

Man Claimed Brain Injury After Armored-Truck Collision

Jazlovietcki v. Garda CL Atlantic \$850,000 Settlement

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VERDICTS &
SETTLEMENTS

Date of Settlement:

July 28.

Court and Case No.:

C.P. Philadelphia No. 03585.

Judge:

Leon Tucker.

Type of Action:

Motor vehicle.

Injuries:

Traumatic [brain injury](#); fracture.

Plaintiffs Counsel:

Joseph L. Messa and Jenimae Almquist, Messa & Associates, Philadelphia.

Defense Counsel:

John S. Tucci, Marshall Dennehey Warner Coleman & Goggin, Philadelphia.

Plaintiffs Experts:

Dr. Leonard B. Kamen, physiatrist, Philadelphia; Dr. A. Lee Osterman, hand surgeon; Philadelphia; Dr. Michael Martin Cohen, neurologist, Bala Cynwyd, Pa; Dr. Terri Morris, neuropsychologist, Bala Cynwyd, Pa; Dr. Richard M. Sobel, psychiatrist, Philadelphia; Bunin Associates, economics, Wynnewood, Pa.

Defense Experts:

Dr. Marc Manzione, orthopedic surgeon, Huntingdon Valley, Pa.; Dr. John E. Gordon, neuropsychology, Philadelphia; Dr. Robert M. Toborowsky, psychiatrist, Philadelphia; Jasen Walker, vocational expert, Valley Forge, Pa.

Comment:

According to the pretrial memorandum of plaintiff Frank Jazlovietcki, he was driving northbound along Brookwood Drive near the intersection with Street Road in Bensalem on April 21, 2012, when the passenger-side door was struck by a vehicle owned by defendant Garda CL Atlantic Inc. and operated by defendant Kevin Moss. Moss was traveling west along Street Road. The memo said Moss entered under a red light, and that the Garda vehicle weighed approximately seven tons.

Jazlovietcki's vehicle was pushed into another vehicle, and then onto an adjacent grassy area, leaving Jazlovietcki trapped in the vehicle, the memo said. Jazlovietcki was extracted from the vehicle by using the jaws of life.

Jazlovietcki contended that the accident caused a wrist fracture, back injuries and a traumatic brain injury.

The defendants conceded liability, the memo said.

Jazlovietcki, who was 29 at the time, was taken by ambulance to Aria Health, Torresdale Division. A rescue report said Jazlovietcki had obvious head, chest, arm, pelvis, abdomen and other injuries.

At the hospital, Jazlovietcki was diagnosed with a radial shaft fracture of the left arm, and closed head injury. The CT scan showed a laceration of the scalp over the right posterior frontal parietal region, as well as a subcutaneous

hematoma, the memo said. The left arm was splinted.

Jazlovietcki returned to the hospital April 23, 2012, complaining of difficulty breathing, increased neck, head, jaw, left arm and right hand pain. He underwent testing, including X-rays, EKG and CT scans, the memo said.

Jazlovietcki followed up with Dr. Matthew McLean, an orthopedic surgeon. His evaluation showed vertigo, blurred and double vision, as well as loss of memory. He also had radiating pain down his legs and arms, and severe wrist pain, the memo said. He was referred to a hand specialist.

Jazlovietcki underwent resplinting of the fracture in his left arm, and saw orthopedist Dr. Norman Stempler, according to the memo. He reported ongoing headaches, back pain, rib cage pain and pain in his left arm. Stempler diagnosed Jazlovietcki with a cerebral concussion, cervical, thoracic and lumbosacral pain and strain, myofascial syndrome, the memo said. Staples and sutures were also removed from Jazlovietcki's scalp.

Jazlovietcki underwent chiropractic and physical therapy treatments, the memo said. He began treating with Lisa Nocera, for pain management, which he continued.

