

## VERDICTS AND SETTLEMENT FORM

<b>Type of Action</b>	Personal Injury Claim – MVC – UIM Coverage
<b>Injuries</b>	<p>Bicep labral complex injury, specifically, symptomatic subacromial impingement, partial rotator cuff tear, biceps tendinitis, synovitis, and post-traumatic distal clavicle osteolysis requiring multiple steroid injections. Plaintiff ultimately underwent shoulder arthroscopy with chondroplasty of the glenohumeral surface, debridement of the superior labrum, suprapectoral biceps tenodesis, diffuse synovectomy, rotator interval debridement, subacromial decompression, and arthroscopic distal clavicle excision.</p> <p>Post-surgery she developed adhesive capsulitis (frozen shoulder) and underwent a second surgery- left shoulder arthroscopic lysis of adhesions, subacromial decompression, and arthroscopic chondroplasty (removal of damaged cartilage).</p> <p>She also sustained back soreness, neck pain, headache, mid-sternal chest and breast pain from the airbag and seatbelt, neck and back pain, left clavicle discomfort, and very severe bruising.</p> <p>10% permanent partial impairment to her shoulder</p>
<b>Name of case</b>	Withheld
<b>Court (include county)</b>	Filed in Superior Court (County Withheld) – Plaintiff elected to demand arbitration of her UIM claim.
<b>Case #</b>	Withheld
<b>Special damages</b>	Past Medical Bills \$113,000. Rule 414 (Adjusted) Medical Bills \$42,000.00. \$7,000.00 in lost wages.

## VERDICT OR SETTLEMENT: *SETTLEMENT*

<b>Amount</b>	\$250,000.00; \$30,000.00 from the liability carrier, \$220,000.00 from the UIM carrier of which \$218,000.00 was UIM coverage and \$2,000 was MPC coverage. The UIM carrier asserted an offset from the UIM coverage by the amount of the MPC payment per <i>Kessler v. Shimp</i> , 181 N.C. App. 753, 640 S.E.2d 822 (2007). The Kessler case was wrongly decided, but Plaintiff did not wish to challenge the decision in the appellate courts.
<b>Date of verdict/settlement</b>	September 2024
<b>Most helpful experts</b>	Brian R. Waterman, M.D., FAAOS, Department of Orthopedic Surgery Wake Forest University School of Medicine, Winston-Salem, NC
<b>Insurance carriers</b>	Withheld
<b>Attorney for plaintiff</b>	C. Douglas Maynard, Jr., Law Offices of C. Douglas Maynard, Jr., PLLC, Winston-Salem, NC.
<b>Attorney for defendant</b>	Withheld
<b>Person submitting report</b>	C. Douglas Maynard, Jr.

## Description of the Case

Plaintiff was traveling to a hair appointment when a 26-year-old male fleeing from the police ran a stop sign striking another car which forced it left of center into the path of Plaintiff resulting in a head-on collision. Plaintiff put her arms in front of her face and the airbag deployed slamming her forearms. The defendant jumped out of his car and ran. He was apprehended about 30 minutes later following a police chase.

The defendant driver pleaded guilty to felony eluding arrest / motor vehicle – with 2 aggravating factors, felony hit and run, felony maintaining a vehicle / dwelling / place for a controlled substance; felony possession with intent to sell and distribute marijuana and resisting arrest.

Plaintiff sustained multiple severe bruises from the seatbelt and airbags. Her primary complaint at the emergency room was chest, neck and back pain. Left clavicle discomfort was also noted.

Plaintiff is a college graduate who works for the government in an administrative job. She is married with two adult children. Prior to the collision she did Pilates / Barre and lifted light weights. Her medical records contained no prior complaints of left shoulder pain. She had been seen by a sports medicine doctor and physical therapist for low back spasms / pain about 18 months prior to the crash.

