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Verdicts & Settlements

Adding 'Piercing The Veil' Claim Results In \$4.4 Million Recovery In Auto Negligence Suit

Negligence/Auto - Negligence - Tractor Trailer Collision - Brain Injury - Claims to Pierce Corporate Veil - Alleged Fraudulent Transfer of Assets - \$4.4 Million Settlement

Brief Statement of Claim: Plaintiff, guardian ad litem for a 29-year-old Chinese American computer engineer, settled a personal injury action on behalf of her ward for \$4,400,000 against a trucking company, its parent corporation and the two shareholders of the parent corporation. Due to insufficient liability insurance the defendants paid \$2,250,000 of their own money in the settlement.

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Principal Injuries (in order of severity): Severe brain injury, muscular injuries to back and neck and nerve damage to extremities.

Tried or Settled: Settled

Mediator: Robert A. Beason

Case Name & Number: Confidential

Date Concluded: June 3, 2005

Settlement Amount: \$4.4 million

Insurance Carriers: Lexington Insurance Company and Occidental Fire & Casualty Company.

Expert witnesses: Gary Albrecht, PhD., Economist; Cliff Thomas, CPA, Accounting; William Pinna, J.D., Corporate Taxation and Accounting.

Attorneys for Plaintiff: Donald R. Strickland and Howard F. Twiggs of Twiggs, Beskind, Strickland, and Rabenau, P.A., Raleigh North Carolina; Jim Napoli, Caesar & Napoli, New York, New York.

Other useful information: In April 2002, John Doe, a 29-year-old Chinese-American computer engineer from New Jersey, suffered a severe brain injury when the car in which he was riding was struck from the rear by a tractor-trailer owned and operated by defendant trucking company. The driver of the car in which John Doe was riding, and another passenger in that car, were killed in the collision. John Doe's brain injury rendered him mentally incapacitated and legally incompetent. John Doe's guardian ad litem initially brought suit against the driver of the tractor trailer and the trucking company that owned the tractor trailer alleging negligence in the operation of the tractor trailer. Other attorneys brought suit against the same defendants on behalf of the estates of the two persons killed in the collision.

Plaintiffs' primary theory of liability was that the driver of the tractor trailer was reading his Qualcomm satellite communications monitor just prior to the collision and failed to see the plaintiffs' vehicle in time to avoid striking it in the rear and running over it. The defendant driver and trucking company denied liability and pled contributory negligence as a defense in all three cases. The primary basis of the contributory negligence claim was that the plaintiffs' vehicle was traveling at an unreasonably slow speed (approximately 30 miles per hour in a 70 mph zone), on a small "donut" spare tire and that the driver and passengers in the car should have exited the highway earlier to have their regular tire repaired so their car could travel at a reasonable speed on the highway.

Shortly after becoming involved in their cases, plaintiffs' counsel learned that there was only \$3,000,000 of liability insurance available to pay all three claims. A joint mediation of all three cases was held in April 2004 at which time the two wrongful death claims settled for \$425,000 each, leaving \$2,150,000 of liability insurance available to resolve John Doe's claim. Given the magnitude of John Doe's injuries and damages, his guardian ad litem and counsel decided to pursue additional claims in an attempt to get to the assets of the defendant trucking company, its parent corporation and the two individual stockholders of the parent corporation. John Doe's GAL succeeded in obtaining an order to amend her complaint to add these additional defendants and to pursue claims to "pierce the corporate veil" of both the trucking company and its parent corporation.

Plaintiff thereafter filed an amended complaint and served written discovery to obtain the financial and business records of all defendants from 1999 through the year ending 2004. Following a motion to compel the production of these records, defendants produced in excess of 15,000 pages of financial and other business records. Based on these records, the plaintiff claimed that the defendant parent corporation and its two shareholders completely dominated and controlled the trucking company in all aspects of its operation, including the trucking company's safety program and use of its Qualcomm satellite communications system. According to plaintiff's counsel, these records also indicated that the defendant trucking company had transferred an LLC that it owned to its parent company about three months after the collision, for only \$100 when tax and other records indicated that the LLC was worth at least \$902,000 at the time of this transfer.

Plaintiff thereafter filed another motion to amend her complaint to add claims for fraudulent transfers of assets against all defendants. Defendants filed a motion for summary judgment on plaintiff's claims to pierce the corporate veil of the trucking company and its parent corporation. Although these motions were heard, the case resolved at a second mediation before the judge entered his decision on either of these motions.

The second mediation resulted in a settlement in which the defendants paid \$2,250,000 of their own money, in addition to the \$2,150,000 of insurance money, for a total settlement of \$4,400,000. A trust was established for John Doe in his home state of New Jersey, with his father and Wachovia Bank serving as co-trustees. The trust has been funded by a lump sum payment from the settlement and will also be funded on a periodic basis from a \$1 million annuity that was purchased by defendants as part of the settlement.

Submitted by: Donald R. Strickland

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