

August 19, 2019

## Broward Lawyers Quadruple Arbitration Award With \$2.2M Verdict for Cyclist Hit by Car

"Although this is a woman who may look OK, that doesn't mean that she is totally OK and doesn't have real pain and real problems," said attorney Bryan Hofeld, who worked with co-counsel Zane Berg and Cristina Sabbagh of the Schlesinger Law Offices to land a \$2.18 million jury verdict for Lee County cyclist Mary Mitchell, who was hit by a driver.



(l-r) Cristina Sabbagh, Bryan Hofeld, and Zane Berg, with the Schlesinger Law Firm.

Bryan Hofeld, Zane Berg and Cristina Sabbagh of Schlesinger Law Offices in Fort Lauderdale won a \$2.18 million jury verdict for a cyclist struck by a car in Sanibel Island in Lee County.

It was a satisfying result for the plaintiff, who had rejected an award of about \$450,00 in damages after mandatory nonbinding arbitration in April, according to Hofeld.

“We just didn’t feel that that was an accurate measure of the damages that Ms. Mitchell had experienced and was going to continue to experience,” Hofeld said. “And I think that was validated by the jury’s decision.”

The morning of April 4, 2015 began like any other for 62-year-old librarian Mary Mitchell, who was en route to work when she cycled across an intersection. Mitchell had the right of way, but driver Steven Anderson pulled out of a nearby supermarket without giving way, knocking her over.

Mitchell was unable to move after the fall, thanks to a fractured wrist and hip. She had same-day surgery on both injuries and enjoyed a good recovery. But the accident triggered years of discomfort and problems with her wrist and hip that will only worsen with time, according to Hofeld, who said that surgical hardware in Mitchell’s body resulted in bursitis.

Bursitis is the inflammation of the bursa, fluid-filled sacs or pads that act as cushions for joints. It was mild at first, Hofeld said, but gradually worsened in 2018, when Mitchell’s doctor prescribed cortisone injections and said she might need another surgery.

in March 2018, **Mitchell sued** Anderson, who had been vacationing in Florida from Minnesota at the time of the accident.

Anderson initially **denied any wrongdoing**, and argued that the lawsuit was barred under Florida’s Motor Vehicle No-Fault Law because Mitchell’s injuries weren’t permanent or life changing.

The defendant’s attorneys, Craig Ferrante, Brittany Perez and Raul Loreda of Wicker, Smith, O’Hara, McCoy & Ford in Naples, did not respond to a request for comment by deadline.

Anderson accepted liability in the run-up to trial, leaving jurors to decide what damages, if any, he owed.

From Hofeld's perspective, fault should never have been a question.

"To me and to, I think, any reasonable person looking at this case, even just based on what was learned on the day of the accident, there was no question that this man was at fault," Hofeld said. "You have a woman who is in the crosswalk with the right of way, crossing at an intersection."

### **'Prism of pain'**

At trial, Anderson disputed the extent of Mitchell's injuries. The defense hired an orthopedic surgeon, who testified that Mitchell was doing well because her fractures had healed and her injuries weren't permanent.

That was a problem for Hofeld, Berg and Sabbagh, because their client did appear to be fine on the outside.

"Although this is a woman who may look OK, that doesn't mean that she is totally OK and doesn't have real pain and real problems," Hofeld said.

The plaintiff had been in good health before the accident, but her treating surgeon testified that the injuries were permanent and would likely lead to post-traumatic arthritis. Unlike regular arthritis, this condition arises from trauma to bones and joints in an accident.

Hofeld said he and his team therefore had to be careful in describing what Mitchell was going through, hoping to properly explain her pain without jurors becoming apathetic to it.

"The jurors hear so much about pain, they hear lawyers talking about pain and I think it may be easy to get sort of desensitized to that word and what it really means," Hofeld said.

"When you're actually someone who has real pain and real problems from the pain, that sort of consumes your entire life, and everything you think, say and do is experienced through that prism of pain that you're going through. It affects every aspect of your life, and that's no small thing."

Hofeld argued that his client hasn't rode her bike since the accident or completed a sculpture, as she used to enjoy doing.

Lee County jurors deliberated for just 37 minutes, which Hofeld said typically spells bad news for a plaintiff.

But not in this case.

Jurors gave a few thousand dollars more than what the plaintiffs team had sought, according to Hofeld. They awarded \$278,631.33 for past and future medical expenses, \$1.9 million for past and future pain and suffering, and \$3,500 for past economic damages.

Mitchell eventually lost her long-time job, getting fired from a library where she'd worked for almost 30 years, according to Hofeld. Although Mitchell testified that she'd struggled to perform certain tasks after the accident, the library said she had been fired over a bad customer review.

"Did her injuries in the accident play a role in her being asked to leave? It may have. But we left that up to the jury to decide whether that played any role or not," Hofeld said. "They ultimately did not award any money for future lost earnings, because it wasn't clear, and I was the first to explain and express that in closing arguments."

Mitchell is now 66, and has another 19 or 20 years life expectancy, according to the plaintiff's evidence in the case.

Hofeld said his client was pleased with the verdict, though the lawsuit had been her last resort.

"The last thing in the world [Mitchell] wanted was to have to go through a lawsuit and subject her entire life to being examined and probed," Hofeld said. "She didn't want any of this. ... And while she's happy with the result, she can't undo what took place, and this is stuff she's going to have to live with."

**Case:** Mary Mitchell v. Steven Anderson

**Case No.:** 18-CA-001085

**Description:** Auto negligence

**Filing date:** March 16, 2018

**Verdict date:** July 31, 2019

**Judge:** Lee Circuit Judge Joseph C. Fuller

**Plaintiffs attorneys:** Bryan Hofeld, Zane Berg and Cristina Sabbagh, Schlesinger Law Offices, Fort Lauderdale

**Defense attorneys:** Craig Ferrante, Brittany Perez and Raul Lored, Wicker, Smith, O'Hara, McCoy & Ford, Naples

**Verdict amount:** \$2,181,631.33