

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
AT COVINGTON
CIVIL ACTION NO. 2:20-CV-00063-DLB-EBA
ELECTRONICALLY FILED

TIMOTHY S. SUDEITH

PLAINTIFF

AND

TRAVELERS INDEMNITY CO. OF AMERICA

INTERVENING PLAINTIFF

v.

PLAINTIFF'S PRETRIAL MEMORANDUM

E & J TRAILER SALES AND SERVICE, INC.;
AMPLE TRAILER LEASING & SALES INC.;
AND RYAN M. SALTER

DEFENDANTS

COMES the Plaintiff, by counsel, and pursuant to this Court's scheduling order [D.E. 87] as amended by Order dated January 11, 2024 [D.E. 112], hereby submits his pretrial memorandum.

I. STATEMENT OF FACTS

At approximately 11:20 a.m. on April 26, 2019, Tim Sudeith was seriously injured when he and a coworker traveling northbound on I-75 in Fort Mitchell and their vehicle was struck by a bobtail semi-truck driven by Ryan Salter, who was an employee of E&J Trailer Sales and Service, Inc., the owner of the truck. Tim Sudeith, is a Senior Vice President and head of a business unit for PlayCore, Inc., a leading manufacturer of institutional recreational and playground equipment and related products. Tim and his coworker, Sarah Howard, had just arrived in Kentucky from Minnesota for a sales call and rented a vehicle at the airport. Tim and Sarah were traveling in the right lane when Ryan Salter, who was in the center lane, abruptly braked and swerved into the other lane, hitting the rented Jeep Grand Cherokee that Tim was driving. The parties expect to enter into a formal stipulation of liability prior to the final pretrial conference.

Tim was wearing his seat belt, but the side impact of the collision caused him to forcefully hit his head on the B-pillar of the vehicle and also strained his back, aggravating an old, asymptomatic injury. It also led to other injuries including to his left elbow and leg.

Tim called 911 and waited for law enforcement to respond. He told the responding officer immediately that he had hit his head. Tim declined an ambulance, but asked for directions to the nearest emergency room because his head hurt and his vision was blurry. Tim was unable to drive himself, so Ms. Howard drove him straight to the St. Elizabeth-Edgewood emergency department, where he was triaged less than one hour after the collision. The examining physician noted “posterior headache, blurred vision, ringing in his right ear.” Tim also reported neck and lower back pain and hip tenderness. A CT of the head was performed. Tim was diagnosed with a concussion and paraspinal muscle spasm.

Tim abandoned the visit to his client and instead returned home to Minnesota, arriving late on a Friday night. The next morning, Tim’s wife, Mertyce, took Tim first to an urgent care facility, where he was quickly referred to the nearby Park Nicolett Methodist Hospital emergency department. .

Tim arrived at Methodist Hospital just over 24 hours after his injury. The history taken by the emergency medicine physician included “nausea, dizziness, general ‘fuzziness’, tinnitus in the right ear, numbness in a region on the left side of his head, headache, intermittent stabbing pain at the top of his head, and tingling in the left long and ring fingers” as well as “bilateral blurry vision.” Tim underwent serial MRI/MRA of the neck, head, and brain, on April 27 and April 28. Those studies found no acute injuries but did find changes associated with trauma. Tim was eventually referred to ophthalmology, neuro-optometry, neurology, and for follow up with his primary care physician at Mayo Clinic. Since then, he has continually been treated for post-concussive

syndrome and vision changes. He also underwent physical therapy relating to his neck, back, and hip pain for approximately six months after the wreck.

Tim's injury-related care has been managed by Dr. Victor Van Hee, an occupational medicine physician. Dr. Van Hee has related the following persistent symptoms to the wreck: headaches, cognitive difficulties, vision abnormalities, tinnitus, vertigo, and intolerance of light, noise, screen time, and protracted cognitive work. He also related new cervical, thoracic, and lumbar strain, as well as substantial aggravation of lumbar radicular pain related to lumbar disc bulging, to the wreck, and noted elbow pain. At his most recent appointment in November 2023, Dr. Van Hee noted that Tim had reached maximum medical improvement, but that Tim had "unfortunately little change in cognitive issues and headaches." He continues to suffer many of the same post-concussive syndrome symptoms, including headaches, eye strain, fuzziness and difficulty focusing when reading, and memory issues. He still requires the help of coworkers to take notes and prepare summaries, and is still unable to review contracts, which he frequently did on his own before the collision.

