

VERDICTS AND SETTLEMENTS

■ continued from PAGE 89

The case was settled in court on the first day of trial.

Premises Liability

Fall From Apartment Building

Roof Deck

Injuries alleged:

Cervical disc fracture, pelvic dislocation, right acetabular fracture

Name of case:

Withheld

Court/case #:

Withheld

Tried before judge or jury:

N/A (mediated)

Amount of settlement:

\$1.75 million

Date:

March 26, 1999

Attorneys for plaintiff:

Neil Sugarman and G. Thomas Fauling, Sugarman & Sugarman, Boston

Attorney for defendant:

Withheld

Other useful information:

The 26-year-old plaintiff was a tenant on the fifth floor of a brownstone in Boston. He and his roommate went onto the roof deck of the adjoining property to throw trash from the roof into a construction dumpster on the ground below.

When the plaintiff leaned against the railing to throw the trash, the railing gave way and the plaintiff along with the railing fell to the ground below. The plaintiff struck a stockade fence before landing on a cement patio at the basement level at the rear of the building.

It was later learned that the newly constructed deck had been fastened with a single screw joining the railing to the corner post of the deck. No permit had been obtained for the construction of the deck until after the accident.

The defendants claimed that the plaintiff was trespassing at the time of his accident and that his comparative negligence exceeded that of the defendants because of the plaintiff's carelessness in throwing trash from the roof of a building.

The plaintiff and his two roommates testified at deposition that they were given permission by the landlord of their building to use the deck on the adjoining building.

The defendant responded with the claim that the landlord had no authority to grant permission to use the deck on the adjoining building.

Each respective roof deck and building were owned separately by different realty trusts with different limited liability companies as sole beneficiaries of the trusts.

The plaintiff claimed that the landlord acted individually and in his multiple capacities when granting the plaintiff permission to use the roof deck over the adjacent building.

As a result of this accident, the plaintiff was found unconscious at the scene. His injuries included a C4-C5 subluxed fracture, pulmonary contusions, dislocated pelvis and right femoral head, right acetabular fracture and numerous lacerations. To date, the plaintiff still has reduced function on the right side.

The parties agreed to a non-binding mediation three days before trial.

Motor Vehicle Negligence

Parking Lot Collision — Defense

Verdict

Injuries alleged:

Cervical injuries, cervical radiculopathy, headaches

Name of case:

Ata v. Coviello

Court/case #:

Lawrence Superior Court, No. 97-533D

Tried before judge or jury:

Jury

Judge:

Howard J. Whitehead

Special damages:

\$36,000 in medical expenses; \$35,000 in impaired earning capacity

Amount:

\$0 (defense verdict)

Date:

Jan. 26, 1999

Demand:

\$250,000 (lowered to \$150,000 on first trial day)

Highest offer:

\$30,000

Most helpful expert:

Charles A. Fager, neurosurgeon, Burlington

Insurance carrier:

Arbella Mutual Insurance Co.

Attorney for plaintiff:

Withheld

Attorney for defendant:

James F. Murray, Law Office of Peter E. Flynn, Saugus

Other useful information:

The plaintiff claimed that the defendant backed his car into the front of the plaintiff's car causing significant front driver's side damage and a cracked windshield.

An automobile appraiser testified that the front driver's side of the plaintiff's car sustained damage, including a broken headlight but no windshield damage.

The defendant testified that, at the time of the accident, he was backing up to leave the parking lot when the rear of his car struck the front of the plaintiff's car.

On the day of the accident, the plaintiff treated as an outpatient at a local hospital due to back pain. Several days later, the plaintiff was examined by her treating physician and complained of neck pain, right upper extremity pain and paresthesia.

At this time, the plaintiff also reported that her car's windshield was broken.

Thereafter, the plaintiff was treated by a neurosurgeon and another physician for neck pain, right upper extremity pain and numbness in her right hand and fingers.

The plaintiff had a prior medical history of neck injuries. At the time of the car accident, the plaintiff was out of work as a mental-health aide and on workers' compensation.

The plaintiff's two experts, including the operating neurosurgeon, testified that there was an aggravation of the plaintiff's previous neck injury as a result of the car accident prompting the neck surgery.

The defendant's medical expert examined the plaintiff and also reviewed the plaintiff's medical records. The defendant's medical expert testified that the cervical discectomy and fusion at C5-C6 were not causally related to the car accident but instead due to a

degenerative condition in the plaintiff's cervical spine and osteophytes.

A jury determined that the defendant was negligent in the operation of his car. However, the jury determined that the defendant's negligence was not the proximate cause of the plaintiff's injuries and awarded \$0 damages.

