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Verdicts & Settlements

Transportation cos. sued after exec hurt in crash in Germany: $2.5 million settlement

The plaintiff was a 50-year-old executive working in the MetroWest area. He was required to travel internationally on a fairly frequent basis.

The plaintiff's employer developed a relationship with another Massachusetts company that touted itself as one of the world's largest transportation companies. The plaintiff's assistant contacted the Massachusetts-based transportation company and arranged to have the plaintiff picked up at his home and brought to Logan International Airport, and then for a driver to pick him up at the Frankfurt Airport in Germany and brought to his ultimate destination.

On Sept. 23, 2015, upon arriving at the Frankfurt Airport, the plaintiff was met by a driver with a Tesla sedan. The plaintiff was situated in the right rear passenger seat. At some point during the trip, the driver seemed to pass out and the car veered off the Audubon, through a fence and across a field, at a high rate of speed. The plaintiff, still belted at the time, was leaning over the front passenger seat trying to drive the car but obviously had no access to the brake.

Eventually, the car struck a tree and the plaintiff was badly injured. His life-threatening injuries required that he be air-flighted to a German hospital where he underwent several emergency surgeries. He was then brought back to the United States for further treatment.

Plaintiff's counsel immediately engaged the Massachusetts transportation company and argued that it had responsibility for the accident in that it should have vetted the German driver better (it was later discovered that the driver admitted to having passed out previously), and that it had vicarious liability by and through the actions of the German company because it gave the public every reason to believe that it was a single company handling the transportation.

The Massachusetts company denied all liability and said that the German company was merely an independent contractor and that any case would have to be pursued in Germany.

Even after the case was placed into suit in Norfolk Superior Court, the Massachusetts transportation company never answered the complaint, instead filing a motion to dismiss citing, among other things, forum non conveniens. The company argued that the accident happened in Germany, that it was subject to German law, and that any and all witnesses including the driver were German residents.

Plaintiff's counsel had engaged both the American transportation company and the German transportation company in talks from the outset of the case. Plaintiff's counsel argued that German law should be applied for liability purposes (Germany has a strict liability policy concerning car accidents) but that American damages should apply because the German law was so restrictive that it could not adequately compensate the plaintiff for his injuries.

For example, German law provides very little by way of compensation for pain and suffering. Most of the German damages model is based on lost wages. Because the plaintiff was a highly regarded executive, his company continued to pay his wages even when he was not working. Consequently, he had no lost wages.

The plaintiff made an argument for loss of earning capacity, but German law is more literal when it comes to loss of wages. Thus, the German defendant offered very little money to resolve the case; the American transportation company, meanwhile, did not offer anything.

Still, the plaintiff persisted and obtained a copy of a contract that existed between the two transportation companies. The document stated that the German company had to adhere to strict guidelines set by the American company. In short, the contract dictated the color of the car that would have to be used in Germany; what the drivers could wear; what they could and could not talk about; what needed to be in the car; what time they would have to arrive at a job; how they would bill; a prohibition against tips; and a requirement that the German driver carry placards that identified the driver as part of the American company. It even stated that the drivers could not give out business cards other than that of the American company.

Accordingly, the plaintiff argued that the American company was exerting significant control over the German company and pointed to the fact that, in accordance with the contract, if a dispute arose between these two companies, the German company had agreed to submit to Massachusetts jurisdiction.

Just prior to the motion to dismiss being heard, the defendants agreed to mediation. The plaintiff's actual injuries were barely ever a point of contention. He had vertebral fractures that required rodding, a fractured wrist that had to be fused, and a brachial plexus injury that left his right arm impaired. Instead, the entire mediation was a microcosm of the case itself in which nothing but liability, choice of laws, and venue were argued.

After a full day of mediation, the defendants agreed to jointly pay $2.5 million to settle the claim.

Action: Motor vehicle negligence

Injuries alleged: Vertebral fractures, fractured wrist, brachial plexus injury

Case name: Withheld

Court/case no.: Norfolk Superior Court/case no. withheld

Jury and/or judge: N/A (mediated)

Amount: $2.5 million

Date: Oct. 8, 2020

Attorneys: Darin M. Colucci of Colucci, Colucci, Marcus & Flavin, Milton (for the plaintiff)