

<p>Colorado Court of Appeals 2 East 14th Avenue Denver, CO 80203</p> <hr/> <p>Trial Court: DISTRICT COURT OF THE 19TH JUDICIAL DISTRICT WELD COUNTY, STATE OF COLORADO</p> <p>Trial Court Judge: Daniel Maus</p> <p>Trial Court Case No. 2011cv107</p> <hr/> <p>Plaintiffs/Appellants: JOHN WINKLER AND LINDA WINKLER,</p> <p>v.</p> <p>Defendants: JASON SHAFFER, MICHAEL GARTLEY, and GERALD H. PHIPPS, INC. d/b/a GH PHIPPS CONSTRUCTION COMPANY</p>	<p>DATE FILED: April 16, 2014 2:43 PM FILING ID: E6E1B7CBF0A4D CASE NUMBER: 2014CA727</p> <p>• COURT USE ONLY •</p>
<p>Attorney for Defendant/Appellant: Name: Brian A. Murphy 10200 W. 44th Ave., Suite 340 Wheat Ridge, CO 80033 Phone: (303) 316-0813 Fax: (303) 320-0827 E-mail: Brian@brianmurphy.net</p>	<p>Case Number:</p> <p>Division:</p>
<p>NOTICE OF APPEAL</p>	

COMES NOW APPELLANTS, John and Linda Winkler, by and through their attorney, Brian A. Murphy, and file this Notice Of Appeal on entry of Judgment on Jury Verdict of May 28, 2013, and the Amended Entry of Judgment On Jury

Verdict of March 10, 2014, as follows:

BRIEF DESCRIPTION OF NATURE OF THE CASE

General Statement of the Nature of Controversy

This is personal injury case arising from multiple vehicle collision which occurred on March 26, 2009. The trial court granted Defendants' unopposed motion to bifurcate the trial and a jury trial solely on the issue of liability was held from May 14, 2013 to May 16, 2013.

The trial court granted Defendant National Farmers Union Property And Casualty Company's motion for a partial directed verdict and entered a verdict in favor of that Defendant solely on Plaintiffs' Uninsured Motorist claims against it and leaving in placed the stayed claims against that Defendant for breach of contract; bad faith breach of an insurance contract; and unreasonable delay. Plaintiff later settled these claims with Defendant National Farmers Union Property And Casualty Company. Therefore, these issues are no longer part of the case.

The jury found that Defendants Kmet Volodymyr and Bogo Transportation, Inc. were negligent and their negligence caused 100% of both Plaintiffs' injuries resulting from the March 26, 2009 collision at issue in the case; and found Defendants Jason Shaffer, Michael Gartley, and Gerald H. Phipps, Inc. d/b/a/ GH

Phipps Construction Company were not negligent in the March 26, 2009 collision at issue in the case.

Plaintiff filed an earlier appeal of this verdict. However, this Court dismissed that appeal without prejudice finding that the trial court's entry of judgment did not contain the necessary language to render the verdict ripe for appeal. On March 10, 2014, the trial court entered an Amended Entry of Judgment On Jury Verdict certifying as final the judgment and issues addressed in this appeal.

This appeal follows.

Statement Whether Judgment Resolved All Issues Pending Before the Court

The Entry of Judgment resolves all claims regarding Defendants Jason Shaffer, Michael Gartley, and Gerald H. Phipps, Inc. d/b/a/ GH Phipps Construction Company. There are still damage claims yet to be decided against Defendants Kmet Volodymyr and Bogo Transportation, Inc.

Judgment Is Final

The Trial Court issued final judgment as described above.

Date of Judgment And Mailing

On March 10, 2014, the trial court entered an Amended Entry of Judgment On Jury Verdict certifying as final the judgment and issues addressed in this appeal. This Order were served via the Court's electronic service system.

Extensions To File Motions For Post-Trial Relief.

No extensions were sought.

Date Motion For Post Trial Relief was filed.

Not applicable.

Date Plaintiff's Motion For Post-Trial Relief was denied.

Not applicable.

No extensions were granted to file a notice of appeal.

ADVISORY LISTING OF ISSUES TO BE RAISED ON APPEAL

- 1) Did the Trial Court in allowing Defendants to present undisclosed opinion testimony of an expert witness?
- 2) Did the Trial Court commit reversible error when in refused to instruct the jury on Plaintiff's Negligence Per Se Claim even though Plaintiff's expert witness testified that Defendant Shaffer was driving too fast for

conditions and following too closely in violation of Colorado safety statutes?

- 3) Did the Trial Court err in refusing to allow Plaintiff's accident reconstruction expert to testify in rebuttal?

TRANSCRIPTS OF EVIDENCE REQUIRED.

