

## Verdicts & Settlements

# Insurer paid over-limits settlement shortly before trial

### Auto Negligence

**\$1.350 million**



**MARKO**

The plaintiff was attending a party in a trailer park and was partying with her friends, smoking weed and drinking alcohol. One of her friends left

at 2 a.m. to get some heroin with the defendant driver to keep the party going. The plaintiff became upset that her friend was leaving to buy drugs because her sister died of a heroin overdose. The plaintiff approached her friend who was in the driver's seat the defendant's vehicle and tried to pull her out. A scuffle ensued, and the defendant driver took off. The plaintiff became entangled in the vehicle and was dragged the distance of a football field, causing serious injuries. The defendant eventually pleaded guilty to assault with his automobile.

The defendant claimed that the plaintiff was more than 51% at fault for the accident, and that any recovery was barred by the wrongful conduct rule due to the plaintiff's intoxication and attempts to assault the passenger. The plaintiff successfully fended off a motion for summary disposition in this regard.

Shortly before trial, the plaintiff filed several very important motions in limine that changed the course of the litigation. Specifically, the plaintiff argued that the defendant driver's criminal guilty plea foreclosed a denial of

**Type of action:** Auto negligence

**Injuries alleged:** Brain injury, emotional problems, degloving injuries, multiple lacerations and fractures, and permanent disfigurement

**Name of case:** Confidential

**Court/Case no./Date:** Confidential; 02/04/2022

**Name of mediator:** Dan Makarski

**Demand:** \$1,350,000

**Settlement amount:** \$1,350,000

**Attorney for plaintiff:** Jon Marko, Detroit

liability. In other words, by pleading guilty to assaults of the plaintiff (beyond a reasonable doubt), the defendant was collaterally estopped from taking a contrary position at trial by arguing that he was not negligent. The trial court agreed and ruled that the jury would be instructed that the defendant was negligent as a matter of law based on the guilty plea. The plaintiff also managed to strike all of the defendant's expert witnesses through aggressive motion practice.

The passenger of the defendant's vehicle who was going to testify that the plaintiff assaulted her died of a drug overdose while awaiting trial. The defendant planned on playing a video interview of the passenger's statements to the police. However, the plaintiff argued that her interview and statements to the police was hearsay. The judge agreed and excluded any of her out of court statements regarding what happened.

Following motion practice, the plaintiff immediately made a policy demand and gave the defendant 30 days to pay it. Plaintiff's counsel promised the policy limits demand would never be given again after the 30 days

expired.

The defendant failed to respond to the offer. Much later, the defendant tried to pay the policy. Plaintiff's counsel kept to his word, and responded it was too late, the demand expired and now the plaintiff needed an over-limits settlement. Plaintiff's counsel said the defendant and the mediator responded that was a crazy position and not realistic, and that the plaintiff did not have a bad faith claim because the defendant offered to pay before trial. Plaintiff's counsel prepared an extensive brief showing that, contrary to popular belief, there is indeed bad faith claims in Michigan, even if the insurance company pays the claim at the last minute.

The parties thereafter settled for above policy limits shortly before trial. The insurance company paid the over-limits amount, not the insured. The mediator said it was the first time he had ever seen this happen in his career without a jury verdict.

Jon Marko, counsel for the plaintiff provided case information.