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Connecticut Personal Injury Law: A Brief Pathfinder

Introduction

In February of 2004, my younger sister Jessica was involved in a fairly serious car accident. She was hit from the side by a driver who was speeding and failed to signal for a turn. The driver of the car was not actually the car's owner; he was a mechanic driving the car back to the lot after filling the tank with gas. Jessica was driving a Honda Accord, a fairly small coupe. The other driver was driving an SUV. Needless to say, her car (which she had just bought a month before) was totaled. In addition, Jessica sustained serious injuries, including whiplash, a broken wrist, third degree burns from the airbag, and, as a result of the injuries to her head and neck, developed TMJ. As defined on the TMJ Association website, "[t]emporomandibular joint and muscle disorders (TMJDs) refer to a complex and poorly understood set of conditions that can cause pain in the area of the jaw joint and associated muscles and/or problems using the jaw. Both or just one of the TM joints may be affected. TMJDs can affect a person's ability to speak, eat, chew, swallow, make facial expressions, and even breathe."¹ This disorder has already forced Jessica to get braces to realign her teeth. From what she has told me, further treatment includes breaking her jaw to replace it to its proper position, followed by a month of having her jaw wired shut. In addition to these physical injuries, Jessica has had ongoing

¹ <http://www.tmj.org/tmjds.asp>. Last visited April 2, 2007.

psychological problems, including migraines, anxiety, and general depression, which require frequent doctor's visits.

Jessica came to me when the lawsuit she filed over three years ago began to pick up momentum. She and her lawyer had agreed to attempt arbitration over the settlement amount; unfortunately, this alternative dispute resolution method did not end her case. The arbiter had recommended a settlement figure so high that the case was forced into Connecticut State Court. Jessica was concerned about going to court. As I am in law school, she asked me to find out what she could expect from bringing her lawsuit.

Because I am not an attorney yet, I told her I could not advise her on any litigation strategy. I did offer to research the available remedies, legal precedents, and any novel legal theories I could find via a search of current legal literature. She agreed that this information would be helpful. Finding the timing of the research compatible with our research assignment, I selected this task for my final project. What follows is essentially a pathfinder for anyone interested in learning about CT tort law, with a particular focus on automobile accidents and personal injury.

To conduct my research, I utilized three major sources, two of which we covered in class: Lexis and Dialog, as well as WestLaw. I also consulted the internet when necessary, for example, when I needed to find technical definitions of things (like TMJ). For all internet searches I used Google unless otherwise stated.

Phase One: Background Research

Because I know very little about Connecticut state law, I decided that it would be helpful to begin with some background research. Lexis has a wide variety of secondary legal sources, from journals and Practising Law Institute materials to legal encyclopedias

and treatises. Lexis has an excellent user interface when it comes to browsing sources – a user can choose to search via secondary sources and narrow down to a specific topic or area, or in the alternative, choose a specific topic or area and broaden the search until one finds secondary sources. I opted for the latter, selecting “States – US – Legal” and then “Connecticut”. I was then presented with a myriad of options: Cases, Statutes, Regulations, Codes, Court Rules, Directories, and Search Analysis and CLE (continuing legal education) materials. Listed under Search Analysis and CLE were several of the most popular choices. The list included well-known treatises on Connecticut Federal Practice, insurance law, and real property. Also included was “Tort Remedies in Connecticut”². This appeared to be exactly the type of background material I had been hoping to find, so I clicked on the link and found an encyclopedia-esque document describing in a simple, concise manner, the basic law of torts in Connecticut, including claims, remedies, and strategies. From reading through the material, it appeared that tort law in Connecticut did not differ much from the tort law I had learned in my first year of school. Essentially, for Jessica to prevail at trial, she had to demonstrate that the driver of the other car had been negligent – that is, that he owed a duty of care to her, breached that duty of care, and by that breach caused her injury. This would entitle her to compensatory damages equal to the amount of her medical costs and property damages, and possibly an additional amount for pain and suffering. She would also need to demonstrate persuasively that the driver of the car (and his employer) owed her compensation for her ongoing medical expenses, including the treatment of her TMJ.

² Richard L. Newman & Jeffrey S. Wildstein, TORT REMEDIES IN CONNECTICUT (2004).

