tion, the Supreme Judicial Court rules. . . . . page 7.

Social Services

Child Abuse - Spanking

The Department of Social Services acted impermissibly on the evidence in determining that a plaintiff, who disciplined his minor son by spanking him, had committed "abuse" under G.L.c. 119, §51A, concludes the Supreme Judicial Court. . . . . page 8.

Criminal

Larceny - Intent

A defendant — who failed to pay a fisherman $2,915.89 in proceeds for a blue fin tuna caught by the fisherman and sold at auction by the defendant — was wrongfully convicted of larceny, where no evidence was introduced demonstrating that the defendant converted the fisherman's property "with intent to steal or embezzle," the Appeals Court decides. . . . . page 9.

Insurance

Fire - Intentional Conduct By Coinsured Party

An insurance company was freed by an "intentional loss" exclusion in a homeowner's policy from being legally required to pay a plaintiff policyholder for fire damage to her home, where the damage resulted from the intentional act of a person who was a coinsured party with the plaintiff under the policy, says a Superior Court judge. . . . . page 16.

Motor Vehicles

Insurance - 'Racing' Exclusion

An insurance company need not pay for damage which occurred to a policyholder's vehicle while he was driving on a speedway in events sponsored by the Porsche Club, as recovery by the policyholder was barred in such a situation by a "racing" exclusion in the subject policy, a Superior Court judge determines. . . . . page 16.

Civil Practice

Limitations - Car Accident - Death Of Defendant

A negligence action, which auto accident plaintiffs initiated against the executrix of the defendant's estate more than three years after the accident, was nevertheless timely in having been filed within one year after the defendant's death, holds a Superior Court judge. . . . . page 17.

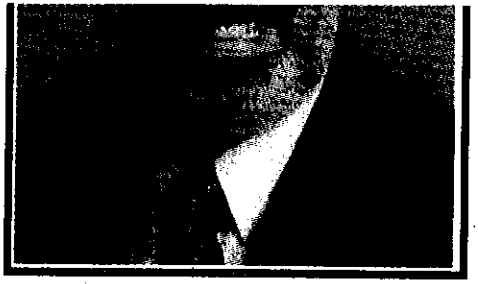
See news story on this page.

Morris N. Robinson of Wellesley stated that, as this "significant" change affects thousands of individuals and businesses, it will generate more work for tax lawyers on smaller cases.

"Before, if somebody had to pay $2,500 in taxes, they might not want to pay the tax and hire an attorney to dispute it, but now the person would be much more willing to hire a lawyer when he doesn't have to pay taxes until after a judicial resolution," he said.

Kenneth J. Vacovec of Newton, former president of the Massachusetts Bar Association, commented that the new legislation will also increase the likelihood of settlements with the Department of Revenue.

"There will be much more incentive for the DOR to take half a loaf rather than none," he said.



MORRIS N. ROBINSON
Thousands of cases affected

Vacovec maintained that the changes, which follow the federal approach to tax appeals, create a "very powerful tool" for taxpayers while maintaining fairness.

Michael J. Nathanson of Boston added that the legislation could also speed up the

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Chronic-Pain Auto Accident Case Results In Big Award

Some Skeptical Of Recovery Theory

BY WENDY L. PFAFFENBACH

VERDICTS & SETTLEMENTS PLUS

Can a low impact rear-end collision causing slight property damage result in a valuable "chronic pain syndrome" case?

A recent $107,500 arbitration award indicates that the answer is "yes."

Edward C. Bassett of Worcester, counsel for the plaintiff, said that the case should encourage plaintiffs' attorneys to invest time and money in chronic-pain injury cases instead of treating them as "typical whip-lash" cases and moving them quickly to settlement.

Bassett emphasized that although chronic pain syndrome cases are "relatively new," orthopedic studies describe chronic pain syndrome as the "most disabling medical entity today."

But despite Bassett's success, other lawyers said that — because juries and insurance adjusters remain skeptical about chronic pain syndrome cases — it is important for a lawyer to adequately screen a case before deciding to invest significant time and money.

Donald L. Gibson of Marshfield revealed that "plaintiffs' counsel throughout the commonwealth are cautious and weary about these cases."

The arbitration award was reported in

■ continued on PAGE 35

Worcester Court On Site Favored

Worcester's new $100 million courthouse will be built on a parcel known as the "Schwachman property" on Main Street — a spot that has been favored by lawyers and judges.

Construction of the courthouse is scheduled to begin in August 2001, according to Division of Capital Asset Management spokesman Kevin Flanigan.

DCAM's announcement came as a relief for members of the Worcester bar who were worried that the stalemate over selecting a site might result in the forfeiture of the entire $100 million allotted for the court. (See "The Battle Over The Worcester Courthouse," June 14.)

JUDGE DANIEL TOO
'Thrilled' by site sele

Superior Court Judge Daniel F. Toomey, who sat on the site selection committee, remarked that "universally, throughout the judiciary and business community everyone is thrilled by the site selection."

Edward W. McIntyre, past president of the Worcester County Bar Association, said that "the city will have a spectacular visual symbol of a new Worcester. [The courthouse] will spur development and refurbishment of the downtown — and the people who work in the courthouse will have a much cleaner, safer, more user friendly environment."

