

TRANSCRIPT OF TRIAL BEFORE THE HONORABLE MARTIN M. SOLOMON,
DATED APRIL 9, 2012 [A-1 - A-117]

05/24/2012 11:28 AM

1 SUPREME COURT OF THE STATE OF NEW YORK
 2 COUNTY OF KINGS : CIVIL TERM : PART 38
 3 -----X
 4 RONALD B. WEATHERS,
 5
 6 Plaintiff
 7
 8 - against - Index No.
 9 ALEX RIOS, 8161/10
 10 TRIAL
 11 Defendant
 12 -----X
 13 360 Adams Street
 14 Brooklyn, New York 11201
 15 April 9, 2012

11 B E F O R E :

12 HONORABLE MARTIN SOLOMON
 13 Justice

15 A P P E A R A N C E S :

16
 17 AVANZINO & MORENO, P.C.
 18 Attorneys for Plaintiff
 26 Court Street, Suite 2015
 New York, New York 11242
 BY: JOHN K. AVANZINO, ESQ.

20 VERRILL & GOODSTEIN
 21 Attorneys for Defendant
 Two Robbins Lane, Suite 200
 Jericho, New York 11753
 22 BY: MITCHELL GORKIN, ESQ.

24 ENIKA BODNAR CSR, RPR
 25 Official Court Reporter

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1 THE COURT CLERK: Case on trial, Weathers versus Rios,
2 Index Number 8161 of 2010.

3 Counsel, your appearances for the record, please.

4 MR. AVANZINO: For the plaintiff, Ronald Weathers,
5 John Avanzino, 26 Court Street, Brooklyn.

6 MR. GORKIN: For the Defendant, Verrill & Goodstein,
7 by Mitchell Gorkin.

8 THE COURT: Any motions in limine?

9 MR. AVANZINO: Yes, your Honor. Originally when the
10 lawsuit was commenced, there was a property damage claim on
11 behalf of the owner of the car, a Joseph Weathers, Jr.
12 That matter has been resolved, so the property damage will
13 not be a part of the case in front of your Honor, nor
14 should the plaintiff's name, Joseph Weathers, Jr. be in the
15 caption. The only plaintiff is Ronald Weathers who has the
16 personal injury claim.

17 MR. GORKIN: Can we go off the record for a second?

18 THE COURT: Yes.

19 MR. AVANZINO: That was the only thing, your Honor.

20 (Whereupon a discussion is held off the record)

21 MR. AVANZINO: Your Honor, at this time I'd also like
22 to add a bad faith statement on behalf of the plaintiff,
23 Ronald Weathers.

24 Your Honor, this is a case that has already had a
25 determination on the issue of liability. That was

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1 determined approximately one and a half years ago, the
2 order awarding the liability in favor of the plaintiff is
3 part of the marked pleadings and that was done in
4 approximately November 2010.

5 This is a matter of a \$100,000 policy on behalf of the
6 defendant, Alex Rios. We have made it known to the
7 defendant that we would accept the policy to settle this
8 matter. They have not been forthcoming with the policy or
9 any amount close to the policy.

10 This is a case that involves multiple herniated disks
11 and bulging disks. There have been numerous epidural
12 steroid injections. There were a series of three epidural
13 steroid injections that Mr. Weathers had in addition to
14 facet blockage injections. In addition, Mr. Weathers
15 underwent an epidurogram which indicated that he had, as
16 his source of pain in his lower back, the L3, L4 disk and
17 the L4, L5 disk.

18 Subsequently, he underwent a discectomy at those two
19 levels. And he has undergone conservative treatment with
20 physical therapy in addition to the invasive epidural
21 steroid injections and facet block injections and a
22 discectomy at two different levels.

23 He has undergone pain management for a number of years
24 following this accident which took place on June 28, 2008.
25 He is now 60 years old. He was a working man for his

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1 entire adult life up to December '07, six months before
2 this accident, and was prepared and ready to resume his
3 work as an auto mechanic had this accident not occurred.

4 He has indicated that because of the increase in pain,
5 that his pain management doctor, who will be coming in to
6 testify, whose report we have exchanged with defense
7 counsel and the insurance company, the pain management
8 doctor, who is his surgeon, Dr. Andrew Davy, has said that
9 a spinal cord stimulator would be the next step in the
10 process of trying to treat the significant pain that
11 Mr. Weathers has in his lower back. And that, of course,
12 comes at great cost to Mr. Weathers, and also is a
13 reflection of the extent of the pain and suffering he has
14 endured for the past four years.

15 So with that, your Honor, we just want to point out
16 that we have not heard any representation that Mr. Rios has
17 been told about these negotiations or that there has been
18 any offer made to Mr. Rios to hire his own counsel.

19 And it is our position that the insurance company has
20 not negotiated and acted in good faith in this, but rather
21 has acted in bad faith in these negotiations. And we would
22 be seeking the proper recourse after the jury has rendered
23 its verdict.

24 MR. GORKIN: In response, your Honor, I think the
25 record should indicate that the defense claims in this case

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1 are that Mr. Weathers' injuries and all the resulting
2 treatment did not result from any trauma that was sustained
3 in this accident of June 23, 2008.

4 The films, the MRI films were read by the radiologist.
5 With respect to the neck herniations, there's no neural
6 impingement. With respect to the lumbar area, which is the
7 main thrust of the plaintiff's claims in this case, again,
8 they're bulges. There's no herniations. There will be
9 testimony that those bulges could not have been caused by
10 trauma from this car accident, that bulges are not caused
11 by trauma. They're degenerative and comes about in years
12 and months before this accident took place.

13 We're going to hear testimony that when he went to the
14 hospital the day after the accident, all his neurological
15 tests were normal. In fact, when he saw Dr. Davy, his
16 treating doctor, for the first time, Dr. Davy's initial
17 diagnosis was cervical lumbar strains and sprains, which is
18 the same diagnosis defendant's neurologist had when she
19 examined him in December 2010 and came to the same
20 conclusion, that there was no neurological damage
21 whatsoever.

22 The bad faith in this particular case cannot apply.
23 There's good faith negotiation on behalf of the insurance
24 company. They've offered a sum of money which they feel
25 would fairly and adequately compensate Mr. Weathers for

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1 soft tissue resolved injuries.

2 And, by the way, with respect to his being able to
3 work, he was out of work for six months before the
4 accident. He lost his job because his place of business
5 went out of business. He worked as an auto mechanic. He
6 has rheumatoid arthritis in his hands. Maybe we'll be able
7 to find out how a man with rheumatoid arthritis in his
8 hands at 60 years old will find a job as an auto mechanic.

9 Again, whatever the claims are in this case, they did
10 not -- the injuries did not cause the damage that's being
11 claimed by the plaintiff.

12 THE COURT: Counsel, off the record.

13 (Whereupon a discussion is held off the record)

14 THE COURT: Counsel, can you limit your opening
15 statements to 20 minutes each, please?

16 Let's get the plaintiff on the stand.

17 R O N A L D W E A T H E R S, having been first duly sworn,
18 was examined and testified as follows:

19 THE COURT CLERK: Please be seated and please state
20 your full name and address.

21 THE WITNESS: Ronald Bernard Weathers, I live at 2800
22 86th Street, Apartment 3B, Brooklyn, New York, 11223.

23 THE COURT: Go ahead.

24 BY MR. AVANZINO:

25 Q Good morning, Mr. Weathers.