present.

Note: During this eight-day jury trial, all parties were
required to wear masks, everyone’s temperature was
taken daily and each person was questioned about
COVID-19 exposure and any symptoms. Jury selection
was conducted in a large courtroom to maintain social
distancing. During trial, held in a smaller courtroom,
six jurors were seated spaced apart and counsel stayed
seated at tables the entire time. Witnesses were allowed
to remove masks to testify while behind a
plastic barrier.

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This summary is factually correct to the extent verifiable by the
Jury Verdict Reporter of Colorado. Certain facts are omitted and/or
summarized by the **Jury Verdict Reporter of Colorado** in the
exercise of its editorial judgment.

	Editor & Publisher: Sally K. Gilbert 7396 South Garfield Ct. Centennial, CO 80122 303) 779-4073 sgilbert@jvrc.com	Director of Research: Steve Gilbert 303-667-5365 Email: steve.gilbert@jvrc.com