

NORTH CAROLINA Lawyers Weekly

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VERDICTS & SETTLEMENTS

Pedestrian crossing parking lot struck by tractor-trailer

\$1.25 million settlement

Action: Motor vehicle negligence

Injuries alleged: TBI, left eye vision loss, fractured thumb, decreased left ear hearing

Case name: Withheld

Court/case no.: Withheld

Jury and/or judge: N/A (settled after mediation)

Name of mediator:

Daniel Gaylord

Amount: \$1.25 million

Special damages: \$97,000, past medical expenses; future medical expenses disputed; \$150,000, past lost income; future lost income disputed

Most helpful expert:

Steve Farlow, accident reconstructionist, Raleigh

Date: March 15, 2023

Attorney: Isaac Thorp of Thorp Law, Raleigh (for the plaintiff)



Isaac Thorp

On Sept. 17, 2020, the plaintiff, a 67-year-old truck driver, was walking across a crowded parking lot when a tractor-trailer traveling through the lot turned right and struck him. The plaintiff was thrown up into the air and landed on the pavement.

Although the plaintiff did not lose consciousness, he was confused at the scene and repeatedly asked EMS responders the same questions every few minutes. When asked by an EMS responder whether he had been drinking, he said he had. However, the plaintiff's hospital bloodwork about an hour later showed he had no alcohol in his system.

The plaintiff sustained a brain bleed, lost vision and hearing on his left side, and a right thumb fracture that left him with diminished grip strength. He remained in the hospital for two days before being discharged home.

The plaintiff underwent two surgeries for his thumb fracture and extensive physical and cognitive therapy.

Issues of liability, contributory negligence, last clear chance, and damages were hotly contested. Dash-cam video showed there were no physical obstacles that would have prevented the defendant or plaintiff from seeing each other. However, the defendant denied he was liable, claiming he did not see the plaintiff because he was looking in his

side mirrors as he navigated the crowded parking lot.

The plaintiff did not recall the incident and could not say whether he saw the approaching truck or not. The video footage showed the tractor-trailer turning left before making a sharp right turn. Plaintiff's counsel contended his client likely saw the truck and assumed it was going to turn left. The plaintiff also pleaded last clear chance.

The parties also disagreed about whether the plaintiff, who was earning \$55,000 a year as a truck driver for FirstFleet, was permanently disabled. The plaintiff's neurologist opined that because the plaintiff suffered short-term memory loss, often became confused, and was a fall risk as a result of the head injury, it was unlikely he could return to competitive employment. FirstFleet acknowledged that the plaintiff could not return to work as a truck driver but suggested he could get a job as a Walmart greeter.

The defendant contended the plaintiff was not permanently disabled as a result of the collision, noting he was still driving a car. It also had surveillance video showing the plaintiff climbing a ladder, mowing his lawn on a riding mower, and loading a refrigerator onto a trailer to take to the dump. The defendant further noted that the plaintiff sought medical treatment for some cognitive issues a few years before the accident.

The parties also disagreed about future medical expenses. The defendant contended that, at most, the plaintiff's future medical expenses would be less than \$50,000. The plaintiff contended that if the plaintiff's wife was not available to assist, he would need increasing levels of attendant care because he was a fall risk and suffered from moderate short-term memory loss and confusion.

The case did not settle at mediation, partially because First Fleet insisted it be repaid the full workers' compensa-

tion lien of \$375,000. Although plaintiff's counsel represented the plaintiff in the negligence claim, the plaintiff refused to hire a workers' comp attorney because he was convinced that his employer would "take care of" him. First Fleet negotiated a settlement of the workers' comp claim directly with the plaintiff before the negligence claim mediation. First Fleet's director of risk management told the plaintiff that the defendant truck driver's company would be required to repay the workers' comp lien. N.C. Gen. Stat. § 97-10.2 explicitly states that a plaintiff is responsible for paying the lien out of any third-party settlement.

Plaintiff's counsel requested a Superior Court judge extinguish the lien pursuant to NCGS 90-10.2(j). The court granted the plaintiff's motion and eliminated the lien, finding that FirstFleet, through its director of risk management, made misrepresentations to the plaintiff that he likely relied upon to his detriment.