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THE COMPREHENSIVE SOURCE FOR CALIFORNIA CIVIL TRIAL RESULTS

SEPTEMBER 18, 2006

Vol. 9, No. 38

SETTLEMENT RESULT: \$107,000

VEHICLE NEGLIGENCE

38 TD 9th 27

SETTLEMENT—Passenger involved in head-on collision files uninsured motorist claim

VEHICLE NEGLIGENCE

Motor Vehicle v. Motor Vehicle/Head-On/
Centerline Violation

INSURANCE

Uninsured/Underinsured Motorist

NO COURT/UNFILED SETTLEMENT

Mossberg v. Automobile Club (II).
Settlement date: 6/15/2003.

SETTLEMENT RESULT: \$107,000

COUNSEL

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

Defendant: Steven H. Silverman, Gilbert, Kelly, Crowley &
Jennett, Los Angeles.

FACTS/CONTENTIONS

According to plaintiff: On September 17, 2000, plaintiff, a 54-year-old construction worker, was a passenger in a vehicle traveling eastbound on Gold Hill Road in an unincorporated area of Ventura County. Defendant, while driving west on Gold Hill Road, crossed over into plaintiff's lane and struck plaintiff's vehicle. Defendant was uninsured.

Plaintiff had a long history of lower back problems that pre-dated the accident. Plaintiff had been involved in an accident on July 17, 1995, in which he had injured his lower back. Plaintiff had been advised that he required surgery at L4-L5 after his July 17, 1995 accident. However, he recovered and never had surgery.

Following the September 17, 2000 accident, he was again advised that he required surgery at the L5-S1 level. The 1995 MRI study demonstrated that plaintiff had a 3 mm disk at L5-S1 but a larger 6 mm disk at L4-L5. The MRI study demonstrated that plaintiff had a 3 mm disk at L5-S1 but a larger 6 mm disk at L4-L5. The MRI study performed in 2001 revealed that the prior L4-L5 disk had been re-absorbed but that at L5-S1, plaintiff now had a larger 6x8 mm extruded disk fragment. The prior July 17, 1995 accident was also an uninsured motorist case and involved the same uninsured motorist carrier. The July 17, 1995 accident had been settled in 1996 for the then-prevailing policy limits of \$100,000.

Plaintiff alleged that the uninsured motorist was negligent in the operation of a motor vehicle and that all of plaintiff's claimed injuries were a direct result of the trauma plaintiff sustained in the accident.

Defendant uninsured motorist carrier disputed the nature and extent of plaintiff's claimed injuries and the need for surgery. The uninsured motorist carrier further contended that the prior July 17, 1995 accident caused plaintiff's claimed need for surgery, as alleged by plaintiff at that time, and not the September 17, 2000 accident.

Defendant further contended that plaintiff would never have surgery for the September 17, 2000 accident as he did not have surgery as he had claimed after his July 17, 1995 accident. Defendant also contended that plaintiff did not seek medical treatment following the current September 17, 2000 accident for over one month.

CLAIMED INJURIES

According to plaintiff: Plaintiff sustained cervical and lumbar strain and sprain injuries, requiring physical therapy. An MRI also revealed a fully extruded disk fragment at L5-S1, measuring 6x8 mm. Plaintiff may require a two-level laminectomy and discectomy surgery in the future at L5-S1.

CLAIMED DAMAGES

According to plaintiff: \$17,245 past medical; \$40,000 future medical.

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38 TD 9th 27 (continued)

SETTLEMENT DISCUSSIONS

According to plaintiff: Plaintiff demanded the available \$100,000 uninsured motorist policy limits, which were ultimately tendered by the carrier. Medical costs of \$7,000 were also paid in addition to the policy limits.

EXPERTS

None.

COMMENTS

According to plaintiff: One of plaintiff's treating doctors for the September 17, 2000 accident was the IME doctor retained by the same uninsured motorist carrier for the prior July 17, 1995 accident claim that plaintiff had met as a result of the prior IME.

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