Assignment(s) for the First Week of Classes

FACT PATTERN

This course involves handling a civil case from beginning to end, developing facts, theories and defenses along the way. The general facts that will be discovered are described below. There may be modifications or changes as the course progresses depending on how you, the attorney for either the Plaintiff or Defendant, decide what to do or depending on how the Professor changes things for purposes of exposure to various legal issues. You may not understand completely all of the terms used in the fact pattern – and that is ok. We will discuss everything in detail in class.

The Plaintiff, Jose Lira was injured on March 9, 2017, while working within the
course and scope of his employment as a landscape supervisor with Green Machine Landscaping, Inc. At approximately 8:00 a.m. on that date, Mr. Lira and his crew parked their landscaping truck on Brookhaven Drive in Orlando, Orange County, Florida. They parked in the same location where they have parked weekly for the prior 3 or 4 years to care for all of the lawns in this large neighborhood. The crew also placed four orange cones behind their vehicle to warn oncoming traffic there were workers in the area.

The blade on one of the riding lawn mowers needed to be replaced before starting work for the day. The crew, as instructed by their employer, always changed mower blades out in the field by positioning the mower on a ramp behind the truck, which allowed access to the mower’s underside, so the old blade could be removed. Mr. Lira laid down under the ramp and began removing the lawn mower blade, with his legs extending into the road. While Mr. Lira was working on the mower, a vehicle being driven by Brian Earle ran into the ramp where Mr. Lira was working, which caused the lawn mower to fall on Mr. Lira.

Mr. Earle lives in the neighborhood where Mr. Lira was working and was on his way to work. He told the police that, while he was driving, his windshield developed a film on the outside that made it difficult to see. He claims he took his foot off the gas pedal when his vision became obstructed but continued to drive for approximately 300 feet before he struck the truck ramp. It was a clear morning and the speed limit in this low traffic area was 25 mph. Mr. Earle was given a ticket by the responding police officer for careless driving.

Mr. Lira sustained serious injuries that included a fractured transverse process at C7, bilateral pneumothorax, bilateral rib fractures 1 through 10, a fracture of the left scapula, bilateral pulmonary contusions, a fracture of the T4 vertebrae, nasal fractures, and a right styloid fracture. He required an internal fixation procedure to address the T4 fracture and had a spinal fusion from T3 through T7 with pedicle screws and rod fixation. Mr. Lira also sustained a brain injury and was in a coma for approximately 1 week after the accident. He was hospitalized at Mercy Regional Hospital in Orlando from March 9 through March 24, 2017, and then was admitted into a rehabilitation facility where he lived and underwent intensive rehabilitation therapy for approximately one year. Mr. Lira has not worked since the accident, claiming he is totally disabled.

Mr. Lira remains under the care of Gerald Stinger, M.D. Dr. Stinger has diagnosed Mr. Lira as an incomplete paraplegic. Mr. Lira continues to experience weakness and burning pain in the lower extremities and is unable to walk without using a walker.

Because Mr. Lira was working within the course and scope of his employment at the time of the accident, his employer, Green Machine, provided workers’ compensation benefits in accordance with Florida law. As such, all of his medical bills and 2/3 of his lost wages have been paid by Green Machine’s workers’ compensation insurer, National Fidelity Insurance Company, which has determined that Mr. Lira is permanently and totally disabled. Accordingly, Mr. Lira will receive disability payments from National Fidelity for the rest of his life. He was 36 years old at the time of the accident, had an 11th grade education and earned $17.50/hour.

To date, Workers' Compensation has paid approximately $1,000,000.00 for medical expenses and wage loss. Dr. Stinger estimates the cost of future lifetime medical care for Mr.
Lira will be in the range of $300,000.00 to $500,000.00. The Defendant, Mr. Earle had automobile insurance through Allstate with policy limits of $100,000 per person and $300,000 per claim.

Mr. Lira is not a legal resident of the United States. He came to the United States from Mexico illegally with his parents when he was 13 years old. He has lived in the Orlando area since that time and attended public schools through the 11th grade. He started working for Green Machine in approximately 1999. He worked there for approximately 7 years, then took another job for approximately 4 years, and came back to Green Machine in approximately 2010, where he remained employed until the time of the accident. At the time of the accident, Mr. Lira was living with his long-time girlfriend, Tina, and they had two children together, Francisco (age 13) and Maria (age 11). Mr. Lira and Tina got married after the accident.

While Mr. Lira was in a coma, his wife contacted your law firm seeking legal representation for her injured husband. You will need to decide whether to take the case and, if so, develop a theory of the case and strategies along the way. Alternatively, you will undertake the role of the defense attorney who has been retained to represent the interests of Mr. Earle.

Some things to consider (but there are many other issues that we will identify):

1. How does the employer, Green Machine, factor in the case? Can they be sued? If not, how do we deal with their potential negligence?
2. Green Machine had workers’ compensation insurance through National Fidelity Insurance Company. Is that important? Does the workers’ compensation insurance company have an interest in a case against Mr. Earle? Do they have a “lien” on any recovery Mr. Lira makes on the case? If so, what is a “lien” and how do we deal with that issue?
3. The Defendant, Brian Earle, only has $100,000/$300,000 in automobile liability insurance coverage with Allstate (we will talk about what that means). If Mr. Lira has medical expenses and lost wages that exceed $1,000,000 – is there anything you can do to help Mr. Lira? What if there is not enough money “to go around?”
4. What is Tina’s role here? Does their marriage after the accident help the case? Hurt the case? Neither?
5. Does Mr. Lira have any comparative fault here? If so, how do we address that issue from both the perspective of the plaintiff and defense?

This entire fact pattern is real and you will meet the attorney who represented Mr. Lira. We will identify issues on our own and be able to compare our analysis with the actual attorneys who handled the real case and we will have access to their work. This course is meant to show you how attorneys in the real world approach cases and handle difficult issues.