

Case summary for:

Robert M. Cearley, Jr.

v.

Daniel Hudgens, 03-F-0698 (MJW)

United States District Court, District of Colorado,
Civil Action # 03-F-0698 (MJW)

Date of Settlement: October 18, 2004

Plaintiff's Counsel:

James H. Chalot (ATLA Sustaining member)
Jchalot@Chalotlaw.com

and

Russell R. Hatten (ATLA member)

both of:
Chalot Hatten Law Offices, P.C., Denver, CO
1900 Grant, Suite 1050
Denver, CO 80203
303/861-1042
fx 303/861-0506

Facts:

Plaintiff, Bob Cearley, is a well regarded Little Rock, Arkansas, trial lawyer. He is a member of ATLA, and was the 1998 president of the Arkansas Bar Association. On the early morning of December 9, 2001, Cearley, then aged 57, and three friends, were skiing at Vail Mountain. They were skiing down the *Avanti* run. It was the first run of the day. They had reached the top of *Avanti* via the *Vista Bahn*, then the *Avanti* chairlifts.

Defendant, Daniel Hudgens is a Houston CPA and was formerly a partner at Anderson partner. He was also skiing at Vail on the morning of December 9, 2001. Hudgens was skiing at high speed down *Avanti*, making slalom race style turns when he collided into Cearley's left side, allegedly from uphill. The skiing conditions were groomed new snow, cold, and clear. *Avanti* is an intermediate run at the place of the accident, over 300' wide, with no visual obstructions down slope or from tree line to tree line. At the moment of the accident, Cearley was behind his companions, and thus they did not witness the event. Hudgens denied liability and testified that Cearley was the uphill skier.

Under subpoena, Vail Resorts, Inc., produced print-outs of each party's lift pass scan data which showed that the Cearley party was scanned at the *Vista Bahn* chairlift at 09:01 and that Hudgens had been scanned at the *Born Free* lift at 09:11. Plaintiff argued that the scan data demonstrated that Cearley had started up the mountain ten minutes ahead of Hudgens and that given the timing of the lifts and runs taken by the parties to reach the accident scene just 30 minutes later that Cearley had to be ahead of Hudgens, and that he thus had to be the downhill skier in the accident. Damage to Cearley's skis, the bio-mechanics of the accident, the parties' comparative injuries, and internal inconsistencies in defendant's testimony also demonstrated that defendant was the uphill and overtaking skier; and, therefore had the legal duty to yield and avoid the collision. Ultimately, the court entered a credibility related sanction against the defendant, pursuant to F.R.C.P. 37(d) and also indicated that defendant's experts would be limited under *Daubert*.

Prior to the accident, Cearley was an avid alpine skier, mountain bicyclist, and runner. In the accident, he sustained multi-part comminuted intra-trochanteric fractures of the proximal left femur. He underwent open reduction and internal fixation on December 11, 2001 at the Swedish Medical Center in Denver. However, his fractures failed to unionize, and he required two subsequent reconstructive surgeries and a complex fourth surgery intended to restore length and correct the architecture of his hip.

A personal injury attorney who worked as a solo practitioner with a staff of five, Cearley earned, prior to the accident, an average of \$291,000 per year. He incurred substantial losses at his law practice as a result of his injuries. He claimed an income loss of \$712,023.00 and incurred medical expenses of \$243,520.00. His primary doctor opined that he sustained a permanent impairment under AMA guidelines of 49% in the limb, and that translated to a 20% impairment to the whole body. Now, he suffers discomfort, a shortened leg, abnormal hip architecture, reduced activity level, and is at significant risk for future surgery and further loss of function.

The Complaint alleged, *inter alia*, negligence *per se* under the Colorado Ski Safety Act, that defendant was skiing too fast, failed to maintain a lookout, and that defendant had the primary duty, as the overtaking and uphill skier to avoid the collision. C.R.S. § 33-44-109.

The parties settled immediately prior to trial for \$1 million.

Principal expert witnesses:

Plaintiffs':

Bio-mechanics & MADYMO simulation: Chris Van Ee, Novi, MI

Ski Safety: Stan Gale, Golden, CO

Accident reconstruction: Olof Jacobson, Littleton, CO

Economics: Pat Pacey, Ph.D., Boulder, CO

Orthopedics: Scott Bowen, M.D., Little Rock, AR;

Limb Lengthening and restoration: Robert Rozbruch, M.D., New York City, NY

Defendant's:

Defendant's expert witnesses:

Vocational Rehabilitation: Patrick M. Renfro

Accident reconstruction: Seth Bayer, P.E., Louisville, CO