Transcript of trial testimony of Plaintiff's expert Ben Railsback; transcript of argument to the trial court and the trial court's rulings on Defendants' Motion to Strike Undisclosed Rebuttal Opinions by Ben Railsback, P.E.; transcript of argument to the trial court and the trial court's rulings on Plaintiff's proposed jury instructions; transcript of argument to the trial court and the trial court's rulings regarding Plaintiff's Motion To Strike Undisclosed Opinion Testimony By Sgt. Gates; and transcript the testimony of Sgt. Gates.

NO PREARGUMENT CONFERENCE IS REQUESTED.

NAMES AND ADDRESSES OF COUNSEL FOR PARTIES

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HALL & EVANS

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Respectfully submitted this April 16, 2014

By: s/Brian A. Murphy

Attorney for Appellants

CERTIFICATE OF SERVICE

I hereby certify that on April 16, 2014, I requested the Court's electronic filing system to serve a true and correct copy of the foregoing to:

Counsel for Defendant National Farmers Union Property and Casualty Company:

Counsel for Defendant Shaffer:

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By: /s Brian A. Murphy

DISTRICT COURT OF THE 19th JUDICIAL DISTRICT WELD COUNTY, STATE OF COLORADO 901 9 th Ave. Greeley, CO 80631 (970) 351-730	DATE FILED: March 10, 2014 11:15 AM CASE NUMBER: 2011CV107 ▲ Court Use Only ▲
Plaintiffs: JOHN WINKLER AND LINDA WINKLER, v. Defendants: JASON SHAFFER, KMET VOLODYMYR, BOGO TRANSPORTATION, INC., MICHAEL GARTLEY, and GERALD H. PHIPPS, INC. d/b/a GH PHIPPS CONSTRUCTION COMPANY	
	Case No.: 2011CV107 Div.: 4
AMENDED ENTRY OF JUDGMENT ON JURY VERDICT	

A jury trial solely on the issue of liability was held from May 14, 2013 to May 16, 2013 in the above entitled action. The Jury returned its verdict on May 16, 2013 and found as follows:

- 1) Defendants Kmet Volodymyr and Bogo Transportation, Inc. were negligent and their negligence caused 100% of both Plaintiffs' injuries resulting from the March 26, 2009 collision at issue in the case.
- 2) Defendants Jason Shaffer, Michael Gartley, and Gerald H. Phipps, Inc. d/b/a GH Phipps Construction Company were not negligent in the March 26, 2009 collision at issue in the case.

Therefore, the Court enters Judgment in favor of Plaintiffs and against Defendants Kmet Volodymyr and Bogo Transportation, Inc. holding that both were negligent and their negligence caused 100% of both Plaintiffs' injuries from the March 26, 2009 collision at issue in the case. These Defendants are jointly and severally liable for Plaintiffs' damages caused by the March 26, 2009 collision. The amount of those damages will be determined in a later proceeding.

The Court further enters Judgment in favor of Defendants Jason Shaffer, Michael Gartley, and Gerald H. Phipps, Inc. d/b/a GH Phipps Construction Company and holds these Defendants were not negligent in the March 26, 2009 collision at issue in the case.

Pursuant to C.R.C.P. 54(b) “When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment.”

This Court expressly determines that there is no just reason for delay in the entry of Judgment in favor of Defendants Jason Shaffer, Michael Gartley, and Gerald H. Phipps, Inc. d/b/a GH Phipps Construction Company finding that these Defendants were not negligent in the March 26, 2009 collision at issue in the case. Therefore, the Court expressly directs entry of Judgment in favor of these Defendants and that this Judgment is final and appealable immediately and terminates the action as to all claims and defenses of Defendants Jason Shaffer, Michael Gartley, and Gerald H. Phipps, Inc. d/b/a GH Phipps Construction Company.

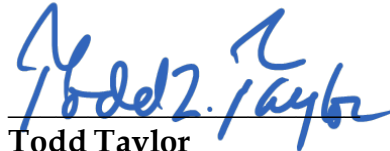
Plaintiffs may proceed with the damages phase of the case against Defendants Kmet Volodymyr and Bogo Transportation, Inc.

Former Defendants National Farmers Union Property and Casualty Company, Maria Moxley as Personal Representative for the Estate of Douglas Mann, deceased; and Leonard Arias have resolved all claims with Plaintiffs and are no longer a part of this action.

WHEREFORE, the Court finds that there is no just reason for delay and directs for the entry of judgment as set out above.

Dated: March 10, 2014

BY THE COURT:



Todd Taylor
District Court Judge



This document was filed pursuant to C.R.C.P. 121, § 1-26. A printable version of the electronically signed order is available in the Court's electronic file.