

VERDICTS AND SETTLEMENTS

Biomechanical Engineer Shines As Expert In Crash Case

By Natalie White

The defense team achieved victory in a recent auto accident case with an innovative strategy that used a biomechanical engineer instead of a medical doctor as their primary expert witness.

The New Jersey jury recently found the defendant at fault for side-swiping the plaintiff's car but issued a \$0 verdict for her injuries.

"I told the jury not to get hung up on the issue of whether he was negligent or not but to go around the room and see if you think the injuries occurred because of the accident. If you don't, then it really doesn't matter if he was negligent," said defense attorney William Mead.

Mead said he decided against using a medical doctor for expert testimony because even he believed the plaintiff's injury was real.

"After taking the plaintiff's deposition, I found her to be credible," he said.

"There was no question that she had back problems and I didn't think that anyone would go through two carpal tunnel surgeries just to bolster a case. I decided not to question that she had the ailments she complained of. What I wasn't convinced of was that this accident was the cause."

The decision to forego a medical doctor raised some eyebrows from colleagues, he said, but in the end helped sway the jury to return a defense verdict.

"A medical doctor could only say that she had these injuries but really couldn't say whether this accident caused the injuries," Mead explained. "A biomechanical engineer could do that analysis and I thought that would be more valuable."

Indeed, testimony from Brad Probst, a biomechanical engineer with ARCCA Inc., turned out to be key, Mead said.

ARCCA, with offices in Boston, Chicago, Philadel-

"A medical doctor could only say that [the plaintiff] had these injuries but really couldn't say whether this accident caused the injuries. A biomechanical engineer could do that analysis, and I thought that would be more valuable," said William Mead.



phia and Pittsburgh, provides biomechanical engineers as legal consultants. They are increasingly providing analysis in automobile accidents, particularly low-impact collisions where plaintiffs often claim major injuries but science shows otherwise, said ARCCA vice president Tom Jennings.

In this case, Probst said he used physics and photogrammetry – a process of making precise measurements using trigonometry to determine three dimensional measure-

ments from two dimensional photographs.

Through an analysis of the damage to both vehicles, Probst was able to determine the gravity force of the side swipe. Probst testified that he determined that the force the plaintiff was subjected to was minor and could not have caused the serious injuries that plagued her, including spine problems and carpal tunnel syndrome.

The accident photos showed that there was only

Continued from page 1

minor damage to the right front quarter pane and the right corner of the front bumper of the plaintiff's vehicle. There was only minor cosmetic damage to the defendant's rear wheel area.

The plaintiff had testified that she was wearing her seatbelt. She said that when the two cars collided, her head went toward the driver's side door and her left arm hit the driver's side door.

But Probst concluded that the accident created minimal impact and that the plaintiff's body would not have moved the way she described. Based on this analysis, he concluded that the accident could not have caused the injuries. He told the jury that in fact, the motion would have pushed the plaintiff away from the door rather than into it.

He testified that the woman would have been subjected to about one gravity force, less than the amount of gravity force a person is subjected to from sneezing, which is approximately three gravity forces. He used scientific studies to back up his findings, Mead said.

Mead said that although the New Jersey courts have previously struck down generic statements from biomechanical engineers as expert testimony, Probst's testimony was allowed be-

cause it was very specific to this accident and this plaintiff.

The plaintiff also used a biomechanical engineer, but only as a rebuttal witness. Mead said this actually bolstered his case because although the plaintiff's expert questioned the analysis by the defense's biomechanical engineer, the plaintiff's witness did not do an analysis of his own.

"He was just critical of what my guy did, but he didn't examine the photos, he didn't do any analysis, he didn't make any determination of the forces in this accident," Mead said. "I just hammered away at that, that he could have done an analysis but he didn't because the plaintiff didn't ask him to."

Alternatively, the defense argued that the plaintiff's injuries could have been caused by earlier accidents in 1996 and 1999 and that her excessive weight may also have played a role, especially in her back pain.

After a six-day trial in February, the Camden County Superior Court jury announced that it believed that the defendant was indeed at fault for the accident but awarded no damages to the plaintiff.

The plaintiff's attorney did not return several phone calls from Lawyers Weekly USA.

Mead said his client, Jef-

frey Shockley, was driving a van for Wyeth Pharmaceutical when the vehicle side swiped Ramona Harvey's car. Mead argued that Shockley acted reasonably, since he was trying to avoid a collision with another car that had intruded upon his lane. However, as part of his legal strategy he did not emphasize the issue of negligence.

"Really, it didn't matter. I didn't want the jury to get hung up on that at all," said Mead.

After the accident, Harvey said her back and her wrists began to hurt. She had two carpal tunnel operations on her wrists to help relieve the pain. She suffered from lower back pain and found it difficult to work and do other activities.

Oddly, the case revolved, in part, around roller coasters, said Mead.

During deposition, he asked the plaintiff what she used to like to do in her spare time before the accident. One of the things she mentioned was riding roller coasters.

During cross examination, he brought up this fact – his goal being to show the jury that she endured far greater gravity forces in her recreational life than she did in the accident. The woman readily admitted her enjoyment of roller coasters, but when Mead asked her

whether she liked to go on those big ones, a light went on in her head and she switched directions, saying she had never been on the big ones and really just enjoyed the smaller roller coasters.

But Mead didn't give up. While questioning the woman's son, who had not heard his mother's testimony, he launched a similar line of questioning: "It must be tough on your mom not being able to do all those things she used to like to do, like going on those big roller coasters at Six Flags." According to Mead, the son bit hard. "Oh yeah," he remembers him responding, "She used to love to do that."

Mead later pointed out to the jury that a large roller coaster creates up to six gravity forces of pressure, compared to just one in the accident that was the subject of this lawsuit.

Plaintiff's Attorney: Scott Goldberg of Petrillo and Goldberg in Pennsauken, N.J.

Defense Attorney: William C. Mead of Blank Rome in Cherry Hill, N.J.

The Case: *Harvey v. Shockley*; February 17, 2004.; Camden County Superior Court, Camden, N.J.; Judge Michael Kassel. **LWUSA**

Questions or comments can be directed to the features editor