

DAILY REPORT

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\$2.25M deal in truck wreck

MOST FACTS IN DISPUTE regarding crash of two semi rigs in Cornelia; offer made on eve of trial

KATHERYN HAYES TUCKER

tucker@alm.com

A DISPUTE OVER a crash between two tractor-trailer truck drivers settled for \$2.25 million on the eve of an August trial.

Nearly every issue from the February 2007 wreck at the intersection of Georgia Highways 166 and 61 in Carrollton was in dispute, according to the consolidated pre-trial order for the case. The defense denied liability for the wreck and denied that the wreck caused the plaintiff's injuries. The defense also disputed: the plaintiff's damages, including \$185,000 in medical bills and a total hip replacement surgery, claims of permanent disability, lost income, and bad faith on the part of the defense.

"This case was a long and bitter fight between the parties," said plaintiffs counsel Matthew Cook of McDonald, Cody & Cook in Cornelia. Cook's client, Michael Potts, suffered a fractured hip and a back injury from the crash, according to the lawsuit. Potts contended that he was driving in the right turn lane when the other rig suddenly turned in front of him from the lane to his left, causing his truck to hit the side of the other trailer.

The defendant driver, Rickie Porter—working for Roadway Express, now called YRC—said the wreck was the plaintiff's fault. Defense attorneys Robert Finlayson II and Jennifer McLean of Mozley, Finlayson & Loggins said in their summary for the pretrial order that their client was not negligent. "Potts failed to keep a careful lookout, failed to exercise reasonable care and failed to take the last clear chance offered to avoid the underlying collision," the defense summary

said. "There is no evidence of bad faith on the part of defendants and there is evidence of a bona fide controversy."

"It was a very difficult case," said Finlayson.

Cook said he was prepared to try the case the week of Aug. 10 in Fulton County State Court—and had hotel rooms booked—when he received a settlement offer for \$2.25 million in cash at 4:45 p.m. the Friday before trial. They accepted it.

Cook said a key development in the case was Judge Wesley Tailor's decision to exclude evidence of his client's 1980 back injury, which the defense said was to blame for his pain. The plaintiff's counsel countered that a 27-year-old back injury was irrelevant.

Cook said he compared the defense's argument with trying to "impeach George Washington for cutting down the cherry tree."

The settlement brings his client much-needed financial relief, but the protracted dispute brought him unnecessary pain, Cook said. "Both the workman's compensation insurer and YRC contended that pre-existing conditions in Mr. Potts' back and hip were the source of his problems as opposed to the wreck," Cook said.

It took a year to persuade the workers comp insurer to approve hip replacement surgery. "That meant Mr. Potts lived for a year in what his doctor described as 'severe, intractable, debilitating pain' in his left hip, unable to put any weight on his left foot or leg and bearing pain that could not be quelled even with Morphine," Cook said in an emailed statement.

The case involved a dispute even between doctors on the plaintiff's side. Potts' treating physician said the wreck caused his hip fracture and necessitated his hip replacement. Potts'



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Matt Cook says the case "was a long and bitter fight" that extended even to the workers' comp insurer, while his client lived for a year in severe pain.

treating radiologist disputed the cause of the fracture, according to Cook.

Potts workman's compensation attorney, Tim MacMillan of Carrollton, made a \$1 million pre-suit demand, but received no offer from YRC, Cook said. MacMillan brought Cook into the case in December 2008.

The case is *Potts v. YRC*, No. 2008EV006225H.