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THE COMPREHENSIVE SOURCE FOR CALIFORNIA CIVIL TRIAL RESULTS

AUGUST 28, 2006

Vol. 9, No. 35

SETTLEMENT RESULT: \$130,000

VEHICLE NEGLIGENCE

35 TD 9th 21

SETTLEMENT—Driver rear-ends disabled car on freeway

VEHICLE NEGLIGENCE

Motor Vehicle v. Motor Vehicle/Rear-End/Parked/Stalled/Stopped Vehicle/Impeding Traffic

LOS ANGELES COUNTY SUPERIOR COURT

McKeehan v. Perry, No. KC026696, Pomona.

Settlement date: 1/15/1998.

SETTLEMENT RESULT: \$130,000

COUNSEL

Plaintiff: Scott J. Corwin, Law Offices of Scott J. Corwin, Los Angeles.

Defendant: David F. Delinko, Myers, Delinko & Pollard, Claremont. Patrick A. Long, Long & Williamson, Santa Ana. Paul Cliff, Homan & Lobb, Riverside. Raymond H. Goetsch, LaTorraca & Goetsch, Long Beach.

FACTS/CONTENTIONS

According to plaintiff: On November 11, 1996, at approximately midnight, plaintiff McKeehan, a 56-year-old self-employed businessman, was traveling in the number four lane of the eastbound 60 freeway, after having just entered the freeway from an on-ramp and merged across two lanes of travel. Defendant Perry was traveling eastbound on the 60 freeway in the number four lane when he either ran out of gas or had a mechanical failure and attempted to roll his vehicle over to the right shoulder. Defendant's vehicle came to rest partially blocking the number four lane of travel. Defendant failed to turn on his lights or warning signals or to place flares to indicate to traffic that his vehicle was stopped. As plaintiff merged into the number four lane, he rear-ended defendant's

vehicle at approximately 65 mph. Plaintiff was pinned in his vehicle and had to be extricated by paramedics using the jaws of life.

Plaintiff alleged that defendant was negligent in the operation of a vehicle and that all of his claimed injuries were a direct result of this accident. Plaintiff further alleged that the medical malpractice of the first orthopedist was a foreseeable and direct result of the accident.

Defendant disputed liability and contended that plaintiff was the 100 percent negligent cause of the accident, since plaintiff rear-ended defendant's vehicle; that other vehicles on the freeway, including a business associate of plaintiff traveling in the vehicle immediately in front of plaintiff, were able to avoid hitting defendant's vehicle. Defendant further disputed plaintiff's claim that defendant's vehicle was blocking the number four lane of travel and contended that plaintiff was actually traveling on the right shoulder. Defendant further contended that he had his hazard lights on at the time of the collision. Defendant disputed the nature and extent of plaintiff's claimed injuries and argued that he was not responsible for the resulting medical malpractice committed by the orthopedist.

CLAIMED INJURIES

According to plaintiff: Plaintiff sustained massive trauma, including chest contusion, open fracture dislocation of his left distal femur and knee, multiple lacerations to the right knee, fractured right fibula, comminuted fracture of the base of the proximal phalanx of the left thumb. Plaintiff was hospitalized for approximately one week. He underwent a reduction of his right distal radius fracture and surgical reduction, debridement, and internal fixation of the fracture of his left knee by his first orthopedic surgeon. Thereafter, plaintiff was confined to a wheelchair and was an inpatient at a rehabilitation center, where he underwent extensive physical therapy and extended care and rehabilitation. Eight months following the accident, plaintiff had an inability to bear weight on his left leg due to continuing knee complaints, despite the previous surgery. Plaintiff was subsequently examined by a second orthope-

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dist, who determined that the first orthopedist had committed medical malpractice in failing to properly reduce the knee fracture. Plaintiff then underwent a knee arthroscopy to properly reduce the knee fracture. Plaintiff then underwent a knee arthroscopy to properly reduce the knee fracture by the second orthopedist.

CLAIMED DAMAGES

According to plaintiff: \$99,443 past medical; \$85,000 future medical (for a wrist fusion and total knee replacement).

SETTLEMENT DISCUSSIONS

According to plaintiff: Plaintiff made an initial settlement demand of \$1 million for defendant's allegedly available policy limits. Initially, defendant denied liability and offered nothing. It turned out that defendant apparently did not have insurance coverage and a coverage dispute between defendant and his insurer was initiated. After the coverage dispute was disclosed and the declaratory relief action was instituted by defendant's insurance company, plaintiff made a global demand to settle with defendant's insurer to resolve not only the underlying automobile case, but the declaratory relief action as well, for \$225,000, reduced to \$130,000 (without a determination of coverage being made in the declaratory relief action).

EXPERTS

Plaintiff: Stuart Baumgard, M.D., orthopedic surgeon, Mauna Loa, HI (310) 395-2829.

Defendant: Not reported.

COMMENTS

According to plaintiff: The settlement was reached prior to the filing of motions for summary judgment in the declaratory relief action and prior to the service of the lawsuit in the underlying automobile accident case. Plaintiff pursued a medical malpractice claim against his first orthopedic surgeon.

Defendant allegedly purchased a \$1 million automobile insurance policy with defendant's insurer the morning after the accident. The insurance agent back-dated the effective date of the policy to the date of the accident. The defendant argued that he placed the order for insurance by telephone with his agent several days prior to the subject accident. After disputing insurance coverage with defendant and plaintiff, the defendant's insurer filed and served a declaratory relief action to ask the court to declare that defendant's insurance policy was void due to fraud for failure to disclose the accident at the time the application was completed.

Paul Cliff represented defendant's employer. Raymond H. Goetsch represented the insurance company in the declaratory relief action. Patrick A Long represented the plaintiff in the declaratory relief action. David F. Delinko represented defendant driver.

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