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TRANSPORTATION LAW UPDATE



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Commercial Motor Vehicle Section:

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NO JACKPOT !



Dawn L. Jennings

On a morning in September, Joy Grace was driving a 2004 Dodge Ram on Route 6 in Washington Township, Wyoming County, Pennsylvania. At the same time, Michael Jarrett was driving a tractor owned by Werner Enterprises, Inc. on Route 87 at its intersection with Route 6. Jarrett traveled through a red light at the intersection and a collision occurred with the Grace vehicle.

As a result of the impact, Grace claimed to have sustained cervical whip-lash with myofascial pain, lumbar disc syndrome with right-sided sciatica, L4-5 disc bulge, right lateral L3-4 and L5-S1 disc protrusions, right arm numbness and tingling, and right carpal tunnel syndrome. Grace claimed that her injuries and pain never resolved and affected all of her activities of daily living. Following the accident, Grace alleged that she could not sit for more than 5 minutes or stand or walk for over 30 minutes. Grace also testified that she was unable to perform household tasks, such as renovating her Victorian home, cleaning, and mowing the lawn. She treated with a physiatrist for these injuries following the accident for about three years.

Grace filed a lawsuit in the U.S. District Court for the Middle District of Pennsylvania and the case was assigned to U.S. District Court Judge Richard Conaboy in Scranton, Pennsylvania. Grace sought both compensatory and punitive damages. Prior to trial, defendants admitted that Jarrett was responsible for causing the accident. During discovery, plaintiff aggressively pursued claims for negligent entrustment, hiring and supervising to show that the conduct was not only negligent, but also reckless and outrageous sufficient to warrant punitive damages. Ultimately,

after defendants filed a motion for partial summary judgment, the plaintiff agreed to dismiss the negligent entrustment, hiring, supervision and punitive damages claims.

At trial, over the defense's objection, Grace called 14 witnesses, including the investigating police officer, two eye-witnesses, and an individual who assessed the property damage and performed the repairs to Grace's vehicle. She also called her daughter who testified that she and her husband moved in with Grace to assist her after the accident. Further, several friends, relatives and co-workers testified about how Grace's life was altered because of the injuries sustained in the accident. Additionally, Grace called her treating physiatrist who testified that Grace sustained cervical whiplash with myofascial pain, lumbar disc syndrome with right-sided sciatica and right carpal tunnel syndrome as a result of the accident. He concluded that Grace had a moderate bodily impairment and that the prognosis for recovery was "poor."

The defense presented two witnesses via videotape, an orthopedist and a radiologist. The orthopedist testified that Grace had sustained a cervical and lumbar strain and had recov-

ered completely. The radiologist determined that the abnormalities on the lumbar MRI were due to chronic, longstanding annular degeneration which existed prior to, and at the time of, the motor vehicle accident. The defense argued that Grace had a history of low back and neck problems and was involved in a motor vehicle accident about twenty months earlier, injuring the low back and neck.

The jury awarded damages of \$35,000 to Grace. The defendants had served an Offer of Judgment for \$30,000 one year before the trial. At that time, Grace demanded \$150,000 to settle her claim.

We are constantly told by judges and mediators that people do not like trucking companies and therefore, our clients should pay more simply because the accident involved a truck. In fact, that is what we were told in this case. Yet, as shown by Grace, even juries in a liberal venue can value cases based on their merits.

Grace v. Werner Enterprises, Inc. et al, U.S.D.J. Richard Conaboy, 3:06-cv-311, M.D. Pa. 2008.

Dawn L. Jennings, Of Counsel, has successfully defended trucking and bus companies and their insurers in the state and federal courts of Pennsylvania and New Jersey. She has lectured on a wide variety of commercial motor vehicle topics, including first party benefits, third party liability, and uninsured motorist coverage.

Dawn graduated from Widener University School of Law in 1993 and earned a B.A. degree from Rutgers University in 1990.

Dawn is admitted to practice in the state courts of Pennsylvania and New Jersey as well as the U.S. District Courts for the Eastern and Middle Districts of Pennsylvania, U.S. District Court for the District of New Jersey, and the U.S. Court of Appeals for the Third Circuit.

Dawn is a member of the Trucking Industry Defense Association (TIDA), the American Bar Association (ABA), the New Jersey Bar Association and Women In Trucking (WIT).

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