

# VIRGINIA LAWYERS WEEKLY

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## VERDICTS & SETTLEMENTS

### Traumatic brain injury claim strongly contested at trial

#### \$1,200,000 Verdict

In July 2009, the plaintiff was stopped at a red light when the defendant rear-ended her pick-up truck, totaling both vehicles and pushing the plaintiff into the car in front of her. The plaintiff was dazed and refused medical treatment at the scene, but she was taken by ambulance to the emergency room six hours later as she began to have vision problems, headaches and dizziness. After many visits to several physicians and neuropsychologists, the plaintiff was diagnosed with a mild traumatic brain injury, thoracic outlet syndrome and a shoulder impingement.

Prior to the accident, the plaintiff

worked as a bank teller and was an exemplary worker, being described consistently by her supervisors as competent, outgoing, well-organized and a role model. The plaintiff had preexisting migraine headaches and neck pain, but they did not prevent her from living a normal life. After the accident, the plaintiff could no longer do math, carry on conversations and organize at the level she did prior to the collision. The highest offer received prior to trial was \$500,000.

This case was tried over three

days in the Richmond Circuit Court.

At trial, the defendant admitted liability but contested all of the plaintiff's injuries except the thoracic outlet syndrome, which was related by the defendant's retained expert Dr. Terry Whipple. The defendant claimed that all of the plaintiff's symptoms were due to somatic tendencies, as alleged by the defendant's psychiatric expert Dr. James Levenson, M.D., and sleep apnea caused by the plaintiff's weight gain.

Over the three-day trial, plaintiff's counsel called lay witnesses and the plaintiff's primary care physician to show that the plaintiff was a significantly different person after the collision – physically, psychologically, cognitively and emotionally. Through the plaintiff's own treating doctors and the plaintiff's MTBI expert, Dr. Gregory O'Shanick, plaintiff's counsel demonstrated that despite having normal MRI and CT scans, the plaintiff did, in fact, suffer an MTBI.

Notwithstanding defense expert claims that 100 percent of people who suffer an MTBI recover 100 percent within three months, plaintiff's counsel established that approximately 10 to 15 percent of people that suffer MTBIs have lifelong symptoms. The jury deliberated for three hours before returning a verdict in favor of the plaintiff for \$1.2 million.

[13-T-160]



HALPERIN

**Type of action:** Personal injury – auto accident

**Injuries alleged:** Mild traumatic brain injury, shoulder impingement and rib subluxation requiring surgical repair

**Name of case:** Barnaby v. Hawk

**Court:** Richmond Circuit Court

**Case no.:** CL11-3004

**Tried before:** Jury

**Judge:** Hon. Gregory Rupe

**Date:** Sept. 25, 2013

**Demand:** \$945,000

**Offer:** \$500,000

**Verdict or Settlement:** Verdict

**Amount:** \$1,200,000

**Attorney for plaintiff:** Jonathan E. Halperin, Glen Allen

**Attorneys for defendant:** W. Tyler Shands and Carter Keeney, Richmond

**Plaintiff's experts:** Kenneth Zaslav, M.D., orthopaedic surgeon; C. Gregory Lockhart, M.D., thoracic surgeon; Gregory O'Shanick, M.D., neuropsychiatrist; Jeffrey Kreutzer, Ph.D., neuropsychologist; James Correll, Ed.D., therapist; Lori Shiffman, OT

**Defendant's experts:** James Levenson, M.D., psychiatry; Terry L. Whipple, MD, orthopaedics

**Insurance carrier:** State Farm