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Nature of Action: Value of physical injuries where there was underlying pars defect from prior accident; admissibility of fear of future surgery Brantner case issue (Judge Maxine White ruled admissible)

Injuries: Auto crash; back injuries, surgery

County: Milwaukee County

Case name: Kyle Giersch v. Safeco Insurance Company, et al.

Judge: John Schmid (mediator)

Verdict or settlement: Settlement

Original demand: \$700,000

Original offer: \$250,000

Amount: \$600,000 settlement including repayment of health insurance subrogation of \$33,000 and unpaid medical bills of about \$10,000; early mediation with John Schmid did not produce a settlement, although defendants did pay \$100,000 of this settlement in advance under Wis. Stat. Sec. 628.46 while litigating the value of the case

Plaintiff's attorney: Jay Urban, Urban Taylor & Stawski Ltd., Milwaukee

Defendant's attorney: Timothy Steinle, Terschan, Steinle & Ness, Milwaukee

Plaintiff's expert: Dennis Maiman, M.D. (plaintiffs neurosurgeon); Scott Hardin, M.D. (plaintiff's psychiatrist) Steven Sirius (plaintiffs family physician)

Plaintiff counsel's summary of the facts: Kyle Giersch, 22, suffered a life-long injury from a car crash in March 1999 before he turned 18. Because of this accident and his injury, he did not get to finish high school and graduate with his class. He later was able to obtain his degree, and then went on to a technical college when his eventual surgery led to the termination of his job.

Plaintiff suffered immediate injury to his back in the crash, and sought attention at the emergency room via ambulance. Days later he was hospitalized for an unstable spine. Over the next couple of years, he was treated conservatively with therapies and hospitalizations in the hope that he would not require surgery. Unfortunately, this also involved heavy doses of narcotics for pain relief, mostly Oxycontin.

Thereafter, Kyle underwent surgery to his spine after being referred to a neurosurgeon over two years post-collision - for a laminectomy and fusion at L4-5 and for removal of a bone stimulator. During his first surgery, he unexpectedly sustained a pulmonary embolism requiring further hospitalization and follow-up with his family doctor.

Kyle's medical expenses totaled about \$150,000. His vocational loss was estimated at \$60,000. He stayed at home with his parents for longer than anticipated due to the care they provided in his recovery. Primarily, Kyle was very worried about his future with a serious back injury.

Theory: On liability, failure to yield right-of-way at controlled intersection. On damages, this was an objective, severe injury with much treatment.

Defenses: On liability, this was an intersection crash although plaintiff was a passenger (defendants stipulated to liability just before trial). On damages, defense counsel contended plaintiff was "previously damaged" from a past high school football injury. Defense counsel also argued that plaintiff made an excellent recovery from his surgery, which was supported by Dr. Maiman, with no proof of any future surgery.