

The Legal Intelligencer

T H E O L D E S T L A W J O U R N A L I N T H E U N I

1843 - 2003

PHILADELPHIA, FRIDAY, SEPTEMBER 19, 2003

U.S. to Pay \$5 Mil. in Tort Claims Suit

BY SHANNON P. DUFFY

U.S. Courthouse Correspondent

In one of the largest single-victim personal injury settlements ever under the Federal Tort Claims Act, the government has agreed to pay \$5 million to a woman who suffered burns over 30 percent of her body and partial amputation of her right hand after her stalled car was rear-ended by a nine-ton Postal Service truck.

Plaintiff's attorneys Thomas R. Kline and David J. Caputo of Kline & Specter said in an interview yesterday that Natalie Cordero's case had significant strengths, but also presented serious challenges, especially since FTCA plaintiffs are not entitled to jury trials and must look instead to a judge for calculation of any award. The case is *Cordero v. United States*.

Cordero was 22 at the time of the October 2000 accident, Kline said, and she spent six weeks in the hospital recovering from burns to her face, neck, back, arms and hands. The fingers on her left hand had to be amputated.

Her medical bills have already topped \$1 million, he said, and doctors tell her that she will likely need 25 more surgeries to treat the burns.

One expert projected that Cordero's future medical expenses will top \$2 million, Kline said.

But Kline said Cordero's case also posed challenges at trial because she was uninsured at the time of the accident, and lawyers for the government were arguing that an uninsured plaintiff is not entitled to seek any economic damages or past medical expenses.



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And as a beauty-school dropout with only a high school diploma and no job, Kline said, Cordero's economic damages were limited.

Nonetheless, Kline said, if the case had gone to trial, he would have argued that Cordero intended to return to beauty school and become a cosmetologist, but that she is no longer able to pursue that occupation as a result of the accident.

"Her inability to use her left hand, her breathing problems around perfumes and chemicals, and her shame over her own appearance prevent her from pursuing that job," Kline said.

Kline said witness accounts of the accident and the government's own investigation showed liability, but that government lawyers continued to contest any liability and were prepared to argue at trial that Cordero was also partially responsible because she chose not to leave the car when it stalled.

Court records show that Cordero was driving a 1982 Chevy Malibu station wagon westbound on the Platt Bridge when her car stalled, coming to rest in the right lane, on the up slope of the bridge.

Kline said Cordero did not have a cell phone to call for help, and decided instead to put her flashers on and wait for assistance.

The weather was clear and the road was dry, Kline said, when a Postal Service truck driven by Joseph Kasavage turned into the right lane and started across the bridge.

Kasavage testified that he was driving 40 to 45 miles per hour before he saw Cordero's car; but Kline said a witness testified that the truck's speed was closer to 65 or 70.

Witnesses said Cordero's car flipped multiple times and was quickly engulfed in flames.

At his deposition, Klein said Kasavage

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"stated ... that a van traveling ahead of him blocked his view [and that] when the van suddenly switched lanes, he saw Ms. Cordero but it was too late to avoid hitting her."

That account, Kline said, was no defense to liability and conflicted with the account of a cab driver who said there was no van in front of Kasavage and that Cordero's vehicle could be seen from hundreds of yards away.

Kline said the cab driver testified that he slowed down to make sure Kasavage would have enough room to get into the left lane, but that Kasavage never tried to get over until it was too late.

The settlement resulted from negotiations conducted by mediator Thomas Rutter of ADR Options, Kline said.

By settling, the lawyers avoid a non-jury trial before U.S. District Judge Legrome D. Davis.

Both sides also avoid the risks involved in motions that would have been decided by Davis before, during and after the trial.

The government's lawyers, Assistant U.S. Attorneys Susan Dein Bricklin and Richard Mentzinger Jr., had filed a motion for partial summary judgment that challenged Cordero's right to damages as a result of her status as an uninsured motorist.

Bricklin and Mentzinger argued that under Pennsylvania's Motor Vehicle Financial Responsibility Law, an uninsured driver cannot recover medical expenses or lost income.

Kline said the Pennsylvania Supreme Court has never addressed the effect of MVFRL's provisions on the ability of an uninsured motorist to recover medical expenses and lost wages from a third-party tortfeasor.

In response to the government's motion, Kline argued that since MVFRL allows a motorist to secure as little as \$5,000 in insurance, an uninsured plaintiff would be barred

under the statute only from recovering the first \$5,000 of medical expenses.

Similarly, Kline said, Cordero's lost wages claim would not be reduced at all since there is no minimum first-party coverage requirement for loss of income.

Kline said he recognized that his argument has been rejected by the Pennsylvania Superior Court, but that he pursued it because Superior Court decisions are not binding on the federal courts.

Kline said his own interpretation of MVFRL's limitations was a "far more reasonable reading of the statute," especially in a case where the plaintiff's medical bills have been paid by the Pennsylvania Department of Public Welfare, which has a statutory lien on any recovery by his client.

"Under the government's reading of the MVFRL ... [a] plaintiff would be unable to plead and prove her medical expenses and lost income at trial, yet plaintiff's recovery for non-economic damages will be subject to DPW's lien," Kline said.

"The asymmetrical result urged by the government — allowing a lien but denying a right of recovery — makes no sense," he said.

But even if an uninsured plaintiff is barred by MVFRL from recovering medical expenses and lost income that are "paid or payable," Kline argued that the statute would not preclude recovery for future medical costs and future lost earning capacity "because such losses have not even been incurred yet and cannot, therefore, be 'paid or payable.'"

Kline said the Superior Court decisions holding that medical expenses and lost wages are not recoverable by an uninsured motorist from a third-party tortfeasor do not address the issue of future expenses.

In an interview, Mentzinger declined to comment on the settlement except to say that the government "took all the factors into account and decided this was an appropriate settlement." •