

# Cab passenger, 89, suffers fractures in accident

Dynamic instability before hospitalization, rehabilitation is disputed

## \$310,000

On Nov. 20, 2006, the plaintiff, a then-89-year-old woman, was a backseat passenger in a cab that rammed into the back of a stopped vehicle in front of it. She suffered a left distal femur fracture, a subdural hematoma, a left malleolus fracture, two broken teeth and other lacerations and bruises.

She was hospitalized for eight days starting Nov. 28, 2006. The required surgery on her left leg included implementation of plates and screws to fix the fracture. Subsequent rehabilitation lasted Dec. 5, 2006, through April 20, 2007.

Significant residuals include constant left leg pain, instability and unsteady gait, muscle atrophy, loss of endurance and motivation, loss of two front teeth and scarring on the left leg and chin. She requires a walker, but cannot do any extended distance walking.

Though before the accident the plaintiff was receiving home care and used a walker on occasion, the plaintiff's attorney ar-

gued that she was in relatively good health for her age, was still active and enjoying life, and could go out by herself whenever she wanted.

The defendant would not admit at deposition that he was negligent, but he couldn't explain why the accident occurred. He also claimed the plaintiff didn't suffer a serious impairment because her life after the crash wasn't significantly different from what it was before.

However, the plaintiff obtained medical records that established how she experienced significant pain during the hospital stay, the rehabilitation and her return home. The records also demonstrated her fear and anxiety about going home and whether she'd be able to care for herself.

She also was able to demonstrate new functional problems because of the accident, such as needed assistance outside of her apartment and in taking medication, inability to do household activities, and limitations on being able to stand or walk.

The defense medical evaluation doctor claimed the plaintiff's dynamic instability that was present at the time of the insurance evaluation predated the crash, but her testimony, her son's testimony and her pre-crash medical records contradicted that allegation.

At facilitation, the case was settled for \$310,000.

**Type of action:**  
Third-party automobile accident

**Type of injuries:**  
Left distal femur fracture, left malleolus fracture, subdural hematoma

**Name of case:**  
Confidential

**Court/Case no./Date:**  
Washienaw County Circuit Court, 07-1305-NJ, Sept. 9, 2008

**Tried before:** Facilitation

**Name of judge:** David S. Swartz

**Settlement amount:** \$310,000

**Insurance carrier:** National Casualty

**Attorney for plaintiff:** Michael J. Garris

**Attorney for defendant:** Withheld

**Key to winning:** Establishing that the injuries to the 89-year-old plaintiff would continue to affect her general ability to live a normal life, even as a senior citizen



GARRIS