

SUFFOLK COUNTY**MOTOR VEHICLE**

Question of Lights — Speeding — Broadside — Intersection

Driver sped through red light, caused crash, defense contended**VERDICT** Defense**CASE** John R. Kelly v. Don E. Mandelbaum and Cynthia Mandelbaum, No. 22486/11**COURT** Suffolk Supreme**JUDGE** James P. Flanagan**DATE** 4/4/2013**PLAINTIFF****ATTORNEY(S)** George R. Gridelli, Cellino & Barnes, P.C., New York, NY**DEFENSE****ATTORNEY(S)** David J. Sobel, David J. Sobel, P.C., Smithtown, NY

FACTS & ALLEGATIONS On July 29, 2010, plaintiff John Kelly, 22, a retail store's clerk, was driving on the northbound side of Walt Whitman Road, near its intersection at Fletcher Place, in Melville. While he was proceeding through the intersection, his car struck a car that was being driven by Cynthia Mandelbaum, who was executing a left turn into a shopping center, from the southbound side of Walt Whitman Road. Mandelbaum's vehicle spun and struck a guardrail that separated northbound and southbound traffic. The vehicles were totaled. Kelly sustained injuries of an ankle and a leg.

Kelly sued Mandelbaum and her vehicle's owner, Don Mandelbaum. Kelly alleged that Cynthia Mandelbaum was negligent in the operation of her vehicle. He further alleged that Don Mandelbaum was vicariously liable for Cynthia Mandelbaum's actions.

Kelly claimed that a yellow traffic signal governed his entrance to the intersection. He contended that Cynthia Mandelbaum ignored a red signal.

Mandelbaum contended that she approached the intersection, stopped and waited until a green signal appeared for motorists who were executing a left turn. She claimed that she observed motorists stop in two of the three northbound lanes before she began her turn. She contended that Kelly was speeding and recklessly weaving through traffic.

One witness, who claimed that she was stopped on the northbound side of Walt Whitman Road when the accident occurred, contended that Kelly sped past her vehicle. Two other witnesses, who claimed that they were stopped behind Mandelbaum's vehicle during the moments that preceded the accident, estimated that Kelly was maintaining a speed of about 60 mph and accelerating when he entered the intersection. Defense counsel noted that the posted speed limit was 45 mph.

INJURIES/DAMAGES *fracture, ankle; fracture, fibula; fracture, leg; fracture, tibia; internal fixation; open reduction*

The trial was bifurcated. Damages were not before the court.

Kelly sustained a fracture of his right ankle and fractures of his right leg's fibula and tibia. He was placed in an ambulance, and he was transported to Nassau University Medical Center, in East Meadow. His fractures were addressed via open reduction and internal fixation, and his hospitalization lasted five days.

Kelly claimed that he developed a residual diminution of the sensitivity of the area that surrounded his surgical wound. He also claimed that he could not easily bend his right leg or walk during his convalescence. He contended that his injuries prevented his performance of about 12 weeks of work.

Kelly sought recovery of damages for pain and suffering.

RESULT The jury rendered a defense verdict. It found that Kelly was liable for the accident.

DEMAND \$25,000**OFFER** \$1,000 (during the jury's deliberations)**INSURER(S)** Progressive Casualty Insurance Co. for both defendants**TRIAL DETAILS** Trial Length: 2 days
Jury Composition: 3 male, 3 female**PLAINTIFF****EXPERT(S)** Stanislav Avshalumov, orthopedic surgery, Valley Stream, NY (did not testify)**DEFENSE****EXPERT(S)** Robert Michaels, M.D., orthopedic surgery, Mineola, NY (did not testify)

POST-TRIAL Judge James Flanagan denied plaintiff's counsel's motion to set aside the verdict.

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

—Jason Pafundi