

# Lowell jury awards record \$2.25M in concussion suit

By Christina Pazzanese

[christina.pazzanese@lawyersweekly.com](mailto:christina.pazzanese@lawyersweekly.com)

A Boston personal injury lawyer walked into Superior Court last month with a daunting task: He had to convince a jury in Lowell that his client would never return to her job as a full-time schoolteacher because of a concussion she suffered following a car accident in 2006.

Even for a seasoned trial attorney like Kenneth I. Kolpan, it promised to be a challenge given the fact that the plaintiff never lost consciousness in the collision.

Until recently, Kolpan says, juries have been largely unfamiliar with what is known as a minor traumatic brain injury, or the fact that the trauma can be significant and have lasting effects on a person's life.

But questions placed to prospective jurors at sidebar by Judge Paul A. Chernoff revealed that publicity surrounding such injuries to professional and amateur athletes had made many newly aware and primed to grasp the potentially debilitating nature of a concussion. Two who ultimately would serve on the jury even had personal experience with brain injuries.

"It was a watershed moment in that the jurors were ready to fully understand what a concussion is," Kolpan says. "It's no longer a ding. It's no longer, 'You got stunned and you're going to be OK.'"

That awareness freed him to focus on the scientific evidence that showed Ellen Farrell had indeed been injured, without having to spend much time on whether a concussion is a serious injury or whether a person has

## VERDICT SPOTLIGHT

to be knocked out cold to have been harmed.

Boston defense attorney William F. Burke, who was not involved in the case, concedes that juries are better informed about brain injuries, but says the issue can be addressed with solid medical expert testimony.

"There's a lot of knowledge, but it's very shallow," the Adler, Pollock & Sheehan lawyer says.

### Liability contested

After a day and a half of deliberations, a Lowell jury awarded Farrell \$2.25 million, plus \$632,000 in interest, concluding that defendant Jonas Devenis' failure to properly maintain his 17-year-old car or operate it safely caused her injuries.

Kolpan says it is the biggest jury verdict of his three-decade practice and the largest award he knows of for a brain injury case in Massachusetts, particularly one in which the victim never lost consciousness.

After trial, the parties entered into a confidential settlement.

Going in, Kolpan says, he and co-counsel Mark F. Itzkowitz were concerned that convincing a jury in Lowell to award substantial damages for a brain injury would be tough



Plaintiff's lawyers  
Kenneth I. Kolpan (left)  
and Mark F. Itzkowitz

CHRISTINA PAZZANESE

given the region's reputation in legal circles as having a very conservative jury pool in a state not known for embracing personal injury plaintiffs.

They worried that, given the area's demographics and the tough economic climate, jurors might downplay their client's reduced capacity to teach.

The pair faced other obstacles as well.

It was not Devenis' car that collided with Farrell, but rather another driver who was not at fault.

Farrell had been driving on Route 3 in Bedford when the hood of Devenis' car lifted into the air and hurtled toward her windshield. Swerving to avoid the flying debris, Farrell was struck from behind by a Chevy Trailblazer, which sent her vehicle spinning onto the highway median.

She was taken by ambulance to the emergency room where she was diagnosed with a minor traumatic brain injury that left her with speech and memory difficulties, a reduced speed of processing information, and trouble with concentration and attention.

Experts for the defense testified that a CT scan showed no signs of a brain injury and claimed there was little proof to conclude that Farrell had suffered a concussion or that she would be hobbled with significant or permanent cognitive injuries as a result of the crash.

If anything, Farrell's depression and other life stresses, including a diagnosis and treatment for breast cancer shortly after the accident, were the more probable source of her post-incident symptoms, they testified.

Devenis' attorney, John A. Eklund of Lynch & Lynch in South Easton, did not return calls seeking comment on the verdict.

### Breaks in the case

That the 49-year-old Devenis had passed away from causes unrelated to the case just before trial made the suit tough for both sides, the lawyers say.

Kolpan and Itzkowitz were left trying to reconstruct what Devenis had known about the car's condition and his own culpability by relying on hearsay evidence and testimony from his parents and stepmother.

Devenis' family members appeared confident on the stand that their son had done nothing wrong and had given them the whole story about the accident before his death.

Under the theory of consciousness of liability, Kolpan was able to convince the

judge to admit Devenis' statement to Farrell and the other driver at the scene: "Don't call the insurance company; my father will take care of this."

The father, K. Peter Devenis, who serves as the administrator of his son's estate, testified at

**"There's a lot of knowledge, but it's very shallow."**

— William F. Burke, Boston

trial that the two did have an arrangement that, if Jonas were to get in a minor accident and no one was hurt, he should avoid filing an insurance claim.

The father also told the court his son said he was unaware the hood latch was broken and reassured him that the accident was minor.

To support that belief, the father pointed to the three-page operator's report that Devenis had filled out and filed with the Registry of Motor Vehicles right after the incident that seemed to show there had been no injuries.

But after examining the paperwork, Kolpan says, it was clear the report was missing a critical page. Over the father's repeated insistence that the document was complete, the stepmother, who once owned the vehicle, reached into her handbag and pulled out the full report in which Devenis had acknowledged injuring Kolpan's client.

"The missing page undoubtedly threw the father's and stepmom's credibility into doubt because it came out on the redirect that it was the stepmom who had the document in the courthouse and gave it to the father only when he'd been made to look like they were hiding that document," Itzkowitz says.

Kolpan says they also caught a huge break in discovery when they learned that Devenis had kept a daily journal for 20 years in which he wrote faithfully about his life. More importantly, he wrote about the various mechanical problems the car was having before the hood flew off, and what had happened the day of the accident.

Those written admissions contradicted statements Devenis had made to Farrell, his parents and stepmother, and the Registry of Motor Vehicles.

"He was writing one thing and telling them another because he wanted to please them, and I think the jury understood that," Kolpan says. "He just couldn't be believed."

MLW

### Law Office of Kenneth I. Kolpan, P.C.

Suite 1425  
175 Federal Street  
Boston, Ma. 02110

Tel: 617-426-2558

Fax: 617-426-7972

Email: ken@kolpan.com

Website: www.kolpan.com