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Parties settle auto accident case for \$3.8M

Drake v. Ryan release was complicating factor

By Jay Donald Jerde
Special to Minnesota Lawyer

A trial court reconsideration to a summary judgment motion encouraged the parties to an automobile collision west of the Twin Cities to agree to a settlement for \$3.8 million.

The settlement, agreed to at a mediation session on Aug. 15 and whose details are confidential, was completed last month, said Philip Sieff of Robins, Kaplan, Miller & Ciresi LLP of Minneapolis, who represented the plaintiffs.

The auto accident resulted in “extensively serious injuries” to a 63-year-old farm wife who sustained severe fractures that limit movement in her right arm to about a 90-degree angle, about at hip height, Sieff said. A complication from treatment required a below-elbow amputation of her left arm.

The plaintiffs were “exceptional clients that epitomize Minnesotans,” Sieff said. They have a hobby farm where they have cattle and raise crops. “She was a typical farmer’s wife, running the household.”

“Her life has changed considerably,” Sieff said. “These are strong Minnesotans who don’t feel an ounce of pity for themselves, never complained,

never whined and tried to go forward the best they could.”

The accident occurred in 2007 on a rural two-lane road west of the Twin Cities, Sieff said. The woman and her 69-year-old husband were driving when an approaching car crossed the center line and struck their car.

Driving conditions were perfect at the time. The collision appears to have been “an issue of driver inattention,” Sieff said.

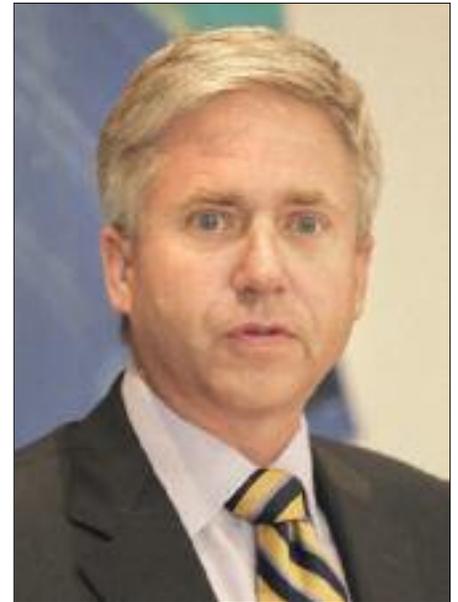
The accident resulted in severe fractures to the woman’s right shoulder and arm, pelvis, right hip, right leg, and right foot. During medical treatment for these severe injuries, an intravenous line became infected, Sieff said. The infection caused gangrene in her left hand. The left arm had to be amputated below the elbow.

Medical expenses alone exceeded \$741,000. Projected future expenses include as much as \$391,000 for prosthetic devices and care, as much as \$310,000 to modify their home to make it accessible, and between \$213,000 and \$657,000 for a life-care plan to adapt to the injuries.

The other motorist was driving his mother’s car on an errand for his employer. The car was insured for \$100,000, and that insurer paid plaintiffs to the coverage limit. The employer had a business insurance policy with a \$6 million coverage limit.

Difficulties of the case

“It was a very difficult case that was complicated by the release” that the



Philip Sieff

plaintiffs signed to receive settlement from the automobile insurer, Sieff said.

The plaintiffs signed a “Drake v. Ryan Satisfaction and Release” that was designed to release the automobile insurer from further claims while preserving claims against the other layer of insurance from the business policy.

The plaintiffs were unable to negotiate a settlement with the business’ insurer. They obtained counsel and sued the driver’s employer, and later also the driver, as defendants.

The defendants “were represented by attorneys whom I respect enormously and, I believe, are extremely capable and talented,” Sieff said of opposing counsel based in downtown

Auto Events in the trial court clearly made the second mediation successful

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Minneapolis.

The defendants denied liability and disputed damages. They pointed out that the plaintiff had made an excellent recovery under the circumstances. She was able to walk and do most ordinary activities, and she continued to care for a grandchild.

"I agree that she made a very good recovery under the circumstances, but even with a good recovery, she was under very serious disabilities and very serious alterations in her life," Sieff said.

The defendants also argued that some of the woman's disabilities predated the accident, that medication and therapy would reduce the psychological damages, and that future care expenses were inflated.

Summary judgment

The defendant's employer moved for summary judgment. A case decided by the Minnesota Supreme Court in 2010, *Booth v. Gades*, raised questions about the effect of the *Drake v. Ryan* agreement, Sieff said.

In *Booth*, a *Drake v. Ryan* agreement released the employee and the em-

ployer's liability arising from its employee. Because the agreement signed by plaintiffs was identical to the agreement in *Booth*, the defendant's employer argued that *Booth* fully released the employer from liability.

"We felt that case was a little different on the facts. We felt that case could and ought to be distinguished," Sieff said.

The trial court agreed with defendant employer at first. The court granted the summary judgment. The plaintiffs filed a motion for reconsideration.

The trial court then reviewed, in camera, documents exchanged between the primary insurance carrier and the employer. "Those communications made it clear to the court that the obvious intent was to preserve my client's claim against the employer's coverage," Sieff said.

Armed with this insight, the trial court said that it had not fully understood the issue in the previous arguments on the summary judgment, but that was not the fault of the parties, Sieff said, describing the court's decision on reconsideration.

The trial court concluded on reconsideration that the facts here were dif-

ferent from those in *Booth*. In the alternative, the court found issues of mutual mistake, misrepresentation and unconscionability that precluded broader enforcement of the *Drake v. Ryan* agreement. For these reasons, the trial court changed its mind and decided in favor of the plaintiffs.

The defendants appealed the trial court's final decision on summary judgment to the Minnesota Court of Appeals.

Dispute resolution continued between plaintiffs and defendants. The parties had been willing to mediate, even before the court-appointed deadline, Sieff said. An earlier mediation had failed to result in settlement. A second mediation, with the same mediator, succeeded.

"Events in the trial court clearly made the second mediation successful," Sieff said.

The settlement of \$3,804,000 includes the \$54,000 that the business' insurer advanced previously. The trial court and Court of Appeals cases have been dismissed, Sieff said. 

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