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Custodian Receives Seven-Figure Award For Crash Injuries



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Waltz v. Travelers Insurance Co.

\$1.3 Million Settlement

Date of Arbitration:

Aug. 28, 2009.

Type of Action:

Uninsured motorist arbitration.

Injuries:

Lumbar spine, cervical spine, and carpal tunnel syndrome.

Plaintiffs' Attorney:

Michael P. McDonald, McDonald at Law, Lancaster, Pa.

Defense Counsel:

Harry D. McMunigal, Bingaman Hess, Reading, Pa.

Plaintiffs' Experts:

Steven J. Triantafyllou, M.D., orthopedic surgeon, York, Pa.; Gary C. Dennis, M.D., orthopedic surgeon, Baton Rouge, La.; Donald E. Jennings, vocational expert, Feasterville, Pa.; Robert P. Wolf, economist, Cherry Hill, N.J.

Defense Experts:

V. Benjamin Nakkache, M.D., orthopedic surgeon, Scranton, Pa.; Richard G. Schmidt, M.D., orthopedic surgeon, Bala Cynwyd, Pa.; Gary R. Kutay, vocational expert, Lancaster, Pa.

Comment:

An arbitration panel awarded \$1.3 million to a grounds custodian and his wife for damages incurred as a result of a car crash on April 29, 2005.

According to the plaintiffs' attorney, Michael Waltz, 43, was stopped at a red light while driving a company-owned truck when he was hit by Christy Ann Smith, who was uninsured. Waltz made claims for a number of injuries causing his leave from employment with the Lancaster County Solid Waste Management Authority. He suffered carpal tunnel syndrome and permanent injuries to his cervical and lumbar spine. Waltz sought reimbursement for past and future medical expenses, a loss of past earnings and a loss of future earning capacity as a result of his injuries. Waltz's wife, Melissa Waltz, claimed a loss of consortium, as Waltz's injuries would have a detrimental effect upon their marriage.

Travelers Insurance Co. provided uninsured motorist coverage for Waltz's employer.

"The claim was made against the uninsured motorist coverage provided by Solid Waste Management Authority" McDonald said.

"The severity of this man's injuries eliminated his earning potential."

Michael McDonald, of McDonald at Law in Lancaster, Pa., represented Waltz, and said the accident affected

Waltz's ability to perform in the labor market.

"This was a man who lost his ability to earn. He had very little transferable skills. He was completely disabled," McDonald said.

According to the plaintiffs' pretrial memorandum, Waltz underwent physical therapy, but continued to suffer back pain and numbness in his left hand. He attended physical therapy for roughly two years as his condition worsened. Waltz, wanting to return to work, underwent a Functional Capacity Evaluation July 12, 2005, according to the plaintiffs' pretrial memorandum. The evaluation allowed Waltz to return to work only under a sedentary work capacity. Further evaluations reduced Waltz's capacity to half-day sedentary work in May 2007.

The plaintiffs' pretrial memorandum states that Steven Triantafyllou, an orthopedic surgeon, performed back surgery on Waltz Dec. 12, 2006, to repair his herniated disk. Waltz met with Triantafyllou again Nov. 19, 2007, to correct carpal tunnel syndrome affecting his left hand. The surgeries, while successful, were insufficient in resolving Waltz's condition, as a FCE conducted in July of 2007 denied him the opportunity to return to work.

Travelers Insurance Co., in the defense's pretrial memorandum, pointed to an independent medical exam conducted by neurosurgeon B. Benjamin Nakkache, July 23, 2009. Nakkache described Waltz's back pain and carpal tunnel syndrome as unrelated to the car accident. Travelers argued that Waltz's lumbar spine injury wasn't caused by the car accident because it did not become an issue until a year after the accident, a claim that would greatly reduce Waltz's arbitration award if accepted by the arbitration panel.

Instead the arbitration panel gave deference to a damages report submitted by the plaintiff's counsel. McDonald cited a July 23 independent medical report by Laszlo Geder, a neurologist that asserted Nakkache ignored important medical records regarding Waltz's back problems. After consolidating Waltz's medical records, Geder opined that Waltz's injuries were caused by the accident in question.

'Dr. Geder was physically present during the examination of Dr. Nakkache, so was able to see what Dr. Nakkache did in the examination, and was able to have a first hand view of the examination so was able to refute it," McDonald said.

According to the plaintiffs' damages report, Waltz suffered a gross earnings loss of \$1.085 million. Vocational economic loss experts Robert P. Wolf and Gary R. Kutay, the insurer's expert, agreed on this figure.

The uninsured motorist arbitration hearing was held Aug. 26, 2009. The arbitration panel awarded Waltz \$1.15 million for damages stemming from the accident. Melissa Waltz was awarded \$150,000 for her loss of consortium claim. The total award of \$1.3 million was molded to the policy limit of \$1 million.

Harry D. McMunigal represented Travelers Insurance Co. and declined to comment.

-- *Ryan Bolger, for the Law Weekly*

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