Second Phase: Sharing Information and Reformulating Strategy

I brought what I had learned from the treatise I found on Lexis to Jessica. I explained to her the essential concepts, what she would have to prove, what was likely to occur in the courtroom, and so forth. She expressed concern that her lawyer would have difficulty proving her case. She also had an additional question regarding the practicality and desirability of settling the case out of court. We agreed I would find further information on both settlement options and procedure as well as any novel strategies for her lawyer and case law that was on point. Hopefully, the results of my search would demonstrate that Jessica was entitled to compensation for both her past and ongoing injuries.

Third Phase: Legal Literature Search

Since I had only used Dialog in class exercises and for patent/trademark/copyright searching at work, I thought I would try doing a legal literature search on Dialog. I hypothesized that a literature search on Dialog would be more efficient because of the structure of the database, as well as the precise nature of the searching strategy required by the system. It also seemed more practical to use Dialog; had I been performing this research for a paying client, a literature search on West or Lexis would be vastly more expensive than on Dialog, whose fees are much smaller in comparison when one is casting a wide net. When I use Dialog, I use Dialog Classic on the Web, because it is the interface with which I am most familiar. I looked up the number for the Legal Literature database (150) and began my search:

B Current 150

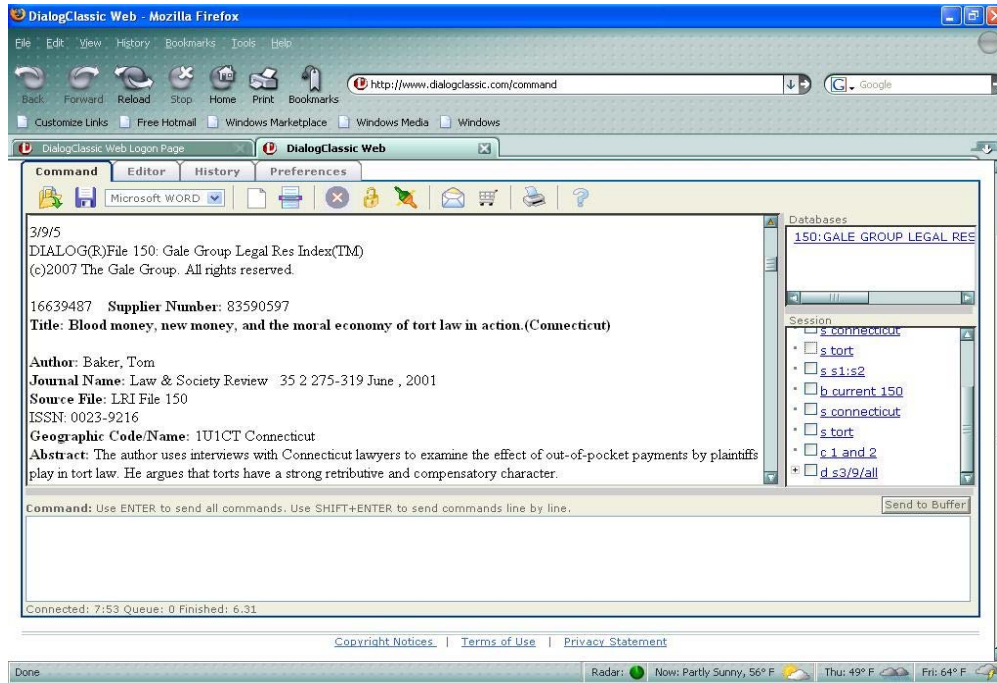
S Connecticut

S Tort

C 1 and 2

D s3/9/all

The search process is pictured below:



Hoping to get the full results for all 67 documents – being a law student and a research assistant, I have become quite adept at skimming long articles - but was disappointed to see that the full results were merely abstracts. I had failed to note this fact when I chose the Legal Literature database for my search. In addition, there appeared to be numerous duplicates. However, I decided to look on the bright side and skim the abstracts; if anything seemed useful, I at least had the cite and could quickly locate it on West later.

I selected the items listed below to follow up on in later searches on full-text databases:

Title: Significant tort development decisions in 2005.(Connecticut)

Author: Wildes, James E.

