

VERDICTS & SETTLEMENTS

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

Milner v. Kozlowski
\$1.25M Settlement

Date of Settlement:

March 3.

Court and Case No.:

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

Type of Action:

Motor vehicle.

Injuries:

Back injury.

Plaintiffs Counsel:

The Duffy Firm, Philadelphia

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 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.

—This report first appeared in *VerdictSearch*, an ALM publication •

Dentist Failed to Diagnose Jaw Cancer, Patient Alleged

Quigley v. Sacks
\$1.55M Verdict

Date of Verdict:

April 25.

Court and Case No.:

C.P. Philadelphia No. 200601357.

Judge:

Angelo J. Foglietta.

Type of Action:

Medical malpractice.

Injuries:

Cancer, tumor.

Plaintiffs Counsel:

Brendan Mulligan and Bruce Martin Ginsburg, Ginsburg & Associates.

Plaintiffs Experts:

Tamar Fleischer, life care planning, Bala Cynwyd; Wayne M. Koch, otolaryngology, Baltimore; Andrew C. Verzilli, economics, Lansdale; Meredith August, oral surgery, Boston.

Defense Counsel:

Jeffrey P. Bates, Marshall, Dennehey, Warner, Coleman & Goggin, Philadelphia.

Defense Experts:

Wayne K. Ross, pathology, Lancaster; Dennis H. Kraus, otolaryngology, New York City; Raymond J. Fonseca, oral surgery, Waynesville, North Carolina.

Comment:

On Feb. 1, 2017, plaintiff Robert Quigley, a construction manager in his late 30s, presented to Gwynedd Dental Associates LLC, after having not seen a dentist in two years. The facility performed an X-ray which allegedly showed a cancerous tumor in his jaw. The practice categorized the pathology as a bony anomaly, and allegedly did not tell Quigley about the finding or what had to be done to investigate.

Within the next couple of months, Quigley came under the care of Dr. Carlos Mirabal at Gwynedd Dental, who repaired a preexisting bridge. For the next year and half, Quigley saw Mirabal on a few occasions to monitor the bridge repair. In July 2018, Quigley contacted Gwynedd with complaints of oral bleeding and soreness, but he was unable to see one of its dentists since the practice no longer accepted his insurance.

On Jan. 30, 2019, Quigley came under the care of a new dentist after having ongoing complaints, and was referred to an

oral surgeon. That February, a biopsy was positive for sclerosing epithelioid fibrosarcoma, or SEF, in his jaw.

Quigley sued Marabel, his practice and two other dentists from the practice, Drs. Charles Sacks and Marko Jestic. Quigley alleged that the defendants failed to properly interpret the 2017 X-ray as showing cancer, which led to a delay in treatment.

Prior to trial, Jestic was dismissed and Sacks entered into a joint tortfeasor release.

Quigley's experts in oral surgery and otolaryngology testified that the defendants breached the standard of care on multiple fronts. According to the experts, the defendants failed to properly interpret the 2017 X-ray as a cancerous tumor, failed in their duty to communicate the X-ray finding to Quigley, even if they thought it was a nonmalignant bone anomaly, and failed to refer Quigley to an oral surgeon and/or for biopsy. The experts concluded that, had Mirabal detected the cancer in a timely manner, Quigley would not have had to undergo the extensive treatment that he did.

Quigley's counsel argued that, in the multiple times that Mirabal saw Quigley in the year-and-a-half span, there was no citation in the records that Mirabal ever mentioned the abnormality seen on his X-ray, compared the X-ray findings, or ever stated he was monitoring the lesion. This was further confirmed by Quigley's testimony.

The defense maintained that Mirabal's treatment of Quigley met the standard of care. The defense's expert in oral surgery testified that Mirabal was correct to interpret the X-ray finding as a traumatic cyst. According to the expert, given his interpretation, Mirabal was not required under the standard of care to refer Quigley to an oral surgeon.

After Quigley was diagnosed with cancer, he underwent two maxillectomies to remove part of his jaw and graft tissue into his mouth. The procedure also involved removal of half of Quigley's upper teeth, which were later replaced. Additionally, a prosthetic was placed in the roof of his mouth after the cancer had eaten a hole into his nasal passage.

Following the surgeries, Quigley did not undergo any chemotherapy or radiation treatment, and was monitored in the ensuing years. At the time of trial, he was continuing to follow up with his surgeon every eight months.

Quigley's experts in oral surgery and otolaryngology testified that Quigley requires future medical care, in the form of surgery for a permanent oral prosthesis, medical monitoring and potential future surgery and cancer treatment/hospice care, if the cancer returns and metastasizes. Quigley's counsel argued that the potential return of the cancer could render Quigley disabled or prove fatal.

Quigley testified about the fear and anxiety he continually experiences over the possible recurrence of the cancer. He

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