Medical Malpractice

Infection At Surgery Site —

Fungus

Injuries alleged:

Cervical disc space infection, vertebral osteomyelitis

Name of case:

Withheld

Court/case #:

Withheld

Tried before judge or jury:

N/A (mediated)

Mediator:

David O. Burbank

Special damages:

\$215,000 in medical expenses

Amount of settlement:

\$717,000

Date:

March 1999

Most helpful experts:

Andrew J. Streifel, hospital environmental health expert, Minneapolis, Minn. and Frank S. Rhame, infectious disease expert, Minneapolis, Minn.

Insurance carrier:

ProMutual, General Star Indemnity, Hanover Insurance

Attorney for plaintiff:

Richard L. Burpee, Burpee & DeMoura, Boston

Attorney for defendant:

Withheld

Other useful information:

In September 1992, the 55-year-old plaintiff underwent surgery in a western Massachusetts hospital to repair herniated discs at L2-3 and L4-5.

During the surgical procedure, an airborne fungus contaminated the surgical site which resulted in a disc space infection. The plaintiff suffered from the disc space infection for nearly six months before doctors determined that the fungus had caused the infection.

The plaintiff had nine in-patient hospitalizations with two additional surgical interventions in the one-year period following the initial surgery. He spent a total of 115 days in the hospital during that time.

The plaintiff eventually brought claims against a general contractor and sheet metal contractor who installed an air handling system in the operating room. Hospital records suggested that water in the air handling ducts was a likely source of the fungus.

The plaintiff also brought claims against an environmental testing company that evaluated the OR suite for the presence of airborne pathogens following installation of the new air system. The testing company reported high levels of *A. fumigatus* in some air samples.

The plaintiff contended, however, that the testing company did not take enough samples, did not take large enough samples, and did not disclose to the hospital the limitations of the testing methodology.

The plaintiff also brought claims against the hospital, the chairperson of the infection

control committee and the infection control practitioner. The plaintiff contended that the medical defendants were responsible for his infection because they failed to: find and eliminate the source of the fungus, appreciate the risk of cross-contamination; and do comprehensive testing in the individual operating rooms.

The case settled after more than four years of litigation. The contractors settled for a total of \$117,000. The environmental testing company settled for a total of \$150,000. The medical defendants settled for a total of \$450,000.

Motor Vehicle Negligence

Auto Collision — Drunk Driver

Injuries alleged:

Fractured skull, craniotomy, removal of epidural hematoma, cranioplasty, axonal injury, focal injury

Name of case:

Bloniasz v. Phelan

Court/case #:

Worcester Superior Court, No. 95-0667

Tried before judge or jury:

Judge

Judge:

Judge Peter A. Velis

Special damages:

\$163,821 in medical bills; \$1.09 million in estimated loss of earnings

Amount of award:

\$15 million (plus interest of \$7.65 million for a total of \$22.65 million)

Date:

June 30, 1999

Attorney for plaintiff:

Edward C. Bassett Jr., Mirick, O'Connell, DeMallie & Lougee, Worcester

Attorneys for defendant:

Withheld

Other useful information:

The plaintiff sustained a fractured skull and permanent brain damage when her car was totaled in an accident with a drunk driver.

Evidence showed that the defendant was intoxicated and speeding at 55 mph (without turning on his headlights) when his car ran a red light and crashed into the plaintiff's car.

The defendant pleaded guilty to: operating a motor vehicle under the influence of alcohol, negligently causing serious bodily injury; illegally leaving the scene of an accident; and operating after revocation of his license. The defendant was sentenced to eight to 10 years at MCI Cedar Junction.

During the accident, the plaintiff was ejected from her car and, as a result, she sustained permanent brain damage when she fractured her skull on the pavement.

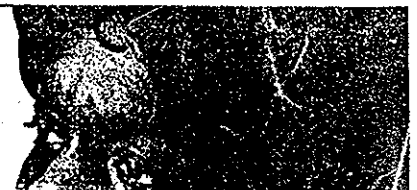
After hitting the plaintiff's car, the defendant got out of his car and ran from the scene.

The plaintiff was rushed to the hospital. She was chemically paralyzed and intubated for an emergency craniotomy. A large portion of the plaintiff's skull was removed and a metal plate was inserted.

After the plaintiff was discharged from the hospital, she was left with "borderline intelligence" and many reasoning/attention difficulties. The plaintiff now survives on Social Security disability payments and she has been forced to live in subsidized housing.

