

MASSACHUSETTS Lawyers Weekly

Type of action: Motor Vehicle Negligence

Damages alleged: Severe complication of prior spinal fusion and severe emotional distress

Name of case: Poulack v. Reliable Fence Co.

Court/case #: Essex County Superior Court, No. 1677-CV-01963

Judge / jury: Jury

Special damages: \$101,521.00

Amount of verdict: \$47,967.00

Date: April 29, 2022

Demand: \$750,000

Highest offer: \$75,000

Defense Attorney: Jason R. Scopa, Law Offices of Peter E. Flynn, P.C., Saugus

Plaintiff's Attorney: Withheld

Additional Information:

Employee of the defendant fence company was operating a company pick-up truck when he rear-ended a sedan in which the plaintiff was a passenger. Defendant operator testified at trial that he took his eyes off of the road to pick up his GPS device, which had fallen on the floor. When he looked up, traffic was stopping and he was unable to stop in time.

The plaintiff had a long and complicated previous medical history, including multiple spinal fusions prompted by a severe motor vehicle accident years earlier. Plaintiff

claimed that this new accident was the so-called straw that broke the camel's back, both physically and emotionally. She testified that she had learned to live with tolerable pain and certain physical limitations that existed for years before she was rear-ended by the defendant. She was previously able to run a business, socialize, exercise, etc. However, according to the plaintiff, she has suffered debilitating back pain and accompanying severe depression since the accident such that she was never able to return to work, play, or life as it used to be. Medical evidence centered around the question of, to what extent the plaintiff's pain and medical treatment after the accident was truly different and/or worse than it had been for years earlier. Radiological images after the accident showed no evidence of hardware complications, but it was the plaintiff's testimony that her pain was markedly worse.

The plaintiff alleged medical expenses totaling more than \$100,000 since the accident. Many such expenses were incurred with providers which she had been treating prior to the accident, which was a point of dispute.

A board-certified orthopedic surgeon testified live at trial for each side. The plaintiff's expert testified that it is not uncommon for symptoms and pain much different and much worse to result from trauma to a fused spine, even if the hardware remained in place. The defendant's medical expert testified that it had been his experience in treating patients recovering from spinal fusion surgeries that they would be in pain and discomfort for up to six months after an accident of this nature and, further, that any prolonged problems would be extremely rare. Based on this time line, the defense argued that only \$8,000 of the medical expenses in evidence were causally-related to the accident at issue. The jury's verdict was entirely consistent with this argument. With pain and suffering for the same 6-month period, the jury returned a verdict of \$47,967.00.