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DAILY BUSINESS REVIEW

VERDICTS & SETTLEMENTS

Attorneys win nearly \$5 million for victim exactly 6 years after accident

Case: Michael Gamsen and Michele Gamsen, his wife, v. State Farm Fire and Casualty Co.

Case no: 04-014089

Description: Auto negligence

Filing date: Sept. 1, 2004

Trial dates: March 2-11, 2009

Judge: Miami-Dade Circuit Senior Judge Richard Yale Feder

Plaintiff attorney: Steven J. Hammer and Valerie Conzo, Sheldon J. Schlesinger P.A., Fort Lauderdale

Defense attorney: Michael Robb, Clark Robb Mason Coulombe & Buschman, Coral Springs

Jury decision: \$4.9 million

Details: Michael Gamsen, a Pembroke Pines respiratory therapist, was driving his company's Dodge van west on Hollywood Boulevard when he was rear-ended on March 11, 2003. The other driver, Murray Kasten, was underinsured.

Gamsen's company, Hollywood Medical Supply, had uninsured motorist coverage with State Farm Fire and Casualty. However, the insurance company did not pay.

Gamsen underwent back surgery in hopes of alleviating pain from the accident in 2004, but the operation made it worse. He stopped working about nine months after the collision. His attorney, Steven J. Hammer, said Gamsen has pain that resonates throughout his body and takes time-released morphine to cope with the pain.

Plaintiff case: Hammer said his client sustained a permanent injury in the accident and cannot work because of the constant stream of morphine he uses. Gamsen's treating physicians, pain



MELANIE BELL

Valerie Conzo and Steven J. Hammer successfully argued their client can't work because he needs constant morphine to manage pain.

management doctor, psychologist and an expert orthopedic surgeon were called as witnesses. Hammer argued State Farm should pay because of the uninsured motorist coverage it provided Gamsen's employer because he was driving a company van at the time he was hit. Hammer asked for \$5.9 million in damages for the Gamsens.

Defense case: Robb did not return call for comment by deadline. He previously said doctors claimed Gamsen was able to work. Hammer said State Farm claimed the pain was produced by a pre-existing condition, not the accident.

Verdict: After deliberating for nearly two hours, the Broward Circuit Court jury ruled Murray Kasten was negligent and State Farm was legally responsible for Gamsen's injury. Nearly \$4.9 million was awarded to Gamsen and his wife. The jury awarded Gamsen \$552,000 for past and future medical expenses, \$1.2 million for lost earnings ability

and \$2.3 million for past and future pain and suffering. His wife, Michele, won \$800,000 for loss of her husband's comfort and services. The verdict came six years to the day after the accident.

Comments: "He has to take morphine in order to even cope with the pain," Hammer said. "Knowing that Michael is taking morphine on a daily basis, [his employer] wouldn't take him back to work. He wouldn't allow it."

Post verdict: State Farm filed a motion for a new trial and to limit the judgment. It also plans to appeal the verdict.

— Jordana Mishory