Fight For Your Site

A few months ago a frustrated Worcester legal community doubted whether the courthouse would ever be built.

Last January the site committee members became sharply divided over where the courthouse should stand, according to

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Lawyers Win Dispute Over Worcester Court Site

■ continued from PAGE 1

place of authority," he said.

Lawyers also treat each other with more respect when they are working in a well designed, impressive environment, Angelini added.

Similarly, the building will foster a sense of civic pride for the Worcester community, said Edward P. Ryan Jr. of Fitchburg.

"Cicero said that one can judge a society by its public buildings," he said. "If we were to be judged right now we'd be judged poorly, but now with the passage of the bond bill we are on the way."

Getting Physical

Apart from the positive psychological effects the new courthouse will bring, it will also create a much better physical work environment for the attorneys, judges, clerks, secretaries and jurors who have been laboring in terrible conditions for years, lawyers said.

"In summer the heat is unbearable; people are working in converted closets; and the lock-up, which was designed to hold 10 to 15 prisoners, now must hold around 40," said O'Brien. "Hats off to the people who work there. A new building can do nothing but improve their performance."

The new courthouse will also provide better working conditions for lawyers, said McIntyre.

Although no plans are drawn yet for the courthouse, McIntyre hopes it will provide attorney-client meeting rooms, cloak rooms, lockers and maybe even an electronic kiosk, like the kind found in airports, to direct people to the location of their proceeding.

Some judges, however, have their sights set on much smaller luxuries.

"Parking!" said Toomey. "I'm thrilled by [the thought of] it."

A Vibrant Downtown

The location of the courthouse will also attract businesses and lawyers to struggling downtown Worcester, said lawyers.

"[Currently] at 5:30 in the afternoon you can roll a bowling ball down Main Street and not hit anyone," observed Toomey.

The influx of people, over one million per year, will stimulate downtown businesses and encourage the development of some of the abandoned store fronts, said McIntyre.

"A lot of vacate buildings might be filled by lawyers and accountants," added Conte.

Angelini, whose office is located in downtown Worcester, also viewed the choice of location as an important forward looking decision that will attract new law firms to the downtown and that rewards firms who already committed to the downtown.

"The courthouse belongs in downtown Worcester," he said. MLW

— WENDY L. PFAFFENBACH

Chronic-Pain Car Accident Case Produces Award

■ continued from PAGE 1

the Verdicts & Settlements section of the Oct. 18 issue of Lawyers Weekly.

Low Impact

On Dec. 13, 1995 Bassett's client was stopped on a snow covered Route 1 at a "YIELD" sign when he was struck from the rear by the defendant's vehicle.

The defendant's vehicle was traveling at approximately 20 mph and collided with the plaintiff's vehicle at a speed of approximately 5 mph.

The collision caused $488 in property damage to the plaintiff's vehicle.

After the accident the plaintiff, a stockbroker, stayed home from work for two days.

During the case, the plaintiff did not make a claim for lost wages or loss of earning capacity.

Nine days after the accident the plaintiff was examined by a medical doctor with complaints of neck and back pain.

The doctor prescribed physical therapy but the treatment had little effect on the plaintiff.

After the failed physical therapy treatment the doctor referred plaintiff to a chiropractor.

The plaintiff developed chronic neck and back pain which required extensive diagnostic testing and treatment.

After five years of treatment the plaintiff was diagnosed with chronic pain syndrome and facet joint injury.

The defendant retained an orthopedic surgeon and a neurosurgeon to examine the plaintiff. Both surgeons concluded that the plaintiff had not sustained significant or permanent injuries.

Another doctor hired by the insurance company also found no objective basis for the continuing symptoms.

Boy Who Cried Pain

One of the most difficult aspects of this case was convincing the arbitrator and the insurance company that a person could sustain permanent injuries from a low impact auto-accident, said Bassett.

At the arbitration hearing the defendant brought in an expert who testified that the damage done to the car was the kind of damage caused by a "slight tap," Bassett added.

"Across the country there is a misconception that a plaintiff involved in an accident with small property damages can't have serious injuries," he said. "This is simply not true — the amount of damage to a vehicle in no way indicates the [significance] of the injury."

Gibson agreed.

"It takes more education on the part of a plaintiff's attorney to convince a trier of fact that it's the interior forces within the car [to which the body is subjected] that cause the injury," he observed.

In Bassett's case, an orthopedic surgeon, a board certified pain specialist and a well respected chiropractor all came to the identical independent conclusion that the plaintiff was suffering from chronic pain syndrome and facet joint injury, Bassett said.

Still, "no one seemed to take the case seriously because of the lack of property damage," he added.

According to Bassett there are now at least 39 well recognized studies describing the prognosis of connective tissue injuries. These studies show that 56 percent of those who are injured in rear end collisions, most of which occur between 8 and 12 mph, will develop some sort of pain or dysfunction, Bassett said.

Introducing these studies into evidence, perhaps to buttress the testimony of an expert witness, is key to convincing an arbitrator or jury that injuries *are* caused by low-impact collisions, said Marianne C. LeBlanc of Boston.

