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DAILY REPORT

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Woman With $25K Insurance Policy Gets $1.5M Car Wreck Settlement

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A REAR-END COLLISION with no damage to either vehicle and no obvious injury to anyone at the scene has led to a $1.575 million settlement paid by an insurance company holding a $25,000 policy.

The story of how that happened started with one driver's demand that the other driver's insurance company settle the case for the $25,000 policy limit. The insurance adjuster rejected the demand. After nearly four years, $300,000 in medical bills claimed for a ruptured disk and spinal fusion surgery and investigations by two lawyers and many experts, mediation brought the parties to agreement.

"It might be one in a hundred—or one in a thousand—cases that somebody gets significantly injured from a small impact, but this is that case," said the plaintiff's attorney Ben Brodhead of Brodhead Law.

In the end, "The company did the right thing," said Anne Gower of Crim & Bassler, who represented the defendant and was retained by the insurer, SafeAuto. Gower added, "We didn't necessarily think it's worth what Ben wants. But we're going to defend it fully and we're going to protect it fully." She noted that, ultimately, the company protected the policyholder.

Ben Brodhead

John Disney

Brodhead said Gower did a thorough job defending the case, engaging several experts to testify that the crash wouldn't likely have caused such a serious injury. He said Gower even hired a private detective to follow his client to be sure the injuries were real and to confirm that she was still having difficulty walking even when she didn't know she was being observed.

The parties finally reached an agreement over the lawsuit, filed in DeKalb County State Court, at a meeting with Rex Smith at Henning Mediation & Arbitration Service in December. The payment was made in January, Brodhead said.

It first appeared the mediation was ending without a resolution. Brodhead said he had packed up and was getting ready to shake hands and prepare for trial, where he thought the case was potentially worth up to $3 million. Then his client had a "moment of fear," he said, and lowered her bottom line from $2 million to $1.575 million. The defense accepted.

"It was one of those cases where it's worth it to both parties to settle," he said. "The risk to the insurance company was $2 million to $3 million. The risk to the plaintiff was walking away with nothing. It was worth it to find a point in the middle where everyone can meet."

The crash happened at 6:24 p.m. on April 28, 2011, in Marietta near the landmark Big Chicken KFC store. Both cars were headed west on Roswell Road at the intersection with Cobb Parkway in heavy traffic.

The police report said Celeste Moon, the defendant, accidentally hit the accelerator instead of the brakes of her 2004 Dodge Stratus and bumped the back of the 2010 Honda Accord driven by Anne Strong. Moon was cited for following too closely. No injury or damage was noted.

The responding police officer's dashboard camera recorded the plaintiff walking around the scene "appearing not to be hurt," and showing concern only for her car, which she had just purchased, Brodhead said. The only mark on the car was a crack in a license plate holder worth $50. However, he added, "after the adrenaline wore off," his client went to an emergency room a few hours later with pain in her back and down to her left leg.

In July 2011, Brodhead made a demand for the $25,000 policy limit. The insurance company offered $15,000, which Brodhead rejected. "Their reasoning was there was no damage to the vehicles," Brodhead said. At the time, his client's medical bills were $13,600, but she was still in severe pain.

"It was an innocent mistake," Gower said, referring to how the insurance adjuster looked at pictures of vehicles with no damage and overlooked the significance of the reported back injury.

Later, the plaintiff underwent lumbar spinal fusion surgery, which cost another $100,000. Then she had additional surgeries. Eventually, her treatment costs ran above $300,000.

Brodhead said his client was an average-sized woman in her 40s. Before the car accident, he acknowledged, she had undergone treatment for neck pain and other injuries from two falls—both when her two beagles pulled her over as they were on a walk. But he disagreed with the defense contention that her problems were related to the previous injuries because her back and leg, which hurt after the car collision, didn't hurt then.

"It was just that she was one of those eggshell plaintiffs. It took less to harm her than it would have taken to harm someone of a stronger constitution," Brodhead said.

Because the defense did not meet the plaintiff's initial policy limit demand, the lawsuit alleged bad faith and stubborn litigiousness.

Gower argued there was no bad faith on the part of the insurance company. "Whoever the adjuster was innocently didn't understand the severity of the case," she said. "When it came to me, I caught it." The company said, "It was a mistake, and we're going to defend the client."

The practice of securing settlements beyond an insurance policy's limits—under the 1992 decision of the Georgia Supreme Court, *Southern General Insurance Co. v. Holt*, 262 Ga. 267—has drawn criticism as unfair from the civil defense bar.

"It's a controversial concept," Gower said. "But on this one, the company stood behind the defendant" and shouldn't be considered to have acted in bad faith.

Justifying the fairness of Holt demands, Brodhead argued, "An insurance company is allowed to take a gamble. The only issue is the insurance company has to gamble with its own money and not the money of its insured. They can take it to trial as long as they're willing to gamble with their money. They're supposed to protect you."

If the defense loses, the Holt precedent allows the insured to then pursue a bad faith claim against the insurance company, as a way of recouping losses at trial.

In this case, Brodhead believes a turning point came in depositions when he was able to secure an admission from the defense accident reconstructionist that the collision happened at a speed potential of above 7.5 miles per hour. "The reason that mattered is that biomechanical studies show that human injury is possible above that speed," Brodhead said. "He had to agree this could be the source of my client's pain."

The depositions of the other side's experts are critical in a case like this, said Brodhead. "You have to win the case in the depositions. If you don't undo their experts in depositions then their experts will kill you at trial."

The case is *Strong v. Moon*, No. 13A46802-3.