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Special Feature

GM Pays $4.25M For Mild Brain Injury

Employee's Car Struck Victim's Vehicle Head-On

By Lynn Patrick Ingram

"Who do I want as my attorney?" a woman asked herself after she was injured in a car accident.

"I'll take Steven Gursten," she answered.

"Is that your final answer?" the woman asked, second-guessing herself.

"That's my final answer," she responded.

Congratulations -- she's a millionaire!

But unlike the television show, "Who Wants To Be A Millionaire," when you have Gursten by your side, there's no need for a lifeline.

Gursten, at age 30, has been making rain -- and sometimes a rumble of thunder -- in motor vehicle negligence cases since becoming a lawyer just a few years ago.

And, judging by the outcome of one of his latest cases, it does not appear that the rain and thunder are going to stop anytime soon.

Gursten and his colleague, Leonard Koltonow, recently represented Angela Fini in a negligence suit in which Fini suffered a closed-head injury when a car driven by Jimmy Hill, a General Motors employee, crossed over the center line and struck her vehicle head-on.

According to Gursten, he and Fini were brought together by two things: 1) timing and 2) poor knowledge among the legal community about brain-injury cases.

"An interesting thing about this case was that it had been previously turned down by several other personal-injury lawyers before it was referred to us," Gursten said. "This shows the lack of understanding about the proper value of mild closed-head injuries among lawyers."

Gursten explained that lawyers and adjusters "must understand that 'mild' is a medical term, and the impact upon how the plaintiff functions in normal life can be severe."

The result of Gursten's insight was a $4.25 million verdict -- his second million-dollar verdict in as many years.

Regis would be proud.

Bad Move

On May 9, 1996, the plaintiff was traveling down Dansen Road in Milford when the defendant's vehicle crossed the center line and struck her vehicle head-on. As a result of the crash, the plaintiff suffered a closed-head injury and post-concussion syndrome.

According to Gursten, the case may have settled early on if not for an "unreasonable" insurance adjuster.

"Like most trials, we were forced to try this case not because of any outrageously-high demands for settlement by the plaintiff, but because of a bad risk manager who would not discuss reasonable settlement demands," Gursten explained. "My experience has been, without exception, that every trial I have ever had has been the result of a bad adjuster or risk manager."

Gursten also said that a "hard-line stance" by the defense attorney precluded ending the case short of trial.

"The case mediated for $700,000 and the plaintiff had accepted," Gursten noted. "Still, however, the highest offer before trial was $100,000."

Gursten further said that he thinks GM's refusal to take responsibility hurt its position at trial.

"GM did not admit liability at trial even though [the defendant] admitted he caused the crash in his deposition," Gursten said. "It tried to argue that a sudden puddling of water and heavy rains were the real cause. I believe the Oakland County jury got very angry at GM's refusal to be held accountable."

Instead, GM and its attorneys "tried to play lawyer games and focus on the plaintiff's pre-existing physical condition," Gursten explained. "Throughout mediation, facilitation and trial they actually maintained that these injuries represented a threshold question for the jury. I firmly believe that although juries are much less compassionate today than ever before, they are more willing to punish the defendant for perceived acts of bad behavior."

Therefore, "not admitting liability at trial was a very poor tactical decision by the defendant," Gursten said.

Cut & Dry

Gursten pointed out that the theory of the case was simple: "a nice, decent person who suffered catastrophic injuries because of the defendant's carelessness."

According to Gursten, the plaintiff's injuries were "clear, objective and severe."

Thus, Gursten said that he was able to incorporate demonstrative evidence into the case. "This allowed us to show the jury that we are here because of an objective injury that everyone can see," he said.

Still, "the biggest obstacle -- as in every 'mild' brain-injury case where the plaintiff both looks and talks well -- was convincing the jury that the plaintiff has suffered a legitimate medical

injury," Gursten explained. "A brain-damaged person may look like anyone else, and we can't show the jury an X-ray of a broken brain like we can a fractured arm or leg, or where the plaintiff is sitting in a wheelchair."

In addition, "we were informed repeatedly by the defense that our client -- a single mother and obese female who had a history of fibrodysplasia -- would not be found likeable by the Oakland County jury," Gursten commented.

To overcome these obstacles, Gursten said he told the jury that the case involved a legitimate, honest injury and then used medical witnesses, demonstrative evidence and literature to back up his position.

"Our client's appearance and background was overcome by showing the jury that the defendant's attempts to shift attention to these issues was just another example of how it was refusing to take responsibility," Gursten noted.

"We kept it short and clean with the plaintiff, framing the debate by saying she did nothing wrong, and by focusing on the defendant's refusal to be accountable for the injuries that they would not admit were caused by crossing over the center line," he said.

Turning Tide

Apparently, Gursten and Koltonow got it right because the jury returned one of the largest verdicts reported to Lawyers Weekly during 1999.

Although the case is being appealed, Gursten said he's confident that the verdict will be upheld.

"It must be understood that this was a just verdict and result based upon the evidence and testimony at trial," Gursten observed. "Medical experts testified that the plaintiff had severe brain damage. Even the defendant's expert under cross-examination testified that the plaintiff had suffered injuries and that they were very significant."

Gursten also said he believes the verdict sends a message to the insurance industry that, if the industry takes hard-line stances and refuses to settle cases reasonably, then it faces much greater exposure at trial.

"These cases should be about trying to fairly and quickly compensate injured people," Gursten said. "This is why our civil justice system was created. Yet somehow it has turned into a game with insurance companies, adjusters and some defense lawyers refusing to remember that we are dealing with innocent people who were hurt through no fault of their own."

Gursten further pointed out that Michigan trails the rest of the nation in its bad-faith law.

"This permits the insurance companies to play games with their own insureds' lives and risk verdicts over policy limits with relative impunity," he explained. "Our courts never considered that insurance companies would take hard-line positions on a large number of certain types of cases and our bad-faith law is largely outdated and powerless to prevent these unfair practices."

But Gursten said he sees the tide turning.

"This is now four verdicts in about a year over $1 million by our firm," he noted. "And all these cases boil down to one thing: bad adjusters and risk managers who refused to settle these cases reasonably."