The fact that the plaintiff only took two days off from work was also a difficult hurdle to overcome, Bassett noted.

"Oftentimes when the case is evaluated [the insurance adjusters will say] that if the person was badly injured they would not have gone to work," he said.

According to Bassett, in these situations an attorney should try to demonstrate that the plaintiff needed to go to work and continued to work through the pain.

For example, in this case Bassett emphasized that the plaintiff returned to work because he had to support his three children.

Gibson also suggested using the testimony of a co-worker or supervisor testimony to demonstrate that the plaintiff was working with pain.

"Use the testimony of a co-worker to show that [the plaintiff] couldn't sit down or stand up or remain in one position for a long period," he said.

Significant Investment

The key to success when representing a plaintiff who complains of chronic pain syndrome is being willing to invest time and money into the case, Bassett said.

In the present case Bassett hired a medical illustrator to create posters demonstrating the pain the plaintiff experienced, he added.

"Medical illustrations are very important in chronic pain syndrome cases because they help adequately explain the mechanics of the injury," agreed LeBlanc. "A layperson may not immediately grasp why a person has pain — medical illustrations can be particularly valuable in making that point."

Before investing time and money into a case, however, it's important to have a good screening process in place, practitioners noted.

"The right case can still justify a significant expenditure," said Gibson. "But a lawyer has to be careful in screening."

Bassett agreed that a good screening process was essential before investing heavily in a case.

"Spend time talking with the client," he said. "If you are convinced someone is truly suffering spend time talking with doctors; once you are convinced [someone is truly suffering] spend as much time and effort on these cases as you would on any other case." MLW

THE WEEK'S OPINIONS

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■ MASSACHUSETTS COMMISSION AGAINST DISCRIMINATION

the opportunity to rest, no heavy lifting, unloading trucks, or climbing ladders. Respondent also accommodated Complainant by permitting Complainant to remain out of work during inclement weather. In addition, Respondent called Complainant or his father, if Complainant did not call Respondent about being absent. I reject Respondent's argument that its accommodations to Complainant, established over many years of employment, are proof that Complainant cannot perform the essential functions of the job and I conclude that Complainant was a qualified handicapped person.

"Respondent asserts that 'job abandonment' was its sole, legitimate, non-discriminatory reason for terminating Complainant's employment. I find that this articulated would question Complainant's excessive absenteeism. Yet Swift did not raise the matter with his superiors, nor did he ever discuss with Complainant the possibility of modifying the accommodations, two possible ways to resolve his concerns without resorting to termination. I do not find credible Respondent's assertion that it believed Complainant had abandoned his job, given his long tenure at the position, his limited ability to communicate, and Respondent's past practice of accommodation. Moreover, by considering Complainant's excused absences in making the determination to terminate his employment, Respondent improperly penalized Complainant for use of a reasonable accommodation. ... Thus, I conclude that Respondent's articulated reasons are a pretext for unlawful discrimination.

"Respondent's unilateral determination that long-established, reasonable accommodations would no longer be provided was improper. 'The duty to provide a reasonable accommodation is a continuing one' ... and the MCAD 'encourages an open and ongoing dialogue between employees and employers about the provision of reasonable accommodations.' ... Complainant's handicap caused [disabled employee.' ... I conclude that Respondent's conduct constituted a failure to reasonably accommodate Complainant's handicap, in violation of G.L. Ch. 151B.

"G.L. Ch. 151B further requires the employer to demonstrate that the accommodation would impose an undue hardship to the employer's business. G.L. Ch. 151B, §4(16). Respondent has failed to establish that permitting Complainant to be absent for four days without calling in, caused undue hardship to its business. In fact, Respondent provided no evidence at all regarding any hardship it suffered on account of Complainant's absence. For the above-stated reasons, I conclude that Respondent engaged in unlawful discrimination on the basis of handicap."

Donohoe v. Sodexho-Marriott Services, Inc. (Lawyers Weekly No. 22-047-99) (24 pages) (Kaplan, Hearing Officer) (MCAD) Christopher Lee Blake for the complainant; Kevin B. Callahan for the respondent (Docket No. 95-BEM-0678).

Employment

Sexual Harassment -

charged.

Accordingly, I will order the respondent to pay the complainant $37,535 for lost wages, to provide her $30,000 in emotional distress damages and to add statutory interest at the rate of 12 percent per year to the just-mentioned sums.

Tasker v. EMCO Engineering, Inc. (Lawyers Weekly No. 22-049-99) (18 pages) (Gomez, Hearing Commissioner) (MCAD) Robert S. Mantell for the complainant; Lawrence M. Siskind for the respondent (Docket No. 94-BEM-2016).

Employment

Rest Home Cook - Sexual Harassment

Where evidence indicates (1) that the owner of a rest home touched a cook's buttocks against her will and made unwanted comments regarding her breasts, menstrual cycle and general sexual activity, (2) that the cook felt compelled by such conduct to leave the job and (3) that no truth exists to the rest home owner's claim that the cook left out of anger over his criti-