

## VERDICTS & SETTLEMENTS



### \$1.25M Deal for County Employee Struck by Vehicle While Mowing

#### *Milner v. Kozlowski \$1.25M Settlement*

**Date of Settlement:**

March 3, 2023.

**Court and Case No.:**

C.P. Delaware No. CV-2020-008068.

**Type of Action:**

Motor vehicle.

**Injuries:**

Back injury.

**Plaintiffs Counsel:**

Ken Fulginiti and Sarah F. Dooley,  
Duffy + Fulginiti.

**Plaintiffs Experts:**

David L. Hopkins, economics,  
King of Prussia; Frank M. Costanzo,  
accident reconstruction, Chester Springs;  
Irene C. Mendelsohn, vocational  
rehabilitation, Penn Valley.

**Defense Counsel:**

Robert J. Balch and Bianca Nalaschi,  
Post & Schell, Philadelphia.

**Defense Experts:**

David H. Clements, orthopedic surgery,  
Cherry Hill, New Jersey; Gerald T. Olson,  
economics, Glenside.

**Comment:**

On Nov. 6, 2019, plaintiff Ernest Milner, 49, was operating a ride-on lawnmower, in the course and scope of his employment with a department of Delaware County. He was on the shoulder of Old Forge Road in Media. The rear of his mower was struck by the front of a sport utility vehicle driven by William Kozlowski. Milner claimed head injuries and spinal fractures.

Milner sued Kozlowski. The lawsuit alleged that Kozlowski was negligent in the operation of a vehicle.

Milner's expert in accident reconstruction filed a report in which he opined that the physical evidence and photographs taken at the scene by the responding police officers confirm that Milner was fully on the shoulder and was simply doing his job when Kozlowski carelessly and recklessly came out of his lane of travel and struck the ride-on mower.

The defense maintained that Milner was comparatively negligent. According to the defense, Kozlowski was in his lane of travel when Milner came onto the road, causing an obstruction. There was an eyewitness

who testified to that effect as well, although that was inconsistent with what he told the police at the scene of the collision.

In his report, the defense's expert in accident reconstruction opined that the evidence supports that Milner was operating the lawnmower partially in the roadway at the time of the collision, and thus created the hazard and caused the collision.

Milner, who had been rendered unconscious, was taken by ambulance to a hospital and admitted. He was diagnosed with compression fractures of the T5 and T12 vertebrae, a sacrum fracture with an associated comminuted coccygeal fracture, third-degree burns on his back, a concussion and a deep scalp laceration.

He was ultimately also diagnosed with an aggravation of preexisting cervical, thoracic and lumbar disc and joint diseases.

Milner's spine was immobilized with a brace and his scalp laceration, which measured 28 centimeters, was sutured.

He remained hospitalized through Nov. 11, 2019. Upon his discharge, Milner recuperated at his home and consulted with his family-medicine physician. In the following months, Milner treated with pain medication and physical therapy, and saw a number of specialists. As of early 2023, Milner continued to be medically monitored and treat with pain medication.

According to Milner's family-medicine doctor, Milner requires future treatment that consists of pain management, diagnostic studies, physical therapy and possible surgery to his thoracic spine. The doctor stated that Milner is permanently restricted from any significant physical activity that would include lifting, pulling, pushing, climbing, stooping, squatting and essentially carrying anything over five pounds.

Milner's expert in vocational rehabilitation determined that Milner could not return to his prior job in landscaping, and could only work in a light-duty, sedentary capacity.

Milner alleged that his injuries and persistent back pain have significantly impacted his quality of life, as he is unable to work and leads a sedentary lifestyle.

Milner sought to recover \$69,651.56 in past medical costs, \$148,727 to \$283,727 in future medical costs, \$165,612 in past



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lost wages and \$883,500 to \$1,523,750 in future lost wages. He further sought to recover damages for past and future pain and suffering. Milner's wife sought damages for loss of consortium.

In their respective reports, Kozlowski's experts in physical medicine and orthopedic surgery opined that Milner made a full recovery from his injuries. The experts concluded that any claim for future treatment would be to address preexisting degenerative conditions, and that Milner was physically capable of returning to his job with the county.

The defense cited Milner's pre-accident use of opioid pain medication to argue that his injuries were preexisting and his work life expectancy, even absent the accident, was limited. The defense also contended that Milner's life expectancy was greatly curtailed due to years of opioid drug use.

The defense's expert in economics prepared a report in which he opined that Milner sustained no lost wages, since he is able to work without any restrictions.

The parties negotiated a pretrial settlement. Kozlowski's insurer tendered its primary policy of \$250,000, as well as its excess policy of \$1 million, for a total of \$1.25 million.

This report is based on information that was provided by plaintiffs counsel. Defense counsel did not respond to the reporter's phone calls.