

VERDICTS & SETTLEMENTS

VERDICTS AND SETTLEMENTS FORM: WWW.PALAWWEEKLY.COM/PLW/VERDICT_REPORT.ASPX



Arbitrator Dismisses Alcohol Evidence in Motorcycle Accident *McKeever v. Kruger* \$1.1 Million Award

Date of Award:
Nov. 24, 2009.
Court and Case No.:
C.P. Montgomery No. 07-23994.

Arbitrator:
Michael C. Shields.

Type of Action:
Negligence.

Injuries:
Brain injury.

Plaintiff's Attorneys:

Jeffrey A. Nerenberg and Thomas J. Gibbons, Nerenberg Law Associates, Philadelphia.

Plaintiff's Experts:

Keith Bergman, accident reconstruction, Fort Washington, Pa.

Defense Counsel:

Cary R. Breon, King of Prussia, Pa.

Defense Experts:

Richard Saferstein, toxicology, Mount Laurel, N.J.

Comment:

An arbitrator awarded a man and his wife \$1.1 million in compensatory damages for injuries sustained during a motorcycle accident in November 2005.

Plaintiff William McKeever suffered "traumatic" brain injuries after being thrown from his motorcycle.

Both the plaintiffs and defense agreed that McKeever was attempting to avoid contact with defendant Janet Kruger's motor vehicle at the time of the accident, but they disagreed as to the cause.

McKeever, who had a blood alcohol level of 0.18 at the time of the accident, argued it was Kruger's "inattentive driving actions" that caused the accident. Kruger responded by arguing McKeever's intoxicated state was the "proximate cause" of the accident, according to an arbitration memorandum.

McKeever swerved his motorcycle to avoid hitting Kruger between 6:30 and 7

p.m. Nov. 6, 2005.

Kruger was making a left-hand turn out of a restaurant parking lot onto Easton Road near Limekiln Pike in Cheltenham Township, Pa. McKeever was traveling north on Easton Road.

According to plaintiffs' pre-arbitration memorandum, an accident reconstruction expert determined that Kruger had failed to yield the right of way and that she had "reasonable, available, sufficient and unobstructed sight distance and time to observe ... McKeever and avoid the accident."

Had Kruger been "reasonably attentive," the expert continued, the accident could have been avoided, according to plaintiffs' pre-arbitration memorandum.

Kruger, though, argued that more than half her vehicle was in the roadway by the time McKeever approached.

The plaintiff should have made a move to avoid Kruger's vehicle earlier, because there were no distractions on the road, the defendant argued.

Kruger further argued that evidence suggested McKeever's intoxicated state weighed heavily in the cause of the accident and supported the argument with testimony from a toxicology expert.

That expert opined that McKeever's intoxication "must be considered the proximate cause leading to the occurrence of his vehicular accident," according to defendant's pre-arbitration memorandum.

McKeever responded to the argument in a motion in limine, seeking to exclude evidence of the alcohol.

It was inadmissible, McKeever argued, because his recklessness or carelessness was not at issue.

McKeever was 40 years old at the time of the accident and was not wearing a helmet. He owned two bars.

According to plaintiffs' pre-arbitration memorandum, McKeever was knocked unconscious at the accident scene and taken to a local hospital. He suffered a non displaced skull fracture with epidural, subdural and subarachnoid hemorrhages, along with neck, back and rib pain.

McKeever suffered from "extreme memory loss, speech difficulties and a severe impairment of the ability to understand spoken or written words," according to plaintiffs' pre-arbitration memorandum.

A month after the accident, McKeever began more than a year of rehabilitation at an outpatient facility to relearn math, spelling and the ability to follow instructions, according to plaintiffs' pre-arbitration memorandum. McKeever also suffered from increased anxiety.

Michael C. Shields, the attorney who arbitrated the case, noted in his award that the accident was caused "solely by the negligence of Defendant Janet Kruger." He cited the "persuasive testimony" of McKeever's wife and medical evidence in his decision to award damages.

Neither plaintiffs attorney Thomas J. Gibbons of Nerenberg Law Associates in Philadelphia nor defense attorney Cary R. Breon of King of Prussia, Pa., could be reached for comment.

— Leo Strupczewski, of the Law Weekly

Arbitration Appeal Results in Lower Damages Amount *Vire & Davis v. Pankow* \$5,000 Verdict

Date of Verdict:

Dec. 3, 2009.

Court and Case No.:

C.P. Allegheny No. GD-07-019849.

