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Front Page Story

Case Report: Jury Poll Backfires, Nets Plaintiff Extra \$300,000 In Injury Suit

A juror's last-minute change of heart boosted a Wilkes County plaintiff's recovery to \$3.8 million for injuries he suffered in a truck-car collision.

The amount of the Feb. 12 award is significant, given the unusual nature of the plaintiff's severe, but not life-threatening, injuries.

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But the way the verdict came about or at least the last \$300,000 of it has lawyers across the country talking.

The plaintiff, represented by Raleigh attorneys Don Strickland and Howard Twiggs, claimed he was permanently and totally disabled by chronic pain in his neck, shoulders and head. He also claimed severe memory problems. He has almost no range of motion in his neck, and one shoulder is frozen in an awkward, elevated position.

The cause: microscopic nerve and muscle damage, allegedly from the collision.

The defendants argued the wreck was an unavoidable accident caused by faulty brakes. They also hotly contested the severity of the plaintiff's injuries.

But after a two-week trial, the jury came back with a verdict for the plaintiff. The amount: \$3.5 million.

Following common practice, the defense requested the jurors be polled, and, as occasionally happens, one juror hemmed and hawed before conceding that the verdict wasn't the one she wanted.

Superior Court Judge L. Todd Burke told the jury to think it over again, but in only three minutes they were back this time with an extra \$300,000, making the total award \$3.8 million, the largest ever in a Wilkes County auto negligence case.

Getting more money after a jury is polled is unheard of, according to Twiggs, a past president of

the Association of Trial Lawyers of America.

"The judge said he had never seen it happen before," said Twiggs. "I know a lot of lawyers and they tell me they've never heard of it either."

Twiggs said he knew of a few instances where awards were reduced after a juror balked.

"But raising a verdict after the jury is polled that's a first," he said.

As it turned out, the 11 other jurors had wanted to give the plaintiff \$3.8 million the first time around, but the dissenting juror argued for a lesser amount, so they compromised.

However, when the jury was polled, the woman changed her mind, later saying that she couldn't in good conscience deprive the plaintiff of \$300,000.

"She decided she had made a big mistake and wanted to correct it," said Twiggs. "When she came back and said, yes, the higher verdict was hers, there was a tear rolling down her cheek."

The defendant is expected to ask that the award be set aside or reduced. At press time, hearings had not been scheduled on those requests.

The case is *Whitley v. Reggie Keith Absher and LADD Furniture, Inc.* (Wilkes County; 97 CvS 1784).

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