After a hearing on a motion to assess damages, the judge awarded \$15 million plus interest of \$7.65 million, for a total of award of \$22.65 million.

**Finding an expert is easy.
And Free.**



VERDICTS AND SETTLEMENTS

■ continued from PAGE 89

The case was settled in court on the first day of trial.

Premises Liability Fall From Apartment Building

Injuries alleged:
Cervical disc fracture, pelvic dislocation, right acetabular fracture

Name of case:
Withheld

Court/case #:
Withheld

Tried before judge or jury:
N/A (mediated)

Amount of settlement:
\$1.75 million

Date:
March 26, 1999

Attorneys for plaintiff:
Nehi Sugarman and G. Thomas Fauling, Sugarman & Sugarman, Boston

Attorney for defendant:
Withheld

Other useful information:

The 26-year-old plaintiff was a tenant on the fifth floor of a brownstone in Boston. He and his roommate went onto the roof deck of the adjoining property to throw trash from the roof into a construction dumpster on the ground below.

When the plaintiff leaned against the railing to throw the trash, the railing gave way and the plaintiff along with the railing fell to the ground below. The plaintiff struck a stockade fence before landing on a cement patio at the basement level at the rear of the building.

It was later learned that the newly constructed deck had been fastened with a single screw joining the railing to the corner post of the deck. No permit had been obtained for the construction of the deck until after the accident.

The defendants claimed that the plaintiff was trespassing at the time of his accident and that his comparative negligence exceeded that of the defendants because of the plaintiff's carelessness in throwing trash from the roof of a building.

The plaintiff and his two roommates testified at deposition that they were given permission by the landlord of their building to use the deck on the adjoining building.

The defendant responded with the claim that the landlord had no authority to grant permission to use the deck on the adjoining building.

Each respective roof deck and building were owned separately by different realty trusts with different limited liability companies as sole beneficiaries of the trusts.

The plaintiff claimed that the landlord acted individually and in his multiple capacities when granting the plaintiff permission to use the roof deck over the adjacent building.

As a result of this accident, the plaintiff was found unconscious at the scene. His injuries included a C4-C5 subluxed fracture, pulmonary contusions, dislocated pelvis and right femoral head, right acetabular fracture and numerous lacerations. To date, the plaintiff still has reduced function on the right side.

The parties agreed to a non-binding mediation three days before trial.

Motor Vehicle Negligence Parking Lot Collision — Defense Verdict

Injuries alleged:
Cervical injuries, cervical radiculopathy, headaches

Name of case:

Ata v. Coviello

Court/case #:
Lawrence Superior Court, No. 97-533D

Tried before judge or jury:
Jury

Judge:
Howard J. Whitehead

Special damages:
\$36,000 in medical expenses; \$35,000 in impaired earning capacity

Amount:
\$0 (defense verdict)

Date:
Jan. 26, 1999

Demand:
\$250,000 (lowered to \$150,000 on first trial day)

Highest offer:
\$30,000

Most helpful expert:
Charles A. Fager, neurosurgeon, Burlington

Insurance carrier:
Arbella Mutual Insurance Co.

Attorney for plaintiff:
Withheld

Attorney for defendant:
James F. Murray, Law Office of Peter E. Flynn, Saugus

Other useful information:
The plaintiff claimed that the defendant backed his car into the front of the plaintiff's car causing significant front driver's side damage and a cracked windshield.

An automobile appraiser testified that the front driver's side of the plaintiff's car sustained damage, including a broken headlight but no windshield damage.

The defendant testified that, at the time of the accident, he was backing up to leave the parking lot when the rear of his car struck the front of the plaintiff's car.

On the day of the accident, the plaintiff treated as an outpatient at a local hospital due to back pain. Several days later, the plaintiff was examined by her treating physician and complained of neck pain, right upper extremity pain and paresthesia.

At this time, the plaintiff also reported that her car's windshield was broken.

Thereafter, the plaintiff was treated by a neurosurgeon and another physician for neck pain, right upper extremity pain and numbness in her right hand and fingers.

The plaintiff had a prior medical history of neck injuries. At the time of the car accident, the plaintiff was out of work as a mental-health aide and on workers' compensation.

The plaintiff's two experts, including the operating neurosurgeon, testified that there was an aggravation of the plaintiff's previous neck injury as a result of the car accident prompting the neck surgery.

The defendant's medical expert examined the plaintiff and also reviewed the plaintiff's medical records. The defendant's medical expert testified that the cervical discectomy and fusion at C5-C6 were not causally related to the car accident but instead due to a

degenerative condition in the plaintiff's cervical spine and osteophytes.

