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VERDICTS & SETTLEMENTS

Truck driver pays \$3 million for rear-end collision

Case settled while jury deliberated

#8 Top Settlement 2007



Rick Holtsclaw

\$3 million settlement

A motorist involved in a multiple-car collision has reached a \$3 million settlement in his Jackson County case against a dump truck driver who rear-ended his vehicle.

The parties reached the policy-limits settlement while the jury was deliberating.

"The insurance company never accepted that although this was not a movie-style crash, it still had a major, life-changing effect on the plaintiff, and it took a jury to get the insurance company to take it seriously," said plaintiffs' attorney Rick



Brad Kendall

Holtsclaw of Kansas City.

On June 28, 2006, four vehicles were involved in a pileup behind a car that had stopped on the Interstate 435 bridge crossing the Missouri River. Seldon Turnbull, 38, claimed he brought his Chevrolet Avalanche to a controlled stop behind the wreck but was struck from behind by a dump truck traveling between 18 and 32 mph. The impact allegedly pushed the Avalanche into the next vehicle, causing Turnbull to suffer rear and frontal impacts in rapid succession.

Turnbull refused medical attention at the scene because he had no visible injuries but went to the emergency room later that day because of pain in his right arm and shoulder. He remained hospitalized for several days, but doctors could not determine the cause of his pain.

Months of medical testing and treatment brought no relief for the severe pain in Turnbull's right arm and shoulder. He was eventually diagnosed with complex regional pain syndrome, a malfunction of the nervous system causing nerves in the affected re-

gion to misfire, sending constant pain signals to the brain.

Plaintiffs' attorneys said that when they approached the dump truck driver's insurance carrier, Grinnell Mutual Reinsurance Co., the company refused to negotiate. Grinnell denied liability, claiming that a minivan struck the dump truck from behind and shoved the 33,000-pound vehicle into Turnbull's Avalanche before fleeing the scene.

Turnbull filed suit against the dump truck driver, claiming he did not maintain a safe following distance or a careful lookout and was speeding. Turnbull's suit also named the dump truck driver's employer, Bolivar Ready Mix and Materials Co., and the company for which he was hauling material, alleging liability respondeat superior, placard liability and violations of Federal Motor Carrier Regulations. Turnbull's wife, Christina Turnbull, also brought a loss of consortium claim.

At trial, plaintiffs submitted evidence that the dump truck driver could not drive his route within the maximum legally allowable hours of service for a truck driver. Plaintiffs also showed multiple log violations, including the driver's log for the day of the wreck, and elicited testimony that the company did not regularly or effectively audit its drivers' logs as required by federal law. Plaintiffs submitted further evidence of the dump truck driver's prior speeding tickets, along with the truck driver's testimony indicating that he was following Turnbull's vehicle closer than the Missouri Commercial Driver License Manual recommends.

The truck driver argued that the multiple-car collision created an unavoidable accident. Defendants also contested plaintiffs' allegations that the dump truck driver was speeding, citing errors and inconsistencies in the police report. Defendants further argued that Turnbull's Avalanche rear-ended the vehicle ahead of it before it was struck from behind by the dump truck, and this cut off the dump truck driver's stopping distance.

In addition, defendants argued that the wreck was a minor impact, wherein the Avalanche's airbags did not deploy, and it was driven from the scene. Defendants argued Turnbull had no visible injuries after the collision, and numerous diagnostic tests were normal.

Plaintiffs' counsel said they received sworn interrogatory responses before trial stating that the policy with Grinnell had a \$1 million limit. About 10 months into litigation, plaintiffs said, the defense advised that it had discovered an additional \$1 million policy.

Plaintiffs made a \$2 million policy-limits demand. In return, they received a \$155,000 offer.

At the close of evidence, defendants offered \$2 million to settle the case. Plaintiffs rejected that offer, and the case proceeded to closing arguments.

About four hours into jury deliberations, plaintiffs said, Grinnell advised that it had just discovered an additional \$1 million in coverage. Defendants then offered the \$3 million policy limits, and the case settled.

— Anne C. Vitale

Turnbull v. Bolivar Ready Mix

Type of Action: Personal injury — vehicular

Type of Injuries: complex regional pain syndrome and occipital neuralgia

Court/Case Number/Date: Jackson County Circuit Court/0616-CV28126/Nov. 13, 2007

Judge, Jury or ADR: Jury

Judge: Michael Manners

Verdict or Settlement: \$3 million settlement

Special Damages: \$1.6 million past medical expenses, lost earning capacity, lost household services

Allocation of Fault: N/A

Last Offer: N/A

Last Demand: N/A

Attorneys for Plaintiffs: Rick Holtsclaw and Brad Kendall, Holtsclaw & Kendall, Kansas City

Attorneys for Defendants: Ryan Karaim, Franke Schultz & Mullen, Kansas City

Insurance Carrier: Grinnell Mutual Reinsurance Co.

Plaintiffs' Experts: Dr. Bernard Abrams, Overland Park, Kan. (neurologist); Terry Cordray, Lenexa, Kan. (vocational rehabilitation counselor); Walter Guntharp Jr., Indianapolis (commercial trucking); Kevin Johnson, Indianapolis (accident reconstruction); Dr. Gabor Racz, Lubbock, Texas (pain disorder specialist); John Ward, Prairie Village, Kan. (economist)

Defendants' Expert: Dr. James Appelbaum, Kansas City (neurologist)