

Plaintiff seeks damages following accident

Extra premium paid for by employer to have driver with poor record insured

By: Michigan Lawyers Weekly Staff ■ in Verdicts & Settlements ○ November 12, 2010

In a third-party automobile negligence lawsuit filed in the Wayne County Circuit Court, plaintiff driver sought compensatory damages from defendants communications company and its employee following an automobile accident.

On Sept. 24, 2008, plaintiff, 36, and defendant employee, 19, were traveling westbound on I-96. Traffic ahead began to slow, and defendant's truck changed lanes into plaintiff's lane at the same time plaintiff was slowing his vehicle. Defendant rear-ended the plaintiff at a high rate of speed, and claimed that a vehicle coming from his left into his lane necessitated him to move into plaintiff's lane.

Plaintiff sustained injuries including an L5-S1 herniated disc, and underwent both posterior and anterior fusions at that level. He was disabled from his machinist's job as a result of this crash.

At the time of the collision, defendant was on his way to work for his employer, defendant communications company. He was driving a vehicle that the employer provided, but he was not in the course and scope of his employment at the time of the accident.

Plaintiff took numerous depositions, including top-level management and all of defendant's supervisors, and established that defendant employer never looked at defendant's driving record before allowing him to use its vehicle, but rather claimed they relied on its insurance company to obtain insurance.

The insurance agent was deposed, and testified that she could get anybody insurance who had a valid driver's license, as long as they were willing to pay the appropriate premium. She also admitted that defendant driver had to pay extra premiums in order to get insurance, and defendant employer paid these extra premiums based upon the poor driving record.

Defendants' accident reconstructionist testified that defendant was traveling too close to the vehicle ahead, and therefore, the defendant could not see the plaintiff and was partially at fault, even if there was another vehicle involved.

Defendants asserted that defendant employer acted reasonably. Also, defendants asserted that extensive surveillance showed plaintiff driving, although he testified he could not drive; not wearing his back brace, despite testifying he always wears it; and doing some other activities that were not in line with his restrictions.

Plaintiff filed a motion in limine to allow plaintiff to introduce evidence relating to exemplary damages, based on the defendant employer's failure to take any action in evaluating defendant driver before allowing him to operate its vehicle. In the motion, plaintiff cited testimony from defendant's managers, which allowed the court to grant this motion.

The matter settled for \$2.72 million.

Type of action: Third-party truck accident, negligence

Type of injuries: Lumbar herniation in one disk, requiring two surgeries

Name of case: Confidential

Court/Case no./Date: Wayne County Circuit Court; confidential; Oct. 27. 2010

Name of judge: Robert J. Colombo

Settlement amount: \$2.72 million

Attorneys for plaintiff: Michael J. Morse, Marc J. Mendelson

Attorney(s) for defendant: Withheld

Keys to winning: Explaining how plaintiff's life was altered after the accident and likely could not work again in the job in which he was trained; plaintiff's counsel attending all independent medical examinations

RELATED JUDICIAL PROFILES

Colombo, Jr., Robert J.

Tagged with:

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