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Bus crash victim seeks at least \$3M

After watching a school bus run over Ashley Zauflik, former Pennsbury school aide Mary Jo Hall rushed to her side to keep other students away.

"I'm assuming she is dead," Hall told a jury Wednesday, the opening day of Zauflik's civil trial against Pennsbury School District. "She is crushed."

Then Hall saw the girl raise her arm, so another student could hold her hand. "She was alive."

"Am I going to die?" Hall recalled Zauflik asking her. "I told her no."

Zauflik didn't die on that January afternoon in 2007 after a runaway school bus plowed into her as she stood on a crowded sidewalk outside Pennsbury High School's east campus, then dragged her under the bus. Another 19 students were also injured in the accident, but none as seriously as Zauflik.

The chief medical officer at Magee Rehabilitation Center in Philadelphia testified Wednesday that Zauflik, now 21, suffered massive internal injuries, the most obvious, the loss of her left leg above the knee.

But other injuries were more life-threatening, and life-altering, said Dr. Guy Fried, an expert witness who testified for Zauflik.

She had multiple, complex fractures in her lower body, life-threatening infections, neck injuries, fractured vertebra and extensive scarring around her body. Her pelvis area was crushed in a way that made it appear similar to pieces of broken hard pretzel, Fried said.

"She is completely made like a pancake," he said.

At St. Mary Medical Center, doctors found three-quarters of her blood was not circulating in her body because it was pooled in the injured lower body areas. The impact of the 10-ton bus on the then-115 pound girl ripped blood vessels, tissue and muscle creating the life-threatening blood loss.

For five weeks she was kept in a medically induced coma to control her pain. She had a tracheotomy, extensive abdomen surgery, a feeding tube and had to undergo dialysis when her kidney function shut down.

The extent of Zauflik's injuries, and their impact on her life, is the cornerstone of the civil trial, which is expected to last until at least Friday. Pennsbury has already accepted legal responsibility for the bus accident, the result of driver error two investigations found, and the district agrees Zauflik should be compensated for her injuries.

The outstanding question, which a jury will decide, is how much. Both sides agree the Zaufliks should receive the \$338,580 in recoverable medical bills, but what is the value of pain and suffering, loss of enjoyment, mental anguish and disfigurement?

Zauflik's attorney Tom Kline believes the amount should be at least \$3 million, which would cover economic damages, including future medical costs such as a \$65,000 high-tech prosthetic leg that will allow Zauflik to get back on her feet. Since the accident she has relied mostly on wheelchairs and crutches.

The district has offered a total of \$500,000 to settle the eight bus-accident claims, including Zauflik's. The district claims its exposure is limited to that amount, according to a pretrial memorandum filed in the case. The Zaufliks have declined to accept the offer. The district's attorney, David Cohen, declined to comment Wednesday on how much the district is willing to compensate Zauflik.

In his opening statement, though, Cohen, who apologized on behalf of Pennsbury to the Zaufliks, told the jury its job was to assess "reasonable and necessary" damages in the case, evaluate all the information presented and set aside the "sympathy factor" when deciding on damages.

"We're all very, very sympathetic to Ashley's situation," Cohen said. "I'm not asking you not to have sympathy. I may want to shed a tear."

When considering pain and suffering, for example, Cohen pointed out that Zauflik was in a medically induced coma to prevent her from experiencing pain after the accident. Kline's co-counsel David Caputo, later refuted that claim with hospital records where doctors noted that Ashley did respond to pain while in the coma.

Cohen also noted that Ashley had taken three vacation trips since the accident including a family trip to Alaska a few months after she was released from the hospital; after the Alaska trip is when Ashley decided not to wear to prosthetic leg, Cohen added. She also graduated from high school on time, and she did not receive medical treatment for her accident injuries in 2008 or 2009.

Cohen also disputed the accident hurt her future earning potential.

"She will be able to earn what she would earn before the accident," he told the jury.

But witness Fried, who reviewed Zauflik's extensive medical records for the case, says her injuries are lifelong. Zauflik likely will develop early arthritis and require a hip replacement, and suffer back pain as a result of her altered gait.

"She was crushed. She'll be hurting in those areas," he said. "She is unfortunately going to age double time. She has a lot of medical issues."

But in his cross examination, Cohen argued that Fried has not treated Zauflik, nor did he contact any doctors who have treated her during his evaluation. He also argued that photos of Zauflik's abdomen and neck scars shown the jury were taken before she underwent plastic surgery to make them less obvious.

Cohen also asked Fried why his initial evaluation of Zauflik in April 2010 took place in her attorney's office, rather than a hospital setting. Fried answered that sometimes patients are more comfortable in a "neutral" environment.

"It's more an emotional comfort," Fried said.

Cohen also pointed out that in her Magee discharge in June 2007, Zauflik was listed as able to take care of herself and use a prosthetic leg with crutches. Fried acknowledged the plan was that she would continue using the leg, but that it didn't work out.

He described the initial prosthetic leg as an "old clunker" — heavy, uncomfortable "like a G.I. Joe leg," which was difficult to maneuver, especially with an above the knee amputation.

Zauflik stopped using the prosthetic leg after a while because it was painful, not easy to maneuver and it looked "fake," something she was extremely self-conscious about.

More recently, Fried added, Zauflik has been evaluated for a newer, "sleeker," lighter leg with a computer chip operated knee. "It looks much better; it feels much better; its a much more comfortable design," he added.

But Fried also acknowledged when questioned by Cohen that there was no physical reason that prevented Zauflik from getting refitted for a new leg between July 2007, when she stopped using one, and now.

"She made a choice not to get refitted," Fried said.

Since the accident and recovery, Kline said Zauflik has been unable to get more "motivated" to move forward with her life. She is extremely self conscious about her scars and missing leg and experiences severe anxiety, which she is also treated for.

"Her world is limited right now," Kline added. "We're not saying she doesn't have a life, she has an injury, that is a big difference."

In a related matter, Kline confirmed Wednesday that his client had reached a confidential settlement with four companies involved in the design and manufacture of the bus and its braking and acceleration systems earlier this month. Former bus driver John McCleary has also been removed from the civil suit.

The trial continues Thursday with a therapist who treats Zauflik and an actuarial accountant among the expert witnesses expected to testify. Zauflik may also take the stand.