

VIRGINIA LAWYERS WEEKLY

Stop-sign crash leaves driver with fused ankle, broken leg

\$1,000,000 Settlement

Plaintiff was traveling in his car eastbound on Virginia Beach Boulevard when defendant failed to yield at a stop sign on a street from a residential neighborhood.

A violent collision occurred and plaintiff suffered extensive orthopedic injuries. He underwent surgeries for a displaced closed intra-articular right calcaneus fracture, a left supracondylar femur fracture, a left open ankle bimalleolar fracture and other related orthopedic damage.

Plaintiff was hospitalized for weeks, and the surgeries included the placement of a plate in his left leg and fusion of his left ankle. Plaintiff was wheelchair-bound or could walk with only an assistive walker for months after the accident. Besides learning to walk with the fused left ankle, plaintiff may require further surgery on the right side and a possible right ankle fusion, which will further limit his ability to walk with a normal gait. An orthopedist said he will suffer significant post-traumatic arthritis in his legs and

may also require a right knee replacement.

Plaintiff's counsel obtained a vocational assessment by Charles Demark, who said plaintiff has no wage-earning capacity as a result of the car accident. Before the accident he earned approximately \$30,000 per year as a painter. Plaintiff was 52 at the time of the analysis, and Demark projected an earning capacity loss was \$612,000.

Plaintiff was granted Social Security disability while the case was pending, and counsel retained a life care planner, Evelyn Robert, to evaluate his future medical needs. After analyzing the pain management that plaintiff was currently undergoing and interviewing his surgeon, Robert estimated future medical care needs at \$830,000, or annual costs of approximately \$30,000.

Counsel filmed two "day in the life" videos showing plaintiff's daily activities in his small apartment, including how he would transfer himself from a wheelchair to various assistive devices in his bathroom and how he would slide step by step down his stairs to a wheelchair at the bottom of



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his apartment unit. A settlement brochure was organized, including liability issues as well as the video, and settlement negotiations ensued with defendant's insurer.

During investigation, counsel learned that the defendant driver had a \$1,000,000 umbrella policy further protecting him from liability in excess of his car insurance policy that applied to the circumstances. Suit was filed in Virginia Beach Circuit Court but not served to allow the parties to negotiate further. Ultimately a \$1,000,000 settlement was concluded that creates a substantial annuity with a significant portion of the settlement funds. [11-7-06]

Type of action: Personal injury - automobile accident

Injuries alleged: Displaced closed intra-articular right calcaneus fracture, left supracondylar femur fracture, left open ankle bimalleolar fracture

Name of case: Confidential

Court: Virginia Beach Circuit Court

Special damages: \$179,633 in medical bills plus loss of future earning capacity

Verdict or settlement: Settlement

Amount: \$1,000,000

Date: May 9, 2011

Attorneys for plaintiff: Richard N. Shapiro and Kevin M. Duffan, Virginia Beach

Plaintiff's experts: Evelyn Robert, life care planning, Virginia Beach; Joel Stewart MD, orthopedics, Virginia Beach; Charles Demark, vocational counselor, Portsmouth