

# Nelson & Dahle, P.C.

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## DISTRICT COURT

Rogers v. McManus, Custer DV 98-21542, 9/9/99.

VERDICT: \$5,100 net (49/51), open intersection auto, neck/back/knee/hand.

An 8-4 Miles City jury found that both Plaintiff Jeffrey Rogers and Defendant Scott McManus were negligent and a cause of Rogers's injuries in a collision in Miles City in 10/96, apportioned negligence 49% to Rogers and 51% to McManus, and awarded \$10,000 damages, for a net \$5,100. The 4 dissenters wanted to give nothing.

McManus, driving a 1972 Ford F-150 4x4, T-boned Rogers in the passenger door of his Toyota pickup in a residential open intersection. Rogers's truck tipped over and came to rest on the driver's side. Rogers was on the left; McManus was on the right. McManus had left either 33 or 44N of skid marks into the intersection. Both drivers were ticketed (not discussed at trial) ??? McManus for speed and Rogers for failure to yield. The officer estimated that McManus was traveling 35 mph or more. Mike King estimated McManus's minimum speed at 28-32 mph, assuming 0 at impact. Denman Lee estimated McManus's speed at more than 34 mph, with speed at impact at 13-15 mph. Rogers contended that he did not violate the right-of-way statute because the vehicles did not arrive at the intersection at approximately the same time due to McManus's speed (1995 statute). John Jurist estimated the arrival time differential at .11-.47 seconds with Rogers entering the intersection first. He estimated impact speed of 7 mph with a range of 5-10 mph likely.

Rogers, 37, was belted in. He reported no injury at the scene. He treated with Dr. Winter for a sore neck, low back, and right knee, and hand numbness. The neck, knee, and hand problems cleared in 3 weeks. He asserted chronic low back pain with radiating, shooting low back pain. He was referred in 12/96 to Scott Callaghan in Billings. An MRI and EMG revealed degenerative changes which Winter did not attribute to the accident. The EMG was normal. Meds were \$5,021. Vehicle damage was claimed at \$1,700 or \$2,500.

Rogers worked at Pine Hills School full-time and had been delivering 5-gallon water jugs for his sister's business part-time. He claimed past & future loss of \$3,100 a year (15 years into the future) for the inability to continue the heavy lifting. He and his wife separated a month before trial; both testified that it was because he was a different person from the accident.

McManus contended that the claim of permanent back injury was not supported by the impact speed, medical evidence, or level of physical activity after the accident, and that other part-time work was available which Rogers was required to take to mitigate.

The jury sent out a query after 1 hour 45 minutes wondering how to award meds and vehicle damage but still apportion 49% of the negligence to Rogers. By stipulation it was instructed that Judge Day must reduce the award by the comparative fault attributed to Rogers.

Plaintiff's experts: internist Malcolm Winter, Miles City; physicist Denman Lee, Bozeman; Det. Mike King, Miles City (deposed).

Defendant's expert: biophysicist John Jurist, Billings (deposed).

Demand, \$50,000; offer, \$7,500. Jury request, \$16,621 specials, \$53,922 future loss of earning capacity, and pain & suffering at discretion; jury suggestion, discretion.

Jury deliberated 2 hours 2nd day.

Terry Hanson, Miles City, for Rogers; Randall Nelson, Billings, for McManus (State Farm Ins.).