Tim's vision treatment focused on neuro-optometry beginning several months after the wreck. His vision-related symptoms include headaches, blurred vision, poor visual memory, loss of place when reading, dizziness, reduced reading comprehension, reduced reading speed, light sensitivity, reading print in and out of focus, eye strain, and short attention span when reading. These are consistent with a neurological injury due to concussion, known as "Post Trauma Vision Syndrome." His neuro-optometric diagnoses included headache, dizziness, convergence insufficiency, binocular vision disorder, disorder of eye movements, disorder of saccadic eye movements, ambient vision dysfunction, visual field defect and abnormal Visual Evoked Potential. These are permanent injuries and are different from any pre-injury vision problems Tim had. His

treating neuro-optometrist at Bright Eyes Vision Center related all these symptoms to the wreck. To compensate for his injury, Tim must now wear prism glasses. He underwent occupational therapy and performed exercises to reduce some of these symptoms, with limited effect.

Tim was followed by a neurologist who referred him to a neuropsychological evaluation in April 2021. The conclusion of that evaluation was that Tim had a “focal weakness in verbal delayed memory, with performances ranging from mildly impaired to low average.” Attention and processing speed were average. Though he had no such testing before the wreck, this is inconsistent with his pre-wreck level of functioning and the neuropsychologist noted declines “relative to his high estimated baseline.”

All of these ongoing conditions have caused Tim pain, a decline in his work performance, and a general frustration and loss of enjoyment of life. He lacks the recall to be an effective salesman. He lacks the cognitive skills to easily analyze complicated financials, which he routinely did before the crash. He lacks the stamina to work the 10-12 hour days that were routine before the crash. Now, he struggles to routinely put in 40 hours a week even with the help of his coworkers. Dr. Van Hee noted that Tim’s job performance was “substantially limited by his injury,” that he was totally unable to perform his job after the wreck, and that Tim continues to have difficulties with cognitive effort. Dr. Van Hee recommended that Tim reduce his maximum workdays and take frequent breaks and perform no activities that require “great concentration and focus.” These are permanent restrictions. Because of his injuries, Tim will likely leave the workforce early or be unable to maintain equivalent employment, which is the basis for his claim of impairment of earning capacity.

II. QUESTIONS OF FACT

The Parties anticipate stipulating to the negligence of Defendants, so fault will not be at issue. In addition, Kentucky law creates a presumption of reasonableness of all medical bills incurred as a result of a motor vehicle collision. KRS 304.39-020(5)(a). The Defendants have not offered any evidence to rebut that presumption, so the reasonableness of the incurred medical bills will not be at issue. The questions of fact for the jury to decide are as follows:

- A. Whether Defendants' negligence was a substantial factor in causing each of Tim Sudeith's individual injuries;
- B. Whether Tim Sudeith has suffered an impairment of his ability to earn money as a result of the Defendants' negligence; and
- C. The extent of Tim Sudeith's past and future pain and suffering as a result of the Defendants' negligence.

III. QUESTIONS OF LAW

Plaintiff does not anticipate any unsettled questions of law that will arise in this case.

IV. EXPECTED EVIDENTIARY OBJECTIONS

Plaintiff's expected evidentiary objections will be contained in the Parties' motions *in limine* and objections to deposition designations.

V. PENDING MOTIONS

Defendants have filed a pending motion to separate witnesses [D.E. 113]. Plaintiff anticipates filing motions *in limine* no later than January 22, 2024, pursuant to the Court's scheduling order.

VI. SETTLEMENT NEGOTIATIONS

The parties have mediated this case twice, most recently on October 20, 2023, without substantial progress toward resolution. The last mediation was after the close of fact discovery and after decision of all substantive motions by the Court. Plaintiff does not anticipate that any further attempts at alternative dispute resolution would be fruitful.

Respectfully submitted,

ATTORNEYS FOR PLAINTIFF

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CERTIFICATE OF SERVICE

I hereby certify that on January 16, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will notify all registered parties.

BY: /s/ Jerome P. Prather
Jerome P. Prather