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VERDICTS & SETTLEMENTS

Pedestrian struck by SUV in Walgreens parking lot

\$340,000 Settlement

On May 31, 2009, the plaintiff was walking through the parking lot of a Walgreens store in Richmond. She was struck by an SUV driven by the defendant. An eyewitness subpoenaed to court was prepared to testify that after the plaintiff was knocked to the ground the vehicle continued to drag her, even though the witness had alerted the defendant that he had struck the plaintiff. The vehicle continued through the parking lot and went through a brick wall before stopping.

The plaintiff sustained an avulsion fracture of the 5th metal tarsal at its joint with the cuboid. Plaintiff was taken to the emergency room and eventually saw a surgical podiatrist, Dr. Lawrence Rubin.

Type of action: Personal injury – auto/pedestrian accident

Injuries alleged: Anxiety, right upper arm pain, right thigh pain, right upper leg contusions, right knee pain, left foot pain, left ankle pain – weakness and clicking (diagnosed with transverse fracture at the base of the left fifth metatarsal), and post-traumatic stress disorder

Name of case: Hicks v. Bagby

Court: Richmond Circuit Court

Special damages: \$78,959.74 (\$76,639.74 in present medical damages and \$2,320 in future medical damages)

Verdict or settlement: Settlement

Amount: \$340,000

Attorney for plaintiff: Jay Tronfeld, Richmond

Insurance carrier: Progressive

Dr. Rubin operated on the plaintiff's foot by pinning the fracture. The surgical pin was subsequently removed by surgery. The plaintiff developed arthritis in the joint between the 5th metatarsal and the cuboid. The plaintiff subsequently saw Dr. Robert Adelaar, an orthopedist, who operated and

fused the 5th metatarsal to the cuboid. Dr. Adelaar opined the plaintiff would have restriction of motion in her foot with a 10 percent permanent partial disability of the leg and would have an abnormal gait.

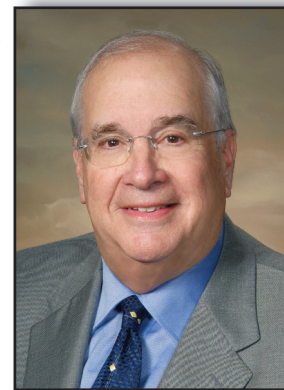
The defense had Dr. Kennedy Daniels review the medical records of the plaintiff. Although Dr. Daniels agreed that the fracture could be pinned initially, he opined that he would have just casted it. He also disagreed with Dr. Adelaar in regard to abnormal gait. He opined that the stiffness in the foot would be insignificant and he doubted she would have an abnormal gait.

The plaintiff also suffered from anxiety and fear as a result of the accident and was subsequently seen by Dr. Martin Buxton, a psychiatrist. Dr. Buxton diagnosed the plaintiff with post-traumatic stress disorder. Dr. Buxton treated her with medication and opined that she was improving from the PTSD but it could be triggered in the future by events reminding the plaintiff of the accident.

The defense admitted liability. However, the PTSD diagnosis would have allowed the plaintiff to prove the details of the accident to establish the causation of the PTSD diagnosis.

Mediation failed in the spring, when the plaintiff's fusion surgery was a future damage. At that time, the defense's top offer was \$125,000. The plaintiff elected to have the surgery subsequent to the mediation because of her pain level. After continued negotiations directly between counsel, the case was resolved for \$340,000 three days before trial.

[11-T-130]



TRONFELD