

DISCLOSURE STATEMENTS ARE ADMISSIBLE BUT NOT CONCLUSIVE AS TO FAULT; PRELIMINARY EXPERT AFFIDAVITS CAN BE USED AS SUBSTANTIVE EVIDENCE

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Ryan v. San Francisco Peaks Trucking Company, Inc.
Ct. Appeals, Div. One, August 25, 2011

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Tana and Patrick Ryan were riding a motorcycle when they collided with a tractor-trailer owned by San Francisco Peaks Trucking (“SFP”). Both were injured, and Patrick later died. Tana sued SFP, passengers in a separate vehicle involved in the accident, and multiple medical facilities and medical professionals, for negligence and wrongful death. Tana’s disclosure statements included four expert reports which opined that medical personnel acted negligently. Tana settled as to two healthcare providers, dismissed the rest of the providers (leaving SFP in the lawsuit), and withdrew her medical experts as trial witnesses.

SFP named the dismissed medical providers as nonparties at fault, for “the reasons set forth in Plaintiffs’ pleadings [and] disclosure statements.” SFP intended to call Tana’s previously-named experts to testify at trial, and asserted it would rely on Tana’s pleadings and disclosure statements as admissions.

Tana moved for summary judgment, arguing that (1) because SFP lacked its own medical expert, it could not present a prima facie case of negligence against the nonparty healthcare providers; and (2) SFP could not rely on Tana’s disclosure statements and expert reports in support of SFP’s non-party at fault allegations. The trial court ruled for SFP on both arguments.

The court of appeals held that an opposing party’s disclosure statements can be admissible as an admission of a party-opponent, as the disclosure statements were prepared by Tana’s attorney as her agent. But they are not automatically conclusive as to fault, and must still be weighed by the jury. This rule ensures that parties are held accountable for their pleadings and disclosure statements, and prevents a party from reaping the benefits of asserting inconsistent arguments – such as a plaintiff who first alleges negligence against a non-party and obtains the benefits of settlement, but subsequently minimizes the fault of the settling non-party in a trial against a remaining defendant.

In holding that SFP could use Tana’s expert witness affidavits to prove a prima facie case of negligence against the nonparties, the court noted that although a party with the burden of proof in a medical malpractice case typically will present live testimony, Arizona law does not necessarily preclude use of an admissible expert opinion affidavit as substantive evidence.