



As appeared in the December 28, 2005 edition of the Wisconsin Law Journal

Nature of Action: Motor vehicle accident

Injuries: Sprained neck and chest and knee contusions

County: Waukesha County

Case name: Megan Damaske v. Mutual Service Casualty Insurance Company

Judge: James Kieffer

Verdict or settlement: Settlement

Original demand: \$250,000 policy limits

Original offer: less than \$50,000

Amount: \$375,000

Plaintiff's attorney: Jay Urban, Urban & Taylor s.c. for plaintiffs, Milwaukee

Defendant's attorney: Karyn Youso, Jacobson & Ratzel, for defendants, Brookfield

Plaintiff's expert: Christopher King, D.O. and Shekar Kurpad, M.D.

Defendants expert witnesses: Gerald Harris, Ph.D.

Noteworthy issues: Contributory negligence and value of damages; defenses of preexisting condition to back, obesity and seatbelt failure to wear

Plaintiff counsel's summary of the facts: Megan Damaske was injured on Dec. 27, 2001 when the car she was driving collided with a car driven by an intoxicated driver. The accident occurred in New Berlin, Wisconsin, at the intersection of Moorland Road and Beloit Road. Ms. Damaske was the driver of a 2001 Saturn with three passengers and was traveling northbound on Moorland Road. As Ms. Damaske proceeded through the intersection, her car collided with a truck driven by defendant Daniel Schimmel who was traveling southbound on Moorland Road at a high rate of speed and attempting to turn westbound on Beloit Road at the time of the collision. Defendant Schimmel was operating his 2002 Toyota truck while intoxicated.

Megan suffered immediate pain to her mid-back, lower back, neck, right knee, shoulder and hip. Ms. Damaske was transferred from the scene via ambulance and transported to Froedtert Memorial Lutheran Hospital where she was diagnosed with a sprained neck and chest and knee contusions.

In the time since the accident, Megan has continuously received treatment for above-mentioned injuries. Her treatment has included arthroscopy on her knee, a brace for her

TMJ, steroid injections and radiofrequency treatments in her back and an L4 through S1 Laminectomy. Megan will likely need at least one future surgery on her back. Christopher King, D.O. and Shekar Kurpad, M.D. believed that Megan needed the future surgery as a fusion, but first she needed to lose significant weight with gastric bypass surgery.

During discovery, several medical records uncovered a history of back pain related to accidents and weight and a condition of rotoscoliosis, but the plaintiff's doctors and the IME doctor were giving considerable causation of injury and surgery to the accident. Megan's past medical expenses alone total approximately \$60,000. Her wage loss is approximately \$5,000.

Defense counsel's response: Original demand was \$850,000 (out of \$1.25M); original offer was \$225,000. Future medical expenses were estimated at \$95,000.