



PENNSYLVANIA

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SUMMARIES WITH TRIAL ANALYSIS

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A monthly review of Pennsylvania State and Federal Civil Jury Verdicts with professional analysis and commentary.

The Pennsylvania cases summarized in detail herein are obtained from an ongoing monthly survey of the State and Federal courts in the State of Pennsylvania.

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\$2,750,000 VERDICT – Medical malpractice – Attending physician fails to provide recommended medication upon discharge from hospital – Failure to communicate medical condition to primary care physicians – Failure to treat clostridium difficile – Toxic megacolon – Septicemia – Colon surgery – Ileostomy with external pouching system 3

DEFENDANT’S VERDICT – Medical malpractice – Alleged failure to diagnose and treat deep vein thrombosis following leg trauma – Pulmonary emboli – Wrongful death of 58-year-old female. 5

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\$2,500,000 GROSS VERDICT – Premises liability – Failure to secure prefabricated step to warehouse doorway – Trip and fall – Aggravation of preexisting neck and back conditions – Lumbar and cervical disc herniations – Rotator cuff tear – Surgery – Emotional injuries. 8

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The plaintiff's orthopedic surgeon testified that the plaintiff will require an ultimate knee replacement and fusion to his left foot in the future as a result of the injuries sustained.

The plaintiff, age 29 at the time, was in the course and scope of his employment and was running an errand for his employer at the time of the accident. A worker's compensation lien in excess of \$600,000 was asserted. The plaintiff's vocational expert testified that the plaintiff is now limited to sedentary employment and his future earning capacity has been significantly diminished. The plaintiff testified that he is no longer able to enjoy many of his prior activities, including football, basketball and snowboarding.

The defendant argued that the plaintiff had made a good recovery from his fractures. The defense stressed that the plaintiff can drive a vehicle, go grocery shopping and engage in normal daily activities. The defendant's vocational expert testified that the plaintiff's injuries had an impact on his earning capacity, but not to the extent alleged by the plaintiff's expert. The defendant's vocational expert opined that the college educated plaintiff had the ongoing capacity to work at a desk job, as long as he was able to change his physical position on an as-needed basis.

After a three day trial and a deliberation of approximately an hour, the 12 member jury awarded the plaintiff \$1,351,000 in damages. Post-trial motions are pending.

REFERENCE

Plaintiff's orthopedic surgery expert: David Cooper from Wilkes-Barre, PA. Plaintiff's vocational expert: Sean Hanahue from Clarks Summit, PA. Defendant's

orthopedic surgery expert: Michael Banas from Plains, PA. Defendant's orthopedic surgery expert: William Walker from Feasterville, PA.

Owens vs. Sczyrek. Case no. 1805-2008; Judge Joseph Musto, 12-16-09.

Attorney for plaintiff: Jamie J. Anzalone of Anzalone Law Offices in Wilkes-Barre, PA. Attorney for defendant: Daniel Cummins of Foley, Cognetti, Comerford, Cimini & Cummins in Scranton, PA.

COMMENTARY

The focus of this motor vehicle negligence trial was on the extent of the plaintiff's injuries and his earning ability for the future. The plaintiff categorized the plaintiff's injuries as "catastrophic" with fractures to most of the major bones. The defense argued that the plaintiff is able to continue most normal daily activities and that his damage award should be reasonable.

The defendant initially contested liability, contending that the plaintiff's motorcycle had crossed the double-yellow line and caused the collision. However, the defense admitted liability immediately before trial.

The plaintiff also named the defendant's wife as a defendant in the case, alleging that she negligently entrusted her vehicle to the defendant whose license had been suspended for a DUI offense. A defense motion to keep out evidence regarding the defendant driving on a suspended license was granted, thus the jury was not aware of that fact. In pre-trial motions, the defense was also successful in having the negligent entrustment claim against the defendant's wife, as well as a punitive damages claim against the defendant, dismissed.

The defendant had a \$100,000 liability policy limit in place at the time of the accident. A coverage issue, regarding the carrier's claim that the defendant driver was excluded from his wife's policy, remains pending.

\$1,000,000 RECOVERY – UNINSURED MOTORIST CLAIM – REAR END COLLISION – CERVICAL NERVE ROOT INJURY – LUMBAR DISC HERNIATION – CARPAL TUNNEL SYNDROME – MULTIPLE SURGERIES – TOTAL DISABILITY FROM EMPLOYMENT CLAIMED – DAMAGES/CAUSATION ONLY.

Lancaster County, PA

This was an uninsured motorist claim which stemmed from a collision to the back of a work vehicle driven by the plaintiff in 2005. The defendant insurance carrier stipulated to the negligence of the uninsured tortfeasor in causing the accident. The case was arbitrated on the issues of damages and causation only. The defendant denied that the plaintiff's claimed lumbar disc herniation and carpal tunnel syndrome, with related surgeries, were causally related to the impact.

The plaintiff was a 43-year-old male employed by the Lancaster County Solid Waste Management Authority and was driving a pick-up truck owned by his employer on April 29, 2005 when the accident occurred. The plaintiff contended that the impact from behind,

while his vehicle was stopped at a light, caused him to brace himself behind the wheel and knocked him backwards and forwards multiple times.

