

# The Legal Intelligencer

THE OLDEST LAW JOURNAL IN THE UNITED STATES

An incisivemedia publication

## Brain Injury Case Results in \$1.95 Mil. Accord

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Of the Legal Staff

A \$1.95 million settlement was reached last month in the Northampton Common Pleas Court case of a bank employee whose brain was injured during a motor vehicle accident.

Patricia D. Eager, 54, sustained a traumatic brain injury, fractures of her tibia and right heel, and other injuries, according to the plaintiffs' pretrial memorandum in *Eager v. Phillipsburg Marble Co.*

Eager was driving her 1993 Toyota Corolla northbound on Route 611 in Williams Township, Northampton County, when David McNally's southbound 1999 Ford Econoline van crossed the center line on a curve called "Canal Lock Curve" and collided with Eager's car around 11 a.m. Nov. 22, 2005, according to court papers.

McNally was driving his employer's vehicle at the time. He was employed by Phillipsburg Marble Co., a small, private New Jersey company that installs stone products, court papers said.

At the time the defense filed its Nov. 30 pretrial memorandum, the plaintiffs had sought a \$5 million settlement, up to the defendants' insurance policy limits, down from an initial demand of \$15 million, and the defendants had offered \$600,000, according to the defense pretrial memorandum.

"The insurance companies made a business decision to amicably resolve a legitimate orthopedic and traumatic brain injury (TBI) claim brought by a nice lady and in doing so, protected a local employer and service provider in the Easton community," said defense attorney Frederick C. Fletcher II of Swartz Campbell in an e-mail response to a request for comment about the settlement.

Eager's cognitive abilities, including her memory and complex problem-solving skills,



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degraded after the accident, according to the plaintiffs' memorandum.

Eager "suffered severe physical pain, aches, mental anxiety, humiliation, inconveniences and loss of life's pleasures," the plaintiffs' memorandum said. Eager was trapped in the vehicle for 30 minutes before being airlifted to Lehigh Valley Medical Center, according to the plaintiffs' memorandum.

The plaintiffs contended in their pretrial memorandum that McNally was driving 40 to 45 mph when the van crossed the centerline and that McNally did not allege that Eager contributed to the accident.

The defense's pretrial memorandum noted that, at the time of the accident,

"Canal Lock Curve" had been the site of three deaths, four personal-injury accidents and a total of 20 accidents in the past eight years and had been identified as a dangerous curve by the Pennsylvania Department of Transportation. It had started raining at the time of the accident; McNally tapped the brakes to slow down in the curve, which went off to the right; and the van started to slide straight ahead because of the road's "lack of frictional quality," according to the defense's pretrial memorandum.

"No action or inaction of Mr. McNally caused his van to slide on the rain-slickened roadway into the opposing lane of travel — the unknown condition and principles of elementary physics took control of that circumstance. ... Pure, and simple, this was an unfortunate accident. Nothing more, nothing less," the defense's pretrial memorandum said.

But President Judge Robert A. Freedberg concluded in a May 23, 2007, opinion that McNally was negligent in operating his employer's vehicle and granted the plaintiffs' motion for partial summary judgment.

According to Freedberg's opinion, McNally testified in his deposition that he was in the northbound lane as Eager's car came around the curve and that he was traveling 40 to 45 mph, which was above the posted speed limit.

"By virtue of the fact that McNally has admitted that he was traveling in excess of the speed limit, crossed the center dividing line into plaintiff's lane of travel and then collided with [plaintiff's] vehicle, plaintiffs have established that defendant's actions were the proximate cause of the collision," Freedberg wrote.

In the defense's response to the plaintiffs' motion for partial summary judgment, the defense argued the speed of

40 to 45 mph — the figure McNally gave to state troopers — was actually the van's rate of speed when McNally hit the brakes.

The 40 to 45 mph speed was not the speed of the van at the time of its impact with Eager's car, defense counsel said, arguing that the vehicle slowed by the time of impact.

The determination "as a matter of law, that the defendant was negligent was a key factor. Furthermore, in light of the fact that the case settled, we presumably demonstrated to

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the satisfaction of the defendant that our client has a serious, permanent injury," said Robert W. Thomas Jr., with Duffy & Keenan in Philadelphia and one of the plaintiffs' attorneys. Tom Duffy and Pat Keenan, also of Duffy & Keenan, worked on the case.

Fletcher said in an e-mail that Freedberg's ruling did not help the defense and came before the expert discovery deadline, which included accident reconstruction analysis and analysis of the condition of the curve. The court did not lift the summary judgment ruling when the defense made a motion for nunc pro tunc reconsideration and unsuccessfully sought an interlocutory appeal. Both raised the issue that accident reconstruction reports showed that the "curve's dangerous condition and not any action or inaction of the driver, or mechanical condition of the van, caused or contributed to the happening of the accident," Fletcher said.

The key defense witness was accident reconstruction expert Steven Schorr, with DJS Associates Inc. in Abington, Pa., Fletcher said.

The plaintiffs' experts, including Eager's physicians at the Moss Rehabilitation Hospital's Drucker Brain Injury Center, concluded that

Eager wouldn't be able to resume her past employment as a retail store manager or resume the assistant bank manager job she held at the time of the accident, according to the plaintiffs' memorandum.

At the time of Eager's discharge from the Drucker Brain Injury Center, "she could fix a simple sandwich but was not considered safe alone at the stove. She was exhibiting impulsive behaviors that intensified when she was stressed or frustrated. ... She continued to exhibit cognitive defects, mood swings and processing deficits, and word finding difficulties," according to the plaintiffs' memorandum.

Irene C. Mendelsohn, a vocational expert from Penn Valley, concluded Eager's earning potential was between \$59,000 to \$61,000 if she had become branch manager at her bank or become a financial planner after completing classes she had begun through The Pennsylvania State University, according to the plaintiffs' memorandum. Eager's lost past and future earning capacity totaled \$968,268, the memorandum said.

Kathleen Corrigan, a life care specialist and registered nurse with Medical Resource

Associates in Havertown Pa., calculated the cost of Eager's future care between \$1,944,928 and \$2,357,128, according to the plaintiffs' memorandum. With a 2.5 percent cost increase, Eager's medical and rehabilitation services would rise to \$3,515,144.

The defense, in its pretrial memorandum, said that Eager's prognosis was good and that she returned to work part time as a bank teller with Abington Bank.

Thomas said the case was based upon the conclusion that Eager couldn't continue her work as an assistant bank manager because of her brain injury and because of her orthopedic injuries, which prevented her being on her feet full time.

The case was originally filed in Philadelphia Common Pleas Court but was transferred to Northampton County.

Eager's husband, Jay W. Eager, also was a plaintiff in the case.

Defense insurer New Jersey Manufacturers Insurance Group is slated to pay \$996,281.20 and defense insurer Hanover Insurance Group is slated to pay \$953,718.80, according to the case's general release and settlement agreement. •