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## PENNSYLVANIA

### ADMITTED LIABILITY/REDUCED DAMAGES



**Nigel A. Greene**

Our client, a package delivery company, faced a daunting case of liability. On July 7, 2011, under clear skies, its driver struck a vehicle driven by plaintiff. The accident occurred at the intersection of New Bold Road and Canal Road in Falls Township, Bucks County, Pennsylvania. The delivery truck



**Kerry A. May**

had a stop sign for its direction of travel, but plaintiff did not. Moreover, two independent eyewitnesses faulted the truck driver and each claimed that he ran the stop sign. Plaintiff sued the company and its driver. The case would be heard in federal court.

The alleged damages were more foreboding. Plaintiff alleged that, as a result of the accident, she sustained the following injuries:

- aggravation of asymptomatic pre-existing C5-6 and C6-7 disc disease;
- disc herniations at C5-6 and C6-7 confirmed by MRI;
- cervical myelopathy;
- left cervical radiculopathy confirmed by EMG;
- cervical sprain and neck pain; and
- chronic pain syndrome.

Plaintiff eventually had cervical spinal surgery in which her surgeon removed the damaged disc in an anterior cervical discectomy procedure and then placed a

morselized allograft and autograft. The surgery left her with a sizeable scar on the front of her neck.

Following the procedure, plaintiff claimed to have permanent reduction in her cervical range of motion and post-laminectomy syndrome. Her expert witnesses claimed that she would always have pain and limited motion.

Plaintiff was 41 years old at the time of the accident. She testified that the accident deprived her of an active lifestyle and prevented her from working in her chosen field. In addition to compensation for her alleged pain and suffering, she sought punitive damages.

Just as discovery closed, plaintiff served “supplemental” Answers to Interrogatories which added a claim for a lifetime of diminished lost earning capacity. Plaintiff produced reports from an economic expert, a vocational expert, and the doctor who performed the cervical spine surgery. Plaintiff’s economist testified that the future economic damages ranged from \$600,000 to \$900,000. This amount would be in addition to her alleged lifetime of pain, suffering and limited range of motion.

However, through in-depth discovery, we uncovered a significantly different version of her post-accident and pre-accident medical history, one that called all of her damages into question. On the day of the accident and in the days after it, plaintiff was only diagnosed with cervical sprain and strain. She

received that diagnosis at the emergency room on the date of the accident, by her treating physician, and by her chiropractor in the days following the accident. In fact, every doctor who treated plaintiff following the accident, with the exception of her recently retained medical expert, diagnosed nothing more than cervical sprain and strain injury as resulting from the accident. Consistent with this diagnosis, she treated with her chiropractor for 16 months following the accident for a strain/sprain.

Thereafter, from November 2012 to June 2013, plaintiff did not treat for any alleged accident-related injuries. During this time, she returned to full-time, full-duty work in her pre-accident employment, which involved operating heavy machinery, assisting to physically lift equipment that weighed up to 150 pounds, and generally being physically active.

Our detailed analysis of her medical records revealed that after the initial palliative care, plaintiff did not complain of, or treat for, neck pain again until August 2013, over two years after the accident and shortly after she was permanently laid off due to the factory shutting down. Plaintiff’s cervical spine surgery took place in December 2013.

Digging even deeper, we learned that plaintiff had been treating with a chiropractor since she was a child. At deposition, she admitted that she considered going to a chiropractor to be a normal part of her health maintenance practice.

The information we developed in discovery gave us a strong defense to damages. We would challenge whether the cervical fusion surgery was related to the accident.

We retained an experienced neurosurgeon as the defense medical expert. After reviewing the medical records and deposition transcripts and conducting a pre-surgery exam, he determined that the evidence only supported cervical sprain and strain as the neurosurgical injuries in the case, that plaintiff recovered from those injuries within approximately five months following the accident, and that she was not vocationally restricted based on any spine or spine area injuries she may have sustained on the date of the accident.

We retained a vocational expert who found various alternative work options open to plaintiff in lieu of her prior, heavy-duty position which was no longer available.

Finally, our economist determined that plaintiff had no economic damages if the cervical spine surgery was not related to the accident and, if it was, the damages would be far less than her expert proposed.

Plaintiff was not persuaded by our experts. They refused to accept our settlement offer. The day before trial, they reduced their settlement demand from \$2,350,000 to a still unacceptable \$600,000.

We opted for a trial in which we would admit liability, but contest the damages. Through pre-trial motions, we had the claims for punitive damages dismissed, leaving only compensatory damages for the trial.

In opening and closing, plaintiff attempted to use the liability aspect of the case to curry sympathy with the jury. We defended on the theme that we accepted responsibility for the accident, but only those damages that really came from the accident.

Neither plaintiff nor her witnesses did well under vigorous cross-examination. Plaintiff displayed a selective memory of her medical history. The fact that witnesses contradicted each other demonstrated that they too had missed important observations during the accident at issue. Plaintiff's experts had to concede major points with regard to the shortcomings of their respective evaluations. Her surgeon had to concede that his causation opinion contradicted every other physician in the case, including plaintiff's prior providers. Her economic expert had to agree that her future economic damages would be "zero" if the surgery was not related to the accident, and her vocational expert could not deny that plaintiff's work history after the accident was inconsistent with his opinion.

The jury deliberation took less than three hours. They returned a verdict with no award for economic damages and \$150,000 for non-economic damages (pain and suffering). The verdict amount was

significantly less than defendants' pre-trial offer.

Given the evidence presented, the verdict suggests that defendants' liability admission and acknowledgment of plaintiff's actual accident-related injuries and

damages earned them significant credibility. Whereas, plaintiff's exaggerated claims and those of her experts likely cost them credibility; thus, the jury reached verdict which supported defendants' contention that plaintiff was overreaching.

**Nigel A. Greene**, a partner in our Philadelphia office, focuses his practice on the defense of commercial motor vehicles, complex commercial litigation and casualty and premises liability matters. In addition, he serves as an arbitrator in Philadelphia County. He received his J.D. from Georgetown University Law Center in 1994 and his B.A. from the Virginia Polytechnic and State University in 1989. Nigel is admitted to practice in the state courts of Pennsylvania, the U.S. District Courts for the Eastern and Middle Districts of Pennsylvania and the U.S. Courts of Appeals for the Third Circuit.

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**Kerry A. May** is an associate in our Philadelphia office. She concentrates her practice on the defense of commercial motor vehicles and their insurers. Kerry received her B.A. with honors in Crime, Law, and Justice from the Pennsylvania State University in 2004 and a J.D. from the Pennsylvania State University Dickinson School of Law in 2007. She began her legal career as a judicial law clerk for the Honorable Carol L. Van Horn in the Franklin County Court of Common Pleas. She is admitted to practice in Pennsylvania.

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