According to the memo, Jazlovietcki claimed to have sustained denervation of hand muscles, bilateral neuropathies, bulging cervical discs and stenosis of the spine in addition to the fracture and traumatic brain injury, or TBI. He also claimed that the injuries led to daily pain, persistent headaches, back pain, spasms and weakness of the left arm. The TBI, the memo said, led to difficulties performing household chores, including struggling to dress and remember tasks, and also hindered his ability to secure work.

The memo also noted that Jazlovietcki had been hospitalized for kidney failure in November 2012, but said he had fully recovered.

The memo also said Jazlovietcki's medical costs were \$43,000.

According to the memo, plaintiffs hand expert Dr. A. Lee Osterman opined that Jazlovietcki suffered a malunion of the fracture, and he will require a complicated surgery.

Plaintiffs expert neuropsychologist Dr. Terri Morris opined that Jazlovietcki has concentration, speech and short-term memory problems. She also said he suffered emotional changes, including anxiety and depression, and he will be unable to resume employment. Morris further opined that Jazlovietcki had

sustained a TBI attributable to the car accident.

Jazlovietcki's expert psychiatrist, Dr. Richard M. Sobel, opined that he suffered from post-traumatic stress disorder, as well as mood disorder.

Dr. Michael Martin Cohen, the plaintiff's expert neurologist, also opined that he suffered from TBI and post-concussion syndrome, the memo said.

According to the memo, economic experts from Bunin Associates predicted that Jazlovietcki would sustain an earnings loss of about \$1.7 million.

A memo from defendants said Jazlovietcki did not lose consciousness at the scene, that he was alert and oriented and that he had a normal neurological examination at the scene. Jazlovietcki only complained of left elbow pain in the emergency room, and a review of Jazlovietcki was negative for neurocognitive symptoms, the memo said. According to the memo, a CT showed intracranial abnormalities that were not acute, and Jazlovietcki's Glasgow Coma scale was 15, which is incompatible with a serious TBI.

The memo also said that in the emergency room, Jazlovietcki indicated he was unable to raise his right arm, but he was able to do so when asked to perform a blood-pressure test.

The defendants' memo also noted that Jazlovietcki was right-hand dominant and had been working at Kmart as a material handler earning \$7.75 an hour. Jazlovietcki's tax records showed he earned about \$2,400 in 2011, and \$1,240 in 2012.

Dr. Marc Manzione, the defendants' expert orthopedic surgeon, opined that Jazlovietcki suffered various soft-tissue injuries, as well as the fracture, but that the soft-tissue injuries were not residual or limiting. He further opined, according to the memo, that scans did not indicate any significant post-traumatic cervical and lumbar injuries, and that some of Jazlovietcki's complaints were not supported by the medical record.

The defendants' expert neuropsychologist, Dr. John E. Gordon, opined that Jazlovietcki had no intracranial abnormalities, and that his level of motivation and effort during testing was questionable, the memo said. Jazlovietcki's reasoning, both verbal and nonverbal, were in the average range, although he showed difficulty with conceptually solving problems; however, Jazlovietcki's learning and memory was clearly unreliable, Gordon opined, according to the memo. The neuropsychologist further opined that Jazlovietcki did not sustain

TBI and that he would not need neuropsychological treatment.

According to the defendants' memo, expert Dr. Robert Toborowsky said no documentation indicated TBI, and that Jazlovietcki did not appear to be a reliable or consistent patient.

The defendants' vocational expert, Jasen Walker, opined that nothing would preclude Jazlovietcki from performing sedentary or light work. He further opined that Jazlovietcki is morbidly obese, and that this condition would interfere with his ability to perform heavier tasks regardless of the claimed injuries. He also opined that Jazlovietcki would be able to earn between \$24,000 and \$35,000 in a sedentary position.

The parties agreed to settle the case for \$850,000.

Plaintiffs attorney Joseph Messa said he was "glad that GARDA accepted responsibility for the actions of its employee," according to a statement from the law firm.

A call to defense counsel was not returned.

— *Max Mitchell, of the Law Weekly*