

MASSACHUSETTS LAWYERS WEEKLY

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Motorcyclist's leg mangled in intersection crash

Not the first accident for defendant courier; \$1.9 million settlement

Published: April 30, 2012

On Sept. 23, 2010, the plaintiff, 23, was operating his motorcycle in Brockton and came to a complete stop at an intersection, intending to proceed straight through. After ensuring that the way was clear, he proceeded across the intersection and was struck broadside by the defendant, who was attempting to make a left turn. The plaintiff was thrown from his motorcycle to the ground.

At the time of the accident, the defendant operator was a courier in the process of a delivery while driving a vehicle owned by his employer. He was operating with a suspended license, for which he was cited by the responding Brockton police officer. In addition, there was evidence that the defendant's license had been suspended in the past and that he been involved in two prior motor vehicle accidents during the course of his employment.

The plaintiff maintained that liability for the accident against the defendant was clear and that his employer was vicariously liable. The plaintiff also asserted a negligent entrustment claim against the employer. The defendants maintained that the plaintiff was comparatively negligent and that there was no evidence of negligent entrustment.

Two witnesses testified that the accident was caused by the defendant's failure to ensure that the way was clear before making the left turn. In addition, the evidence suggested that the plaintiff was over halfway across the intersection at the time that his motorcycle was struck.

The EMTs at the accident scene reported that the "back of left leg was noted split open from behind the knee to the ankle area."

The plaintiff was stabilized and transported to Brockton Hospital. X-rays showed multiple open compound fractures of the left tibia and fibula. He was advised that he would require an amputation of his left leg from the knee down. The doctors at Brockton Hospital could not perform that procedure, however; therefore, they contacted Med-Flight to have him transported to Tufts Medical Center. Upon arrival at Tufts, the plaintiff underwent extensive debridement of his left lower extremity, repair of the fractures and application of an external fixator. Over the ensuing days and weeks, he underwent numerous additional further surgeries, repeat debridements, skin grafting and blood transfusions. Ultimately, a rod was placed in his leg with multiple interlocking screws. After undergoing eight operations in two weeks, he was discharged on non-weight bearing status. He continued his follow-up treatment and underwent extensive physical therapy, which continues to this day.

The plaintiff has been left with a severe obvious deformity of his left leg and walks with a permanent limp. Over a year after the accident, it was still unclear whether the fracture had united. The plaintiff has been left with an 18-percent permanent impairment of the whole person as well as permanent scarring and disfigurement. He will also need additional further treatment and possible surgery as he ages.

The plaintiff's medical bills totaled \$378,980. He claimed that he will also have future medical bills that may involve surgeries and cosmetic surgery.

As a result of his injuries, the plaintiff was unable to continue his employment as a personal trainer and therefore sought recovery for loss of earning capacity and the expenses associated with undertaking a new career.

Detailed Information

Type: Settlement
Total Value: \$1,900,000.00
Verdict/Settlement Date: 2/11/2012
Type of Action: Motor Vehicle Negligence
Court: Plymouth Superior Court (MA)
Case Number: 2010 - 01507
Caption: *Reginald Silva Jr. v. Michael V. Warren, U.S. Lab & Radiology, Inc.*
Plaintiff(s) v. **Defendants(s)**
Reginald Silva Jr. Michael V. Warren
U.S. Lab & Radiology, Inc.
Injuries Alleged: Leg, knee, ankle, foot
Injuries Detail: Multiple open compound fractures of the left tibia and fibula.
Special Damages: Medical bills: \$378,979.77
Tried Before: Mediation
Judge or Mediator or Arbitrator: Other (Brian Mone)

Attorney(s) for Plaintiff(s)

Lead Attorney: James V. Marano
Firm: Kushner & Marano, P.C. (Newton, Massachusetts)

Other Attorney: Linda M. Freehill
Firm: Kushner & Marano, P.C. (Newton, Massachusetts)

Attorney(s) for Defendant(s)

Lead Attorney: Robert Turner
Firm: Law Offices of Jacqueline L. Allen (Boston, Massachusetts)

Insurance Carrier(s)

No insurance companies involved

Plaintiff(s) Expert(s)

No plaintiff experts

Defendant(s) Expert(s)

No defendant experts