

DAILY REPORT

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\$6M Jury Verdict Ends in \$7.8M Settlement on Appeal

The plaintiff's attorney said the addition of new defense counsel and mounting costs helped resolve the case while an appeal was pending.

GREG LAND

More than a year after a North Carolina jury awarded \$6 million to the family of a trucker who died after steel plates fell on him, the defendants have agreed to pay \$7.8 million to settle while their appeal was pending.

Lead plaintiffs attorney Matt Cook said he thought mounting interest and the addition of fresh lawyers led the defendant's insurers to cut their losses.

"The interest had already run up to a little more than \$8 million and was still accruing, and—as often happens—there was a new set of eyes on the case," said Cook, of Gainesville's Cook Law Group. "So



Matt Cook (from left), Kate Cook, Robert Childres III and Nathan Nicholson, Cook Law Group, Gainesville, Georgia. (Courtesy photo)

they made what they said was a business decision and agreed to settle."

"We barely moved off of what our outstanding demand was."

The defendant, North Carolina-based Lyndon Steel Co, had appealed the trial court's refusal to grant a new trial or

motion notwithstanding the verdict, and both sides had filed their appellate briefs and were awaiting a date for oral arguments when the case settled, he said.

"It was pretty clear that one trip to the bar of justice was enough for these folks," said

Cook, who handled the case with wife and firm partner Kate Cook and associates Robert Childres III and Nathan Nicholson.

Jon Ward and Brittany Milisor of Pinto Coates Kyre & Bowers in Greensboro served as local consul.

Lyndon Steel was represented at trial by Joseph Carruthers and Meg Shipley of Wall Babcock in Winston-Salem. Its appeals was filed by M. Duane Jones and Linda Stephens of Hedrick Gardner Kincheloe & Garofalo in Raleigh. They did not respond to requests for comment Monday.

According to Cook and court filings, the case began in 2014 when trucker Robin Colvin, 46, picked up a flatbed trailer loaded with steel beams at Lyndon Steel's Winston-Salem plant to deliver to a construction site in Greensboro.

The steel was welded into pieces necessary for the particular job and loaded by Lyndon's employees for the 30-minute trip.

The load was secured with nylon straps and chained to

the flatbed trailer. Colvin loosened one chain and moved on the next when a frayed nylon straps broke. Two of the beams fell on Colvin's head, causing major skull and facial injuries.

He underwent surgery and lived for about six months, then succumbed to his injuries and died. Colvin was single with no children. In 2015 his sister and estate administrator, Gloria Connell, filed a wrongful death action against Lyndon Steel in

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Forsyth County Superior Court in North Carolina.

Cook asked for the \$1 million limit of Lyndon's primary insurer, Travelers, but was refused. A mediation also failed.

Lyndon's highest offer pre-trial was \$550,000, while the plaintiff's team demanded \$2.8 million.

Following a two-week trial before Judge Richard Gottlieb in May 2019, the jury awarded \$6 million in damages and found

no liability on Colvin's part. A crucial distinction in North Carolina law is that any contributory negligence by a plaintiff, even just 1%, bars recovery.

Cook said Lyndon had excess coverage worth \$4.5 million supplied by Zurich, so the judgment still exceeded the company's coverage.

Lyndon appealed, arguing that the trial judge sabotaged its contributory negligence defense by ruling that Federal Motor Carrier Safety Regulations didn't apply to Colvin, when he was loosening the load, and that the judge also should have declared a mistrial or granted its motion notwithstanding the verdict.

After the transcript of the trial was finished a few months ago, the parties had another mediation before Ray Owens Jr. of Higgins & Owens in Charlotte.

The \$7.8 million was agreed to last Thursday, Cook said.

Greg Land covers topics including verdicts and settlements and insurance-related litigation for the Daily Report in Atlanta.