

failing to adequately monitor the child as he was being brought from the catheterization lab to his room. Further, the defendants also negligently failed to properly set the pulse oxymeter to the mode that provided maximum information during the transfer, thereby preventing them from detecting that the arrest had occurred as early as possible. The defendants, who maintained that the pulse oxymeter was, in fact, set correctly and that the arrest was observed virtually immediately, contended that irrespective of this dispute, such a short period of time elapsed from the time the child left the

lab until arriving at his room that it was highly doubtful any alleged delay in detecting the arrest was a substantial factor in the brain damage. In this regard, counsel for the defendant cardiologist and hospital presented an exemplar video showing a patient being moved, and it was felt that this evidence was very helpful to the defense case.◊

**\$2,800,000 PRESENT VALUE RECOVERY – Defendant driver of small truck makes illegal left turn after pulling from front of employer’s premises while facing oncoming traffic – Crushing injuries to knee – Eight surgical procedures – Patelectomy – Pre-existing compartment syndrome in knee.**

**Bergen County**

The male plaintiff automobile driver, approximately age 60 at the time of the accident, contended that as he was proceeding easterly on a roadway with one lane in each direction, the defendant truck driver, who had been parked facing east on the other side of the roadway, negligently pulled into the path of the plaintiff. The plaintiff contended that as a result, he suffered severe crush injuries in the area of the knee. The plaintiff, who had a history of arthritis in the knee requiring prior arthroscopic surgery, contended that he had nonetheless been able to work as a tractor-trailer driver for many years in his home state of California. The plaintiff contended that the injuries sustained in the subject accident have necessitated eight surgical interventions, including an emergency hospitalization due to the development of a pulmonary embolism. The plaintiff maintained that he will permanently suffer severe pain and difficulties ambulating, an inability to return to work, and that a future trauma would probably result in the need for an above-the-knee amputation. The defendant denied that the claimed injuries stemmed from the subject accident.

The accident report, which was adverse to the plaintiff’s position, indicated that neither the plaintiff nor the defendant saw each other at the time of the collision. The defendant contended that he had been facing the same direction as the plaintiff and was in the course of making a lawful right turn at the intersection and that the plaintiff was attempting to pass him on the right side, thereby causing the accident. No witnesses were listed on the police report and the report did not reflect that the defendant had any passengers.

The plaintiff could only recall that the defendant’s truck suddenly appeared in front of him at the time of the accident and that a severe collision ensued, resulting in serious injury to the plaintiff’s right knee. It was nevertheless suspected that the defendant had been illegally parked and made an illegal turn from the opposite and wrong side of the two-way street. The plaintiff argued that the defendant entered the roadway directly in front of the path of travel and

right of way of the plaintiff’s vehicle, causing the subject collision. Due to the severity of the injuries involved, plaintiff’s counsel undertook a surveillance of the front of the defendant trucking company’s premises where the collision occurred and also set about to determine whether there was, in fact, a passenger in the defendant’s truck as suspected by the plaintiff. The surveillance led to a videotape depicting the defendant trucking company employees making the same illegal turn at the T-intersection. Neighbors were prepared to testify that the defendant’s trucks made such turns quite frequently and that the defendant employer’s drivers acted “as if they owned the street.” Further investigation turned up the name and address of a passenger of the truck who happened to be a transient employee of the trucking company who had left prior to the arrival of the investigating police officer. A subsequent interview of this employee was also conducted by videotape. In the videotape, the employee graphically depicted how the defendant caused the truck to be parked illegally and facing the opposite direction and how, as the plaintiff suspected, the defendant had made an illegal right turn in front of the path and right of way of the plaintiff’s vehicle, causing the collision.

The plaintiff’s accident reconstruction expert would have testified that the physical damage was much more consistent with the plaintiff’s theory. The expert further maintained that had plaintiff attempted to pass the defendant on the right as the defendant argued, the impact would have been at a much sharper angle than was the situation in the subject case.

The plaintiff contended that as a result of the accident, he suffered a shattered patella in his right knee, which required an open reduction, internal fixation surgery. Subsequently, he developed a pulmonary embolism and required hospitalization and anticoagulation therapy. Approximately one year following the accident, the plaintiff underwent a total right knee replacement. Several months later, the plaintiff’s remaining right patella gave way and crumbled, necessitating a patellectomy together with reconstructive knee surgery. One-month later, over the course of a four-month hospitalization, the plaintiff underwent limb salvage procedures as a result of the



failure of his right knee tissues to heal and close. Furthermore, the knee had become infected, requiring open "lavage" treatments. During this four-month hospitalization, the plaintiff underwent four reconstructive knee surgeries. Approximately nine months later, the plaintiff's right knee prosthesis became infected and was required to be replaced completely with a total new right knee prosthesis, together with a left thigh skin graft to be applied to the right knee surgical site.

