

Passenger Injured When Bus Careens Off Highway In Vermont - Plaintiff: Driver Was Speeding, Didn't Have Adequate Off- Duty Hours Prior To Shift

By: admin | March 21, 2005

\$3.7 Million Settlement

On Feb. 17, 2002, the 38-year-old plaintiff and his 13-year-old son boarded a charter bus operated by the defendant bus company to go skiing in Vermont.

Shortly after the bus crossed into Vermont on I-91 in heavy snow conditions, the bus driver lost control, causing the left rear of the bus to collide with the guardrail. The bus then careened back onto the highway down a hill, until the right rear side of the bus smashed into a large cement bridge abutment.

The collision caused the bus to cross the two northbound lanes and the median and go through the southbound lanes of the highway. It then rammed into an embankment and flipped onto its right side, facing southbound.

The plaintiff named the bus company and the bus driver as defendants.

At the time of the accident, the plaintiff was in the small confines of the bus bathroom located in the right rear of the bus. Well after the other passengers were removed from the bus, the plaintiff was found in a U-shape position in a semi-conscious and incoherent state, attempting to crawl while bleeding from a large laceration on his scalp. The plaintiff was eventually stabilized and transported to a nearby hospital where he was diagnosed with a severe traumatic brain injury, fractured vertebrae, laceration of the spleen and fractured right hand. The plaintiff was immediately transported to Dartmouth Hitchcock Hospital in New Hampshire where he remained in a medically induced coma for the first week.

The plaintiff was then transferred to Spaulding Rehabilitation Hospital in Boston where he remained as an inpatient for 10 weeks. When discharged, the plaintiff was able to walk with a limp and used a cane. He also had limited use of his dominant left hand.

The plaintiff suffered from memory loss, depression and attention deficits, as well as the onset of seizures that resulted from his brain injury. The plaintiff was forced to surrender his driver's license indefinitely due to the seizures.

The plaintiff advanced two theories of negligence against the defendants: that the defendant bus driver was operating the bus at an excessive speed, causing the accident, and that the bus driver did not have eight consecutive hours off-duty prior to starting his shift on the day of the accident, in violation of the Federal Motor Carrier Safety (FMCS) Rules.

The defendants defended the liability issue on the basis that the crash was merely an accident and that the bus driver did not exceed the speed limit. However, passengers on the bus testified at trial and deposition that the bus was traveling in the passing lane at excessive speeds for the existing weather condition.

The plaintiff's first witness was a fellow bus passenger who was seated close to the front of the bus and was able to view the bus driver and the instrument panel. The witness testified that approximately one mile prior to the accident, he saw the bus pass multiple vehicles in the passing lane, including a salt truck, and that the speedometer read 70 mph immediately prior to the accident (the speed limit was 65 mph).

As to the plaintiff's allegation that defendants violated the FMCS rule, a Vermont state trooper testified as to contradictory statements made by the driver in an interview after the accident. The plaintiff was prepared to offer

evidence that the driver did not have the required eight hours off between shifts, and that he falsified his driver's logs.

The plaintiff had approximately \$185,000 in medical bills, and intended to offer evidence that the future costs for medical treatment would be approximately \$200,000. The plaintiff was a self-employed software developer earning approximately \$90,000 per year. He was unable to return to work, and planned to offer evidence from a vocational rehabilitation expert that due to his cognitive issues and fatigue, he was not employable in any capacity.

The plaintiff's economist was expected to testify that the plaintiff's total lost earnings exceeded \$2.1 million. The defendants contended that although the plaintiff was making \$90,000 before the accident, his income would have plummeted due to economic conditions. The defendants further argued that the plaintiff was able to work in some capacity.

Expert testimony prior to the settlement came from a neurologist who testified that the plaintiff suffered from a permanent brain injury caused by the accident. The expert described how the plaintiff, whose IQ remained in the 99th percentile after the accident, could still struggle daily with memory impairments and remain unable to process information.

Five days prior to trial, the defendants' insurer offered \$2.5 million to settle against the plaintiff's demand of \$4 million. After four days of trial, the parties settled for \$3.7 million.

Type of action: Motor Vehicle Negligence

Injuries alleged: Traumatic brain injury, lacerated spleen, fractured vertebrae, fractured hand

Name of case: Brann v. Mini-Coach of Boston, Inc.

Court/case #: Middlesex Superior Court, No. 02-1412

Tried before judge or jury: Jury (settled mid-trial)

Name of judge: Jeffrey A. Locke

Amount of settlement: \$3.7 million

Date: Dec. 11, 2004

Most helpful experts: Michael Alexander, M.D., neurologist; Lawrence Cripe, accident reconstructionist; Dana Hewins, Ph.D., economist; Thomas Deters, Ph.D., neuropsychologist; Heechin Chae, M.D., rehabilitative medicine

Attorneys: Robert R. Pierce, Pierce & Mandell, Boston, and Robert L. Kirby Jr., Nixon Peabody, Boston (for the plaintiff)

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