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## Verdicts & Settlements

### Negligence/Auto

#### **Rear-End Collision -- Shoulder, Neck Injuries -- Frozen Posture -- Permanent, Total Disability -- Larger Verdict After Polling -- \$3.85 Million**

**Brief Statement of Claim:** Plaintiff Jason Whitley was injured when the Nissan king cab pickup truck he was driving was struck from the rear by a 1976 furniture truck at a stop light at the bottom of Second Street in North Wilkesboro. The truck was owned by defendant Ladd

Furniture, Inc. and was being driven by its employee, Reggie Absher.

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The plaintiff alleged that Absher was negligent by driving too fast for the conditions and failing to reduce speed to avoid a collision. The plaintiff alleged that Ladd was negligent in failing to properly maintain the brakes on the truck.

The plaintiff's evidence indicated that the speed at impact was about 20 m.p.h., although the defendants

argued the speed at impact was closer to 10 m.p.h.

The time of the collision, the plaintiff was on his way to work at UPS where he had worked as a package delivery driver for 17 years.

The defendants denied liability on the grounds of sudden brake failure and further contended that the plaintiff's disability, if any, was caused by prior medical conditions and was not related to the low-impact collision.

The defendants' experts contended at trial that the collision did not cause any neurological, orthopedic, or muscular injury and that the plaintiff's complaints were psychological, produced by somatizing and a desire for secondary gain.

**Principal Injuries (in order of severity):** The plaintiff suffered a flexion injury to his neck and upper back which caused his left shoulder to become "frozen" in an elevated position and eliminated practically all of the range of motion in his neck, making it impossible to turn his head without turning his entire upper torso.

Despite months of physical therapy, the plaintiff's limited range of motion in his neck and shoulder did not improve. Approximately one year after the collision, his surgeon rated him as totally and permanently disabled, which was attributable to microscopic nerve root damage in his spinal cord.

The plaintiff was unable to return to work at UPS following the accident and had to resign as preacher of his church. He consequently developed depression and severe anxiety due to the loss of his jobs and inability to support his family. At the time of trial he was under the psychological care of a pastoral counselor.

**Special Damages:** Medical expenses were approximately \$18,000; loss of earnings were approximately \$1.5 million, assuming total disability.

**Tried or settled:** Tried

**County where tried or settled:** Wilkes

**Case Name and number:** *Jason Lee Whitley and Janet Elaine Whitley v. Reggie Keith Absher and Ladd Furniture, Inc.* (Wilkes County Superior Court; 97 CvS 1784).

**Date Concluded:** The jury returned its verdict on Feb. 5, 1999. The defendants' motion for new trial was denied on March 19, 1999.

**Name of Judge:** L. Todd Burke

**Amount:** The total jury verdict was \$3.85 million. The jury awarded Jason Whitley \$3.8 million and awarded his wife \$50,000 on her loss of consortium claim.

**Insurance Carrier:** Zurich Insurance Company had the primary coverage of \$1 million. Cincinnati Insurance Companies had the excess coverage of \$50,000.

**Expert Witnesses and areas of expertise:** Mike Sutton of Accident Reconstruction Analysis was the plaintiff's expert on brake failure. J. Finley Lee, Ph.D. was his expert on economic loss. The plaintiffs relied exclusively on Jason Whitley's treating physicians, physical therapists, neuropsychologist and pastoral counselor to establish the extent of his injury caused by the collision.

**Attorneys for plaintiffs:** Donald R. Strickland and Howard Twiggs of Twiggs, Abrams, Strickland and Trehy, P.A., Raleigh

**Other Useful Info:** The initial jury verdict for Jason Whitley was \$3.5 million. When the jury was polled by defense counsel, one of the jurors stated that the verdict was not her verdict. Approximately five minutes later the jury returned with a unanimous verdict for \$3.8 million for Mr. Whitley.

Discussions with jurors after the verdict revealed that the original verdict was a compromise to satisfy the one juror who stated the verdict was not hers when polled. The other 11 jurors wanted to award \$3.8 million.

During the polling, this juror decided she was wrong and decided to correct the situation by joining the other jurors in returning a verdict for \$3.8 million (see related story, March 1, 1999 *Lawyers Weekly*).

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