

In the Supreme Court of the State of Nevada

DESIRE EVANS-WAIAU,
individually; GUADALUPE PARRA-
MENDEZ, individually,

Appellants,

v.

BABYLYN TATE, individually,

Respondent.

Electronically Filed
Case No. 79424 Feb 05 2021 09:21 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPEAL

From the Eighth Judicial District Court
Clark County, Nevada
The Honorable Mary Kay Holthus, District Judge
District Court Case No. A-16-736457-C

APPELLANTS' APPENDIX VOLUME 1 PAGES 1-24

DENNIS M. PRINCE
Nevada Bar No. 5092
KEVIN T. STRONG
Nevada Bar No. 12107
PRINCE LAW GROUP
10801 W. Charleston Boulevard, Suite 560
Las Vegas, Nevada 89135
Attorneys for Appellants
Desire Evans-Waiiau and Guadalupe Parra-Mendez

CHRONOLOGICAL TABLE OF CONTENTS TO APPENDIX

Tab	Document	Date	Vol.	Page Nos.
01	Plaintiffs' Demonstrative Exhibits (Excerpts)	05/21/19	1	1-11
02	Joint Trial Exhibit No. 5	05/21/19	1	12
03	Joint Trial Exhibit No. 7	05/21/19	1	13
04	Joint Trial Exhibit No. 9	05/21/19	1	14
05	Joint Trial Exhibit No. 16	05/21/19	1	15
06	Joint Trial Exhibit No. 18	05/21/19	1	16
07	Joint Trial Exhibit No. 19	05/21/19	1	17
08	Joint Trial Exhibit No. 20	05/21/19	1	18
09	Joint Trial Exhibit No. 44 (Excerpts)	05/21/19	1	19-23
10	Plaintiffs' Closing Argument (Excerpt)	05/31/19	1	24

ALPHABETICAL TABLE OF CONTENTS TO APPENDIX

Tab	Document	Date	Vol.	Page Nos.
02	Joint Trial Exhibit No. 5	05/21/19	1	12
03	Joint Trial Exhibit No. 7	05/21/19	1	13
04	Joint Trial Exhibit No. 9	05/21/19	1	14
05	Joint Trial Exhibit No. 16	05/21/19	1	15
06	Joint Trial Exhibit No. 18	05/21/19	1	16
07	Joint Trial Exhibit No. 19	05/21/19	1	17
08	Joint Trial Exhibit No. 20	05/21/19	1	18
09	Joint Trial Exhibit No. 44 (Excerpts)	05/21/19	1	19-23
10	Plaintiffs' Closing Argument (Excerpt)	05/31/19	1	24
01	Plaintiffs' Demonstrative Exhibits (Excerpts)	05/21/19	1	1-11

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that this document was filed electronically with the Supreme Court of Nevada on the 5th day of February, 2021. Electronic service of the foregoing document entitled **APPELLANTS' APPENDIX** shall be made in accordance with the Master Service List as follows:

Daniel F. Polsenberg
Joel D. Henriod
Adrienne R. Brantley-Lomeli
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Parkway
Suite 600
Las Vegas, Nevada 89169

-AND-

Thomas E. Winner
Caitlin J. Lorelli
WINNER & SHERROD
1117 South Rancho Drive
Las Vegas, Nevada 89102
Tel. (702) 243-7000
Fax: (702) 243-7059
Attorneys for Respondent
Babylyn Tate

/s/ Kevin T. Strong
An Employee of PRINCE LAW GROUP

1

LOCATION OF THE COLLISION



Las Vegas Blvd.



THE LINQ

Linq Ln.

Koval Ln.

Paradise Rd.

Flamingo Rd.



RPLYAPP0001

DEFENDANT'S INTENDED ROUTE



Las Vegas Blvd.



THE LINQ

Linq Ln.

Koval Ln.

Paradise Rd.

Flamingo Rd.



DESIRÉ'S ROUTE



Las Vegas Blvd.



THE LINQ

Linq Ln.

Koval Ln.

Paradise Rd.

Flamingo Rd.



RPLYAPP0003

LOCATION OF THE COLLISION

Linq Ln.

Flamingo Rd.



