

# MASSACHUSETTS LAWYERS WEEKLY

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## TRIAL REPORTS

### Negligence

#### Personal Injury - Bicycle Accident

##### \$205,000 Settlement

In May 1982, the then 12-year-old plaintiff was riding her bicycle in a residential area. She turned left on a main street to travel northbound. Approximately 100 to 250 feet away, the defendant, who was travelling southbound, saw the plaintiff make a wide left turn, cut across the northbound lane and head northbound on the shoulder of the southbound lane.

As the defendant approached the plaintiff, the defendant claims the plaintiff cut in front of his motor vehicle. In spite of trying to swerve his car out of the way, he hit her. The plaintiff was knocked off her bike, and she struck the windshield, landing on her feet. The plaintiff said, "I'm sorry, I'm sorry; it was my fault."

The plaintiff was rushed to a local hospital where she was treated for bruises to her knee. No head injury was diagnosed. Five years later, after the plaintiff had emotional problems, she was diagnosed with a closed-head injury and possible temporal lobe epilepsy.

The defendants claimed that the plaintiff's injuries either pre-existed the above accident or were caused by other factors. The defendants asserted that the plaintiff's back, not her head, hit the defendant's windshield, and that she was treated for only leg injuries on the day of the accident.

The plaintiff's mother produced a head injury warning sheet which she stated was given to her by the staff of the local emergency room where her daughter was treated on the day of the accident. Additionally, the emergency room physician was located 11 years after the accident and his office notes showed that the plaintiff complained within 10 days of the accident of symptoms relating to a head injury.

The case was mediated before attorney Raymond Kenney, under the auspices of the American College of Trial Lawyers. The defendants asserted that the plaintiff was at fault for travelling the wrong way in violation of state law and for suddenly without warning turning in front of the defendant's vehicle. The defendants claimed that the plaintiff had admitted it was her fault. The

case was settled after lengthy negotiations with the medicaid department who reduced its lien by more than \$400,000. The total settlement included a cash payment, substantial reduction in lien and monthly payments to the plaintiff's special needs trust.

##### **Injuries alleged:**

Closed-head injury

##### **Name of case:**

Withheld

##### **Court/case #:**

Withheld

##### **Tried before judge or jury:**

N/A

##### **Special damages:**

Medicaid lien in excess of \$400,000

##### **Amount of settlement:**

\$205,000 plus \$400,000 reduction of lien

##### **Highest offer:**

\$205,000

##### **Insurance carrier:**

Withheld

##### **Attorneys for plaintiff:**

Kenneth I. Kolpan, Boston

##### **Attorney for defendant:**

Withheld

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