Judge:

Ronald W. Folino.

Type of Action:

Negligence.

Injuries:

Cervical and lumbosacral strain and sprain.

Plaintiff's Attorneys:

Michael J. Kearney Jr., Pittsburgh.

Plaintiff's Experts:

Rob Fishman, chiropractic medicine, Pittsburgh.

Defense Counsel:

Joseph A. Hudock Jr., Summers McDannell Hudock Guthrie & Skeel, Pittsburgh.

Defense Experts:

R. Kent Galey, maxillofacial surgery, Pittsburgh; Michael Weiss, orthopedic surgery, Pittsburgh.

Comment:

Plaintiff Deaja Vire, an art student in her

early 20s, and her daughter Nevaeh Davis, 3, were passengers in a vehicle operated by Folanda Parker, who was attempting to merge onto Interstate 279 northbound, in Carnegie, Pa., when her vehicle was rear-ended by Charles T. Pankow. Vire was a front-seat passenger while her daughter was in the back seat.

Vire and Davis sued Pankow for motor vehicle negligence, claiming injuries. The plaintiffs were awarded \$25,000 during an arbitration, which the defendant appealed.

Pankow stipulated to negligence and the case was tried on alleged injuries and damages.

The plaintiffs were taken by ambulance to Allegheny General Hospital where they were treated and released. Vire claimed that, following the accident, she experienced pain in her neck, left shoulder, chest and lower back, as well as headaches, which resulted in trouble sleeping. The plaintiff treated with her family physician, who diagnosed her with cervical and lumbosacral strain and sprain, brachial plexus irritation and nerve root irritation. Through February 2007, Vire received chiropractic adjustments two to three times a week, electrical muscle stimulation, trigger point therapy and lumbar distraction.

Vire's treating chiropractor testified as to causation and said that she would suffer a permanent residual impairment of 25 percent of the cervical spine and 25 percent of the lumbar spine. Vire sought damages for past and future pain and suffering. The plaintiff testified that she continues to have lower back pain where she feels stiffness and increased pain as a result of physical activity, and she sometimes has a random shooting pain in her legs and numbness.

Vire claimed that, after the accident, Davis, who suffered a mild abrasion around her eye, began experiencing clicking in the right side of her jaw, soreness in the right gum area and pain when brushing her teeth. The toddler saw the same chiropractor as her mother, and she received cervical and jaw adjustments, trigger point therapy and electrical stimulation through March 2007; however, she still complained of the clicking and was referred to a pediatric specialist. The physician opined that Davis would suffer a 50 percent residual impairment of her right jaw. Her mother sought damages for past and future pain on behalf of the child.

See 'Verdicts' on Page 8

Roofer Who Suffered Traumatic Brain Injury Settles Lawsuit for \$14 Million	Jury Hands Down \$6 Million Award in Med Mal Case	Burn Victims to Get \$5.8 Million From Energy Firms	Shock Case Settles for \$9 Million
Paraplegic Settles for \$8 Mil. following Worksite Accident	Pier 34 Lawsuits Settle for \$29.5 Million	Jury Awards \$8.3 Million in Industrial Accident Case	\$8.3 Million Settlement in Construction Accident Case
\$7.8 Million in Products Liability and Negligence Case	\$13 Mil. Settlement Reached Over Casino Construction Accident	Injured PECO Worker Awarded \$4.5 Mil.	\$5.9 Million for Roofer in Construction Accident
\$12 Mil. Jury Award in Breast Cancer Case	Tropicana Collapse Yields \$101 Mil. Settlement	Office Builder Secures \$8.9 Mil. Settlement	Work-Accident Suit Settles for \$8.5 Million
Insurer to Pay \$20 Mil. in Bad Faith Claim	Kimmel Center Accident Nets \$12.7 Mil.	Delaware Gas Explosion Yields \$5.9 Million in Settlements	\$5 Million Settlement Secured in Fatal Propane Explosion Case
\$5.5 Mil. Settlement in Scaffold Accident Suit	Jury Awards \$6.63 Mil. to Van Driver	Jury Awards Accident Victim \$75 Million	

These results and cases are unique. They are shown to illustrate some of the cases we have handled. They should not create any expectations that our firm, or any firm, can achieve similar results.

RESULTS MATTER



SALTZ MONGELUZZI
BARRETT & BENDESKY
TRIAL LAWYERS

1.866.496.8282 WWW.SMBB.COM
PENNSYLVANIA • NEW JERSEY