

## Victim clears suit hurdles, gains \$6.5M settlement

BY PETER VIETH

A case that looked discouraging at first proved worthy of a recent \$6.5 million settlement for a man severely injured in an interstate crash.

As they kept digging, the victim's lawyers say they slowly uncovered facts that enhanced the defendant's liability and minimized any role the victim's own negligence might have played in the accident.

Despite the outcome, prospects appeared bleak when the case came to the door of Richmond lawyer David E. Durrett and his partners.

The hapless plaintiff – lawyers did not disclose party names pursuant to a confidentiality agreement – had been grievously injured when his Chrysler passenger car was nearly flattened by a tractor-trailer in the dark on Interstate 95 in Southside Virginia.

A junkyard photograph was a testament to the impact. From the image, it is hard to determine whether the mangled metal is the front or the rear of the auto.

Reports indicated the victim had pulled into the path of the truck and promptly run out of gas.

The truck driver told an investigating state trooper that the victim had not turned on his lights until just before the collision. The trooper concluded the plaintiff had no lights on at the time of the collision and declined to file any traffic charges.

To make matters worse, the injured driver – en route from North Carolina to Northern Virginia – had bottles of liquor and cans of beer in the passenger compartment.

The injured driver was airlifted to VCU with “life threatening injuries,” Durrett reported.

The prognosis was grim. His diagnosis included a fracture of the clivus – a part of the cranium at the base of the skull. He later was treated at the Richmond area veterans' hospital and was still in a brain injury rehabilitation facility when his claims were resolved.

After the wreck, the man's brother in North Carolina tried to find a lawyer. One Virginia attorney agreed to discuss the case, but only if the brother would come to the lawyer's office, Durrett said.

When he got the call, Durrett agreed to

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go to North Carolina and meet with the family. The visit led to a retainer agreement.

“I listened to what he had to say,” Durrett said of the brother's story.

Nevertheless, recovery seemed a daunting prospect. The defendants – the truck driver and the trucking company – strongly disputed liability, mainly pointing to the victim's own actions.

Some of their ammunition came from the car's “black box” – the event data recorder that stores travel information. The victim's family had allowed defense access to the unit before they hired a lawyer.

The box revealed that the car had run out of gas and was traveling only 25 miles per hour when it was rear-ended by the defendants' truck.

### Accident-scene observations

Suit was filed last February, and discovery slowly revealed more favorable information for the plaintiff.

“We started to peel back the layers of the onion,” Durrett said.

In the first place, witnesses established the victim's lights actually were on at the time of the crash. Lawyers located an off-duty deputy who saw the car seconds after the collision with headlights on, Durrett said.

Lawyers also found a firefighter who testified under oath that he turned off the victim's headlights after he arrived at the scene.

“He was the one who actually turned them off and turned the car engine off,” Durrett said.

Hospital records showed the victim's blood alcohol level was zero, so the back-seat booze was not a factor, Durrett said.

More revelations exposed problems for the defendants.

The truck driver had been on duty for 37 consecutive hours during which he had driven for 27 hours, Durrett said. The driver reportedly acknowledged he had no memory of sleeping during the 37 hours before the crash.

Based on those disclosures, the plaintiff

filed an amended complaint demanding punitive damages, raising a possible bar to any defense of contributory negligence.

The defendants claimed an exemption to the usual federal rules for motor carrier safety. The defendants alleged they were carrying agricultural products and entitled to relief from the strict duty limits of the federal rules.

Durrett said his team had experts prepared to dispute the defendants' qualification for the agricultural exemption. The experts would have established many federal motor carrier safety violations, the attorney said.

Also on board was a human factors expert who would testify about the effects of sleep deprivation. The truck driver was operating his commercial vehicle with the equivalent of a blood alcohol level of .08 percent or higher because of fatigue, the expert would say, according to Durrett.

“We were confident the punitive damages would have been allowed by the judge. That would have removed the issue of contributory negligence,” Durrett said.

Even damages were in play. The defendants pointed to the 61-year-old plaintiff's health problems and a history of substance abuse. They said his life expectancy was only two-to-five years, not the 17 years claimed by the plaintiff's team.

Face-to-face mediation failed to produce agreement, but the case was resolved the week after the mediation session on March 4, about a month before a scheduled trial date. The mediator who stuck with the case was retired Virginia Beach Circuit Judge Thomas S. Shadrack.

“It was a long trip to get from where I thought the case was going at the beginning to what we were able to achieve for our client,” Durrett said.

He credited the support of the American Association for Justice Trucking Litigation Section for resources that bolstered the case.

Because of the confidentiality agreement involved in the settlement, the identity of defense counsel was not disclosed.