

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

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-