

Trial Report

Capozza v. O'Donnell,
McNally & Hyder Insurance
Agency
Hampden Superior Court
Jan. 31-Feb. 3, 2005

Summary: Defense verdict in claim by pedestrian against at-fault motorist's insurance agent, \$1.5M verdict against co-defendant motorist.

* * *

The plaintiff was a pedestrian struck in a crosswalk in downtown Springfield by a motorist operating a Mercedes at high speed. The plaintiff was thrown to the opposite curb and suffered serious leg and head injuries. He missed about 18 months of work initially from an executive position, then returned half-time, and went out permanently after corrective surgery for a non-union in his leg four years post-accident. The plaintiff's medical bills were \$80,000, his past lost earnings were about \$200,000.

Suit was brought within weeks of the accident against the motorist, and after it was determined the motorist had

only 20/40 BI limits, the complaint was amended to add the motorist's insurance agent and the vehicle lessor. Prior to trial, the plaintiff alleged the agent was negligent in failing to secure 100/300 required under the vehicle lease. Discovery revealed the plaintiff himself carried only 25/50 BI on his own BMW. It also came to light that the motorist was a gypsy who maintained numerous alias identities, and disappeared after criminal fraud charges were instituted in connection with his fortune-telling scam. (He charged upwards of \$10,000 to remove a curse.)

After discovery the agency brought a motion for summary judgment on grounds (1) legal precedent clearly established no duty owed to accident victims (non-insureds) for optional coverage, (2) the agency procured in fidelity with the motorist's request for 20/40, and (3) the agency owed no duty to police the motorist's compliance with insurance requirements contained in his vehicle lease. After lengthy opposition procedures, the judge refused to allow the motion and the

case was called for trial the following week.

So his potential recovery would not be capped at \$80,000, the plaintiff changed his theory at trial. He claimed the agency should not have procured insurance for the motorist, since he presented only a learner's permit as identification. The agency established the motorist met the criteria to be eligible for coverage and under state law the agent was required to secure insurance on his behalf. Accepting the agency's

proposed requests, the judge instructed the jury that the Registrar of Motor Vehicle issues licenses to persons showing sufficient proof of identification, and since automobile insurance was compulsory an ERP agency must bind coverage if a motorist is eligible to hold a driver's license.

After three hours of deliberation, the jury returned a verdict against the motorist for \$1.5M (over \$2M with interest), and finding the agency was not negligent.