

## **Rear-End Collision Nets \$500K Verdict For Low Back Injury**

### **Clear Presentation By Sincere Plaintiff Key**

This auto negligence case involved a rear-end collision where the 76-year-old defendant struck a vehicle in front of his car, pushing it into the 16-year-old plaintiff's vehicle. The plaintiff drove away from the collision, and continued on her shopping trip.

The defense admitted liability and argued that no objective findings existed regarding serious impairment of body function. The defense asked the jurors to place great weight on the fact that the plaintiff's car sustained minimal physical damage and that the plaintiff did not immediately go to the hospital for treatment.

The plaintiff conceded during trial that the elderly defendant was a nice gentleman, however, further suggested that the defendant's age and personality did not take away from the admission that he was at fault.

The plaintiff sustained a minimal grade stress fracture of L5-S1 and has gone through a rigorous course of physical therapy. The plaintiff testified that she endures pain when driving for long periods of time, when attempting to engage in sporting activities and often has difficulty sleeping. She is presently a college student.

The court failed to allow the plaintiff's expert to testify regarding future economic damages based upon the fact that the plaintiff's treating physician could not state the date the plaintiff would recover. The court thought it was too speculative as to the date of recovery, if ever. A detailed record was made as an offer of proof to preserve the record for appellate purposes on behalf of the plaintiff if it became necessary to do so.

The key to winning, plaintiff's counsel said, was a clear presentation by a sincere plaintiff. The plaintiff was believable and made an excellent impression on the jurors. The jurors indicated after the trial that they were impressed by the plaintiff's pursuit of physical therapy, inclusive of her home exercise program.

According to plaintiff's counsel, the defendant's IME expert appeared overly anxious to assist the defendant's case, answering questions that she was not even asked. The defendant's medical expert testified it was not possible to relate the stress fracture to the automobile accident, and that it was an injury that existed since the plaintiff's early years.

The jurors returned a verdict of \$500,000 for economic damages. The case mediated for \$15,000 and the highest offer the defense made was \$45,000. They withdrew the offer when the jurors commenced deliberations. The mediators merely polarized the parties by placing such a low

value upon the case when they were presented with objective findings from the plaintiff (X-rays and CT scans) of the stress fracture.

**Verdict amount:** \$530,384 (\$500,000 judgment plus costs)

**Attorney for the plaintiff:** James O. Elliott