A jury determined that the defendant was negligent in the operation of his car. However, the jury determined that the defendant's negligence was not the proximate cause of the plaintiff's injuries and awarded \$0 damages.

Medical Malpractice Infection At Surgery Site —

Fungus Injuries alleged:
Cervical disc space infection, vertebral osteomyelitis

Name of case:
Withheld

Court/case #:
Withheld

Tried before judge or jury:
N/A (mediated)

Mediator:
David O. Burbank

Special damages:
\$215,000 in medical expenses

Amount of settlement:
\$717,000

Date:
March 1999

Most helpful experts:
Andrew J. Streifel, hospital environmental health expert, Minneapolis, Minn. and Frank S. Rhame, infectious disease expert, Minneapolis, Minn.

Insurance carrier:
ProMutual, General Star Indemnity, Hanover Insurance

Attorney for plaintiff:
Richard L. Burpee, Burpee & DeMoura, Boston

Attorney for defendant:
Withheld

Other useful information:
In September 1992, the 55-year-old plaintiff underwent surgery in a western Massachusetts hospital to repair herniated discs at L2-3 and L4-5.

During the surgical procedure, an airborne fungus contaminated the surgical site which resulted in a disc space infection. The plaintiff suffered from the disc space infection for nearly six months before doctors determined that the fungus had caused the infection.

The plaintiff had nine in-patient hospitalizations with two additional surgical interventions in the one-year period following the initial surgery. He spent a total of 115 days in the hospital during that time.

The plaintiff eventually brought claims against a general contractor and sheet metal contractor who installed an air handling system in the operating room. Hospital records suggested that water in the air handling ducts was a likely source of the fungus.

The plaintiff also brought claims against an environmental testing company that evaluated the OR suite for the presence of airborne pathogens following installation of the new air system. The testing company reported high levels of *A. fumigatus* in some air samples.

The plaintiff contended, however, that the testing company did not take enough samples, did not take large enough samples, and did not disclose to the hospital the limitations of the testing methodology.

The plaintiff also brought claims against the hospital, the chairperson of the infection

control committee and the infection control practitioner. The plaintiff contended that the medical defendants were responsible for his infection because they failed to: find and eliminate the source of the fungus, appreciate the risk of cross-contamination; and do comprehensive testing in the individual operating rooms.

The case settled after more than four years of litigation. The contractors settled for a total of \$117,000. The environmental testing company settled for a total of \$150,000. The medical defendants settled for a total of \$450,000.

Motor Vehicle Negligence Auto Collision — Drunk Driver Injuries alleged:

Fractured skull, craniotomy, removal of epidural hematoma, cranioplasty, axonal injury, focal injury

Name of case:
Bloniasz v. Phelan

Court/case #:
Worcester Superior Court, No. 95-0667

Tried before judge or jury:
Judge

Judge:
Judge Peter A. Velis

Special damages:
\$163,821 in medical bills; \$1.09 million in estimated loss of earnings

Amount of award:
\$15 million (plus interest of \$7.65 million for a total of \$22.65 million)

Date:
June 30, 1999

Attorney for plaintiff:
Edward C. Bassett Jr., Mirick, O'Connell, DeMallie & Lougee, Worcester

Attorneys for defendant:
Withheld

Other useful information:
The plaintiff sustained a fractured skull and permanent brain damage when her car was totaled in an accident with a drunk driver.

Evidence showed that the defendant was intoxicated and speeding at 55 mph (without turning on his headlights) when his car ran a red light and crashed into the plaintiff's car.

The defendant pleaded guilty to: operating a motor vehicle under the influence of alcohol, negligently causing serious bodily injury; illegally leaving the scene of an accident; and operating after revocation of his license. The defendant was sentenced to eight to 10 years at MCI Cedar Junction.

During the accident, the plaintiff was ejected from her car and, as a result, she sustained permanent brain damage when she fractured her skull on the pavement.

After hitting the plaintiff's car, the defendant got out of his car and ran from the scene.

The plaintiff was rushed to the hospital. She was chemically paralyzed and intubated for an emergency craniotomy. A large portion of the plaintiff's skull was removed and a metal plate was inserted.

After the plaintiff was discharged from the hospital, she was left with "borderline intelligence" and many reasoning/attention difficulties. The plaintiff now survives on Social Security disability payments and she has been forced to live in subsidized housing.

After a hearing on a motion to assess damages, the judge awarded \$15 million plus interest of \$7.65 million, for a total of award of \$22.65 million.

**Finding an expert is easy.
And Free.**