RPLYAPP0004





Pedestrian

Desiré



Pedestrian

Desiré



Pedestrian

Desiré

**Defendant:
35 mph**



Pedestrian

Desiré

**Defendant:
35 mph**



Pedestrian

Desiré

**Defendant:
35 mph**



Pedestrian

Desiré

Defendant:
35 mph

2



RPLYAPP0012

3



RPLYAPP0013

4



RPLYAPP0014

5



RPLYAPP0015

6



RPLYAPP0016

7



RPLYAPP0017

8



RPLYAPP0018

9

Align Chiropractic Rhodes Ranch
8680 Warm Springs Rd.
#155
Las Vegas, NV 891481828
Phone: (702)413-7307
FAX: (702)413-6741

Patient Name: Evans, Desire

Date of Service: 11/2/2015

Mrs Evans was involved in a collision. She was pain free before the accident. Since the accident she is having severe back and neck pains, along with a hard time sleeping and anxiety.

She is having hard time taking care of her three daughters and cant pick them up any more.

Subjective

This patient presents with the following problems:

Sprain of ligaments of cervical spine, initial encounter

History of present illness/condition:

The patient rated the intensity of their pain/symptoms as an 8 on a scale of zero to 10 with zero being complete absence of symptoms and 10 being very severe or unbearable. The mechanism of injury described by the patient involved an automobile injury. The symptoms have been present since the date of injury on 10/30/2015. The patient describes their pain with the following qualifiers: stiffness, aching, throbbing, sharp, stabbing, radiating and tingling. The patient describes their symptoms as radiating down the left arm to hand. Upon questioning, they related that the symptoms were aggravated by activities involving movement, standing, walking, bending, lying supine and lying prone. The patient stated that some relief is obtained when rest occurs.

Sprain of ligaments of thoracic spine, initial encounter

History of present illness/condition:

The patient rated the intensity of their pain/symptoms as an 8 on a scale of zero to 10 with zero being complete absence of symptoms and 10 being very severe or unbearable. The mechanism of injury described by the patient involved an automobile injury. The symptoms have been present since the date of injury on 10/30/2015. The patient describes their pain with the following qualifiers: aching, stiffness, throbbing, sharp and stabbing. Upon questioning, they related that the symptoms were aggravated by activities involving movement, standing, walking, bending, lying supine and lying prone. The patient stated that some relief is obtained when rest occurs.

Sprain of ligaments of lumbar spine, initial encounter

History of present illness/condition:

The patient rated the intensity of their pain/symptoms as a 7 on a scale of zero to 10 with zero being complete absence of symptoms and 10 being very severe or unbearable. The mechanism of injury described by the patient involved an automobile injury. The symptoms have been present since the date of injury on 10/30/2015. The patient describes their pain with the following qualifiers: aching, stiffness, sharp and throbbing. Upon questioning, they related that the symptoms were aggravated by activities involving movement, standing, walking, lying prone, lying supine and bending. The patient stated that some relief is obtained when rest occurs.

11/2/15 Patient states she is having sharp throbbing pains in left side of neck, into the left mid thoracic and left side of low back. Radiates into left hand to the fingers. Feels numbness and tingling sensation at night time. Having trouble sleeping at night, hard to get comfortable. Starting to have headaches, and feeling nauseous. Hurts to sit and stand for long periods of time -ja

Objective

Range of motion/joint fixation:

Passive/Active	Joint	Plane of Motion	Degrees	Level of Decrease	With Pain
Active	Cervical	Flex	35°	Moderate-Severe	Yes
Active	Cervical	Ext	40°	Severe	Yes
Active	Cervical	LLF	35°	Moderate-Severe	Yes
Active	Cervical	RLF	30°	Severe	Yes
Active	Cervical	LR	60°	Severe	Yes
Active	Cervical	RR	55°	Severe	Yes
Active	Lumbar	Flex	40°	Moderate	Yes
Active	Lumbar	Ext	20°	Moderate-Severe	Yes

Active	Lumbar	LLF	25°	Moderate	Yes
Active	Lumbar	RLF	20°	Moderate-Severe	Yes
Active	Lumbar	LR	35°	Moderate	Yes
Active	Lumbar	RR	30°	Moderate-Severe	Yes
Active	Thoracic	Flex	40°	Moderate-Severe	Yes
Active	Thoracic	Ext	20°	Severe	Yes

