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News Story

Auto Case Settles For \$950K Despite
Significant Obstacles
Plaintiff's Counsels' Trial Reputation
Was Key

By Kelly A. McCauley

Can an auto accident victim recover significant damages even though he may not have lost consciousness at the scene, said he was okay, did not have surgery and returned to work for two months?

A \$950,000 settlement indicates that the answer is "yes."

Southfield attorneys Lawrence and Steven Gursten, who represented the victim in this case, told Lawyers Weekly that one of the keys to achieving such a significant settlement was their trial reputation.

"Having a successful track record at trial allows for mutual respect and fair settlements," Lawrence Gursten said. "But respect also means having a track record at trial so defendants understand there is significant risk and exposure if they do not make reasonable offers."

The Gurstens were quick to point out that the defense attorneys "were very well-prepared and knowledgeable," noting that this also helped them to reach the settlement.

They further observed that the message sent by the verdict is clear.

"Fair and reasonable verdicts can be achieved if the practitioner can understand — and make others understand — the underlying injuries and impairments that these injuries can have on people, and the large exposure to the defendant at a jury trial if everything is done with excellence," Lawrence Gursten noted.

According to this father-son duo, attorneys handling similar matters should:

- * truly understand the nature of the client's injuries;
- * gather as many resources as possible to properly evaluate defense arguments;
- * research relevant medical literature intensively;
- * make the client's pain "real and tangible" through the use of demonstrative evidence; and

* be willing — and able — to devote a significant amount of time and financial resources to the matter.

Construction Zone Collision

On Sept. 1, 1999, the defendant, a truck driver, was speeding in a highway construction zone. While searching for cigarettes on the floor of his truck, he rear-ended three vehicles, including the one driven by the plaintiff.

As a result, the plaintiff suffered serious and permanent injuries resulting in traumatic brain damage and disc herniations compressing the spinal cord. However, he said he was okay at the scene, did not have surgery, and tried to work for two months.

The plaintiff suffered from incredible pain and depression until he was eventually disabled. MRIs showed that he suffered serious injuries. According to the Gurstens, these injuries will require "major surgery to protect against future damage" to the spinal cord and permanent paralysis.

Suit was filed in the Eastern District. The case settled for \$950,000.

Playing Games

The Gurstens told Lawyers Weekly that, to obtain maximum settlements for their clients, attorneys have to go above and beyond the norm.

"Today, a lawyer cannot simply 'play the game,'" the elder Gursten asserted. "You have to have knowledge and sophistication, and truly understand the underlying medical literature and the nature of the injuries. You have to have the resources available to understand and properly evaluate defense arguments."

For example, Gursten pointed out that, if an attorney is handling a brain injury case, he must "have the raw data of the defense neuropsychologist reviewed for mistakes in interpretation or simple addition. If it is a spine injury case, the attorney has to understand the anatomy and function of the affected areas."

This may seem like a daunting task, but attorneys now have access to an extensive variety of materials.

"There is a wealth of excellent medical literature available that can show many of these injuries are permanent and that very severe impairments can result," he explained. "It should never be left to a battle of one treating doctor versus the hired expert of the defendant."

Where Does It Hurt?

Lawrence Gursten also pointed out that pain is an "intangible concept," and that medical descriptions such as "bulge," "herniation" or "mild" do little or nothing to illustrate the nature and extent of an underlying injury.

Therefore, the attorney's job is to make the pain real.

"You must show what these injuries truly mean and how they affect someone on a day-to-day

level," he said.

According to Gursten, people are "visual learners," so the most effective way to get this across to people is with demonstrative evidence. He said there are many resources available, and attorneys are only as limited as their imagination. Moreover, he claims the results are well-worth the time and expense involved.

"There are tremendous resources available to lawyers today that can significantly increase case evaluation awards, jury verdicts and settlements," he stated. "There is three-dimensional videotape of the brain, so a treating doctor can explain the regions affected and the areas of injury. There are excellent videotapes that are very affordable that can be purchased from the orthopedic colleges for almost every type of tear and fracture. Films of positive diagnostic testing can be obtained and then enlarged so people can see and understand the area of injury."

Expensive Proposition

Meanwhile, the younger Gursten said one of the "unintended consequences" of tort reform is that cases have become "far more expensive" and are taking a longer period of time to resolve. This poses additional challenges for practitioners today.

"Many significant cases can require tens of thousands of dollars in costs and experts to prepare properly, and can take years to finally resolve," he maintained. "Therefore, the personal injury lawyer today must understand that to achieve the greatest results possible for his client, he will have to devote significant time and financial resources to do so."

Break It Down

Steven Gursten next told Lawyers Weekly that one of the innovative techniques they used in this case is one that was crucial to achieving the settlement.

"We started by breaking down each major injury of Mr. Hayden's medical damages and presenting each one as a basis for pain and disability," he explained. "Then, demonstrative evidence was prepared for each injury."

Moreover, for each of the plaintiff's injuries, the Gurstens used "top medical specialists" who provided treatment for this patient.

"In this case, as in most injury cases, the parts are greater than the whole," Steven asserted. "Each injury will increase a defendant's risk and exposure, and each injury adds to the value of settlement."

'Unremarkable' Visit

The younger Gursten claimed the biggest obstacle to overcome in this matter was virtually the same as in other accident cases he and his firm have tried — that the emergency room visit after the car accident was "unremarkable."

He said there was "no notation as to loss of consciousness and [the plaintiff] shortly thereafter returned to work and did continue to work for some time before being disabled by his treating doctors."

This is a common problem and Gursten said "defense lawyers commonly seize on these types of things to try to minimize the severity of an accident."

In such a situation, he said "attorneys have to have the knowledge and sophistication to be able to explain and put in proper context what this truly does mean — and what it does not mean."

The elder Gursten added that emergency rooms are acute care facilities, and that medical literature shows "the vast majority of mild and moderate head injuries are not diagnosed" there.

"Many emergency room doctors do not ask the right questions to diagnose brain trauma and there is also 'masking' of symptoms as attention is directed to the most acute areas of pain and injury," he explained. "People who suffer physical injuries and who are on medication may not become aware of functional impairments in memory or concentration for many weeks after an injury until the demands and stresses of daily life bring these deficits to their attention."

Gursten also pointed out that, oftentimes, tests performed in the emergency room are routine.

"Normal X rays, CT Scans or MRIs of the brain are routine and do not reveal significant disc or head injury in the emergency rooms," he said. "It is even likely that while a trauma can cause a significant tear or swelling in a spinal disc, that it has not yet begun to herniate or bulge. Therefore, a good plaintiff lawyer must spend time explaining each and every misperception."
