

Civil Jury Trials

FRANKLIN COUNTY COMMON PLEAS COURT

By *Monica L. Waller*

Verdict: \$79,002.14. Automobile Accident. On February 2, 2007 Plaintiff Ellen Morgan turned left from Bale-Kenyon Road to East Powell Road and was struck from behind by a truck driven by Defendant Spencer Miller. Ms. Morgan claimed that Mr. Spencer was traveling at a high rate of speed and skidded approximately 150 feet before striking the rear of her vehicle. Ms. Morgan claimed injury to her neck, head and low back. She developed chronic headaches and claimed that the headaches occurred on an average of six to eight times a day. She sought treatment with a neurologist who diagnosed her with a concussion, post-concussion disorder and post-traumatic headaches related to the accident. Ms. Morgan filed suit against Mr. Miller, who had a \$50,000 liability insurance limit and filed an underinsured motorist claim against her insurer, USAA, with whom she had \$100,000 in UM insurance coverage. Prior to trial, the parties entered into a stipulation that USAA would not participate at trial but would be entitled to an offset for the \$50,000 liability limit reimbursement for payments made under Ms. Morgan's medical payments coverage. At trial, Ms. Morgan's medical expert testified that the chronic headache condition was permanent and that she should receive yearly Botox injections at a cost of \$3,000 per year. Mr. Spencer's medical expert testified that Ms. Morgan's headaches were not related to the automobile accident and that the injuries she sustained in the accident would have resolved within the first three months. Medical Specials: \$15,000 (past) and \$54,000 (future). Lost Wages: N/A. Plaintiff's Experts: Dr. Hussein (neurologist) and Larry Robbins, M.D. (neurologist). Defendant's Expert: Gerald Steiman, M.D. Last Settlement Offer: \$18,000. Last Settlement Demand: \$50,000. Length of Trial: 3 days. Counsel for Plaintiff: J. Scott Bowman. Counsel for Defendant Miller: Michael Ferguson. Counsel for Defendant USAA: Joe McCullough. Magistrate Ed Skeens. Case Caption: Mary Ellen Morgan v. Spencer C. Miller, et al. Case No. 09 CV 1469 (2012).

Verdict: \$15,735.00 (\$3,235 for economic; \$12,500 for non-economic; \$0 for loss of consortium). Automobile Accident. On May 26, 2005, Plaintiff Shirley Smith was traveling in the center westbound lane on East Main Street in Whitehall when Defendant Geraldine Ankrom pulled out of an Arby's and entered the center lane. The front of Ms. Smith's vehicle struck the driver's side of Ms. Ankrom's vehicle. Ms. Smith, who was 74 years-old at the time, claimed injury to her head, neck, both shoulders, left elbow, left forearm and thumb. She further claimed that, as a result of the head injury she also suffered blurred vision and dizziness. Ms. Smith was diagnosed with a right rotator cuff tear and underwent surgery. Ms. Smith's husband also claimed he suffered a loss of consortium. Ms. Ankrom claimed that Ms. Smith was comparatively negligent for the accident by failing to stop in time to avoid the collision. She also claimed that Ms. Smith

sustained only a left shoulder and left thumb contusion in the accident and that the right shoulder complaints did not arise until 5 months after the accident and were unrelated. The jury did not find that Ms. Smith suffered a head or shoulder injury in the accident, but compensated her for the remaining injuries. Medical Specials: \$30,442.74 (billed)/ \$15,449.84 (accepted as payment). Lost Wages: None. Plaintiff's Expert: Edwin Season, M.D. (orthopedist) and Elizabeth Cook, Ph.D. (rehabilitation psychologist) Defendant's Expert: Joseph Schlonsky, M.D. (orthopedist) Last Settlement Offer: \$10,000. Last Settlement Demand: \$135,000. Length of Trial: 4 days. Plaintiff's Counsel: Adam P. Richards and Adam Crowell. Counsel for Defendant Ankrom: Belinda Barnes. Counsel for Defendant American Family Insurance: Wilbur Hane. Magistrate Pamela Browning. Case Caption: Shirley Smith, et al. v. Geraldine Ankrom, et al. Case No. 09 CV 11905 (2012).

Verdict: \$12,000.00 (\$4,218.50 for economic; \$7,781.50 for non-economic). Automobile Accident. On January 20, 2010, Plaintiff Janice Tunstall was stopped in traffic eastbound on Roberts Road when she was struck in the rear by a vehicle driven by Defendant Timothy Parker. Ms. Tunstall claimed injury to her neck, back, knees, shoulders and thighs. She received two courses of chiropractic treatment of approximately one month each and then returned for additional chiropractic care 18 months later. Mr. Parker did not dispute liability but argued that the chiropractic care was not reasonable and necessary as a result of the accident. The jury found in favor of Ms. Tunstall and compensated her for the first two courses of chiropractic care but found that the third course was not related to the accident. The jury awarded Plaintiff \$4,218.50 in economic and \$7,781.50 in non-economic damages. Plaintiff's Expert: Josh Dorsey, D.C. Defendant's Expert: None. Last Settlement Demand: \$45,000.00. Last Settlement Offer: \$6,500.00. Length of Trial: 3 days. Counsel for Plaintiff: Charles Bendig. Counsel for Defendant: Mark Gams. Magistrate Timothy McCarthy. Case Caption: Janice Tunstall v. Timothy Parker Case No. 10 CV 4716 (2012).

