

## Jury awards mom hurt in low-impact crash \$975K

By: Pat Murphy ⌚ February 26, 2015

**PATRICK  
BARRY**



Plenty of attorneys would have been satisfied with a \$150,000 settlement for a client involved in a low-impact, rear-end collision, particularly since her injuries weren't diagnosed until 11 months after the accident.

But Providence lawyer Patrick C. Barry didn't blink when earlier this year his client, Erica L. Campanelli, passed on a \$150,000 offer just before the start of her trial in Providence Superior Court.

The Decof, Decof & Barry attorney saw strengths in the suit where others may have seen only weakness, and his assessment of the case was vindicated recently when a jury awarded Campanelli and her daughter a combined \$975,000.

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Campanelli was injured on Aug. 8, 2006, while she was stopped at a red light on Centerville Road in Warwick. A loaner car driven by the customer of an automobile dealership rear-ended a van stopped behind Campanelli's vehicle. The van was propelled into the rear of Campanelli's car at what defense experts estimated to be a speed of about 5 miles per hour.

According to Campanelli, at the moment of impact she was leaning over and into her steering wheel, stretching to reach one of her daughter's toys that had fallen on the floor. Although her vehicle's rear bumper sustained barely visible damage, Campanelli claimed she hit her head and face on the steering wheel upon impact.

The 23-year-old Campanelli was treated for a neck strain and headaches in the immediate aftermath of the accident, but it wasn't until 11 months later that she was diagnosed with temporomandibular joint — or TMJ — disorder, which ultimately required joint replacement surgery.

In Campanelli's lawsuit against the loaner-car driver, the dealership and two other corporate entities with ownership interests in the loaner car, Barry succeeded in discrediting the testimony of the defendants' biomechanical expert, who had opined that it was "impossible" for Campanelli's injuries to have occurred as she described.

Barry also managed to force the defense's sole medical expert out of the case in a strange confluence of circumstances.

On Feb. 6, after a four-week trial interrupted by bad weather, a jury took only four hours to decide to award Campanelli \$725,000 for her injuries and \$250,000 for her daughter's loss of parental society and companionship.

With interest, the total judgment is in the range of \$1.97 million, Barry said. He recently spoke with *Lawyers Weekly*.

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**Q.** *Your client was injured in a prior car accident when she was 14. Did the defense try to make a case that her claimed injuries from the 2006 accident in fact stemmed from the prior crash?*

**A.** Yes. They made a strong defense out of preexisting conditions, one being the prior history of a car accident in which my client had hit her head as well. She had a course of treatment for headaches then. The defense looked at the headaches as a preexisting condition that she had since she was 14. She also developed some PTSD and depression from that car accident. We developed medical testimony that explained how those things can be contributing factors for the development of TMJ. We used those factors to our client's advantage.

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**Q.** *How exactly did the evidence of preexisting conditions wind up working to your advantage?*

**A.** The “eggshell skull” rule is an old tort rule that basically says you take your plaintiff as you find them. If a particular plaintiff has a condition, weakness or infirmity that makes them have a worse injury, then the defendant is still responsible for the full scope of the injury. We got [a jury] instruction on the eggshell skull rule, which the judge put into modern terminology.

**Q.** *Was it critical to introduce medical testimony to explain why your client’s TMJ disorder wasn’t diagnosed until 11 months after the accident?*

**A.** Yes. TMJ tends to develop chronically over time. I took a lot of time with the experts explaining the process of trauma to the joint and how, if the swelling and inflammation in the joint becomes chronic, it then starts to displace the soft tissues within the joint areas. You get scar tissue growing into the joint. The scar tissue then develops into an arthritic, bony condition. We spent a lot of time laying how this disease progresses and how the apparent delay in diagnosis [for our client] was actually very consistent with the normal development of this particular disease.

**Q.** *The defense called a biomechanical expert who testified that the way your client claimed she suffered her injuries was “impossible.” How did you counter that testimony?*

**A.** We took a common-sense approach that, when somebody is already bent over in that position, their abdominal muscles and back muscles have already essentially locked them into that position. The collision happens so quickly that your body doesn’t have time to react. A jury would accept that, if you’re bent over like that, stretching to find something, and you get hit from behind, nobody is going to want to have their face right next to the steering wheel. It makes sense that you’re going to get your head banged against the steering wheel, even if you initially go backward.

**Q.** *How did you manage to force out the defense’s sole medical expert?*

**A.** At the time of his deposition, their expert had an action taken against him by the [state] Department of Health. He then sued the Department of Health. So there was pending litigation between the Department of Health and the expert about things that impacted on the nature of his practice and his medical competency. At his deposition, defense counsel wouldn’t let him answer my questions about that litigation, so we broke the deposition off. The judge later ruled that the expert was going to have to answer most of my questions about the litigation, so he ended up withdrawing voluntarily. That was only a couple months before trial and the defense was stuck. I’ve joked with defense counsel that, if they ever wanted to sue that expert for bailing out on them, I’d take their case.

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**Q.** *Were you satisfied with the verdict?*

**A.** I was very pleased with the \$250,000 awarded to our client's daughter for loss of parental society and companionship. I was also pleased with our client's number because the case was otherwise difficult. We had a client with preexisting conditions. She was challenged on cross-examination on practically everything. They were attacking her credibility and the nature of her treatment. When you look at all the challenges that we had, I was very pleased with the number.

**Q.** *What lessons can other attorneys take from your case?*

**A.** For all the challenges that we had, this was still a good case to take to trial. We saw as many strengths to our case as the defense saw weaknesses. Most practitioners are anxious to get cases settled, but when the right ones come along, don't be afraid to take them to trial.

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## **Verdict Report**

**Action:** Negligence and vicarious liability claims stemming from rear-end auto collision

**Injuries alleged:** Temporomandibular joint disorder

**Court:** Providence Superior Court

**Judge:** Netti C. Vogel

**Jury verdict:** \$725,000 for plaintiff's compensatory damages and \$250,000 for daughter's loss of parental society and companionship

**Date:** Feb. 6, 2015

**Attorney:** Patrick C. Barry, Providence (for the plaintiff)