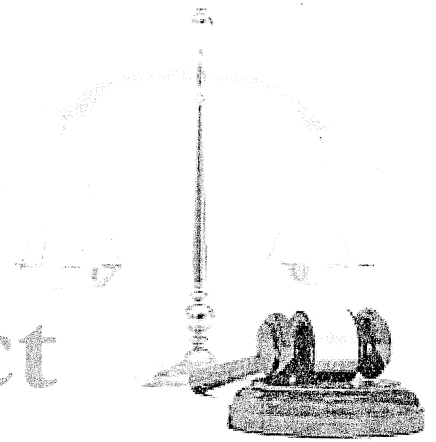


The Anatomy of a Successful Verdict



By Attorney Doug Marcello, Marcello & Kivisto, LLC

Our recent achievement of a defense verdict in the face of Plaintiff's request for a \$5.9 million award was the product of numerous components. A supportive client, a rational jury, and successful subpoenaing of MySpace records were vital in defending against the plaintiff's claims of reflex sympathetic dystrophy (RSD) and post-traumatic stress disorder (PTSD) that were supported with testimony from nine medical or psychological experts. Among the most important elements of our defense, however, was the cooperation and assistance of two other motor carriers. Their willingness to work with us within the restrictions of discovery and privacy was important in achieving the defense verdict.

The Plaintiff, a commercial driver, claimed that he was side-swiped by the Defendant driver and injured his shoulder as a result. He claimed that while he continued to work for seven months, he did so despite his physical and mental injuries. He ultimately stopped working, claiming that he was unable to continue working and was permanently disabled due to his conditions which he said were RSD, complex regional pain syndrome, PTSD, anxiety, and depression.

Plaintiff presented numerous medical witnesses in support of his claims, including two primary care physicians, an orthopedic surgeon, two pain doctors, a pain treatment nurse, a psychiatrist, a social worker, as well as the report of a psychologist who performed an independent examina-

tion for his workers' compensation carrier. Plaintiff also argued that his workers' comp and social security disability awards for these conditions supported his claim. Plaintiff sought damages for claims of permanent injury for the balance of his life from the date he stopped working at age 33. This included lost wages of \$1.2 million, medical bills of almost \$100,000, future medical bills of \$1.2 million, as well as pain, suffering, and loss of life's enjoyment.

We countered and were pleased with the response from the trucking industry. Our position was that Plaintiff did not suffer any psychological injury and that his physical condition was a product of symptom magnification. In support of these positions, we presented the testimony of a psychiatrist and an orthopedic surgeon who performed independent examinations of the Plaintiff.

We supported our position with evidence that the Plaintiff continued to work for three months as a commercial driver for the company that employed him at the time of the accident. He then left for a job with another carrier for whom he drove for four months before leaving due his claimed disability.

We presented testimony from his employer at the time of the accident as well as the safety director of the company for whom he subsequently worked. Both testified as to the lack of complaints, limitations or reduction in driving during the period between the accident and Plaintiff's

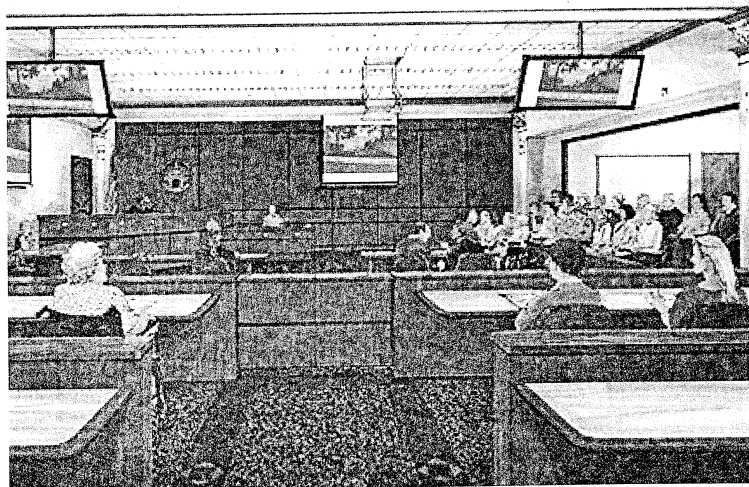
leaving employment. In fact, Plaintiff underwent a DOT physical after the accident (but before leaving his first employer) and another DOT physical upon application to the second company.

We presented the testimony of the two nurse practitioners who performed the DOT examinations. The nurse practitioners both testified that they did receive a history of his injury and the accident but found no sign of the claimed shoulder injury upon their respective physical examinations.

Our success illustrates the benefits of company cooperation. In an era when trucks are viewed as 18-wheel ATMs, our collective good is promoted by the cooperation of our community. This still requires compliance with the privacy protections of the effected individuals, including HIPPA mandates, drug and alcohol confidentiality, and other restrictions upon the dissemination of personal information. We do not ask for the coloring of testimony, just the facts that demonstrate the rightness of our defense. However, upon obtaining the required releases, other companies' responsiveness and cooperation can be invaluable in assisting a fellow carrier against false claims to which those other companies may find themselves defending against in the future. That was the situation in our recent case.

The fact that the subsequent safety director was willing to travel from Jacksonville, Florida, in early January to testify in Watertown, New York, is indicative at so many levels of the spirit that drove the success of the case and is needed in the continuing protection of the industry. It is the continuation and growth of this cooperation that will serve our industry well against the ongoing tide of litigation.

For further information, please contact Douglas B. Marcello at (717) 240-4686.



ATA Safety Awards



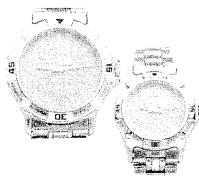
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