Verdict: \$5,314.89. (\$3,814.89 for medical specials; \$500 for lost wages; \$1,000 for non-economic) Automobile Accident. On October 27, 2009, Defendant Tejuan Anderson turned left from westbound Morse Road to the entrance ramp to I-270 southbound in front of a vehicle driven by Plaintiff Kristen Greenwood which was traveling eastbound on Morse Road. Ms. Greenwood sustained a wrist fracture, closed head injury, forearm pain and knee and chest contusions. Medical Specials: \$3,814.89 (stipulated amount accepted as payment). Lost Wages: \$2,000.00. Plaintiff's Experts: Won

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Song, M.D. (orthopedist). Defendant's Expert: None. Last Settlement Demand: \$15,000.00. Last Settlement Offer: \$6,700.00 Length of Trial: 2 days. Counsel for Plaintiff: Brian W. Ross. Counsel for Defendant: Edwin Hollern. Judge Michael Holbrook. Case Caption: Kristin M. Greenwood v. Lejuan F. Anderson et al. Case No. 10 CV 17365 (2012).

Verdict: \$4,500.00 (\$4,500 for economic damages; \$0 for non-economic damages). Automobile Accident. On August 5, 2009 Plaintiff Janice Tyler was headed eastbound on East 5th Avenue when a vehicle driven by Defendant Tonika Mason that was headed westbound on East 5th Avenue turned left in front of her onto North 9th Street, causing a collision. Ms. Morgan claimed soft tissue injuries to her neck, back and hip as a result of the accident. Ms. Mason stipulated negligence but disputed the extent of the neck and back injuries and argued that the hip injuries were unrelated to the accident. Ms. Mason argued that Ms. Morgan sought no treatment for the hip complaints for a year after the accident. Medical Specials: \$4,071.20. Lost Wages: \$1,188.00 (according to Plaintiff); \$249.60 (according to Defendant). Plaintiff's Expert: Ronald J. Stacy, II, D.C. (chiropractor). Defendant's Expert: None. Last Settlement Demand: \$15,000.00. Last Settlement Offer: \$6,000.00. Length of Trial: 3 days. Counsel for Plaintiff: Andrew W. Cecil. Counsel for Defendant: Edwin Hollern. Judge Daniel Hogan. Case Caption: Janice Tyler v. Tonika Mason. Case No. 10 CV 18601 (2012).

Verdict: \$3,785.00 (\$2,285.00 for economic damages; \$1,500 for non-economic damages). Automobile Accident. On February 5, 2009, Plaintiff Christopher Burch was riding on a COTA bus on High Street when Defendant Joseph Mastroberti changed lanes in front of the bus and caused a collision. Mr. Burch claimed that he suffered cervical and lumbar sprains and strains and recurring headaches as a result of the accident. He treated with chiropractor Heather Kight, D.C. at East Broad Chiropractic approximately a week after the accident and continued to receive treatment for the next six weeks, incurring medical bills of \$4,570.00. Dr. Kight testified that the accident was the direct and proximate cause of Mr. Burch's injuries. Mr. Mastroberti conceded negligence but argued that Mr. Burch could not have sustained injury in the accident. Mr. Mastroberti's accident reconstructionist testified that the occupants of the bus would have experienced forces akin to those experienced while coughing or sneezing. Mr. Mastroberti also argued that Mr. Burch's symptoms were more likely related to a prior work-related back injury. Medical Specials: \$4,570.00. Lost Wages: None. Plaintiff's Expert: Heather Kight, D.C. (chiropractor). Defendant's Expert: Michae Rzesutock, P.E. (accident reconstructionist). Last Settlement Demand: unknown. Last Settlement Offer: None. Length of Trial: 3 days. Counsel for Plaintiff: Matthew E. Ice. Counsel for Defendant: Jeffrey Nodzak. Magistrate Timothy Harildstad. Case Caption: Christopher Burch v. Joseph Mastroberti, et al. Case No. 11 CV 693 (2012).

