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## Verdicts & Settlements

### Judge Lets Stand \$6 Million Wake Wreck Verdict For Brain-Injured Trucker

**Negligence/Auto -Head-On Wreck - Liability Admitted - Brain  
Injury Disputed - \$2.5 Million Offered - \$6 Million Jury Verdict**

**Brief Statement of Claim:** Jury award for motor vehicular negligence; orthopedic injuries. The defendant admitted liability, but disputed the plaintiff's traumatic brain injury.

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**Principal Injuries (in order of severity):** Mild brain injury; fractured left hip and other orthopedic injuries to left knee and both elbows; torn ligaments in right wrist; muscular injuries to back and neck; and nerve damage in left leg

**Tried or Settled:** Tried

**County where Tried or Settled:**  
Wake

**Judge:** The Honorable Leon Stanback

**Case Name & Number:** *Francis Hammel v. USF Dugan, Inc.* 02 CVS 9689 (Wake County)

**Date Concluded:** Verdict Oct. 21, 2004; Post-verdict motions denied and judgment entered on Nov. 15, 2004 in amount of \$7,143,178.23, including interest and cost.

**Verdict Amount:** \$6,000,000

**Insurance Carriers:** AIG administering claim for National Union Fire Insurance Company

**Attorneys for Plaintiff:** Donald R. Strickland and Howard F. Twiggs of Twiggs of Twiggs, Beskind, Strickland & Rabenau, P.A., Raleigh

**Other Useful Info:** Plaintiff, an independent owner/operator tractor-trailer driver was severely injured when his tractor-trailer was struck nearly head-on by Defendant USF Dugan's tractor-trailer after Defendant's driver lost control of his vehicle, crossed the median of a four lane

highway and collided with Plaintiff. Plaintiff was knocked unconsciousness for a short period of time by the impact. When he regained consciousness, EMS and Fire Department personnel were trying to extricate him from his tractor. The impact was so severe that the double sleeper on the cab of Plaintiff's truck was knocked completely off the cab, across a guardrail and down an embankment. Plaintiff's primary orthopedic injuries included a displaced fracture of his left hip, broken bones in his left knee and left elbow, and torn ligaments in his right wrist. In addition, Plaintiff suffered muscle injuries in his back and neck and nerve injuries in his left leg. Plaintiff was also diagnosed with a mild, but significant, brain injury approximately one year after the collision. Plaintiff has very little recollection of the collision, of being transported to WakeMed, or of his one week stay at WakeMed where his primary orthopedic injuries were stabilized so that he could be transported back to his home in Stoughton, MA. Plaintiff was 34 years old at the time of this collision on Aug. 31, 1999. He continues to be under the care of his primary care physician, an orthopedic surgeon, a neurologist and a psychiatrist.

Approximately three months prior to trial, Defendant admitted liability. At the time of the trial, Plaintiff had been under the care of his primary orthopedic surgeon, Dr. Stephen McNeil, for over five years. Dr. McNeil, who testified at trial through a videotaped deposition, opined that Plaintiff had a 60 percent whole body impairment due to his orthopedic, back and neck injuries. He also testified that Plaintiff would likely need two hip replacements during his lifetime and that Plaintiff was totally and permanently disabled from gainful employment. Defendant did not dispute Plaintiff's orthopedic injuries, but suggested that Plaintiff may be able to return to work once he has his first hip replacement, which Plaintiff's doctors have advised Plaintiff to put off as long as possible due to his young age.

The primary disagreement in the case related to Plaintiff's brain injury. Due to the severity of Plaintiff's physical injuries, his physicians did not initially address his cognitive impairments. However, about one year following the accident, Plaintiff's sister, a registered nurse, realized that Plaintiff was having focus, concentration and attention problems and that his personality was different than before the collision. She persuaded Plaintiff to see a psychiatrist and a neurologist.

Plaintiff was thereafter referred by his neurologist for neuropsychological testing, which was done about two years after the collision. That clinical neuropsychological evaluation indicated that Plaintiff had cognitive impairments with memory, concentration, attention, speed of processing and executive function, consistent with a traumatic brain injury. Thereafter, Plaintiff received cognitive rehabilitation therapy for six months to address some of these difficulties.

Defendant attacked the credibility of this neuropsychological evaluation, contending, among other things, that the neuropsychologist who did the testing was not board-certified, did not perform testing that should have been done in a forensic evaluation, improperly scored some of the testing, and failed to perform standard validity testing to rule out malingering in the face of test results that indicated the possibility of malingering.

Defendant primarily relied on Robert Conder, PhD, a Raleigh neuropsychologist, in disputing that Plaintiff suffered a brain injury in the crash. Dr. Conder ultimately testified that Plaintiff did not have a brain injury and that he was malingering. On cross examination, Dr. Conder admitted that his opinions were contrary to the opinions of all of Plaintiff's treating medical care providers who had been involved in either the diagnosis or treatment of Plaintiff's brain injury.

Defendants also contested Plaintiff's need for a case manager and supportive care, the main components of Plaintiff's life care plan, which Plaintiff claimed were necessary in large part because of his traumatic brain injury. These two components of the life care plan accounted for approximately \$1.3 million of the approximate \$1.9 million present value of the plan.

Defendants also disputed Plaintiff's \$758,474 claim for loss of earning capacity. Plaintiff based his loss of earning capacity claim on the average annual earnings of a trucker working as an employee of a trucking company, which was about \$32,500 per year rather than on Plaintiff's historic earnings which averaged about \$12,000 per year according to his income tax records over the 11 years preceding the collision. The basis of Plaintiff's claim was that he was an experienced trucker who had licenses to haul every kind of load including tandems, triples, hazardous waste, and military equipment, and he could have worked for another company if he had chosen to do so, but due to his injuries, this capacity to earn money was lost. Defendant claimed that Plaintiff's lost earning capacity should be limited by his past income and therefore the present value of this claim should only be \$250,000.

This case presented numerous practical challenges for Plaintiff. Plaintiff lived in Stoughton, Massachusetts and all of his family members who would testify at trial lived in that general area.

Plaintiff received most of his medical care at the Mass General Hospital in Boston or at his local hospital in Stoughton, MA. Therefore all of his treating medical care providers, who were key witnesses in the case, lived in Massachusetts and could not be subpoenaed to trial. The only treating doctor who would agree to come to North Carolina to testify was Plaintiff's psychiatrist. Plaintiff's other treating medical witnesses had to be presented to the jury through six videotaped depositions.

The case failed to settle following two mediations. The highest offer by Defendant was \$2,500,000. Defendant's liability insurer, AIG Technical Services, the claims administrator for National Union Fire Insurance Company, faxed a letter to Plaintiff's counsel at the close of the evidence, advising Plaintiff that "This offer expires when the jury returns with either a question, comment or verdict." Plaintiff allowed the jury to respond to this letter.

On November 15, 2004, presiding Judge Leon Stanback denied Defendant's motion for judgment notwithstanding the verdict or in the alternative a new trial, and entered judgment against Defendant USF Dugan on the \$6,000,000 verdict plus eight percent interest from the date of filing until the judgment is paid, plus \$25,768 in costs. The judgment with interest and cost as of the date of the entry of Judgment was \$7,143,178.

**Submitted by:** Donald R. Strickland

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