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COVER STORY

Board approves \$10M in work commute crash

By Shane Nelson
Daily Journal Staff Writer

A workers' compensation board judge approved a compromise and release settlement agreement on Monday in the amount of \$10 million for a California woman, who suffered a traumatic brain injury in a car accident as she drove home from work at 2:30 a.m. in June 2013.

Los Angeles attorney Christopher Asvar of Asvar Law handled the workers' compensation claim for the 29-year-old woman against her employer, Ernst & Young, and The Insurance Co. of the State of Pennsylvania, a subsidiary of American International Group Inc., or AIG.

Asvar claimed the award is the highest known workers' compensation settlement in the nation's history.

"The \$10 million is to maintain the status quo of this young woman," he said, noting the plaintiff will receive about \$9.1 million in structured lifelong annuity payments. "Every penny will be spent on just her daily care."

Meanwhile, Arash Homampour of The Homampour Law Firm led the client's civil third-party case with co-counsel Jin Lew against Caltrans and the state of California, reaching a tentative settlement

of \$8 million last October. The agreement includes a tentative lien for AIG of \$1.5 million, allowing for a net civil recovery of approximately \$3.2 million to the injured woman.

Homampour said the settlement hinged on the state conceding a safety barrier should have been present at the accident site.

"We got them to admit that this was a location that, per their own manual, required the presence of a guardrail, because the slope and height of the embankment required one to protect the roadway user," he said. "And they could have put up a temporary k-rail [barrier] while they were planning and installing the permanent one."

According to Lew, the state installed a new guardrail at the crash site — the Venice on-ramp for Interstate 10 Santa Monica Freeway — "not long after the plaintiff's accident."

The workers' compensation suit, however, featured consideration of a regulation regarding employee commutes.

"We could have raised the going and coming rule, which states you're generally not covered under workers' comp when you are either commuting to or from work," explained Joseph Kieffer, co-counsel for AIG. "But this was sort of a special



ASVAR

mission that she was on, and the trouble with the going and coming rule is there are so many exceptions to it."

"This poor lady was 29 years old and she was pretty much 100 percent on impact," he added. "So it was really more or less trying to find a number that would work for everybody. In the end, it was just a tragic case."

One Asvar tactic that Kieffer said he applauded was a documentary of sorts the attorney's team for the plaintiff put together, showcasing a typical day in the life of the woman following the accident.

"We wanted to show there

isn't a penny here that's being asked for that isn't justified," Asvar said of the film his team made. "The actual picture of the injuries was much more daunting than the medical records indicated, and I think they probably played an important factor in AIG deciding to do the right thing, which was to meet our demand for \$10 million."

In 2012, Asvar reached an \$8.9 million workers' compensation settlement in the case of *Enriquez v. Willie's Painting; SCIF*, involving an 18-year-old who suffered a traumatic brain injury after falling from a painting scaffold.