In total, the plaintiff underwent eight open right knee surgeries, and two skin grafts as a result of the accident. Many of the procedures, including the graphic limb salvage procedures, were documented by videotape for later use at trial and were incorporated into a day in the life video DVD that was used as part of the settlement brochure.

The plaintiff, who had worked as a trucker for many years in California, had recently relocated to New Jersey where his brother-in-law owned a trucking facility and employed him as a "truck jockey."

The defendant contended that the plaintiff's right total knee replacement, seven of his nine open surgeries, and his significant disability, were all the products of the plaintiff's preexisting severe tri-compartmental degenerative joint disease in his right knee. This preexisting condition, as well as a prior arthroscopic surgery that the plaintiff underwent over the several years previously, were well documented in the extensive prior medical and hospital records from the plaintiff's previous residence in California. The plaintiff countered that in view of his ability to work as a trucker for many years despite the prior knee arthritis, the defendant's position should be rejected. The orthopedist who had provided prior treatment in California would have testified that the plaintiff had been able to function relatively well until the happening of the subject accident.

The case proceeded to trial and settled after two days of jury selection for \$2,902,227.12, representing \$1,900,000 up-front cash and \$200,445.33 every year for five years, for a total present value of \$2,800,000.

## REFERENCE

Plaintiff's accident reconstruction expert: Eric Carlsson of A & C Automotive Consulting from Chester. Plaintiff's economist: Matityahu Marcus from Scotch Plains. Plaintiff's orthopedic surgeons: Stephen Stoller from Paramus and Nicholas Alexander from Mahwah, Plaintiff's plastic surgeon: Michael Torsiello from Midland Park. Defendant's orthopedic surgeon: Robert Goldstone.

Randall vs. McClain. Docket no. BER-L-1048-04; Judge Estella De La Cruz, 12-06.

Attorneys for plaintiff: Michael Maggiano and Michael Lizzi of Maggiano, DiGirolamo, Lizzi & Roberts, PC, in Fort Lee,

## COMMENTARY:

The plaintiff, who had limited memory of the accident, could only recall that the defendant's truck was suddenly present in front of him and that a severe collision then occurred. The defendant driver had contended that he had been facing the same direction as the plaintiff and was making a lawful right turn at the intersection when the plaintiff caused the accident by attempting to pass him on the right side by traveling onto the shoulder. The plaintiff, suspecting that a passenger had been in the truck, ordered an investigation and surveillance of the area. This surveillance revealed two important facts. The first was that the defendant's employees often made the illegal right turn that the plaintiff alleged the defendant had made after parking while facing in the wrong direction. The second was that there was, in fact, a passenger in the defendant's truck. This individual confirmed that the accident had occurred in the manner advanced by the plaintiff. In this regard, it is felt that the presentation of this evidence would undoubtedly have created a strong jury response against the defendant's case.

Moreover, the plaintiff had prepared a DVD presentation that incorporated both liability and damages issues. The DVD presentation included the interview of the defendant driver's passenger in which he confirmed the plaintiff's theory. It also incorporated interviews with the plaintiff from his hospital bed as well as interviews with family members that were interspersed with descriptions and medical illustrations discussing the eight, open, right knee surgeries, including limb salvage procedures necessitated by the failure of his right knee wound to heal and close. Additionally, the evidence also included the actual depiction of a "lavage" treatment in which fluid was sprayed into the large open knee wound as well as the fact that the plaintiff underwent two skin grafts to cover the open wound, and it is felt that the presentation of this graphic evidence would probably have been very effective before a jury. ◇

## **\$900,000 RECOVERY – MOTOR VEHICLE NEGLIGENCE – REAR END COLLISION – CERVICAL AND LUMBAR HERNIATIONS REQUIRING SURGERY PREVIOUSLY ACTIVE PLAINTIFF LIMITED TO MUCH MORE SEDENTARY LIFESTYLE.**

### **Bergen County**

The female plaintiff driver, in her mid 30s, contended that while she was stopped at a red light, the defendant driver negligently struck the car immediately behind her, propelling it into the rear of her car. The plaintiff maintained that as a result of the collision, she suffered herniations at L5-S1 and C6-7 as well as a cartilage tear in the knee. The plaintiff contended that she will suffer

extensive, permanent pain and weakness and as a result, she will be required to give up a very active lifestyle and lead a much more sedentary life. The plaintiff further contended that although cervical surgery would have otherwise been indicated, the operation posed significant risks of complications, including paralysis, because of the location of the injury and that it is hoped that the plaintiff would have been able to avoid surgical intervention in the cervical area.