The plaintiff immediately reported the accident to his employer and was instructed to go to a physician designated by the employer. The plaintiff was ultimately diagnosed with a nerve root injury in the cervical spine, a lumbar disc herniation and carpal tunnel syndrome which his physicians causally related to the subject automobile accident.

The plaintiff's doctor reported that the plaintiff exhibited a degree of moderate preexisting degeneration in his cervical spine, but that the condition was asymptomatic before the date of the accident. The trauma of the rear end accident resulted in a cervical nerve root injury which necessitated the performance of cervical surgery in December 2005, according to the plaintiff's claims. The plaintiff also

underwent lumbar surgery in December of 2006 to treat the disc herniation and left carpal tunnel release surgery in November of 2007.

The plaintiff testified that his back pain, neck pain and left wrist problems continued after the surgery. A functional capacity evaluation performed at the request of the plaintiff's treating orthopedic surgeon July of 2007 determined that the plaintiff was unable to return to work in his prior employment as a grounds custodian with the Solid Waste Management Authority. The plaintiff's vocational expert opined that the plaintiff's minimal education, lack of transferrable skills, ongoing severe pain and his current physical disabilities rendered him totally disabled from employment. The plaintiff's economist estimated the plaintiff's loss of future earnings as approximately \$1,085,000.

The defendant argued that the plaintiff's lumbar condition and carpal tunnel syndrome were unrelated to the subject collision. The defense contended that the plaintiff did not voice significant back pain until approximately a year post-accident. The defendant's vocational expert opined that the plaintiff still has significant residual work capabilities and could obtain alternative employment if he so desired.

The case went to binding arbitration with an award of \$1,115,000 million to the plaintiff and \$150,000 to the plaintiff's wife for her loss of consortium claim. The applicable uninsured motorist policy limit was \$1 million.

REFERENCE

Plaintiff's economic expert: Robert P. Wolf from Cherry Hill, NJ. Plaintiff's orthopedic surgery expert: Gary C. Dennis from Baton Rouge, LA. Plaintiff's orthopedic surgery expert: Steven J. Triantafyllou from York, PA. Plaintiff's vocational expert: Donald E. Jennings from Feasterville, PA.

\$550,000 VERDICT – EXCESSIVE USE OF FORCE BY PHILADELPHIA POLICE OFFICERS – THUMB FRACTURE – FACIAL INJURIES – CERVICAL AND LUMBAR SPRAIN AND STRAIN – EMOTIONAL INJURIES – \$200,000 IN PUNITIVE DAMAGES.

Philadelphia County, PA

This was a police brutality action in which a husband and wife plaintiff claimed that they were dragged from their vehicle and assaulted by four Philadelphia police officers in the street in front of their house. The case was brought under common law claims of assault and battery and intentional infliction of emotional distress. The defendant officers maintained that the plaintiffs fought with the officers and necessary force was used to subdue them.

The plaintiffs testified that on January 19, 2006, at approximately 1:30 a.m. they were sitting in a vehicle parked in front of their residence near 63rd and Greenway Streets in Philadelphia. The female plaintiff was sitting in the driver's seat and the male plaintiff

Waltz vs. Travelers Insurance Company. 08-26-09.

Attorney for plaintiff: Michael P. McDonald of McDonald at Law in Lancaster, PA.

COMMENTARY

The main focus of this binding uninsured motorist arbitration was on causation and damages. There were indications that the plaintiff had a degenerative cervical condition, but he had no prior symptomology and was able to perform strenuous work as a grounds custodian before the date of the accident. The defendant's expert maintained that the plaintiff's lumbar herniation and carpal tunnel syndrome, which both required surgery, were not causally related to the motor vehicle accident. However, plaintiff's counsel made arrangements to have the plaintiff's neurologist present when the plaintiff was examined by the defendant's expert neurosurgeon. Thus, the plaintiff's physician was able to observe the examination conducted by the defense expert and had first-hand observations to refute his findings related to his examination as it impacted the plaintiff's medical conditions and the causes of those conditions.

The plaintiff maintained that the defendant's expert did not conduct a proper examination and ignored several medical records which tended to indicate that the plaintiff's condition was, in fact, causally related to the subject accident. Experts on both sides concurred that the plaintiff has suffered at least some loss of future earning capacity, although the amount of his future earnings loss was at issue.

The plaintiff's claim was made against the coverage issued by the defendant insurance carrier to the plaintiff's employer, Lancaster County Solid Waste Management Authority. The arbitration award of \$1.3 million, in a known conservative venue, exceeds the applicable \$1 million policy limit. The plaintiff reportedly demanded the policy limit prior to trial, but the limit was not tendered by the defendant.

was sitting in the front passenger seat with the car engine turned off. The plaintiffs contended that the defendant, Officer Jones, approached the driver's side door of the plaintiffs' car, opened the door, dragged the female plaintiff from the car and began beating her. When the male plaintiff exited the car, he alleged that he was also beaten by Jones and the three other defendant officers who arrived as back-up.

The plaintiff called an eyewitness who was on the porch of a neighboring house at the time of the incident. The witness testified that Officer Jones punched the female plaintiff in the face several times and knocked her to the street. The witness also testified that the other officers who arrived at the scene con-