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THE COMPREHENSIVE SOURCE FOR CALIFORNIA CIVIL TRIAL RESULTS

OCTOBER 16, 2006

Vol. 9, No. 42

SETTLEMENT RESULT: \$1,000,000

VEHICLE NEGLIGENCE

42 TD 9th 22

SETTLEMENT—Rear-end collision exacerbates pre-existing back condition

VEHICLE NEGLIGENCE

Motor Vehicle v. Motor Vehicle/Rear-End/Intersection/
Parked/Stalled/Stopped Vehicle

LOS ANGELES COUNTY SUPERIOR COURT

Smith v. Kolinsky, No. LC073276, Van Nuys.
Bert Glennon Jr. Settlement date: 9/29/2006.

SETTLEMENT RESULT: \$1,000,000

COUNSEL

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

Defendant: Christopher Sheedy, Calendo, Puckett, Sheedy
& DiCorrado, Glendale.

FACTS/CONTENTIONS

According to plaintiff: At the time of the accident, December 15, 2003, plaintiff John Smith was a 42-year-old, totally disabled corporate transactional attorney. Plaintiff was stopped at the stop sign of southbound Eilat Avenue at the intersection with Valerie Street in Woodland Hills in his 2001 Saab 95. Defendant Stacy Kolinsky was proceeding southbound on Eilat Avenue. He was unable to stop and rear-ended plaintiff's vehicle. The impact was relatively minor in cosmetic damage to plaintiff's vehicle. No police, paramedics, or emergency personnel were summoned to the scene, and plaintiff drove his vehicle home from the accident unassisted.

Plaintiff had been involved in a prior accident on August 1, 2001, in which he sustained lumbar and cervical spine herniated disks. Plaintiff had been advised to undergo both cervical and lumbar spine surgery on February 18,

2003, and again on September 12, 2003 (only three months prior to the subject accident) and had not recovered from the September 12, 2003 lumbar surgery at the time of the subject accident. Plaintiff did not seek medical treatment until January 7, 2004, 23 days after the subject accident.

Plaintiff alleged that defendant was negligent in the operation of her motor vehicle and that all of plaintiff's claimed injuries were a direct result of the accident. Defendants Stacy Kolinsky and Holiday Candy Company accepted liability, but disputed the nature and extent of plaintiff's claimed injuries. Defendants contended that virtually all of plaintiff's claimed injuries and treatment subsequent to the subject accident were pre-existing and related to his original August 1, 2001 accident. They further contended that all treatment that occurred subsequent to the subject accident would have been required even absent the accident.

Defendants further contended that plaintiff was totally and permanently disabled prior to the subject accident, and absent the subject accident would never have been able to return to work. There had been several unrelated legal proceedings, including a federal court disability claim and a social security administration disability claim that pre-dated the subject accident, in which plaintiff had been determined to be totally disabled. Plaintiff also had a pending workers' compensation claim originating from the August 1, 2001 accident.

Defendants further contended that the impact between the vehicles was minor, resulting in only cosmetic damage to plaintiff's vehicle. They also contended that the cervical spine artificial disk replacement surgery was experimental and not the appropriate procedure to remedy plaintiff's claimed cervical spine injuries. Essentially, defendants admitted that plaintiff was totally disabled and in need of significant future medical care, but that the subject accident was not responsible for anything and plaintiff would have been in the exact same medical condition absent the subject accident.

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CLAIMED INJURIES

According to plaintiff: Plaintiff sustained exacerbation of his pre-existing cervical and lumbar spine injuries. Plaintiff also claimed a double crush phenomenon to his sciatic nerve at the piriformis muscle. A cervical spine MRI performed after the subject accident demonstrated that plaintiff's cervical spine herniated disks had increased in size and compression of exiting nerve roots at several levels.

Plaintiff underwent cervical spine artificial disk replacement surgery in London, England on February 26, 2004. Multiple post-12/15/03-accident lumbar spine MRIs did not reveal any significant objective change in plaintiff's lumbar spine herniated disks that pre-dated the 12/15/03 accident. However, plaintiff had subjective increase in his symptoms following the 12/15/03 accident. Plaintiff subsequently underwent a lumbar piriformis release surgery on July 8, 2004. Neither plaintiff's cervical nor lumbar spine condition improved, and plaintiff underwent a course of pain management and epidural injections on a monthly basis for a period of nearly two years. Plaintiff was scheduled to undergo a four-level cervical anterior discectomy and fusion on October 17, 2006, which was scheduled just days before defendants tendered their policy limits.

CLAIMED DAMAGES

According to plaintiff: \$308,084 past medical; \$100,000 future medical.

SETTLEMENT DISCUSSIONS

According to plaintiff: Plaintiff demanded defendants' \$1 million policy limits (CCP § 998). Defendants requested an extension of time to respond, during which time plaintiff underwent a defense medical examination and deposition. Also, his extensive medical records from over 25 medical providers were subpoenaed and reviewed by defendants' medical experts. Defendants tendered the \$1 million policy limits two days before the expiration of the CCP § 998 demand and approximately four months before the trial date.

EXPERTS

Plaintiff: Aaron Filler, Ph.D., neurosurgeon, Institute for Nerve Medicine, Santa Monica (310) 314-6410. Gerald Sacks, M.D., pain management physician, Santa Monica (310) 264-7314. Steven E. Levine, M.D., neurologist, Beverly Hills. Adrian T. Casey, M.D., neurosurgeon, London, England.

Defendant: Perry R. Secor, M.D., orthopedic surgeon, Lakewood Regional Medical Center, Lakewood (562) 633-3787.

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