

Verdicts & Settlements

Negligence/Auto

\$3.5 Million Settlement On Sixth Day Of Trial

Brief statement of claim: Automobile negligence

Principal injuries (in order of severity): Comminuted fractures of both knee caps; comminuted fracture of left heel; bicondylar right tibial plateau fracture; fracture of 5th metacarpal on right hand; abdominal trauma and multiple lacerations; plaintiff eventually had to have both knees replaced.

Special damages: Past medical expenses of \$242, 311; cost of life care plan for future medical expenses, equipment, architectural renovations, and supportive home care ranged from \$1,311,330 to \$1,764,583 to plaintiff's life expectancy

Tried or settled: Settled on the sixth day of trial after the final charge conference and just before closing arguments; plaintiff filed a statement of monetary relief for the sum of \$3.5 million several months before trial.

County where tried or settled: Cumberland

Case name and number: *Dorothy C. Powers v. Charles Muller and Bolt Trucking Company, Inc.* (Cumberland County Superior Court; 01 CvS 8431)

Date concluded: Sept. 16, 2002

Name of judge: Gregory Weeks

Amount: \$3.5 million

Insurance carrier: Scottsdale Insurance Company; PMA Group; Zurich-American Insurance Company

Expert witnesses and areas of expertise: Cynthia Wilhelm, Ph.D, life care planner, Chapel Hill; J. Finley Lee, Ph.D, economist, Chapel Hill; Mike Sutton, P.E., accident reconstruction, Cary

Attorney for plaintiff: Howard Twiggs and Don Strickland of Twiggs, Beskind, Strickland and Rabenau, P.A., Raleigh; and Chris Guedri of Allen, Allen, Allen and Allen, Richmond, Va.

Other useful info: Plaintiff Dorothy Powers, a retired 67 year old woman was severely injured when the car she was driving was struck by a tractor-trailer attempting to pass her on a bridge in South Carolina. Plaintiff alleged that when she pulled into the main road from a side road that she could see the defendant tractor-trailer coming but it was far enough away to allow her to safely enter the roadway. Plaintiff alleged that the defendant driver then came up behind her at a high rate of speed and passed her on a bridge traveling in excess of 70 mph at a time when the defendant driver could see that another tractor trailer was coming in the opposite direction. Plaintiff alleged that the defendant driver, in an effort to avoid hitting the oncoming tractor-trailer

pulled back into her lane striking her car, causing it to go out of control and collide with the oncoming tractor-trailer head-on. Plaintiff was initially trapped in her car and had to be cut out with the "jaws of life" and then transported to the hospital by air ambulance. Plaintiff sued the defendants for compensatory and punitive damages under South Carolina law. The defendants denied liability contending that Plaintiff pulled out in front of the defendant driver and that her negligence was the sole cause of the collision. Defendants also alleged that Plaintiff's conduct under South Carolina law was reckless and wanton misconduct.

After staying in a South Carolina hospital for one week to get stabilized, plaintiff was transported by air ambulance to Richmond, Va. to live with one of her sons. The rest of her medical care, for the next 3 and 1/2 years was provided by physicians and other health care providers in Virginia. Her primary treating physician became Robert Adelaar, M.D., the Chief of Orthopedic Surgery at the Medical College of Virginia. Dr. Adelaar, replaced both of Plaintiff's knees and provided other orthopedic services. Dr. Adelaar testified in a deposition that Plaintiff was totally and permanently disabled as a result of the accident and needed round the clock supportive care and a handicapped home. At the time of the trial Plaintiff had been living with her son in Virginia and badly wanted to move back home to South Carolina. Over 92% of the cost of the Life Care Plan was to provide a handicapped accessible home and 24 hour/day supportive home care to allow Plaintiff to return home to South Carolina.

The case was mediated on July 31, 2002. At that time defendants had answered discovery stating that there were two liability policies - one with Scottsdale Insurance Company with limits of \$750,000 that covered the tractor and one with PMA Group with limits of \$2,000,000 that covered the trailer, but that only about \$2,600,000 was available due to payments to other parties. The highest offer by Defendants at mediation was \$850,000. Plaintiff demanded the policy limits and requested that defense counsel put the defendants on notice that the case could be settled within their coverage. A few weeks later, at the August 23rd pretrial conference, defense counsel disclosed that he had just been made aware that there was an excess policy through Zurich for an additional \$20,000,000, according to the plaintiff's counsel. Thereafter on August 30th defense counsel wrote Plaintiff's counsel making a final offer of \$2,000,000 to settle the case stating that no further increases would be forthcoming before or during trial. Plaintiff's counsel responded by giving defendants until September 4th to pay the remaining policy limits on the two primary policies or else Plaintiff's demand would increase to \$5,000,000. Defendant's declined Plaintiff's offer and the case proceeded to trial on September 9, 2002.

At trial, all of plaintiff's lay liability witnesses and the firefighter and EMS personnel who responded to the wreck testified by videotaped depositions since they all lived in South Carolina and could not be subpoenaed to trial. Dr. Adelaar came to testify live at trial. Following his testimony defendants offered to settle for the remaining primary coverage of approximately \$2,600,000, which had been previously demanded. Plaintiff declined and proceeded with trial. Following Plaintiff's testimony and that of her son, Plaintiff's counsel was put in touch with the Zurich claims representative who increased the offer to \$2,750,000 which was also declined. Plaintiff concluded her evidence by calling the defendant driver adversely, and then offering the testimony of Dr. Wilhelm and Dr. Lee. Defendants did not put on evidence, according to plaintiff's counsel. On the evening of the 6th day of trial, after the charge conference, and with closing arguments to begin the next morning, Zurich offered to settle for \$3,500,000, which was the amount of Plaintiff's Statement for Monetary Relief Sought. Plaintiff accepted that offer on the condition that it be paid within 10 days, which happened.

The charge conference took almost an entire day since there were many conflicts of laws issues in dispute. The parties generally agreed that the substantive law of South Carolina applied and the procedural law of North Carolina applied, but what was substantive and what was procedural was hotly contested, particularly as it related to the punitive damages issue and whether the North Carolina cap applied.

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