

MASSACHUSETTS Lawyers Weekly

Jury: No Damages for Plaintiff Struck by Pizza Deliveryman Making U-turn.

Type of action: Motor Vehicle Negligence

Damages alleged: Atrial Fibrillation; and Concussion with Cognitive Deficits

Name of case: Baril v. Burgos

Court/case #: Essex County Superior Court, No. 1777-CV-01761

Judge / jury: Jury

Special damages: \$28,770.00

Amount of award: \$0 (defense verdict)

Date: July 25, 2019

Demand: \$250,000

Highest offer: \$42,500

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

Plaintiff's Attorney: Withheld

Additional Information:

On a rainy September night, the parties were traveling in opposite directions on Merrimack Street in Lawrence. The defendant, a pizza deliveryman, attempted to take a U-turn across the double yellow lines. He did not see the plaintiff approaching on the other side of the roadway. The plaintiff's vehicle t-boned the passenger side of the defendant's vehicle. It was the plaintiff's position that he could not avoid crashing into the defendant's car due to the defendant's sudden and unexpected U-turn across the double yellow lines.

The plaintiff struck his head, passed out, and was unable to recall any details about the accident. He was found by EMT's to be ambulatory, but confused, at the scene. He was transported to the emergency room of Lawrence General Hospital. He was diagnosed with a concussion. He was also found to be in atrial fibrillation after being placed on a cardiac monitor during his workup. As a result, he was admitted to the hospital and discharged two days later. Weeks later the plaintiff consulted a cardiologist, and an electro-cardioversion was attempted to restore a normal heart rhythm. It was

unsuccessful, and the plaintiff's atrial fibrillation has continued ever since. There was no additional treatment.

Two components of the plaintiff's medical history were significant issues. First, the plaintiff had been in a previous car accident 18 months earlier, and it was well documented that he suffered from cognitive deficits in that previous crash. These deficits included problems with memory and concentration. He underwent neurological examinations as well as cognitive and speech therapy after the first accident. Such treatment had ended before the subject accident, and he did not return to those treatment providers ever again.

While the plaintiff testified that those pre-existing cognitive conditions were substantially aggravated by the accident with the pizza deliveryman, there was no corroboration in the form of medical records, other than the report of a non-treating neurologist, which was introduced by the plaintiff along with his treatment records.

The second significant portion of the plaintiff's medical history related to vague and varying reports of palpitations, panic attacks, and possible atrial fibrillation over the years before the accident. At trial, the plaintiff admitted to very remote panic attacks but denied any other meaningful cardiac history. An internist testified live at trial on behalf of the plaintiff and testified that chest trauma from the impact of the accident was likely the source of the atrial fibrillation discovered while the plaintiff was in the emergency room that night. The defense focused on the fact that "no chest trauma" was noted numerous times in the plaintiff's ambulance and hospital records.

The defense retained a cardiologist to review the plaintiff's medical records and ultimately testify at trial. It was his expert opinion that only significant chest trauma could possibly trigger atrial fibrillation and such trauma would include a pulmonary contusion, broken ribs, a fractured sternum or similar chest wall injuries. He also offered testimony as to the prevalence of atrial fibrillation in people in the United States and particularly in men of the plaintiff's age, men of the plaintiff's weight, and men with the plaintiff's medical history. Further, the defendant's medical expert explained that it is fairly common for a cardiologist to find atrial fibrillation in a patient who was completely unaware of having the condition and possibly had it for many years.

The plaintiff was self-employed as an IT specialist and initially claimed lost wages and an impairment of earning capacity. These claims were dropped when trial began.

After less than 20 minutes of deliberation, the jury found the defendant negligent but also found that his negligence was not a substantial contributing factor in causing any injury to the plaintiff.