Journal Name: Connecticut Bar Journal 80 2 139-184 June , 2006

Title: The role of compensation in personal injury tort law: a response to the opposite concerns of Gary Schwartz and Patrick Atiyah.

Author: O'Connell, Jeffrey; Robinette, Christopher J.

Journal Name: Connecticut Law Review 32 1 137-154 Fall , 1999

Both of these articles touched on the two main aspects of a solid legal argument: binding case law and policy.

Fourth Phase: Review of the Literature

To find the law review articles, I decided to use WestLaw, because I like their command searching interface better than Lexis's. For one, it is easy to call up the correct database if one is already familiar with it. Secondly, the heading search fields have easy-to-remember abbreviations, so it is much faster than using Lexis's drop-down field search menu. I began by navigating to the most expansive literature database on West: TP-ALL, or "Texts & Periodicals - All Law Reviews, Texts & Bar Journals", intending to look for the first potentially useful article I found using Dialog. I used the following command:

TI("Significant tort development decisions in 2005") & AU(Wildes)

The search produced zero results. I then tried searching by the author's name only:

AU(Wildes)

For some reason, of which I am still unsure, the exact article I was looking for by title AND author showed up in the results of this search, as did an even more recent article by

the same author: “Tort Development in 2006”. Although I had not been looking for it, I decided to review the more recent article – the fresher the information, the more useful in court. Even though I was happy with the result, the differences between Dialog and West begged the question why the supposedly “current” Legal Literature database on Dialog was not as up to date. The best explanation I could imagine was that as Dialog is not primarily a legal research tool, the updates to the database are less frequent or timely. It also may have something to do with the proprietary nature of legal resources. In addition, the titles were slightly different in each database.

In any case, the law review article was helpful, especially in the area of recent developments in damages. A relevant passage from the article read:

The Supreme Court in Right v. Breen, [FN20] in reversing the Appellate Court, thereby making the defendant potentially liable for costs when the defendant admits liability but denies having caused the alleged injury, and the tier of fact thereafter concludes that the plaintiff failed to prove that he or she suffered any injury as a result of the defendant's conduct. The plaintiff claimed injuries as a result of having been rear-ended by the defendant. [FN21] The defendant admitted liability, but contended that the plaintiff's injuries were the result of various other vehicle accidents. [FN22] Using a plaintiff's verdict form, the jury returned a verdict of zero economic damages and zero noneconomic damages. [FN23] The trial court granted the plaintiff's motion to set aside the verdict, and for additur, and awarded the plaintiff \$1.00, as well as costs under General Statutes Section 52-257. [FN24] *The Supreme Court agreed with the defendant that a plaintiff must prove all of the elements of a negligence claim, including causation and actual injury, in order to recover, and therefore, the technical injury concept was inapplicable to a negligence action.* [FN25] The

*Court, in rendering its decision, explicitly overruled the portion of Keller v. Carone [FN26] which stated that a defendant's admission of liability in an action for negligence establishes a technical legal injury for which the plaintiff is entitled to at least nominal damages. [FN27] (Italics added).*³

This information was helpful for two reasons: first, it alerted me to the fact that simply because the defendant was prepared to admit liability for the accident did not mean that Jessica would automatically be entitled to compensation for all her injuries. This was especially pertinent information because Jessica had told me that the defendants were not denying liability, but rather arguing they did not cause her TMJ, and thus did not have to compensate her medical expenses associated with that particular injury. Thus, it appeared Jessica was still facing an uphill battle. Secondly, the article specifically referenced a case having to do with injuries caused by an auto accident in which defendants were denying liability for certain injuries – a case exactly on point. I noted the citation of the case (277 Conn. 364, 365-66, 890 A. 2d 1287) for future reference.

I then searched for the other secondary source, again in the database TP-ALL:

TI(The role of compensation in personal injury tort law: a response to the opposite concerns of Gary Schwartz and Patrick Atiyah)

I chose to search by title thinking that it would be more specific, and therefore more efficient and inexpensive, to search for a title than for an author, yet again my title search produced no results. I modified the search to the author's name:

AU("Jeffrey O'Connell")

³James E. Wildes, TORT DEVELOPMENTS IN 2006, 81 Conn. B.J. 63 at 66 (March 2007).

