

MASSACHUSETTS Lawyers Weekly

Type of Action:	Negligence - Pedestrian Struck
Injuries Alleged:	Multiple pelvic fractures; rotator cuff tear; concussion.
Name of Case:	Friedman v. Arbella Insurance
judge or jury:	N/A - Underinsured Arbitration
Damages Awarded:	None.
Date:	May 2, 2019
Demand:	\$155,000.00
Highest Offer:	\$75,000.00
Special Damages:	\$53,690.00
Attorney for plaintiff:	Withheld
Attorney for defendant:	Jason R. Scopa, Law Offices of Peter E. Flynn, P.C., Saugus

The plaintiff was hit by a car as she walked across Beacon Street in Newton Center on the evening of September 17, 2016. After receiving the \$20,000 policy limit from the carrier for the motorist that hit the plaintiff, she filed this underinsured claim with her own carrier.

The plaintiff testified that she had just consumed a full dinner as well as one or two glasses of Prosecco at a nearby restaurant before walking outside with her boyfriend and attempting to walk across the street to their parked car. There was a nearby crosswalk, which the plaintiff admitted she decided not to use. According to the plaintiff, it was still light out and there was no oncoming traffic in either direction as she began to cross. The couple successfully crossed one side of the road and, according to the plaintiff, looked again for oncoming traffic when they reached the double yellow center lines. Seeing no oncoming vehicles, they continued, and the plaintiff was then struck after stepping into the travel lane.

No statement was ever taken from the motorist that struck the plaintiff, but an eyewitness provided a sworn statement that there was moderate traffic and that it was dark out at the time. Also, a photo provided with the police report showed a fairly dark accident scene, but there was much disagreement over the exact time at which the officer took the photo. Also important was the fact that the officer did not cite the operator, who reported to the police that he was traveling within the speed limit and simply never saw the plaintiff or her boyfriend.

There was little dispute as to the claimed injuries, which included multiple pelvic fractures, for which the plaintiff underwent inpatient physical therapy for two weeks, followed by visiting nurse home care. An MRI taken shortly thereafter a 50% rotator cuff tear, for which the plaintiff underwent a subacromial cortisone injection but not surgery. She also claimed to suffered with post concussive symptoms for some time.

The plaintiff's treating orthopedic surgeon opined that she suffered a 2% whole person impairment due to the pelvic fractures and, additionally, a 3% permanent impairment of the right upper extremity due to weakness in abduction in the right shoulder. The defense offered a record review calling into question the source of the shoulder injury.

The result was an arbitration decision in favor of the defense on the issue of liability based on the finding that the pedestrian plaintiff was more than 50% at fault.