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From the March 22, 2004 North Carolina Lawyers Weekly.

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Verdicts & Settlements

Grocery, Cellphone Records Help Couple Recover \$1.02 Million From Impaired SUV Driver

Brief Statement of Claim: Husband and wife on motorcycle were injured by an impaired SUV driver.

Principal Injuries (in order of severity): Plaintiffs suffered multiple broken bones of their left lower extremities. Jane Doe (age 48) has a 20 percent disability of the left lower extremity, past medical expenses of \$50,467 and lost wages of approximately \$6,000. John Doe (age 50) has a 40 percent disability of the left lower extremity, past medical expenses of \$59,660, projected future medical expenses of \$28- \$30,000 and lost wages of \$23,694

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Tried or Settled: Settled after second mediation

County where Tried or Settled:
Confidential

Mediator: Kelly Johnson

Case Name & Number: John and Jane Doe v. Defendant Driver

Dates Concluded: First mediation March 10, 2003; second mediation June 5, 2003.

Settlement Amounts: \$1,020,000 total settlement: \$510,000 allocated to each plaintiff

Insurance Carrier: Confidential

Attorneys for Plaintiff: Karen Rabenau and Don Beskind of Twiggs, Beskind, Strickland & Rabenau, P.A., Raleigh

Experts: Toxicologist Andrew Mason, Ph.D.

Other Useful Info: Defendant was turning into her subdivision and swung her SUV wide, striking plaintiffs who were leaving the subdivision on their motorcycle. The sole witnesses to this Sunday afternoon crash were defendant and plaintiffs John and Jane Doe. Immediately after

the impact, plaintiff John Doe, lying in a ditch and too injured to use his cell phone, handed it to the defendant and asked her to call 911.

Instead, as plaintiffs' cellphone records revealed, defendant called her home telephone number. Shortly after the impact, a newspaper photographer arrived and took photos of the scene on a digital camera. Law enforcement then arrived on the scene and detected an odor of alcohol on the defendant's breath. When asked by the officer at the scene, defendant initially denied consuming any alcohol. When again asked by the officer, defendant told the officer she had a glass of wine at lunch hours earlier. Her breath test for alcohol measured .09 and defendant was charged with driving while intoxicated.

At her criminal trial, which plaintiffs had recorded, defendant denied intoxication at the time of the wreck. Defendant testified that after the wreck, but before the arrival of the officers, she chugged a glass of vodka handed to her by a neighbor. Defendant further testified that she had been to the grocery store just before the wreck but did not purchase any alcohol. Defendant was convicted of driving under the influence and did not appeal.

When deposed in the civil case, defendant again denied intoxication at the time of the wreck and again testified that she did not purchase any alcohol at the grocery store just prior to the wreck. During the deposition, plaintiffs obtained the defendant's grocery store customer card number. The grocery store later produced a computer log of the date, time and items purchased by defendant just before the wreck, and contrary to the testimony of the defendant, the record showed that among the few items purchased was a bottle of Chardonnay.

Defendant further denied responsibility for plaintiffs' injuries, denying that she had crossed the center line. Defendant claimed that plaintiffs were on her side of the roadway. When shown the photos from the newspaper reporter showing defendant's vehicle at impact on the wrong side of the road, defendant claimed the photos were inaccurate and that someone had moved her vehicle to that location after the impact. Aided by the timing of the grocery store computer log, the timing of the cell phone call to defendant's home and the time stamps on the digital photographs, plaintiffs established the timing of the impact, and that no vehicles had been moved before the photos were taken.

Submitted by: Twiggs, Beskind, Strickland and Rabenau

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