The article from Dialog was number 20 on the list. A quick skim of the introduction alerted me to the fact that the article was far too scholarly to be of any practical use to my sister, so I decided not to include it in my report back to her.⁴

At this point I reflected on the poor results I achieved using Dialog for a literature search. I suspect that my failure to find useful articles there was a combination of my inexperience with literature searches on Dialog, the simplicity of my search commands, and the aforementioned limitations of Dialog as a legal literature search tool. Despite these shortcomings, I did find a gem – the Wildes article about tort developments. I printed that and added it to the other background research I had already gathered.

Phase Five: Case Research

However informative the background information obtained, and no matter how strong Jessica's case appeared to be, neither could direct the court to find in my sister's favor – such things are merely *persuasive* in a court of law, as opposed to binding precedent. What is binding on the court is law – both case law (common law) and statutory law. Because I did not think Jessica's case implicated any statutes, I chose to eliminate that from my search. I did want to find several cases that would indicate the likely outcome should Jessica's case progress through the trial. I therefore searched for cases that had been cited in both *Tort Remedies in Connecticut* and in the Wildes article. For those cases, I had cites, which meant I could find the exact case instantly, without

⁴ The article, THE ROLE OF COMPENSATION IN PERSONAL INJURY TORT LAW, discussed the philosophical and moral underpinnings of tort law and argued that compensation is not only a plausible goal but a necessary one. The article's only connection to Connecticut law specifically was that it was published in the Connecticut Law Review. 32 Conn. L. Rev. 137 (Fall 1999).

search terms. I did so for the following cases (the holdings⁵ of each are summarized in parenthesis):

Block v. Pascucci, 111 Conn. 58, 64 (1930) (noting that an award of compensatory damages in tort serves to restore the plaintiff to his or her original condition).

Barker v. Lewis Storage and Transfer Co., 78 Conn. 198, 200 (1905) (stating that the “cardinal rule” of tort law is that compensatory damages should receive fair compensation for loss or injury and no more.)

Trani v. Anchor Hocking Glass Corp., 142 Conn. 541, 544 (1955) (holding that a plaintiff’s compensation includes items which will exist in the future if such items can be determined with a reasonable degree of certainty.)

Kane v. New Idea Realty Co., 104 Conn. 508, (1926) (defining general damages as those which the law implies result from the tort in the complaint that the damages were sustained by the plaintiff by reason of injury.)

The combination of these cases and the background information gave me a good idea as to what Jessica would have to prove and why. However, I wanted more specific information – in particular, I wanted to find cases that involved plaintiffs suffering from TMJ. To do that, I knew I had to try to search the Connecticut case law database on either Lexis or WestLaw.

⁵ “Holding” refers the portion of the court’s opinion which constitutes the conclusion of the case and the precedent which binds all forthcoming cases of a similar nature.

I chose WestLaw, again, because I am more comfortable with its interface. West also features “KeyCites” which immediately alert the reader whether the case is still “good law” or not. These “KeyCites” are symbols located at the top left of each case. If a case is not “good law”, it will no longer be binding on the court, and would be useless to Jessica.

I started my search for case law in the database CT-CS-ALL, or Connecticut State and Federal Cases – All, which is the most comprehensive database of case law from the state of Connecticut. For my search string, I began with:

Damages & (Automobile or Car) & (TMJ or Temporomandibular joint and muscle disorders)

One result of my search is pictured below:

