

\$1.65M pretrial settlement reached in Wadmalaw Island wreck

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A Lowcountry man who suffered severe injuries to his left arm in a 2009 auto collision has settled for \$1.65 million in mediation over alleged reckless driving - and he did it without ever filing a complaint.

In pre-litigation negotiations, lawyers for plaintiff James Fallon worked out the details of the settlement almost two years after Fallon was in a wreck on Wadmalaw Island in Charleston County.

Not that it was easy.

Fallon's lawyers, David Hoffman of Charleston and Nathan Hughey of Mount Pleasant, said it's unusual to mediate a large settlement in an auto collision case. And, as far as the cause of the accident, about all they had to go on was that the defendant's trailer had shifted into their client's lane.

But their client, who now has a spinal cord stimulator to alleviate pain, apparently made an impression on defense lawyers. Or at least his injuries did.

"In this case, our guy had such bad injuries. They came and they evaluated him. They looked at him face to face and sized him up, and our guy presents well. And he was hurt," Hughey said.

That, along with Fallon's life-care plan, economic-loss estimate, vocational evaluation and documentation of his accident costs, may have made the difference, Hoffman and Hughey said. Plus, the trailer's shift, though inexplicable, couldn't be ignored.

"They looked at all of the risk that they had in terms of going forward, and it was more so that they couldn't possibly show that the accident was our guy's fault," Hughey said.

"Their guy did come into our guy's lane, which made them liable, and so it was more of an issue of us saying here's your opportunity to sit down and talk about resolving the case reasonably before we go after you on the threat of punitive damages," Hughey added.

Carl Edwards, a lawyer for the defendant, did not return a phone call seeking comment prior to deadline.

The collision occurred in April 2009 when Fallon, driving on a two-lane highway, collided with an oncoming vehicle towing a small bulldozer on a trailer, Hughey and Hoffman said. The trailer edged several feet into Fallon's lane and hit his truck, and Fallon suffered multiple fractures in his left arm.

To Fallon's lawyers, the trailer's shift was too anomalous to not suggest reckless driving by the other driver.

"Something clearly happened. A trailer doesn't just shift unless the person's driving too fast for conditions, rounding a corner too fast. It's the kind of thing that speaks for itself," Hoffman said.

And then there was the injury to Fallon.

"The trailer basically smacked into Fallon with his arm outside the door, and so he got the full force of the weight of that trailer ... directly into his arm and all down the side of his truck," Hoffman said.

Fallon suffered multiple fractures and nerve damage to his arm. After emergency surgery, he suffered chronic pain and was unable to return to work. In 2010, he received a permanent spinal implant to alleviate pain by stimulating the nerves in his arm. A doctor assigned an impairment rating of 100 percent to his arm.

Hoffman said meeting with Fallon's doctors was his first move after Fallon came to him for representation.

"I started out with a life-care plan and then, simultaneously, I had a vocational evaluation done. Once those came back, I sent them to an economist to come up with the loss. But before any of that started, I met with doctors and I worked up the medicals so that the experts would all have a clear picture of what was going on," he said.

"Dave worked it up and got the right experts on board and had a big economic-loss report and a lot of medical bills," said Hughey, who served as co-counsel for mediation purposes.

Not all such cases are candidates for mediation, Fallon's lawyers said.

"This is one that had the right set of facts, and Dave, from the beginning, was meeting with the doctors and doing those things while [Fallon] was still treating such that the case, although it settled, was really worked up," Hughey said.

Settlement Report

Type of claim: Personal injury

Principal injuries (in order of severity): Multiple fractures and nerve damage to left arm

Special damages: \$218,908 (medical bills) and \$27, 917 (lost wages)

Tried or settled: Settled pre-litigation

Date concluded: Jan. 28, 2011

Amount: \$1.65 million

Expert witnesses, areas of expertise and hometown: Life-care planner Sarah Lustig, RN, LNC, CLCP (Mount Pleasant); economist Oliver Wood Jr., Ph.D (Columbia); and vocational and rehabilitation expert William W. Stewart, CRC, CVE, LPC (Columbia)

Attorneys for plaintiff: David Hoffman Jr. of the Hoffman Law Firm (Charleston) and D. Nathan Hughey of the Hughey Law Firm (Mount Pleasant)

Other useful info: James Fallon said he was the driver of a 1998 Dodge pickup which was struck in the side by another vehicle on April 26, 2009. He claimed he suffered significant injuries to his left arm.

Emergency surgery included extensive debridement of foreign material and glass fragments from his arm, as well as an open reduction and internal fixation of his open humeral condylar fracture and closure of "complex wounds."

Fallon continued treatment with an orthopedic surgeon, who referred him for physical therapy and requested an EMG study due to Fallon's impairment.

Fallon is now receiving treatment from a pain management specialist, who recommended a neural stimulator implant. In June 2010, Fallon received the implant. Positioned in his lower back with wires running up his spine to his neck, the implant stimulates the nerves in his left arm. But Fallon said it has done nothing to improve his range of motion or his use of the arm.

In August 2010, a doctor assigned an impairment rating of 100 percent to his left arm, which is equal to 60 percent whole-person impairment.

Editor's note: *The information in Lawyers Weekly's verdicts and settlements reports was submitted by the counsel for the prevailing party and represents the attorney's characterization of the case.*