COURT OF APPEALS
DECISION
DATED AND FILED

October 2, 2001

Cornelia G. Clark
Clerk of Court of Appeals

No. 00-2296

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

AMY STRAHM,

PLAINTIFF-RESPONDENT,

V.

GENERAL CASUALTY INSURANCE COMPANY OF WISCONSIN, AMERICAN FAMILY MUTUAL INSURANCE COMPANY, PEKIN INSURANCE COMPANY, JAMES G. ASCHENBRENER, MATTHEW J. KEHREIN, DANIEL SCHNEIDER, COMMERCIAL UNION MIDWEST INSURANCE COMPANY AND UNITED HEALTH OF WISCONSIN INSURANCE COMPANY, INC.,

DEFENDANTS,

ALLSTATE INSURANCE COMPANY AND GEORGE S. CIELINSKI (DECEASED),

DEFENDANTS-APPELLANTS.

APPEAL from a judgment of the circuit court for Outagamie County: DENNIS C. LUEBKE, Judge. *Affirmed*.

Before Hoover, P.J., Peterson and Dykman, JJ.

¶1 PER CURIAM. Allstate Insurance company appeals a judgment awarding Amy Strahm $53,500 for injuries she suffered in a traffic accident with its insured, George Cielinski. Strahm had previously been in three other accidents that were consolidated for trial. The other three defendants settled with Strahm before trial. Allstate argues that the trial court improperly exercised its discretion when it refused to allow Allstate to inform the jury of the other settlements to show Strahm's bias and potential financial interest in associating her medical problems with the fourth accident. Allstate also argues that the court should not have instructed the jury on causation because Allstate conceded liability and that the instruction and verdict erroneously inquired whether Cielinski's negligence was "a cause" rather than "the cause" of Strahm's injuries. We reject these arguments and affirm the judgment.

¶2 The only issue at trial was whether and to what extent Strahm's present medical condition resulted from the fourth accident. Strahm testified that, although she could not say whether the third or fourth accident caused most of her medical problems, she thought the third accident was worse than the fourth. The only doctor who testified, Lester Owens, was retained by the defendants in the first two accidents. He opined that the fourth accident was a substantial factor in producing Strahm's ongoing injury and lead to permanent impairment, disability and need for future medical care. Strahm's treating physician apparently believed that the fourth accident only caused a temporary aggravation of a preexisting condition, but he did not testify at trial. The jury was informed by Owens' testimony, however, that he disagreed with the treating physician's opinion.

¶3 The trial court properly exercised its discretion by excluding the evidence of settlement under WIS. STAT. § 904.03[1] because its minimal probative value was substantially outweighed by considerations of undue delay and waste of time. Allstate argues that evidence of the settlement was admissible under WIS. STAT. § 904.08 to prove that Strahm had a financial interest in attributing her medical condition to the fourth accident. That evidence has little probative value because Strahm did not change her testimony after the settlement and continued to describe the third accident as the most painful of the four accidents. She specifically stated no personal opinion attributing any specific injury to the fourth accident. Likewise, Dr. Owens' report was prepared before the settlement and therefore could not have been influenced by the settlement. Allstate's counsel freely explored Owens' potential bias during the course of his testimony and in closing argument. The jury was informed that Strahm's treating physician held a different opinion. Evidence of the settlement would have merely underscored that Strahm presented testimony from the doctor whose opinion was most favorable to her case. Therefore, evidence of the settlement had very little probative value. If the settlements had been introduced, it might have opened the door to full exploration of the other accidents in order to show the basis for the settlements. The trial court properly limited evidence on this tangential matter.

¶4 The trial court correctly instructed the jury on causation. Allstate concedes that the only issue was whether Strahm's injuries "resulted from" and were a "natural and probable result of" the fourth accident. These terms are synonymous with causation. When the plaintiff has suffered injuries in separate

[1] All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

accidents, the defendant's concession of liability does not obviate the need for the jury to consider whether the accident in question caused the plaintiff's current medical condition.

¶5 The court correctly instructed the jury to determine whether the fourth accident was "a cause" rather than "the cause" of Strahm's condition. Because her medical condition arguably arose from any of the four accidents, it would have been inappropriate to ask the jury whether the fourth accident was "the cause" of her injuries. That instruction would have suggested that all or none of her medical problems resulted from the fourth accident.

¶6 Contrary to Allstate's argument, the instruction on causation did not suggest to the jury that it should compensate Strahm for all of the injuries incurred in the four accidents. The court specifically instructed the jury to determine the amount that would compensate Strahm "for the damages sustained as a natural consequence of the accident involved in this case."

¶7 Finally, Allstate challenges the trial court's denial of a new trial in the interest of justice. The only grounds for the motion are the alleged errors that we have rejected in this opinion and the assertion that the verdict is against the great weight of the evidence. The argument that the evidence does not support the verdict is not sufficiently developed to require a response. *See* ***State v. Flynn***, 190 Wis. 2d 31, 39 n.2, 527 N.W.2d 343 (Ct. App. 1994).

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.