The screenshot shows a Mozilla Firefox browser window displaying a Westlaw search result. The browser's address bar shows the URL: http://web2.westlaw.com/search/default.w?fn=_top&rs=WLW7.04&rp=%2fsearch%2f. The Westlaw interface includes a navigation menu with options like 'FIND & PRINT', 'KEYCITE', 'DIRECTORY', 'KEYSEARCH', 'COURT DOCS', and 'SITE MAP'. The search results section displays the case 'Vickers v. Jessup' with citation '32 Conn.App. 360, 629 A.2d 457' and date 'August 03, 1993 (Approx. 9 pages)'. The case text includes the name 'Kim JESSUP', case number 'No. 11613', and dates 'Argued May 10, 1993' and 'Decided Aug. 3, 1993'. The summary states: 'Certification Granted, Limited to the Following Issue September 15, 1993. Personal injury victim brought suit against driver for injuries suffered in accident when driver's car struck automobile in which victim was passenger. Following jury trial before the Superior Court, Judicial District of New London, Hendel, J., judgment was entered on jury verdict for victim. Driver appealed. The Appellate Court, Lavery, J., held that: (1) physician's expert testimony was based on reasonable medical probability, notwithstanding his use of terms such as "I felt," or failure to specifically phrase questions in terms of reasonable medical certainty; (2) sufficient factual foundation was established for all medical opinions of physician; (3) trial court did not commit clear and manifest error in determining that victim's letter was not admissible in evidence as prior inconsistent statement; (4) evidence was sufficient to support determination awarding victim \$71,500 for past and future economic damages; and (5) evidence was sufficient to support award of \$125,000 for noneconomic damages. Affirmed.'

This search was extremely successful (surprisingly – for such a narrow search I was not expecting much – I simply wanted to try my luck). Eight fairly recent cases matched my criteria. Following is a summary of my findings:

Chen v. Neubauer, 2002 WL 1573396 (Conn. Super. 2002) (holding plaintiff injured (including TMJ) in auto accident was entitled to compensation for both damages and future suffering despite fact that “[t]he plaintiff testified she felt “mostly okay” at this time though sometimes she felt “a little bit hurt.”).

Schiel v. Diduca, 2001 WL 1468886 (Conn. Super. 2001) (holding plaintiff injured in bus/car accident was entitled to damages despite the fact that “the most disturbing element of the plaintiff’s case is her attempt to relate several physical problems arising long afterwards to the accident of October 3, 1995. For example, the plaintiff initially did not report any injury to her teeth, her mouth, or her jaw. Yet, in 1996, 1997 and as recently as this year, she has complained of ear problems, a jaw dysfunction (TMJ) and a cracked tooth.”)

Vickers v. Jessup, 32 Conn.App. 360 (Conn.App.1993) (Personal injury victim brought suit against driver for injuries suffered in accident when driver's car struck automobile in which victim was passenger. Court held that: (1) physician's expert testimony was based on reasonable medical probability, notwithstanding his use of terms such as “I felt,” or failure to specifically phrase questions in terms of reasonable medical certainty; (2) sufficient factual foundation was established for all medical opinions of physician; (3) trial court did not commit clear and manifest error in determining that victim's letter was

not admissible in evidence as prior inconsistent statement; (4) evidence was sufficient to support determination awarding victim \$71,500 for past and future economic damages; and (5) evidence was sufficient to support award of \$125,000 for noneconomic damages.)

Phase Six: Information Synthesis

By the end of all my research, I had found a significant amount of background information and case law supporting my sister's case. It seemed to me that she was justified in seeking compensatory damages for not only her past injuries but also her ongoing treatments. The case law concerning auto accidents resulting in TMJ were very favorable. These cases, having been decided by the appellate level court in Connecticut would be binding on the lower court. Were Jessica to pursue her case in court, I felt a victory was highly probable.

Conclusion

I saw my sister over spring break and reported my findings. Unfortunately, she had already decided to settle her case. Thus, my research was for naught. In spite of this, I learned a great deal about both search strategies and personal injury tort law in Connecticut. I learned that my Dialog skills need more practice. My search on that database did not give me the results I had hoped. I must learn to become comfortable with more complex search commands before I can expect more accurate and useful results. I also learned that Lexis is excellent for browsing. The user interface is well organized, and displays a number of research options that I found intuitive. I also appreciated the system's flexibility – I could begin a search from a geographical area or

an area of law – all without having to develop any search terms. Perhaps most importantly, I discovered the truth in the researcher’s adage “start broad”. The problems I encountered with WestLaw could have been avoided if I had started with only the author’s name, rather than the “exact” title I discovered on Dialog.

This exercise was most useful for me. I was able to hone my online research skills, attempt to use Dialog for a new purpose, and supply my sister with valuable information regarding the law of torts in Connecticut. If only she had waited for my search results – she might have decided to decline the defendant’s settlement offer and fight the battle in court. Given my results, I am fairly certain she would have won the case.