

MVA-PEDESTRIAN STRUCK

Plaintiff v. Jake Piekarski and Kimberly Piekarski

Favorable Verdict



LUKS, SANTANIELLO
PETRILLO, COHEN & PETERFRIEND

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Plaintiff Counsel: Syfrett, Dykes & Furr (Clayton R. Syfrett and Douglas B. Dykes) and Seymore Justice (Talley L. Kaleko)

Tried on Damages only — Bay County; Syfrett, Dykes & Furr and Seymore Justice; 21-year old Pedestrian Struck; \$9.7M sought, \$1.2M awarded.

Partners G. John Veith, Esq. and Valerie Edwards, Esq., obtained a favorable verdict in a motor vehicle accident in Bay County involving a pedestrian struck on a sidewalk in the matter styled *Plaintiff v. Jake Piekarski and Kimberly Piekarski*. The case had been pulled from another well-known national defense firm and reassigned to Luks & Santaniello for trial. By the time of the reassignment, critical deadlines had been missed, including the deadline for disclosure of experts. Despite these setbacks, the defense succeeded in retaining experts for trial, although the experts were not permitted to conduct an in-person physical examination of the Plaintiff. The case was tried on damages only. Plaintiff waived her past medical expense and past and future wage loss claims. Due to a pre-trial ruling by the court, the defense was not permitted to offer evidence that Norway, where plaintiff continued to reside, has socialized medicine.

At trial, Plaintiff's counsel asked the jury to award \$9.7 million, including \$3.4 million in future medical care costs, and \$6.3 million in past and future pain, suffering, disability, disfigurement, and loss of enjoyment of life. The jury returned a total verdict of \$1.2M.

The Plaintiff was a 21-year-old female exchange student attending the University of Minnesota from Kristiansand, Norway. Plaintiff, who had come to Panama City for spring break, was walking with two of her friends on the sidewalk at the corner of an intersection in order to cross the street to her hotel when she was struck by a motor vehicle. Surveillance video obtained from a nearby establishment captured the accident and showed the Plaintiff was thrown into the air and landed on the concrete approximately 15 to 20 feet away. The accident was caused by the defendant, Jake Piekarski, who fell asleep at the wheel after having driven all night across the country with some friends for spring break. Alcohol and drugs were not a factor in causing the accident.

There was no legitimate basis to argue Plaintiff was comparatively at fault because the evidence showed she was properly on the sidewalk at the time of the accident. Prior to trial, the defendants admitted liability and the case was tried on the damages issues only.

As a result of the impact, Plaintiff claimed she sustained a permanent traumatic brain injury with post-concussive symptoms of impaired memory, attention span and language abilities. Plaintiff sustained a left orbital skull fracture, a full-thickness tear of her left anterior cruciate ligament, and soft tissue injuries to her left shoulder and left hip. Plaintiff also claimed anxiety, depression and post-traumatic stress disorder.

Plaintiff's experts testified that, while an initial CT scan failed to show an organic injury to the brain from the impact, a subsequent MRI revealed a lesion on the right frontal lobe. Plaintiff's experts claimed this lesion was a result of the accident, dismissing the radiologist's finding that it could have been evidence of subcortical dysplasia, a congenital condition. Plaintiff's doctors also opined that a DTI (diffuse tensor imaging) scan showed Plaintiff's brain activity at more than two standard deviations downward. Plaintiff's experts opined that their diagnosis of a permanent brain injury was based on the surveillance video of the accident together with the result of the DTI. Neuropsychological testing conducted in Norway, and in Plaintiff's native language, failed to reveal any significant cognitive impairments. However, Plaintiff presented evidence of subsequent neuropsychological testing performed by Kevin Groom, a neuropsychologist hired by Plaintiff's counsel, which showed impairment, mostly in categories of testing involving language and speech function. The defense called Dr. Michael Herkov, who testified that the neuropsychological testing performed by Dr. Groom would be expected to include some findings of impairment because the testing was not conducted in Plaintiff's native language.

Plaintiff's left orbital fracture healed with conservative treatment, and her left ACL was surgically repaired in Norway. Plaintiff's retained orthopedic surgeon provided opinions that she would likely develop early onset osteoarthritis in her left knee, which would likely require her to need a total knee replacement at a young age, followed by a revision surgery. The defense presented testimony of Dr. Troy Lowell, who opined that there was no medical evidence to support this claim. Dr. Lowell testified total knee replacements are typically only needed after ACL reconstructive surgery where there is also evidence of a meniscal injury. Neither the treating radiologist nor the surgeon in Norway had found evidence of any meniscal injury on the MRI scan.

Plaintiff also presented medical testimony from Dr. Deborah Simkin and Dr. Kevin Groom that she continued to suffer from PTSD as a result of the impact. The defense showed that Plaintiff had not been diagnosed with PTSD until 2018, one month after she had been the victim of a violent sexual assault, according to legal records from a Norwegian court, and based on medical records pre- and post-assault.

Plaintiff called Dr. Craig Lichtblau and Dr. Bernard Pettingill, Jr. to testify regarding her future medical care needs and expenses. Dr. Lichtblau opined that Plaintiff would need orthopedic, neurological and pain management care for life, including two surgeries on her left knee, injections and other pain management for her low back due to instability in her left knee, plastic surgery for her scarring, and in-home nursing care due to an anticipated early onset of dementia. Dr. Pettingill testified the present value of her future medical care was \$3.4 million.