

November 2016

An ALM Publication

# PHILADELPHIA

## PHILADELPHIA COUNTY

### MOTOR VEHICLE

Rear-ender — Multiple Vehicle

## Lawsuit asserted rear-ender led to permanent disability

**SETTLEMENT \$1,300,000****CASE** Donald Zook Jr. and Anastasia Zook v. Preferred Meal Systems Inc. and Gary Hanson No. 150603352**COURT** Philadelphia County Court of Common Pleas**DATE** 8/29/2016**PLAINTIFF**  
**ATTORNEY(S)** Duffy + Partners  
Philadelphia, PA**DEFENSE**  
**ATTORNEY(S)** Thomas A. Kuzmick, Rawle & Henderson LLP, Philadelphia, PA  
M. Susan Toth, Rawle & Henderson LLP, Philadelphia, PA

**FACTS & ALLEGATIONS** On Aug. 23, 2013, plaintiff Donald Zook Jr., 44, a sales representative, was rear-ended while stopped at a red light in Lionville. He was on Route 113, at Devon Drive, waiting for the traffic light to change to green when his sedan was struck by another sedan. He claimed neck and back injuries.

Zook sued the driver, Gary Hanson, and his employer, Preferred Meal Systems Inc., alleging negligence in the operation of a vehicle.

Hanson stipulated to negligence, and the case proceeded in litigation on the issues of causation and damages.

**INJURIES/DAMAGES** *aggravation of pre-existing condition; carpal tunnel syndrome; disc protrusion,*

*cervical; headaches; herniated disc at L4-5; leg; lower back; massage therapy; microdiscectomy; physical therapy; post-concussion syndrome; radicular pain / radiculitis; radiculopathy; speech/language, impairment of; spondylosis; stenosis; vertigo*

Following the accident, Zook drove to work, where he experienced slurred speech, headaches, vertigo, and pain to his head, neck, and low back. He presented to a workers' compensation physician, who performed an X-ray (it was negative) and gave him pain medication.

Zook followed up with an internist and underwent MRIs, which showed degeneration at lumbar intervertebral discs C5-6 and C6-7, protrusions and spondylosis at those levels, multifactorial stenosis at C5-6, and an L4-5 herniation. He was further diagnosed at his left (non-dominant) hand with carpal tunnel syndrome (he experienced numbness in his left hand), post-concussion syndrome, and left-sided radiculopathy stemming from lumbar intervertebral disc L4-5. Zook treated with six months of physical therapy (e.g., massage treatment, exercises). Throughout 2014, he continued treating with pain medication and consulted with an internist and neurologist.

In April 2015, Zook, with conservative treatment unsuccessful, underwent a lumbar microdiscectomy. No further treatment was administered, and he sought to recover \$39,305 in past medical costs and a workers' compensation lien of approximately \$112,000.

Zook's internist causally related his injuries and treatment to the accident, and opined that his prognosis is guarded, as his injuries are permanent in nature.

According to Zook's expert in pain management and neurology, his neck pain was asymptomatic prior to

the accident, and his continued neck pain is chronic in nature. The expert causally related his back injuries to the accident, and stated that Zook was permanently disabled.

After missing six months of work post-accident, Zook attempted to return in February 2014, and stopped working in October, due to ongoing pain and limitations. He had not been medically cleared to work since then. According to his expert in vocational rehabilitation, he can only sit or drive for up to an hour, and can only stand and walk for about 20 minutes before needing a break. He was deemed permanently disabled. Zook sought to recover \$160,298 in past lost wages, \$2,000,946 in future lost wages, and \$327,028 in future lost household services.

Zook stated that he can no longer engage in his hobbies of golfing, hunting, fishing, and bike riding. He also experiences difficulty being intimate with his wife. He sought damages for past and future pain and suffering, and his wife sought damages for her claim for loss of consortium.

Hanson's expert in accident reconstruction determined that he was traveling 19 to 25 miles per hour at the time of impact. His expert in biomechanical engineering opined that, considering the kinematics and crash-test results involved, the force direction and magnitude of calculated loading were below levels associated with a lumbar injury. The expert opined that each full golf swing Zook executed during a round of golf produced substantially more compressive loading on his lumbar spine than the accident.

The expert concluded that the inertial force when Zook's head contacted the cushioned head restraint in the accident was below the level associated with an expectation of concussion or any other diffuse brain injury.

Hanson's expert in orthopedic surgery, who examined Zook, opined that he was capable of sedentary work. An expert in vocational rehabilitation determined that Zook was capable of earning an average salary of \$39,302 in occupations like a customer service representative, travel agent, or emergency dispatcher, a salary which was consistent with the average of his last three years of pre-accident earnings.

**RESULT** The parties reached a settlement for \$1.3 million, a week prior to trial. Preferred Meal Systems had a \$25 million insurance policy.

**DEMAND** \$2,500,000  
**OFFER** none reported

**INSURER(S)** Travelers Property Casualty Corp.  
Preferred Meal Systems Inc.

**PLAINTIFF EXPERT(S)** David L. Hopkins, A.S.A., economics, King of Prussia, PA  
Mario Littman, M.D., internal medicine, Philadelphia, PA (treating)  
Louis A. Marotti Jr., M.D., neurosurgery, Lancaster, PA (treating)  
Irene C. Mendelsohn, vocational rehabilitation/counseling, Penn Valley, PA

**DEFENSE EXPERT(S)** Robert D. Cipko, Ph.D., vocational assessment, Plymouth Meeting, PA  
Charles O. Funk, Ph.D., P.E., accident reconstruction, Ann Arbor, MI  
Richard J. Levenberg, M.D., orthopedic surgery, Broomall, PA  
Edward J. Mathis, Ph.D., economics, Villanova, PA  
Joseph C. McGowan, Ph.D., P.E., traffic, Bala Cynwyd, PA

**EDITOR'S NOTE** This report is based on information that was provided by plaintiffs' and defense counsel.

—Aaron Jenkins