

## **MOTOR VEHICLE**

Alcohol Involvement — Truck — Hit and Run — Multiple Vehicle

# Lawsuit alleged trucker and employer both liable for crash

**SETTLEMENT     \$900,000**

**CASE** Michael Spadine and Jennifer Spadine v.  
Richard Kemmerer and Linde Enterprises Inc.  
No. 2011-13482  
**COURT** Luzerne County Court of Common Pleas  
**JUDGE** William H. Amesbury  
**DATE** 3/26/2015

**PLAINTIFF**  
**ATTORNEY(S)** Michael J. Pisanchyn Jr., The Pisanchyn  
Law Firm, Scranton, PA

**DEFENSE**  
**ATTORNEY(S)** Michael P. Perry, O'Malley Harris Durkin  
& Perry, Scranton, PA

**FACTS & ALLEGATIONS** On Nov. 3, 2009, plaintiff Michael Spadine, 46, a tree surgeon, was driving a box-truck in Montrose when another truck, traveling in the opposite direction, entered his lane of travel and hit the driver's side of his truck. Spadine claimed injuries to his neck and lower back.

Following the crash, the other truck's driver, Richard Kemmerer, fled the scene. He was apprehended by police about 20 minutes later. His blood-alcohol level was tested at .225, and he was charged with a DUI.

Spadine sued Kemmerer, alleging he was negligent in the operation of a vehicle, and also sued his employer, Linde Enterprises Inc., alleging negligent entrustment.

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Spadine's counsel asserted that Kemmerer, due to his intoxicated state, intentionally acted in conscious disregard of others. Counsel also faulted Linde for allowing an employee to work while inebriated.

The defense maintained that Linde performs regular drug testing and checks the motor-vehicle records of all drivers before allowing them to drive a company vehicle. Moreover, drivers are also required to sign a company safety policy, asserted the defense.

**INJURIES/DAMAGES** *bulging disc, lumbar; disc protrusion, cervical; lower back; neck; radiculopathy; trigger point injection*

Spadine presented to work the next day with complaints of pain to his neck and lower back. His employer sent him to an emergency room, where X-rays were negative.

About three weeks later, Spadine presented to a physician, and for the next two months he self-treated with over-the-counter pain medication, until he saw an orthopedist on Jan. 5, 2010. He was put on a home-exercise program, and followed up with the physician on March 15 and April 27.

On Sept. 23, Spadine presented to a neurologist, who prescribed pain medication and administered a series of pain-killing trigger-point injections to his cervical and lumbar spine, over a course of about eight months. During that time, an MRI showed protrusions at intervertebral discs C3-4 and C6-7 and bulges at L2-3, L3-4, and L4-5. An EMG demonstrated radiculopathy in his cervical and lumbar spine.

In the ensuing years, Spadine continued to treat with pain medication and to consult with his neurologist. On April 11, 2014, he presented to a physiatrist with continued complaints of pain to his low back, and the physician administered another series of pain-killing trigger point injections. No further treatment was rendered. He sought to recover a nominal amount of past medical costs.

Spadine's physiatrist causally related his injuries and treatment to the accident, and opined that his injuries were permanent in nature.

In his report, Spadine's neurologist, who died prior to trial, causally related his injuries and treatment to the accident. The physician opined that Spadine would require future injections and pain medication, which was estimated at \$10,000 to \$20,000 annually.

Spadine reportedly never returned to work as a tree surgeon, and in 2013 he began operating a bowling alley. He sought \$12,000 to \$14,000 for past and future lost earnings.

He testified that he is able to perform all of his activities of daily living that he did prior to the accident, but requires pain medication to do so. He sought damages for past and future pain and suffering, and his wife sought damages for her claim for loss of consortium.

Spadine's expert in toxicology testified that Kemmerer's blood-alcohol level was nearly three times the legal limit, and equated the level to the consumption of 10 to 14 beers. (Spadine was precluded from seeking punitive damages against Linde Enterprises, since the court granted a motion for summary judgment.)

The defense questioned the severity of Spadine's alleged injuries and pointed to the significant gaps in treatment, particularly the two months he waited post-accident to seek further care.

Linde Enterprises' expert in orthopedic surgery opined that Spadine only suffered strains and sprains, which had resolved within a few months post-accident.

The defense's expert in vocational rehabilitation estimated Spadine would only sustain lost earnings of \$431 annually.

**RESULT** The jury found that Kemmerer was an agent and/or employee of Linde Enterprises and was acting within the scope of that relationship. According to jurors, Kemmerer and Linde Enterprises were negligent, and their negligence was a legal cause of the Spadines' harm. The jury determined that Kemmerer intentionally acted with conscious disregard of the likelihood of harm to others when he should have known harm was certain, or reasonably certain, to occur.

Spadine was determined to receive \$700,000: \$20,000 for past medical costs, \$20,000 for future medical costs, \$160,000 for past lost earnings, \$275,000 for future lost earning capacity, \$150,000 for pain and suffering, and \$75,000 for enjoyment of life.

Spadine's wife was determined to receive \$50,000 for loss of consortium.

While the jury was determining how much to award in punitive damages, the parties settled for \$900,000.

Linde had a primary insurance policy of \$1 million and an excess policy of \$15 million.

<b>DEMAND</b>	\$1,000,000
<b>OFFER</b>	None reported
<b>INSURER(S)</b>	Travelers Property Casualty Corp.
<b>PLAINTIFF</b>	
<b>EXPERT(S)</b>	Michael Coyer, Ph.D., toxicology, Dunmore, PA Albert D. Jancrich, M.D., physical medicine, Wilkes-Barre, PA (treating) Leroy J. Pelicci, M.D., neurology, Scranton, PA (treating; did not testify, physician's report submitted into evidence) William Walker, C.R.C., vocational rehabilitation, Falls, PA
<b>DEFENSE</b>	
<b>EXPERT(S)</b>	Michael P. Banas, M.D., orthopedic surgery, Plains, PA Sean C. Hanahue, vocational rehabilitation, South Abington, PA

**EDITOR'S NOTE** This report is based on information that was provided by plaintiffs' counsel. Defense counsel did not respond to the reporter's phone calls.

- Aaron Jenkins