Defense Verdict. Negligence. On September 7, 2006, Plaintiff Stephanie Freeman was walking across a grassy area from a parking lot to the entrance of Discount Tire at Mill Run in Hilliard when she fell into a hole and struck an electrical junction box beside the hole. Ms. Freeman argued that the hole was created when Defendant Hanover Signs erected a 20-foot pole sign for Discount Tire in 1998. Due to

zoning regulations, Hanover Signs had to move the sign two months later. According to Plaintiff, the hole remained and became obscured by the grass around it. She was treated at the emergency room of Doctor's West Hospital for contusions to her right knee and left middle finger, abrasions and a laceration to her left big toe. She was later diagnosed with right carpal tunnel syndrome and a strain of the proximal interphalangeal (PIP) joint and osteoarthritis in the left middle finger. Surgeries were performed for both conditions. Ms. Freeman sued Discount Tire and Hanover Signs. The claims against Discount Tire were dismissed on summary judgment, but the claims against Hanover Signs proceeded to trial. Hanover Signs argued that the hole Ms. Freeman fell into was not the same hole it created to erect the sign 8 years earlier. It also claimed that its employees would have filled the hole they created with gravel when they moved the sign. Hanover Signs also asserted that it owed no duty to Ms. Freeman. Medical Specials: \$42,127.35. Lost Wages: None. Plaintiff's Experts: Paul Cook, M.D. (orthopedist). Defendant's Expert: unknown. Last Settlement Demand: unknown. Last Settlement Offer: unknown. Length of Trial: 3 days. Counsel for Plaintiff: Craig P. Scott. Counsel for Defendant: David Herd. Magistrate Pamela Browning. Case Caption: Stephanie Freeman v. Hanover Signs, Inc., et al. Case No. 10 CV 12064 (2012).

Defense Verdict. Medical Malpractice. Decedent Stephan West came into Grant Medical Center on April 7, 2007 with a 2-week history of coughing and wheezing and the abrupt onset of shortness of breath 6 days earlier which had progressively worsened. He was admitted to the hospital with a working diagnosis of pneumonia. A CT pulmonary angiogram was ordered to rule out a pulmonary embolism. However, Mr. West's weight (537 lbs.) exceeded the limits of the equipment. Therefore, the test was canceled. A lower extremity venous duplex exam was performed. The exam was noted as being "sub-optimal" due to Mr. West's body habitus (overall size and weight), but revealed no signs of deep vein thrombosis ("DVT"). A pulmonologist was consulted and, based on a clinical assessment, determined that Mr. West's risk for pulmonary embolism was low and that the risks of continuing him on anti-coagulation therapy exceeded the benefit given the low likelihood of pulmonary embolism. Mr. West remained hospitalized and received treatment for pneumonia until April 11, 2007 when he was discharged after reporting an improvement in his symptoms. The following day Mr. West returned to the Grant Medical Center ER with complaints of sudden onset of shortness of breath. Arrangements were made to admit him. However, Mr. West suffered a cardiopulmonary arrest in the ER and died. An autopsy revealed a pulmonary embolism and DVT. Plaintiffs sued Grant Medical Center, Mr. West's attending physician Robert Skully, M.D. and the consulting pulmonologist, Philip Hawley, M.D. Plaintiffs claimed that the defendants were negligent in failing to diagnose and treat his pulmonary embolism. They argued that defendants also breached the standard of care by relying upon the lower extremity venous duplex exam to rule out DVT because the exam did not effectively image Mr. West's deep veins due to his body size. They also argued that the defendants should have performed more diagnostic testing to rule out pulmonary embolism before discontinuing anticoagulation therapy and should not have discharged Mr. West without a prescription for an anti-clotting agent. They also alleged that defendants

failed to properly advise Mr. West of the risk of pulmonary embolism upon discharge. They also alleged that Dr. Skully failed to recognize the signs and symptoms of pulmonary embolism and DVT when Mr. West returned to the ER and failed to respond appropriately. The defendants argued that Mr. West received the appropriate workup, diagnosis and treatment based on his symptoms and that Mr. West underwent all the appropriate diagnostic testing that was reasonably available given the limitations imposed by his morbid obesity. Defendants also disputed Plaintiffs' damage calculations arguing that Plaintiffs' calculation of future lost wages failed to account for the instability of Mr. West's business and reduction in his life expectancy due to his other health issues. Plaintiff's Experts: Mark O. Farber, M.D. (pulmonology), Jesse Hall, M.D. (critical care), Kevin Stuart Halstuk, M.D. (vascular surgery), Arthur McTighe, M.D. (pathology); Hiren Shah, M.D. (internist/hospitalist) and Ralph Frasca, Ph.D. (economist). Experts for Defendants Grant Medical Center and Dr. Skully: Elliott B. Davidson, M.D. (family medicine) and David Neal, M.D. (radiologist). Experts for Dr. Hawley: M. Gregory Balko, M.D. (pathology), Thomas Parker, M.D. (internal medicine), Paul Stein, M.D. (cardiology), Patrick Gaughan, Ph.D. (economics), Robert C. Hyzy, M.D. (pulmonary medicine) and Robert Hyzy, M.D. (pulmonary medicine). Last Settlement Demand: \$3,200,000.00. Last Settlement Offer: None. Length of Trial: 10 days. Counsel for Plaintiff: Robert Handelman. Counsel for Defendant Philip Hawley, M.D.: Neil Freund. Counsel for Defendants Grant Hospital and Robert Skully, M.D.: Thomas Dillon and Jessica Davis. Visiting Judge Dale Crawford. Case Caption: Tina M. West, Administrator of the Estate of Stephen L. West v. Philip Hawley, M.D., et al. Case No. 10 CV 18441 (2012).



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