

Obremski v. CHT Trucking
Right Turn-Sideswipe-Intersection-Multiple Vehicle

Queens County

VERDICT **\$75,000**

CASE Agnes Obremski v. CHT
Trucking Inc., and Anthony
H. Holsapple, No. 18892/03

COURT Queens Supreme
JUDGE Joseph P. Dorsa
DATE 1/13/2006

The defendants conceded liability. The trial addressed damages.

INJURIES/DAMAGES *aggravation of preexisting condition: arthroscopy; back bursitis; debridement; decreased range of motion; elbow; lacerations; neck ; physical therapy*

PLAINTIFF
ATTORNEY(S) **Leonard B. Chipkin,**
Sackstein & Lee L.L.P.,
Garden City, NY

About three months before the accident, Obremski sustained back and neck injuries that produced disc herniations at C3-4, C4-5, C5-6 and L4-5; disc bulges at C6-7 and L3-4; and radiculopathy that stemmed from her C5-6 and L4-5 discs. The injuries were treated via physical therapy, which was ongoing at the time of the instant accident.

DEFENSE
ATTORNEY(S) **Robert Mazzuchin,** Brand
Glick & Brand P.C., Garden
City, NY

FACTS & ALLEGATIONS On June 27, 2003, plaintiff Agnes Obremski, 38, an unemployed student, was driving in the right westbound lane of 20th Avenue, near its intersection at 132nd Street, in the College Point section of Queens. When she reached the intersection, she began to execute a right turn onto northbound 132nd Street. Her vehicle was sideswiped by an 18-wheel flatbed truck, which was traveling in 20th Avenue's left westbound lane and executing an identical turn. The collision sheared the top portion of Obremski's vehicle, and the vehicle was pushed onto the sidewalk, where it struck a telephone pole. Obremski claimed that she sustained back, elbow and neck injuries. Obremski sued the truck's operator, Anthony Holsapple, and his employer, CHT Trucking Inc. She alleged that Holsapple was negligent in the operation of his vehicle and that CHT Trucking was liable because the accident occurred within the scope of Holsapple's employment.

After the instant accident, Obremski sought treatment by her family physician. She claimed that the collision exacerbated her preexisting injuries. She also claimed that she sustained a laceration of her right (dominant) arm's elbow. She contended that the laceration became infected and caused bursitis of the elbow.

Obremski claimed that Holsapple should not have turned out of 20th Avenue's left lane.

On July 22, 2003, Obremski underwent surgical debridement and draining of an infected portion of the elbow's olecranon-its bony prominence. The surgeon also removed a glass shard.

On Sept. 30, 2003, Obremski underwent arthroscopic surgery that included removal of her right elbow's olecranon bursa.

On Oct. 31, 2003, she underwent a complete bursectomy. The latter procedure was followed by about three months of weekly physical-therapy sessions. Obremski also underwent about two years of somatic surgical procedures that addressed her right elbow. She claimed that she cannot extend or flex the elbow

and that the disability limits the elbow's use. She also claimed that the bursa's absence causes pain that emerges when the elbow is rested on a surface.

Obremski sought recovery of her future lost earnings and damages for her past and future pain and suffering. However, she was not employed when the accident occurred, so the lost earnings claim was dismissed.

After the conclusion of Obremski's case, defense counsel moved for a directed verdict. As a result, Judge Joseph Dorsa dismissed the claims that were related to exacerbation of Obremski's preexisting back and neck injuries.

Defense counsel contended that Obremski does not suffer any limitation or loss of her right elbow's use and that objective evidence did not indicate that she suffers pain. He also contended that Obremski's surgeries were necessitated by her failure to heed physicians' instructions.

RESULT The jury determined that Obremski's damages totaled \$75,000.

AGNES OBRESMKI \$50,000 past pain and suffering
\$25,000 future Pain and suffering (1 year)
\$75,000

DEMAND OFFER \$150,000
\$75,000

INSURER(S) Progressive Casualty Insurance Co. for both Defendants

TRIAL DETAILS Trial Length: 6 days
Jury Deliberations: 2.5 hours
Jury Composition: 1 male, 5 female

PLAINTIFF EXPERT(S) **Jatinder S. Bakshi, Robert Michaels, M.D.**, orthopedics, Mineola, NY (treating surgeon) **Roger L. Simpson, M.D.**, plastic Surgery/ Reconstructive Surgery, Garden City, NY

DEFENSE EXPERT(S) **Edward A. Toriello, M.D.**, orthopedics, Middle Village, NY

POST-TRIAL Both sides' counsel contended that the verdict was against the weight of the evidence. Both moved to set aside the verdict, but Dorsa denied both motions.