

## **Pedestrian's pre-accident state of mental health questioned**

### **Plaintiff would've needed to be in facility even with no injury, defendant says**

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*BY: Douglas J. Levy*

Plaintiff guardian and conservator for plaintiff pedestrian sought non-economic damages from defendant driver for injuries sustained in an auto accident.

Plaintiff, 53, was a pedestrian at the crosswalk of Greenfield and Catalpa roads in Berkley, when he was struck by the 75-year-old defendant's car. Defendant had stopped at a red light, tried to make a right turn, and hit plaintiff, who sustained catastrophic injuries including a fractured skull; bilateral leg fractures with open reduction internal fixation; and a herniated lumbar disc requiring fusion.

Defendant contested liability for the accident. An independent eyewitness testified that the light had turned green while plaintiff was in the crosswalk. Another eyewitness testified that defendant apparently failed to see plaintiff and ran him over while plaintiff was directly in front of the car.

Plaintiff spent three weeks in intensive care at Beaumont Hospital, followed by a month at Evergreen Rehabilitation and six months in Rainbow Rehabilitation. When he was discharged home, where he lived alone, he needed 24-hour attendant care. He was proven too injured to stay at home and care for himself, and now is a full-time resident of a brain-injury rehabilitation center.

Prior to the accident, plaintiff was disabled from his job as a supermarket clerk for 20 years due to depression. He had made numerous suicide attempts, his most recent being a few months before this accident. But it was asserted that, notwithstanding his severe depression, he had been able to live independently, care for himself and his home, and drive.

Defense contended that plaintiff had returned to his pre-accident state of mental health, and would have required moving into a facility even if the accident had not occurred. It also was argued that plaintiff could have been trying to commit suicide when he was hit by defendant.

The matter was settled with very active involvement by the judge at the settlement conference.

**Type of action:** Third-party auto negligence

**Types of injuries:** Fractured skull with subdural hematoma, fractured legs with open reduction internal fixation, herniated lumbar disc requiring fusion

**Name of case:** Confidential

**Court/Case no./Date:** Oakland County Circuit Court; 10-115544-NI; June 1, 2012

**Tried before:** Judge

**Name of judge:** Shalina Kumar

**Settlement amount:** \$1.25 million

**Case evaluation:** \$1.35 million

**Insurance carrier:** Chubb

**Attorneys for plaintiff:** David Christensen, Sarah Stempky

**Attorneys for defendant:** Thomas DeAgostino, Steven Potter

**Key to winning:** Illustrating how plaintiff's injuries prevented him from being fully independent, even though he was mentally ill before the accident