

Wittmer firm recovers \$490,000 settlement in motor vehicle collision case.

On July 30, 2003, James Mason was heading home after a day at work. On this particular day, James, a CAD design operator for a national safety engineering firm, was driving down Fruitville Road with the rest of the evening rush hour traffic. James and his wife, Kathi, were in the right lane heading East on Fruitville Road. They were stopped at the red light at the intersection of Fruitville Road and Lockwood Ridge Road. Doris MacBain had just left Sarasota Memorial Hospital after visiting her husband. Mentally distracted and not paying attention, the elderly Doris MacBain plowed her car into the rear of the Masons' vehicle.

In the blink of an eye the collision turned the Mason vehicle from a midsize car to the likeness of a compact. James immediately felt pain in his neck and shoulder, and was taken to the hospital for his injuries. Throughout the next several months James endured neck surgery for a herniated disc and shoulder surgery for a torn rotator cuff. Since the motor vehicle collision, James found it increasingly more difficult to concentrate, became agitated, had difficulty collecting his thoughts and was unable to concentrate enough to work a full day. James and Kathi were concerned they would lose everything under the crushing burden of their extensive medical bills.

Doris MacBain had automobile liability insurance with Progressive. The limits of coverage on her vehicle were \$100,000.00. When James retained our firm his medical bills already approached \$100,000. James and Kathi were in a serious predicament. Offers were extended to Progressive to resolve the Masons' claims provided Progressive made a timely delivery of \$100,000 AND disclosed information on all other available insurance. Initially, Progressive failed to disclose that Mrs. MacBain's husband

had a second insurance policy of \$100,000, which provided coverage for this motor vehicle collision.

Progressive failed to comply with the terms of the Masons' initial offer and suit was filed. After a little more than one year of litigation, Defendant's denials of wrongdoing, defense medical opinions indicating that there was nothing wrong with James, and surveillance to try to capture James in the act of doing something he should not, the insurance company was finally convinced they needed to settle the Masons' claim. The problem now facing the insurance company was that the Masons' damages clearly exceeded all available insurance. Progressive quickly made a written tender of the \$200,000 in coverage and turned to Mrs. MacBain to pay the remainder of the claim.

Ultimately, our Firm was able to convince Progressive that they had failed to properly evaluate this claim and that their conduct (in trying to pay less than the available policy limits) had exposed their insured to excess damages. Convinced their attempts to reduce the Masons' damages had failed, they reluctantly agreed to pay James and Kathi Mason \$490,000.

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