Examinations

Type of Exam	Exam/Test/Maneuver	Side	Outcome	Outcome Qualifier	Pain Descriptor	Body Area
Orthopedic	Cervical maximum compression test	Left	Positive			
Orthopedic	Cervical maximum compression test	Right	Negative			
Orthopedic	Distraction test	Bilateral	Positive			
Orthopedic	Kemp's test	Left	Positive			
Orthopedic	Kemp's test	Right	Positive			
Orthopedic	Straight leg-raising test(SLR)	Left	Negative			
Orthopedic	Straight leg-raising test(SLR)	Right	Negative			
Orthopedic	Vertebrobasilar artery functional maneuver	Bilateral	Negative			
Orthopedic	Yeoman's test (pelvis)	Left	Positive			
Orthopedic	Yeoman's test (pelvis)	Right	Positive			

Physical Exam

UE & Chest - Upper Extremity

Name	Abnormal	Comments
Sensory (Light Touch, Pin Wheel, Sharp/Dull)	Yes	c3 c4 c5 decreased sensory on the left

Deep Tendon Reflexes

Left Bicep: 0 Right Bicep: 2 Left Tricep: 2 Right Tricep: 2 Left Brachioradialis: 1 Right Brachioradialis: 2

Abdomen, LE Neuro - Lower Extremity

Name	Abnormal	Comments
Sensory (Light Touch, Pin Wheel, Sharp/Dull)	No	

Deep Tendon Reflexes

Left Patellar: 2 Right Patellar: 2 Left Achilles: 2 Right Achilles: 2

Assessment

Diagnoses

Number	ICD Code	Description
1	M50.12	Cervical disc disorder with radiculopathy, mid-cervical region
2	S23.3XXA	Sprain of ligaments of thoracic spine
3	S33.5XXA	Sprain of lumbar ligaments, initial encounter
4	M62.830	Muscle spasm of back

Phase of healing: Acute

Type of care: Subacute

Type of pain: Type 2 (Allogenic)

Prognosis:

Overall Prognosis: Fair

Provider Statements: Tolerated treatment well

Plan

Treatments

CPT	Mod1	Mod2	Mod3	Mod4	Units	Duration	Description	DxLink
99203	25				1		Detailed Exam	1, 2, 3, 4
98941					1		CMT 3-4 region	1, 2, 3, 4
97032	59				1	15	Electrical Muscle Stimulation	1, 2, 3, 4
97035	59				1	15	Ultrasound	1, 2, 3, 4
97530	59				1	15	Kinetic Therapeutic Activity	1, 2, 3, 4

Spine Levels Adjusted:

Cervical, Thoracic and Lumbar Regions were manipulated using a diversified method.

Based on the patient history, the subjective, radiographic studies, and my physical examination of Mrs. Evans it is my opinion, stated with reasonable degree of certainty based on my experiences as a chiropractor that the injuries are directly related to the MVA on 10/30/15. Dynamic stretching performed by the treating doctor.

Patient Care Plan

Informed Consent Obtained:	Yes
Problem:	S13.4XXA - Sprain of ligaments of cervical spine, initial encounter, S23.3XXA - Sprain of ligaments of thoracic spine, initial encounter, S33.5XXA - Sprain of ligaments of lumbar spine, initial encounter
Plan Start Date:	11/2/2015
Frequency:	3x a week, to 2x a week, to 1x a week for 8 to 12 weeks
Duration:	3 months
Estimated Plan End Date:	2/2/2016
Expectation for Recovery:	Maximum Medical Improvement
Services:	CMT, Electrical Stimulation, Ultrasound, Rehabilitation exercises
Home Care Recommendations:	Home exercises, Stretches, Ice, Heat
Short Term Goals:	Reduce pain and restore normal joint function and muscle balance.
Long Term Goals:	Restoring functional independence and tolerance to normal activities of daily living
Benefits:	Increased ROM, Decreased Pain
Techniques to be Utilized:	Diversified
Special Tests/Studies to be Ordered:	MRI
Referral:	MD

Signed by Ryan Kissling, DC

Align Med
2208 S. Nellis Blvd.
Unit 1A
Las Vegas, NV 89104
Phone: 702-478-8555
FAX: 702-478-7748

Patient Name: Evans, Desire

Date of Service: 12/14/2015

Subjective

This patient presents with the following problems:

Sprain of ligaments of cervical spine, initial encounter

History of present illness/condition:

The patient rated the intensity of their pain/symptoms as a 5 on a scale of zero to 10 with zero being complete absence of symptoms and 10 being very severe or unbearable. The mechanism of injury described by the patient involved an automobile injury. The symptoms have been present since the date of injury on 10/30/2015. The patient describes their pain with the following qualifiers: stiffness, aching, throbbing, sharp and radiating. The patient describes their symptoms as radiating down the left arm to hand.