After the emergency room, she saw her primary care provider, a nurse practitioner, who provided an affidavit on causation and the reasonableness of the medical care provided before she was seen by an orthopedic surgeon. The medical records did not specifically contain a reference for left shoulder pain until about 5-weeks after the crash. However, the records mention mid-back mostly on the left. She also had severe seatbelt bruises to her left shoulder / neck / chest and bruises on her forearms from the airbag.

Plaintiff had multiple stints of physical therapy and epidural steroid injections. She ultimately underwent two shoulder surgeries.

Counsel for Plaintiff was able to obtain the video footage of the investigating officers which contained a wealth of helpful information. In the video the officers commented that defendant's car "reeked like weed." In his car, police located a "sh#tload of pot brownies" (estimated at over 4 pounds), an open bottle of Patron, a vape pen with dab, ammunition, gun casings, and two cell phones. The officers also smelled alcohol on his breath.

The primary carrier tendered its \$30,000.00, but Plaintiff did not immediately accept it. Pre-suit the UIM carrier only offered \$100,000.00 and advised it did not see ever paying its limits in the case (\$250,000.00 in UIM coverage).

Typically, with shoulder surgeries the defense blames the surgery on the natural aging process, prior medical conditions, prior physical activities / sports (weightlifting, baseball, volleyball, CrossFit, etc.), and /or prior jobs (overhead work). Plaintiff's treating orthopedic surgeon was very helpful with the medical aspects of the claim. He met with counsel for plaintiff, reviewed pictures of her bruising, and video from the investigating officers. He discussed her prior medical records, prior physical activities, and the mechanisms of injury which formed the basis for a detailed affidavit drafted by counsel for Plaintiff. He then reviewed and edited the affidavit.

Plaintiff's orthopedic surgeon's affidavit unequivocally related her two surgeries directly to the collision, describing the mechanism of injury in detail and consistent with peer reviewed publications (Clavert P., Bonnomet F., Kempf J.F., Boutemy P., Braun M., Kahn J.L. Contribution to the study of the pathogenesis of type II superior labrum anterior-posterior lesions: A cadaveric model of a fall on the outstretched hand. J. Shoulder Elbow Surg. 2004;13 (1):45–50. doi: 10.1016/j.jse.2003.09.008). He clearly stated that "based upon my observations of her shoulder pathology in surgery, in the absence of the ... collision, [withheld] would not have had any symptoms, pain, or the problems she had with her left shoulder."

After providing the orthopedic surgeon's affidavit to counsel for the UIM carrier, the carrier proposed mediation several times. Plaintiff declined and insisted the UIM carrier pay its policy limits. The UIM carrier ultimately paid limits subsequent to a time limit demand, which included allegations that the claim was not handled in good faith. Among the issues raised was the UIM carrier serving voluminous discovery requests, which required Plaintiff to file a motion for a protective order.

Due to the facts of the case, particularly the conduct of the defendant, Plaintiff strongly considered not demanding arbitration and not accepting the \$30,000 tendered by the liability carrier and instead proceeding to trial. Ultimately, the Plaintiff elected arbitration.

Plaintiff contended North Carolina law, including *Capps v. Virrey*, 184 N.C. App. 267, 272–73, 645 S.E.2d 825, 829 (2007), makes it clear that the North Carolina Rules of Evidence do not apply to arbitrations; therefore, N.C. R. Evid. 414 does not apply to reduce damages payable in arbitration.

Punitive damages are excluded by UIM policy language. However, Plaintiff continued the UIM panel could consider the conduct of the tortfeasor in assessing compensatory damages (“The possibility of being found liable in tort and ordered to pay compensatory damages certainly acts to deter individuals from committing tortious conduct in the first instance. *Haarhuis v. Cheek*, 255 N.C. App. 471, 480–81, 805 S.E.2d 720, 727–28 (2017), writ denied, review denied, appeal dismissed, 371 N.C. 344, 814 S.E.2d 103 (2018), and writ denied, review denied, 372 N.C. 298, 826 S.E.2d 698 (2019).

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