

IN THE COURT OF COMMON PLEAS IN THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

DANIEL ZEIGLER,)
) C.A. No. CPU5-11-000124
Plaintiff,)
)
)
v.)
)
STATE FARM MUTUAL AUTOMOBILE)
INSURANCE COMPANY,)
)
Defendant.)

May 18, 2012

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DECISION AFTER TRIAL

Plaintiff Daniel Zeigler (hereinafter “Zeigler”) has filed this civil action with the Court seeking recovery against Defendant State Farm Mutual Automobile Insurance Company (hereinafter “State Farm”) under his underinsured motorist policy. Liability was not contested by the parties. Further, State Farm acknowledges that a valid policy of insurance was in effect when Zeigler was injured which included underinsured motorist coverage. The only issue before the Court is the valuation of Zeigler’s claim. The Court held a trial on this matter and reserved decision. After a careful consideration of the evidence introduced at trial and the parties’ arguments, the Court finds for Zeigler and

awards damages against State Farm for the total amount of \$7,120.00. This award is in addition to the amount already recovered by Zeigler from the tortfeasor.

Zeigler was involved in an automobile accident on January 19, 2009 (hereinafter the “automobile accident”). The vehicle he was driving was struck in the rear. At the time, he was covered by an underinsured motorist policy issued by State Farm.

Zeigler suffered injuries as a result of the automobile accident. He has received the policy limits of \$15,000.00 for these injuries from the insurance carrier that covered the automobile and driver that struck his vehicle. It is his contention that he has suffered damages in excess of this amount and has filed a claim against his underinsured motorist policy with State Farm. The calculation of these damages is the sole issue before the Court.

Awards for pain and suffering are highly subjective and should be committed to the sound discretion of the [judge], especially when the [judge] is being asked to determine injuries not easily calculated in economic terms. In making an estimate of damages to be awarded for pain and suffering, the [judge] may consider the nature and extent of the injuries and the suffering occasioned by them and its duration or prospective duration. The [judge] may also consider the age, health, habits and condition of the injured party before the injury as compared with his or her condition afterwards. In determining whether sufficient evidence exists to support an award of more than nominal damages for emotional distress, the court examines factors such as the need for medical, psychological, or psychiatric treatment, the presence of physical symptoms, the loss of income, and the impact on the plaintiff’s conduct and lifestyle. Other significant factors the [judge] should consider in evaluating pain and suffering include the plaintiff’s use of sedatives and other drugs to relieve pain and their effect and any aggravation of preexisting disorders by the incident in question.

22 AM. JUR. 2D *Damages* §221 (2012).

In determining the value of the damages that Zeigler is entitled to as a result of the automobile accident, the Court considered a number of factors Zeigler proved at trial by a

preponderance of the evidence. Given these factors, the Court awards Zeigler \$6,500.00 in damages against State Farm for his pain and suffering resulting from the automobile accident, plus the amount of \$620.00 for out of pocket special damages that Zeigler has incurred for medical treatment he received for the injuries he incurred as a result of the automobile accident.

Zeigler suffered a chronic lumbar sprain and strain as a result of the automobile accident. It started as a mild back pain, described as “paraspinal” in the right lower back. During the first year after his accident, the back pain would radiate down his buttocks and down through both legs. He would sometimes feel numbness in his feet. During this period of time, his pain would normally rate as a 3 to 6.¹ Sometimes, it might flare up to approximately an 8, especially when the pain was radiating down his legs. He used prescriptions during this time to control the pain and received chiropractic treatment and physical therapy.

Zeigler is a 48 year old Service Technician for Grotto’s Pizza. In that position, he performs maintenance duties at the chain’s sixteen locations statewide and even makes pizza in the kitchen during the summertime. In addition to the injuries he suffered as a result of the automobile accident, he suffered a work related back injury on or about January 11, 2010, at Grotto’s Pizza. He was lifting a bag out of his truck at work and twisted the wrong way. His work injury resulted in low back pain in the same area that was injured by his automobile accident. He rated the pain at the time at about an 8. After the work incident, Zeigler renewed his chiropractic treatment and was prescribed percocet for the first time to control the pain.

¹ The ratings Zeigler was using during his treatment to describe his pain were on a scale of 1 to 10 with 10 being the worst pain.

Although three years have now passed, Zeigler still suffers lingering low back pain related to his automobile accident to this day. The injuries appear to be soft-tissue in nature. He has not suffered any permanent damage. Medical testing has not been able to find any abnormalities to his spine attributable to his automobile accident. However, a month does not go by where he does not have some discomfort or a flare up that normally results in pain that he rates as a 3 or 4. He describes the pain as feeling “like a knot” in his lower right back. In July of 2011, Zeigler was removed from kitchen duty at Grotto’s Pizza as his low back pain would worsen when he had to work in the kitchen and stay on his feet for any period of time. He currently has trouble walking long distances and standing for long periods of time. He also must be more careful when doing yard work and has trouble sleeping. Zeigler believes that his pain is mostly related to his automobile accident although he testified that up to 50% of his pain could be related to his work incident.

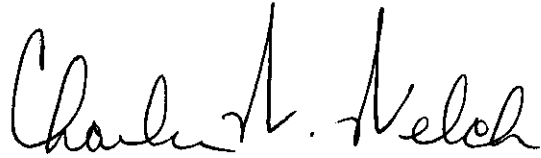
From the evidence provided at trial, the Court finds that Zeigler’s lower right side back pain is proximately caused by his January 19, 2009, automobile accident although his work related injury from January of 2011 is a contributing factor.² Considering these two causes together, the Court awards Zeigler damages for pain and suffering in the amount of \$6,500.00 for the portion of the pain and suffering sustained as a direct result of his automobile accident. Zeigler also has proven that he has incurred reasonable, additional out of pocket medical expenses in the amount of \$620.00 for the necessary treatment of his injuries that are related to the automobile accident during the period of

² It should be noted that medical testing on Zeigler has shown some degenerative disc disease that undoubtedly has affected some of his physical activities as well.

July 2011 through August 2011. Therefore, the Court also awards Zeigler an additional \$620.00 amount for the reimbursement of these expenses.

In conclusion, the Court finds State Farm liable to Zeigler in the amount of \$7,120.00, under his underinsured motorist coverage, for both pain and suffering and medical costs that were incurred for treatment of the injuries suffered by Zeigler as a result of the automobile accident. This award is in addition to the \$15,000.00 amount already recovered by the plaintiff from the tortfeasor

IT IS SO ORDERED THIS 18th DAY OF MAY, 2012.

A handwritten signature in black ink that reads "Charles W. Welch". The signature is written in a cursive style with a horizontal line underneath the name.

CHARLES W. WELCH
JUDGE