The Very Rare Case of Additur in Kentucky

4871 - Auto Negligence - In an all too common occurrence, a Louisville jury awarded a plaintiff with soft-tissue symptoms medicals and nothing more – the trial court didn't grant a new trial but instead ordered the unusual remedy (in Kentucky at least) of additur

Hale v. Sayed, 10-4245
Plaintiff: Lawrence I. Young, *Romines Weis & Young*, Louisville
Defense: David C. Travis, *Travis & Herbert*, Louisville
Verdict: $6,421 for plaintiff less 40% comparative fault
Court: **Jefferson**, J. Cunningham, 4-17-13

Tenisha Hale, then age 29, was injured in a rear-end wreck on Poplar Level Road in Louisville on 10-22-09. She was struck by Hassan Sayed, the impact knocking her through the intersection. Sayed defended on fault, implicating both a sudden stop by Hale and the duties of a third-party (Michael Williams) who had pushed him forward.

However it happened there was a crash and Hale was treated and released at the ER for soft-tissue symptoms. She was then treated four days later by her family doctor.

Only after this initial course of care did Hale make a phone call to 1-800-Ask-Gary. Gary apparently directed her to the captive 1st Physicians Rehabilitation where she was treated for ongoing soft-tissue pain by Dr. Greg Bronner, Osteopath and Dr. Anthony Weichand, Chiropractor.

Hale's medical bills were $10,240 and she sought $25,000 more for pain and suffering. In this lawsuit she sought damages from Sayed. Sayed defended on fault as noted above. He also diminished damages, thinking very little of Hale's treatment with 1st Physicians Rehab.

This case was tried for three days in Louisville. As the jury deliberated, it asked several questions about insurance. Although the questions are not a part of the court record, apparently the jury asked about who paid the medicals and whether insurance factored into the case. The court didn't answer.

Returning with a verdict, the jury found Sayed and the non-party Williams at fault – it rejected apportionment to the plaintiff. That fault was then assessed 60% to the defendant and 40% more to Williams.

Moving to damages, Hale took $6,421 of her medicals but nothing for pain and suffering. The court did not enter a judgment on the verdict and instead entertained the plaintiff's motion for a new trial.

Hale argued in her motion that even the defense IME expert (Smith) had conceded there was some injury. Sayed replied that Kentucky law was clear – pain and suffering need not be awarded in every case where there is an award of medical bills.

Judge Cunningham entered his order and agreed the verdict was inadequate. He noted the current state of the law in Kentucky misleads jurors about the role of insurance, the court theorizing that this leads to all sorts of false presumptions, including wondering if the plaintiff even had car insurance. In crafting a remedy, rather than ordering a new trial, Cunningham instead chose to order "additur."

The court explained that while neither party would like the remedy, it was better than a second full-blown trial. Cunningham ordered additur to $3,852, that sum representing 60% of the raw verdict. Sayed has since moved to set aside the additur order. He wrote in his motion that additur has no legal basis as Kentucky doesn't recognize the doctrine.

The case subsequently settled. And get this. In the weeks after the trial, a nurse who sat on the jury learned what happened at trial and that essentially the plaintiff had taken nothing. Which was no the

intent of the jury. This juror, from her own pocket, wrote a check to the plaintiff for $500. You think jurors don't take their responsibilities seriously?