Sprain of ligaments of thoracic spine, initial encounter

History of present illness/condition:

The patient rated the intensity of their pain/symptoms as a 4 on a scale of zero to 10 with zero being complete absence of symptoms and 10 being very severe or unbearable. The mechanism of injury described by the patient involved an automobile injury. The symptoms have been present since the date of injury on 10/30/2015. The patient describes their pain with the following qualifiers: aching, stiffness and throbbing.

Sprain of ligaments of lumbar spine, initial encounter

History of present illness/condition:

The patient rated the intensity of their pain/symptoms as a 4 on a scale of zero to 10 with zero being complete absence of symptoms and 10 being very severe or unbearable. The mechanism of injury described by the patient involved an automobile injury. The symptoms have been present since the date of injury on 10/30/2015. The patient describes their pain with the following qualifiers: aching, stiffness and throbbing.

12/14/15: Patient reports reduced pain. DS.

Objective

Palpation/Spasm/Tissue Changes

Region/Area	Anatomy	Finding	Severity	Progress
Cervical, Neck		myofascial pain and tenderness	moderate	No Change
Thoracic, Mid Back		myofascial pain and tenderness	moderate	Improving
Lumbar, Lumbar		myofascial pain and tenderness	moderate	Improving

Assessment

Diagnoses

Number	ICD Code	Description
1	M50.12	Cervical disc disorder with radiculopathy, mid-cervical region
2	S23.3XXA	Sprain of ligaments of thoracic spine
3	S33.5XXA	Sprain of lumbar ligaments, initial encounter
4	M62.830	Muscle spasm of back

Phase of healing: Acute

Type of care: Subacute

Type of pain: Type 2 (Allogenic)

Prognosis:

Overall Prognosis: Fair
Provider Statements: Responding favorably

Plan

Treatments

CPT	Mod1	Mod2	Mod3	Mod4	Units	Duration	Description	DxLink
98941					1		CMT 3-4 region	1, 2, 3, 4
97530	59				1	15	Kinetic Therapeutic Activity	1, 2, 3, 4
97035	59				1	15	Ultrasound	1, 2, 3, 4

Spine Levels Adjusted:

Cervical, Thoracic and Lumbar Regions were manipulated using a diversified method.

Therapy performed by Diana CA

12/14/15: Pending PM with Dr. Rosler.

11/30/15 MRI Findings for C/S: 1.Evidence for cervical strain. 2.Bilateral posterolateral disc protrusion C6-C7. 3.There is no significant central spinal canal stenosis or significant neural foraminal encroachment in the cervical spine.

MRI Findings for Left Shoulder: 1. Bone contusion lesser tuberosity of the humerus without fracture. 2.Mild subcoracoid bursitis. 3. Rotator cuff, ligamentous structures, and glenoid labrum are intact.

Went to Injury medical consultants for a follow up on 11/27/15. has a third visit scheduled for 12/11/15

11/30/15:MRI INTERPRETATION:C/S

Evidence for cervical strain. Bilateral posterolateral disc protrusion C6-C7.

LEFT SHOULDER:

Mild subcoracoid bursitis. Rotator cuff, ligamentous structures, and glenoid labrum intact. Bone contusion lesser tuberosity of the humerus without fracture.

Signed by Timothy McCauley, DC

10

DESIRÉ'S PAST MEDICAL EXPENSES

MEDICAL SPECIALS
DESIRE EVANS-WAIAU

	Medical Provider	Dates of Service	Charges
1.	Align Med Chiropractic and MRI	11/3/15 – 4/24/17	\$10,670.00
2.	Interventional Pain & Spine Institute	12/16/15 – 7/28/17	\$11,660.00
3.	Khavkin Clinic	5/17/16	\$930.00
4.	Monitoring Associates	9/1/16	\$7,350.28
5.	Neuromonitoring Associates	9/1/16	\$8,450.28
6.	NLV Pain Management & Urgent Care	11/10/15 – 12/30/15	\$960.00
7.	Surgical Anesthesia Services	9/1/16	\$2,700.00
8.	Surgical Arts Center	1/7/16 – 4/11/16	\$4,610.00
9.	Valley Hospital	8/30/16 – 9/2/16	\$88,232.06
10.	Western Regional Center for Brain & Spine	7/12/16 – 12/8/17	\$45,055.00
	TOTAL		\$180,617.62