

VERDICTS & SETTLEMENTS

Case turns on delay in reporting knee injury from crash

\$225,000 Verdict

Plaintiff was involved in a motor vehicle accident on Dec. 15, 2008. She was transported from the scene to the emergency room of St. Mary's Hospital with complaints of facial burns from the air bag deployment and head, neck, and shoulder discomfort. She did not complain about a right knee injury.

Four days after the accident, she saw her family doctor for a possible pneumonia that was picked up on a routine chest X-ray in the ER the day of the accident, and the family doctor wrote on her chart that she was "feeling fine from the [motor vehicle accident]."

On Dec. 25, she returned to St. Mary's ER with swelling in both knees.

On Jan. 6, 2009, she saw a doctor of osteopathic medicine and complained of right knee swelling and provided an account of the accident. The DO aspirated 30 cc's of fluid from her right knee and ordered an MRI, which showed a partial meniscus tear. He then referred the plaintiff to Dr. William Nordt of West End Orthopedic.

Nordt confirmed the diagnosis and performed a partial meniscus repair in January 2009.

Plaintiff continued to have complaints of right knee pain and obtained a second opinion in June 2010 from Dr. Robert Adelaar.

Nordt testified that the accident caused the meniscus tear but that the plaintiff's chronic arthritis in the right knee was the cause of her additional problems after the corrective surgery.

Adelaar opined that the tear was a result of trauma from the accident even though the plaintiff's meniscus was

weakened due to arthritis and her age of 58. Adelaar further testified that the right knee was asymptomatic prior to the accident and that the accident caused the arthritic knee to become symptomatic. He said the residual pain was due to the aggravation of the pre-existing arthritic condition and that the plaintiff would need a knee replacement due to the accident.

The defense called Dr. Howard K. Stern, who testified that the absence of a complaint for approximately seven days from the time of the accident and the mechanism of the injury did not support causation. The knee surgery or future knee replacement was not related to the accident, Stern said.

Stern also testified that the plaintiff's statement that she was feeling fine to her family physician confirmed his opinion that the knee injury was not related to the crash. He further testified that the statement four days after the accident to the family doctor indicated that the plaintiff was fully recovered at that time.

On cross-examination, Stern admitted that the injury to the meniscus was not in the rim of the cartilage where the nerve fibers are located. He further testified that the partial tear in the meniscus was in the portion of the ligament where there are no nerve fibers and, accordingly would not cause immediate pain. He agreed after a lengthy cross-examination that pain would come from the swelling to the knee caused by irritation to the synovium.

The plaintiff used *Campbell's Operative Orthopedics* as a medical treatise, which confirmed this information. Although



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Stern initially would not agree that it was a reliable authority, he finally admitted that he had *Campbell's Operative Orthopedics* in his office. The plaintiff argued that this was consistent with the plaintiff's evidence that she did not feel pain until the right knee started swelling until approximately five to seven days after the accident.

Stern testified that the mechanism of the injury did not support the injury being

caused by the accident because this would have been a twisting type of injury. Although the plaintiff's testimony was that she did not know whether she hit her knee, the evidence confirmed that there was enough frontal force in the accident to deploy the airbags; her seat was very close to the steering column; and she had her right foot on the brake at the time of impact and the car spun to the left at impact.

Plaintiff offered photographs of the car, which supported the argument that this was a twisting forceful type of injury to the plaintiff's knee.

Stern testified that he had reviewed three file boxes of medical records, interrogatories, and depositions. Although the plaintiff had a lengthy medical history, he found no complaints of right knee pain before the motor vehicle accident. He acknowledged that a prior history of knee complaint would have been an important piece of information in support of his opinion.

In closing the plaintiff asked for \$350,000, the jury deliberated for a little over two hours and returned a verdict of \$225,000. [10-T-165]

Type of case: Motor vehicle accident

Type of injuries: Torn meniscus in right knee

Name of case: Carolyn Hamlin v. Audrey Borscel

Court: Henrico County Circuit Court

Judge: Daniel Balfour

Special damages: \$48,468 past medical expenses, \$32,800 futures

Verdict or Settlement: Verdict

Amount: \$225,000

Highest offer: \$100,000

Lowest demand: \$200,000

Insurance carriers: The liability carrier offered its policy limits of \$100,000 prior to trial. State Farm, the UIM carrier with policy limits of \$300,000, refused to negotiate.

Plaintiff's attorney: Jay Tronfeld, Richmond