

Conciliation Role Play - Tort Case

General information

This case involves a car accident in a rotary between Sandra Small and Gerry Jerome. Ms. Small was driving home from work when she entered the rotary, and on her way out of the rotary, she was struck from behind by the defendant's car. Ms. Small was sent to the emergency room, where she was diagnosed with neck and lower back strain.

A police report was filed and states that the defendant may have been traveling at an excessive rate of speed, but no citation was issued at the scene. The left front section of the defendant's car hit the rear of the plaintiff's car. The police report lists one eye-witness named Bill Waters, who was sitting in his car at a gas station just off the rotary at the time the accident occurred.

Plaintiff claims that the defendant was operating his car negligently at the time of the accident because he was speeding and failed to yield to her in the rotary.

Defendant is contesting both liability and damages. His position on liability is that the plaintiff was entering the rotary and he had the right of way. As to damages, the defendant contends that the plaintiff suffered only a soft tissue injury at best, and had only a very short period of disability.

PLAINTIFF'S COUNSEL

You represent Plaintiff Sandra Small, a **77-year old** woman. Ms. Small filed against Defendant Gerry Jerome, the driver of a car that hit her while she was driving in a rotary.

On the day of the accident, Ms. Small was driving home from her part-time job at Lowell General Hospital. She entered the rotary, and on her way out of the rotary, she was struck from behind by the defendant's car. Ms. Small was sent to the emergency room, where she was diagnosed with neck and lower back strain and elevated blood pressure. She treated with a chiropractor for over 1 year.

Ms. Small incurred **\$5,170** in medical expenses and **was out of work for five weeks**. She was partially disabled for an additional 46 weeks in the opinion of her primary care physician. Her primary care physician has causally related the treatment and disability to the accident. **Her lost wages total \$1,600**. PIP has paid \$4,000 to her.

You claim that the defendant was operating his car negligently at the time of the accident because he was **speeding and failed to yield** to her in the rotary.

Your position at the conciliation conference is that liability is clear and damages are significant.

The depositions of both Sandra Small and Gerry Jerome have been taken, and you have provided defense counsel with all relevant medical records.

You want a trial date as soon as possible, preferably within the coming month because Ms. Small is elderly and in poor overall health. As her counsel, you are concerned that she eventually may not be able to testify at trial if it is not scheduled soon.

Your demand at the conciliation conference is \$15,000. You are **frustrated** by the lack of attention this case has been getting from the defendant's insurer United Insurance Companies, Inc.

You believe that this case is going to have to be tried.

You would prefer to settle the case and are open to the idea of mediation, but it would have to take place ASAP!

Your client has authorized you to settle the case at conciliation for **\$10,000**

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PLAINTIFF SANDRA SMALL

Plaintiff Sandra Small is a **77-year old** woman. You are a widow and live with your younger sister.

You have experienced back and neck pains for over one year since the accident. You have been receiving treating from a chiropractor and **your treatment has just ended.**

Prior to the accident, you worked 10 hours per week for \$8.50 per hour. (\$85 weekly). After the accident, you were out of work for 5 weeks. You then returned to work but could only work 3 hours per week (one afternoon) for almost a year. You could not return to your full schedule sooner because back pain prevented you from being able to stand on your feet for a long time.

You have recently returned to work at your regular schedule. But, you are worried about your blood pressure and your overall health.

You want this case over with. **You cannot understand why the insurance company does not take your injuries seriously.**

You have been in other car accidents over the years, but none that have caused you this much pain and suffering.

You have discussed settling the case with your attorney for less than \$15,000.

You have agreed that if the defense offers anything close to **\$10,000**, you would take it just to have the case over with and to get on with your life.

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DEFENDANT'S COUNSEL

You represent the Defendant, Gerry Jerome.

The defense is contesting both liability and damages. His position is the plaintiff has not been in the rotary for as long as she claimed, and thus he had the right of way.

There was **very minor damage to defendant's vehicle**, and since there were no photographs of the plaintiff's vehicle, one would assume her damage was also minor.

Contrary to the plaintiff's assertions, the police report states that the defendant was in the rotary before the plaintiff, so the plaintiff, as the entering vehicle had the obligation to yield, however, the report also notes that neither car had exhibited caution.

The police report lists one eye-witness named Bill Waters, who was sitting in his car at a gas station just off the rotary at the time the accident occurred.

On the issue of damages, you contend that the **plaintiff suffered soft tissue injury** at best, and that the records show prior car accidents.

According to your IME (independent medical exam), Ms. Small received **excessive treatment** and that **any disability** from this accident was just **one week**.

You are **frustrated** that you just received Ms. Small's medical records from her counsel the week before the conciliation conference, despite numerous requests and a pending motion to compel production of documents. This is why you have yet to respond to the Plaintiff's offer.

You have contacted the eye-witness Bill Waters, and after speaking with him, you have determined that **his testimony may be helpful** in proving your client had the right of way, so you need to depose him or call him as a witness at trial.

Also, Mr. Waters told you that he may be moving out of state within the next six months. You have not discussed this with opposing counsel.

You have arranged for the insurance adjuster to be available by telephone during the case conference and **you have authority to offer \$6,500 at the conciliation.**

You can call the adjuster for more authority if the negotiations get in the **\$7,000 - \$11,000** range.

The insurer would agree to go to **mediation.**

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CONCILIATOR

Contested Issue:

1. Liability: who was in the rotary first? ; who had the obligation to yield?
2. Damages: was plaintiff's treatment reasonable and necessary or was it excessive?
3. Negotiation History: plaintiff feels case not taken seriously and defendant feels plaintiff did not cooperate with providing medical records because she has something to hide.
4. Timing of Trial: plaintiff wants trial right away due to condition of client and defendant may want a delay to depose the eye-witness.

Conferencer's Goals:

- A. To facilitate a settlement of the case between \$7,000 and \$11,000; OR
- B. To help the parties to agree on the following:
 1. A deadline to depose the eye witness
 2. A trial date
 3. That they will consider scheduling a mediation session before trial