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## News Story

# Trial Judge Lets Stand \$6 Million Verdict In Auto Case

*By Ertel Berry*

A Superior Court judge has let stand a Wake County jury's \$6 million verdict for a Massachusetts trucker who will need assistance for the rest of his life after suffering a closed head injury in a head-on collision.

## ADVERTISEMENT

Last week, Superior Court Judge Leon Stanback rejected the defendant's request to set aside the verdict or order a new trial. In a Nov. 15 order, Stanback held, among other things, that the jury verdict was not excessive, contrary to law or the product of passion or prejudice.

The plaintiff, who was 34 at the time of the accident, also sustained a broken hip, knee, elbow and nerve damage when his rig was struck by a tractor-trailer that crossed the median

on U.S. 70.

The plaintiff was knocked unconscious by the impact, which was strong enough to tear the sleeper compartment off the truck's cab. The plaintiff has little recollection of the accident or the immediate aftermath.

The defendant, USF Dugan, Inc., didn't dispute the plaintiff's physical injuries and admitted liability for the collision, which occurred when its driver lost control of his vehicle.

However, the parties sharply disagreed over the amount of the plaintiff's damages. The plaintiff offered to settle the case for \$4.5 million, but the defendant refused to budge past \$2.5 million.

That disparity turned in large part on differing views on a single question: had the plaintiff suffered a closed head injury in the accident?

Approximately a year after the wreck, the plaintiff was diagnosed with a mild but significant brain injury which impaired his memory, concentration, attention, information-processing and decision-

making. According to the plaintiff, his cognitive problems destroyed his ability to live independently, triggering a need for a case manager and lifetime supportive care.

Those two elements represented \$1.3 million of the plaintiff's \$1.9 million life care plan, according to his attorneys, Donald Strickland and Howard Twiggs of Raleigh.

"The reason we turned down \$2.5 million was that it was just insufficient to meet his needs," said Strickland. "He would be penniless by the time he was 60 years old."

But the defendant challenged the tests used to diagnose the plaintiff's brain injury and argued his mental problems were caused by medication or malingering.

The jury apparently agreed with the plaintiff's position and awarded him \$6 million on Oct. 21.

With interest and costs, the judgment on the date of entry totaled more than \$7 million.

"We felt there was no credibility to the malingering defense," said Twiggs. "Their position was that he had no brain injury and that he could get better if he wanted to, which we thought was totally inconsistent with all the evidence."

Strickland said his client's brain injury was "mild," on a scale of mild, moderate and severe — but that rating didn't lessen the effect on the plaintiff's life.

Strickland said his client "had trouble remembering events that happened around the house the prior day. His personality changed. He became irritable with everybody when he never had those kinds of problems before. He was an avid newspaper reader and always stopped and got a local paper on his routes, but after the accident he was having a lot of difficulty reading the newspaper and remembering what he read.

"He can drive to his doctor's office," said Strickland. "They apparently felt a jury would not believe he had a brain injury if he could drive a car in Boston to the hospital and back."

The worst problem for the plaintiff was his loss of independence after the wreck, according to Strickland. After the accident, his family had to take care of him in shifts.

"They helped wash his clothes, cook food for him, do a lot of chores he would otherwise do," he said. The plaintiff now lives with his parents, both of whom are in their 70s.

"All they were asking for was ten to fifteen hours a week in supportive care for someone to do the jobs for him that his family had been doing for the last five years," Strickland said.

Strickland also said that the plaintiff bought a large commercial fishing boat a year before the accident.

"He planned to live on it and run his trucking business from there," Strickland said. "Basically he lost his dream. With this injury, he can never be a captain of a fishing boat."

Said Twiggs: "A mild closed head injury is only minor to defense counsel, not to the person who has it."

According to Twiggs, "The problem with this case is that when you have all these orthopedic injuries, the medical care providers focus on those first. When cognitive problems develop and are diagnosed later, that can raise doubts whether it's a legitimate closed head injury."

Strickland said the defendant argued, among other things, that a neuropsychologist who diagnosed the plaintiff's brain injury wasn't board-certified and that she failed to perform tests that would have uncovered possible malingering.

"Their main argument was that this was only a clinical evaluation for the purposes of medical treatment, not a forensic evaluation for purposes of a lawsuit," Strickland said. "The lady who did the evaluation was the head of the department of neuropsychology at Massachusetts General. She doesn't testify very often and just happened not to be board-certified. She did perform a test for malingering but they claimed it was an outdated test."

That clinician's diagnosis wasn't the only expert evidence of a closed head injury, according to Twiggs.

"His neurologist at Duke and all his other doctors thought he had a brain injury," he said.

### Countering 'Tort Reform' Ads

According to Strickland, the timing of the jury trial during the elections exposed the jury pool to an unusual source of bias: political advertising.

"One of the big things on the Republicans' agenda was tort reform and putting caps on noneconomic damages," he said. "You had all those tort reform ads out there in a situation where we had decided to turn down \$2.5 million and let the jury decide the case.

"So we asked about that during voir dire and asked jurors if they believed in caps, or if they could base a verdict only on the evidence and the law."

According to Strickland, about half the jurors said they believed there should be "limits on what is paid in lawsuits."

The jury included several members with college degrees and beyond, including an engineer, a mortgage banker — and even a nurse.

"She was going to have to go back and work for her doctor after this case," he said. "We were concerned about peer pressure. So one thing I specifically asked was that they not be swayed by the peer pressure of spouses or bosses or public opinion on what has happened in other lawsuits," Strickland said. "I think they did that."

An out-of-state attorney for the defendant did not return a phone call from Lawyers Weekly. The defendant's local counsel declined to comment on the case.

The case is *Francis Hammel v. USF Dugan, Inc.* (Wake County Superior Court; 02 CvS 9689). The complete case report appears on page 16.

— Questions or comments may be directed to [eberry@nc.lawyersweekly.com](mailto:eberry@nc.lawyersweekly.com).

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