



KOPKA PINKUS DOLIN & EADS, LLC

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THREE NOTEWORTHY TRIAL VICTORIES FOR KOPKA, PINKUS, DOLIN & EADS

ATTORNEY ANDREW D. ELLBOGEN of our Chicago office, successfully completed a trial on April 30th, 2009. This complicated case involved product liability/spoliation of evidence. The plaintiff in this case, was attending a graduation party hosted by our insured. While at the insured's home she noticed a hostas plant outside the insured's master bedroom. As she was leaning over a small wooden table, the table collapsed, and the plaintiff was blinded in her right eye. She had 3 surgeries, and never regained vision in her eye. The table was purchased at a large super store a few weeks before the party. Consistent with the depiction on the box, the insured covered the table with a cloth linen and a glass top, giving the table a more attractive and sturdy appearance.

We were sued for premises liability and spoliation. The real cause of action, however, was in spoliation. The insured informed the plaintiff's spouse that she would save the table. She even admitted, a few months after the accident that she needed to save the table for "a lawsuit down the road." The insured denied making this statement, which was attributed to her by the plaintiff's spouse. About two months after the accident, the insured disposed of the table. The insured's testimony was sufficient enough to bring the co-defendant, into the case. They also filed a spoliation case against the insured.

The defendants eventually settled the case with the plaintiff. The co-defendant was unwilling to relinquish their contribution action in spoliation against us, and we tried the case before Judge James McCarthy (bench trial) during March 27-April 1. The main issue at trial was whether there was a duty to preserve the table.

The co-defendant relied upon a human factors-liability expert, who testified that had the product been preserved, they would have been able to assess whether the product was indeed manufactured by them. There are several manufacturers of these end tables, which contain a wooden oval top with brackets on the back so that three thin legs can be screwed into the table's backside.

The expert also argued that even if the table had been manufactured by co-defendant, testing would have been able to demonstrate whether the table had any manufacturing defects.

The demand at the trial from co-defendants was \$300K. We offered nothing. The verdict was returned by Judge McCarthy on April 30th. He ruled that a duty did not exist under the case facts, as the plaintiffs from the underlying case testified they did not consider filing a lawsuit until some 10 months following the accident. Therefore, as a matter of law, the insured could not have reasonably anticipated that the table would have been material evidence in a civil lawsuit.



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ATTORNEY JOEL D. GROENEWALD of our Chicago office, successfully completed a trial on May 11, 2009. This accident took place in Cook County, Illinois. This complicated case involved a head on collision between plaintiff's car and defendant's truck. Plaintiff alleged that the defendant crossed the center line, and the defendant alleged that the plaintiff crossed the center line. The defendant further alleged that defendant was veering to his right shoulder as plaintiff neared him, to avoid contact.

The defense contended that plaintiff crossed the center line, and photographs supported defendants' position. Defense also contended that plaintiff's injuries (specifically her back injuries and surgery (installation of a permanent spinal neuro stimulator) were due to a pre-existing condition and 3 prior spinal surgeries plaintiff underwent at the L5-S1 level.

Plaintiff suffered a complex, displaced open ankle fracture which required open reduction, internal fixation surgery in the hospital, followed by hardware removal and eventual fusion of the subtalar joint. She had 4 separate surgeries on her ankle. She also suffered a fractured calcaneus, which was not operated on at the hospital as the ankle fracture had to be treated and it is contraindicated to operate on a heel fracture with an ankle fracture surgery occurring. She also suffered an unspecified hip injury for which she received many injections and diagnostic studies. Plaintiff also suffered a facial laceration which required over 30 stitches to close. Finally, she suffered back and radiating pain after the accident, incurring numerous medical visits, treatment, and ultimately the placement of a permanent spinal stimulator. She treated with over 15 doctors throughout the entirety of her care, and is still seeing several physicians for ongoing complaints of pain in her hip, back, and ankle.

Medical witnesses called by the plaintiff include: Dr. Steven Rabin, Dr. John Nikoleit, Dr. James Kelly, Dr. John Hamby. Expert witnesses called by the defendant include: Stanley Sangdahl, P.E. (Accident Reconstructionist), Dr. James Boscardin, Orthopedic Surgeon.

Medical specials were a total of \$452,286.00, Loss of income, \$180,000 for 4 ½ years as a customer service representative for a large airline.

Plaintiff used a cane during trial, and got up from her chair to walk around frequently during the trial. Also, defense counsel filed a motion well in advance of the trial to bar plaintiff from calling any experts at trial, which was granted.

Last Demand: \$1.8 million; asked of jury \$3.25 million
Last Offer: \$25,000

Also, over defense objection, the judge gave a 5.01 instruction since Mr. Gustafson took photographs at the scene with an expired camera, and the photographs did not turn out. Also, photographs of the scene were taken by an off duty fire chief who's fire department did not even respond to the accident. The jurors reported that the plaintiff failed to sustain her burden of proof and they did not believe that Mr. Gustafson crossed the center line. Plaintiff had to be removed from the car with Jaws of Life Equipment, and her car was totaled. The truck incurred almost \$40,000 worth of damage.

The jury deliberated for under 2 hours, including lunch, and delivered a defense verdict.



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ATTORNEY DEBORAH A. KAPITAN of our Crown Point, Indiana office, successfully completed a trial on May 7th, 2009. This accident occurred in Porter County, Indiana. This was a Dram Shop case involving the co-defendant, drunk driver and our insured (a family restaurant with multiple locations). Co-defendant had stipulated to her fault for causing the accident that injured the plaintiff and to her intoxication at the time of the accident. The question for the jury in determining fault was whether employees of our insured had actual knowledge of the visible signs on intoxication in the co-defendant at the time she was in the insured's restaurant. The server for our restaurant on the date of loss did not recall any of the events of the day of the accident. The evidence showed that the co-defendant was served two alcoholic beverages and was inside of the restaurant between 20-60 minutes. The co-defendant admitted she was an alcoholic and the evidence showed she had a .30 BAC at the time she was inside of the restaurant and at the time of the accident. Toxicologists testified for the plaintiff and for the co-defendant. The co-defendant insisted we, the restaurant, share fault 50/50 with the drunk driver.

The plaintiff claimed a permanent soft-tissue type injury and approximately \$25,000 in medical specials. Due to a lost job opportunity, plaintiff claimed his future lost wages totaled about \$300,000. The pre-trial demand was for \$300,000. The plaintiff asked the jury for a verdict of between \$589,000 and \$864,000. The jury deliberated for over three hours and delivered a defense verdict in favor of our client and found against the co-defendant drunk driver for \$140,570. There were no punitive damages available against either defendant.

Kopka, Pinkus, Dolin & Eads is a multi state civil litigation defense firm that approaches litigation from the client's perspective. Among a diverse group of clients, including many of the nation's largest insurance companies, are a wide range of businesses, manufacturers, service and distribution companies, health care institutions and professionals. The firm's attorneys have extensive trial experience in numerous federal and state courts nationwide as well as appellate experience which includes the United States Supreme Court, federal appellate circuit courts, state Supreme Courts and various state appellate courts. For more information, please visit www.kopkalaw.com.

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