

The Legal Intelligencer

THE OLDEST LAW JOURNAL IN THE UNITED STATES 1843-2011

PHILADELPHIA, MONDAY, NOVEMBER 21, 2011

VOL 244 • NO. 100

An **ALM** Publication

REGIONAL NEWS

\$3 Mil. Workers' Comp Accord Reached in \$38 Mil. Dram Shop Case

BY ZACK NEEDLES

Of the Legal Staff

A former highway construction worker who was awarded nearly \$38 million and later settled for an additional \$20 million with a third-party insurer after he was left quadriplegic by an allegedly drunken driver has also reached a \$3 million settlement with his employer's workers' compensation carrier.

The plaintiff's workers' compensation attorney, Samuel H. Pond of Pond Lehocky Stern Giordano in Philadelphia, said he believes it may be the largest workers' compensation settlement in the country.

On Oct. 28, more than seven years after a Philadelphia judge reduced the \$75 million jury verdict in the underlying dram shop case to about \$38 million and following three years of negotiations, workers' compensation Judge Thomas J. Hines approved a \$3 million settlement between plaintiff Joseph Tuski and workers' compensation carrier Erie Insurance Co.

According to court papers in the underlying dram shop case, *Tuski v. Ivyland Café*, Tuski was working

as a flagman for Liberty Construction at a road-paving project in Warminster, Pa.

One lane of the road was closed to traffic, and Tuski and another flagman were directing traffic, according to court papers. At the time of the accident, Tuski had several cars stopped in order to allow the oncoming traffic to proceed, court papers said.

According to court papers, Michael Petaccio, a manager at defendant Ivyland Café who had served himself drinks, passed the stopped cars on the shoulder and struck Tuski at more than 40 mph, throwing him more than 108 feet and causing injuries that left him paralyzed from the neck down.

After the accident, according to court papers, Petaccio fled the scene and drove to his nearby home where he smashed into pillars near his driveway.

Petaccio then persuaded his girlfriend to take him to his mother's house in Philadelphia. When they discovered that his mother was not at home, they went to the home of Petaccio's sister, who immediately



POND

called the police and informed them that her brother "was drunk and had been in an accident," court papers said.

Police arrested Petaccio several hours after the accident and noted that he appeared intoxicated, accord-

ing to court papers.

But Petaccio at first denied drinking any alcohol in the six hours before his arrest and refused to submit to a blood test, court papers said.

After police obtained a search warrant, Petaccio's blood was tested at about 8 p.m. It indicated a blood-alcohol level of 0.17 percent, according to court papers.

After a six-day trial in January 2004 before Philadelphia Common Pleas Judge John Milton Younge, a jury awarded Tuski \$75 million, including \$5 million in punitive damages for the owners of the Ivyland Café and \$20 million in punitive damages for Petaccio.

The award also included more than \$1.6 million for his past medical expenses, \$18 million for future medical expenses and \$2 million for lost earnings.

In addition, the verdict included

four awards of \$7.25 million each — or \$29 million — for pain and suffering, loss of life's pleasures, embarrassment and disfigurement.

At the time, plaintiffs attorney Robert Mongeluzzi of Saltz Mongeluzzi Barrett & Bendesky told *The Legal* he believed the award may have been the second-largest verdict ever in Philadelphia in a non-death personal injury case.

But in May 2004, Younge issued an order that cut the punitives in half — to \$2.5 million against the bar and to \$10 million against Petaccio — and reduced the compensatory awards to \$25.34 million — with the award against Petaccio reduced to \$19 million and the award against Ivyland Café reduced to \$6.34 million.

Younge's reductions brought the total award down to \$37.84 million. A unanimous state Superior Court panel upheld the judgment in September 2005.

But Mongeluzzi told *The Legal* at the time that when pre- and post-judgment interest were added, the judgment had swelled to more than \$48 million.

In June 2007, Ivyland Café's insurer, Princeton Insurance Co., agreed to pay \$20 million to Tuski to settle a bad-faith claim that it had refused to settle the case for the tavern's policy limit of \$1 million.

It was the largest settlement to date in a Pennsylvania insurance bad-faith case.

On top of the \$1.4 million the plaintiffs had already collected from the bond Ivyland Café had previously posted, the total recovery for Tuski was about \$21.4 million.

But Pond told *The Legal* in early November that, after the settlement with Princeton Insurance was reached, Tuski had been forced to put more than \$200,000 per year from those settlement proceeds toward his medical bills, which total about \$300,000 annually.

According to Pond, prior to settlement, Erie Insurance had a lien against Tuski that had reduced his workers' compensation benefits by about 60 percent and that was paid back.

Pond said workers' compensation settlement negotiations began in 2008, with Erie Insurance originally offering \$750,000 before the parties eventually agreed on \$3 million.

It was the largest settlement to date in a Pennsylvania insurance bad-faith case.

According to Pond, about \$1.5 million of the settlement was a Medicare set-aside. Previously, Pond said, Tuski had only been receiving about \$13,000 from Medicare annually. Ten percent of the \$3 million settlement — \$300,000 — also went toward attorney fees.

Pond called the settlement "extremely satisfying," particularly since there was some concern that the workers' compensation carrier would begin conducting utilization reviews to challenge the necessity of some of the medical care Tuski had been receiving.

But, according to Pond, Erie Insurance was instead "very anxious" to close the case.

"What Erie Insurance was able to do was close their file and free up their reserves," he said. "My client was able to stop bleeding money out of his third-party settlement proceeds to the tune of a quarter-million dollars a year."

Erie Insurance's attorney, Neil T. Dombrowski of the Dombrowski Group in Paoli, Pa., said Tuski's was "a complex case involving an individual who had a profound spinal cord injury and we resolved it by a lawful compromise and release" agreement under the state's Workers' Compensation Act.

Zack Needles can be contacted at 215-557-2493 or zneedles@alm.com. Follow him on Twitter @ZNeedlesTLI. •