

\$487,500 RECOVERY - MOTOR VEHICLE NEGLIGENCE - THREE VEHICLE COLLISION ON PENNSYLVANIA TURNPIKE - NEGLIGENT MERGING - AGGRAVATION OF PREEXISTING CERVICAL DISC.

Philadelphia County

The plaintiff was an employee of the Pennsylvania Turnpike Commission when he claimed he was standing in the back of a truck that was struck by a vehicle driven by the first defendant. A second defendant and the trucking company which employed him were also named as defendants in the case for allegedly failing to move over and allow the first defendant's vehicle to exit the work zone. The defendants denied any contact with the host vehicle.

The male plaintiff, 49 years old, was employed as a maintenance worker by the Pennsylvania Turnpike Commission at the time of the accident. The plaintiff was part of a work crew performing roadway maintenance replacing road reflectors on the concrete median separating eastbound and westbound traffic on the turnpike.

The plaintiff and his work crew were in the left high-speed lane of the westbound lanes performing their work. A series of advanced warning signs had been placed notifying oncoming motorists that the speed limit was reduced to 40 mph and that the left lane was closed.

The first defendant was driving in the left lane approaching the work site area. The codefendant, an employee of the defendant trucking company, was driving a tractor-trailer in the middle lane. As the two defendants approached the work zone area, the first defendant merged to the right, into the middle lane, contacting the trailer tires of the defendant's tractor-trailer. The defendant tractor-trailer driver then changed lanes as well, moving to his right.

The plaintiff claimed that, after the first defendant contacted the codefendant's tractor-trailer, he then contacted the right passenger tire of the stake-body truck which the plaintiff occupied.

The plaintiff's neurosurgeon reported that the plaintiff suffered a preexisting cervical disc herniation at the C5-C6 level which was permanently aggravated as a result of the accident. The plaintiff contended that his neck symptoms were significantly worsened following the accident. The plaintiff's vocational expert opined that the plaintiff's accident-related neck injury prevented him from returning to his employment with the Turnpike Commission.

The plaintiff claimed lost past wages of \$69,522 and past medical expenses of \$44,725.

The defendants claimed there was absolutely no contact with either of their vehicles and the plaintiff's stake-body truck. The defendants contended the plaintiff was sitting on the floor of his truck next to the tailgate, unharmed, when they passed his truck. The defendants argued that photographs showed no property damage to the driver's side of the first defendant's vehicle which had allegedly struck the host vehicle. The defendants also argued there was no visible damage to the host truck.

The defendants established that the plaintiff was involved in three prior motor vehicle accidents in which he injured his neck and back. In the most recent accident before the subject collision, the plaintiff sustained a herniated disc at the same cervical level he claimed was injured in this accident. The defendant argued that the plaintiff's symptoms were not causally related to the alleged accident. The defense also maintained the plaintiff was capable of returning to gainful employment, but has chosen not to do so.

The case settled prior to trial for a total of \$487,500. The first defendant paid \$475,000 of the settlement. The codefendant trucking company paid \$12,500.

REFERENCE

Plaintiff's neurosurgeon: Gene Salkind from Huntingdon Valley. Plaintiff's vocational economist: Robert Wolf from Cherry Hill, N.J.

Blair vs. Defendants. Case no. 02-10-3059; Judge Howland Abramson, 3-17-04.

Attorney for plaintiff: Richard M. Jurewicz of Galfand Berger, LLP, in Philadelphia.

COMMENTARY:

This motor vehicle accident case centered on the credibility of the plaintiff himself, regarding both liability and damages. The defendants denied the plaintiff's version of how the accident occurred and denied there was any contact with the truck in which the plaintiff was riding.

In support of the defendants' version of how the accident occurred, the defendants introduced photographs of the vehicles which showed no damage to the driver's side of the vehicle which allegedly struck the host truck. Similarly, there was no damage to the host truck itself. The defense argued that the lack of property damage negated the plaintiff's claim that the vehicles had collided. However, the plaintiff maintained that the contact occurred on the right passenger-side tire of the host truck, where damage would not be apparent.

Although the plaintiff suffered a documented preexisting cervical disc, his physicians opined that the condition was severely aggravated by the accident. The plaintiff claimed he was previously able to continue his daily employment functions but the aggravation of his neck injury prevented him from returning to work.

The first defendant driver had a liability policy limit of \$500,000. The plaintiff was attempting to create a bad faith claim against this defendant in the event his insurance carrier refused to settle the case within the policy limits. The case settled with the first defendant paying \$475,000 of a total \$487,500 recovery after the final settlement conference. □