



Head-on collision aggravated migraines, plaintiff claimed

Type: Verdict-Plaintiff

Amount: \$175,000

Actual Award: \$250,000

State: Pennsylvania

Venue: Lackawanna County

Court: Lackawanna County Court of Common Pleas, PA

Injury Type(s):

- *leg*
- *knee* - knee contusion
- *neck* - sprain, cervical; strain, cervical
- *other* - massage therapy; physical therapy; aggravation of pre-existing condition

Case Type:

- *Motor Vehicle* - Head-On; Left Turn; Multiple Vehicle; Underinsured Motorist

Case Name: Destiny Fertig v. Horace Mann Insurance Company and/or Horace Mann Property and Casualty Insurance Company, No. 16 CV 4801

Date: June 07, 2022

Plaintiff(s):

- Destiny Fertig Destiny Fertig , (Female, 18 Years)

Plaintiff Attorney(s):

- Bradley Moyer; The Pisanchyn Law Firm; Scranton PA for Destiny Fertig Destiny Fertig
- Thomas J. Carroll Jr.; The Pisanchyn Law Firm; Scranton PA for Destiny Fertig Destiny Fertig

Plaintiff Expert (s):

- Albert D. Janerich M.D.; Physical Medicine; West Pittston, PA called by: Bradley Moyer, Thomas J. Carroll Jr.

- Defendant(s):**
- Horace Mann Insurance Company
- Defense Attorney(s):**
- Anthony P. Trozzolillo; The Chartwell Law Offices, LLP; Scranton, PA for Horace Mann Insurance Company
- Defendant Expert(s):**
- Paul W. Horchos M.D.; Brain Injury/Trauma; Scranton, PA called by: for Anthony P. Trozzolillo

Facts: On Aug. 27, 2014, plaintiff Destiny Fertig, 18, was driving on Route 222, in Lower Macungie Township. The front driver's side of her vehicle was partially struck head-on by a vehicle traveling in the opposite direction, when the driver of that vehicle attempted to turn left. Fertig claimed an aggravation of a preexisting condition and injuries to her neck and knee.

Fertig sued her underinsured-motorist insurer, Horace Mann Insurance Co. Fertig alleged that the tortfeasor was negligent in the operation of a vehicle, and that she was entitled to recover damages from her \$100,000 policy.

Horace Mann denied that Fertig was entitled to underinsured-motorist damages.

During a trial in October 2021, Fertig was determined to receive \$75,000 for future medical costs, and zero damages for past medical costs and past and future noneconomic damages. The court granted her motion for a new trial on noneconomic damages only.

Injury:

Fertig was taken by ambulance to a hospital and admitted. Fertig had a racing heart and was suspected of having internal bleeding. She was monitored for the next three days, and discharged on Aug. 30, 2014. Fertig was ultimately diagnosed with post-traumatic headaches, a cervical strain and sprain, and a contusion and sprain to her right knee.

In the ensuing weeks, Fertig underwent an MRI of her brain and X-rays of her spine and knees. She was put on a course of physical therapy which lasted a couple of months. In the following years, Fertig continued to treat with prescribed medication to treat ongoing migraines.

Fertig's expert in physical medicine testified that the accident caused Fertig to suffer a permanent aggravation of her preexisting migraines, which the degree of improvement noted did not exceed about 50 percent of normal.

Fertig testified that she was able to control her migraines with over-the-counter medication before the accident, but the accident worsened her condition, requiring her to take prescribed medication. According to Fertig, her migraines become so severe that she has to take a day or two off work as a registered nurse. She sought damages for past and future pain and suffering.

The defense's expert in brain injury/trauma testified that Fertig fully recovered from her injuries and that her ongoing complaints are solely attributed to her preexisting migraine condition.

Result:

The jury determined that Fertig would receive \$175,000. When including the \$75,000 Fertig received for future medical costs during the 2021 trial, the total amount Fertig received was \$250,000.

Destiny Fertig Destiny Fertig

\$ 135,000 Future Pain Suffering

\$ 40,000 Past Pain Suffering

\$ 175,000 Plaintiff's Total Award

Trial Information:

Judge: Terrence R. Nealon

Trial Length: 2 days

**Trial
Deliberations:** 45 minutes

Post Trial: Plaintiff's counsel anticipates filing a bad faith action against Horace Mann for allegedly not acting in good faith and fair dealings.

**Editor's
Comment:** This report is based on information that was provided by plaintiff's counsel. Defense counsel did not respond to the reporter's phone calls.