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## Phila. Trial Team's \$1.88M Award for Underinsured Motorist Claim Could Triple Under NJ's New Bad Faith Law

By Charles Toutant

A U.S. District Court jury in Camden, New Jersey, has awarded a \$1.88 million verdict in an underinsured motorist verdict after the carrier made a pretrial offer of \$350,000.

The verdict was awarded to Kathleen Kelley of Mullica Hill, New Jersey, on Friday, following a five-day trial before U.S. District Judge Christine O'Hearn.

Kelley also brought a claim of



File Photo of crashed car. Credit: Diego M. Radzinski/ALM



Kenneth Fulginiti, left, and Sarah Dooley, right, with Duffy + Fulginiti.

bad faith against the defendant, Massachusetts Bay Insurance Co., which was severed from

the rest of the case and stayed, said Kenneth Fulginiti of Duffy + Fulginiti in Philadelphia, who represented the plaintiff along with Sarah Dooley of the same firm.

Under New Jersey's recently enacted bad-faith auto insurance law, Kelley could recover treble damages and attorney fees, said Fulginiti.

The verdict is believed to be the largest awarded in a personal injury suit in the District of New Jersey in 2022, said Fulginiti.

Massachusetts Bay allegedly showed bad faith by more than merely failing to settle for a reasonable amount, according to Fulginiti.

The company allegedly engaged in dilatory and abusive

claims handling by requesting irrelevant records, failing to keep the insureds apprised of the status of the claim at proper intervals, and harassing the insured with character attacks, the suit claims.

“There was an issue as to how they conducted themselves during discovery, issuing a subpoena, last-minute attempts at identifying new witnesses, that was done within days of the trial,” Fulginiti said.

But the insurer denies wrongdoing.

Massachusetts Bay had been “reasonable and prudent at all times” in its handling of the claim, the company’s lawyers said in court papers.

Massachusetts Bay was represented at trial by Brian Shay, Richard McMonigle Jr. and Jeffrey Brenner of Post & Schell in Philadelphia. They did not return calls about the case.

### **\$150,000 Offered**

The suit stems from an Aug. 2, 2016, crash on southbound Interstate 76 in Bellmawr, New Jersey.

Kelley, then 58, collided with a vehicle driven by Joseph Wolf, then 52, of Sicklerville, New Jersey. According to the suit, Wolf allegedly saw traffic ahead was

slowing down, and he swerved into the right lane without checking over his shoulder, striking Kelley’s vehicle and causing it to flip several times.

Kelley sustained aggravation of degenerative disc and joint disease of the cervical and lumbosacral spine, an injury to the left brachial plexus and multiple herniations of the lumbar spine, her lawyer said. She was treated by physical therapy and saw a chiropractor, Fulginiti said. Kelley missed several months of work, then was laid off soon after she returned to work, said Fulginiti.

Wolf’s policy with Liberty Mutual paid his policy limit, which was \$50,000.

Kelley then brought an underinsured motorist claim on the Massachusetts Bay policy on the car she was driving, which belonged to her employer. Massachusetts Bay initially offered Kelley \$150,000, which she declined, Fulginiti said.

Massachusetts Bay disputed liability but then conceded right before trial, Fulginiti said. But the insurance company maintained that Kelley’s injuries were merely aggravation of a preexisting condition, along with soft-tissue injuries

that fully resolved, Fulginiti said. “Our position was those prior conditions were ramped up a hundred-fold and what was a previously tolerable condition becomes intolerable and effects every moment of your life,” said Fulginiti.

The jury awarded \$1 million for pain and suffering, disability, impairment and loss of enjoyment of life; \$57,659 for past medical expenses; \$220,000 for future medical expenses; \$499,987 for past lost wages; and \$99,005 for future medical expenses, for a total of \$1,876,650.

Each of the five categories of damages was approved by a 7-1 margin of the jury.

The jurors wore masks during jury selection, but were not required to do so during trial, Fulginiti said. Lawyers were not required to wear masks during trial but had to show proof of vaccination, he said.