

DAILY REPORT

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Summing it up: A plaintiff's demand strategy

WHAT HAPPENS when a lawyer tries to resolve a case and the defendants are slow to settle.

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A WOMAN WHO originally sought \$800,000 in damages after being rear-ended by a driver who was rummaging for her cellphone has settled her case for \$2 million. Ben Brodhead of Brodhead Law said he attempted at several stages to resolve the case—by increasing his demand at each point and assuring the defense he would only go higher.

“My strategy was what I referred to as an attitude adjustment for the defense,” said Brodhead. He noted that his client, Stacy Crabtree, had more than a quarter-million dollars in medical bills and was likely to rack up more as a result of her injuries.

“This case follows the same pattern that seems to occur in many of my cases,” said Brodhead. “Specifically, we make every possible

attempt to resolve the case early in the process, but, as the case proceeds, favorable information is obtained, and we increase our demands for settlement based on the new information.”

The defense attorney in the case, Ben Brodhead of Brodhead Law said he attempted at several stages to resolve the case—by increasing his demand at each point and assuring the defense he would only go higher.

According to court documents and others that Brodhead provided, Crabtree, now 45, was turning into her driveway on Hickory Flat Highway in Cherokee County in April 2009 when her 1995 Pontiac was struck by a 2010 Toyota driven by Jennifer Pressley.

Crabtree's head and chest hit the steering wheel, and her knee hit the dashboard, according to one of several subsequent demand letters Brodhead sent prior to settling the case.



Ben Brodhead said his client's medical bills mounted while he was trying to settle.

Complaining of pain to her head, neck and back, plus numbness in her left leg, she was strapped to a

backboard and taken by ambulance to the Northside Hospital Emergency Room.

After being examined and X-rayed, Crabtree was diagnosed with neck strain, treated with pain medication and sent home. Crabtree's pain persisted despite continuing treatment and therapy, and she ultimately required cervical fusion surgery.

Even after the surgery, according to the letter, she continued to experiencing significant pain and suffered permanent injury.

At the time of the wreck, Pressley was driving a car belonging to her employer, food service company Compass Group USA, and in May 2010 Brodhead made his first demand on Gallagher Bassett Services, the adjuster for Compass Group's insurer, AIG. The company carried \$5 million in coverage, he said.

At the time, according to the letter, Crabtree had nearly \$68,000 in medical bills and would settle the case for \$800,000.

“We got no response,” said Brodhead.

In April 2011, Brodhead filed suit against Pressley and Compass Group and sent another demand letter. By then, Crabtree's medical bills were at \$79,000, and the sum sought was \$1 million.

When Crabtree sued, the defendants retained Johnson and Brodhead continued to build his case—and his demands. In November 2011, he filed a settlement demand with the State Court of Fulton County for \$1.25 million; when that

was rejected, he filed another offering a “compromise” of \$1.5 million.

On Aug. 15, he sent Johnson one more letter.

“In anticipation of mediation, and in an effort to give your clients yet another chance to resolve this case for less than full value, this letter is to inform you that the Plaintiff is now willing to compromise her case in exchange for \$2,750,000.00,” Brodhead wrote. “If we are not able to resolve this case through mediation, this number will again increase.”

That offer refused, the parties met for a daylong mediation on Aug. 30 before Art Glaser at Henning Mediation.

“At mediation, we were willing to accept no less than \$2 million,” Brodhead said.

He said he did not expect a successful mediation, “because I doubted that the defendants valued the case in the same way I did. My goal at mediation was to make the defendants understand the strengths of the case and to explain that this would be the only time that it could be settled for only \$2 million.”

By then, he said, Crabtree's medical bills had climbed to \$237,081.

As expected, the defense turned down the offer.

“We gave them a week after mediation to accept the \$2 million,” he said. “They offered \$1.5 million; I said, ‘No, we’ll go to \$3 million.’”

“I said, ‘no, even if it’s 1.999 million, we won’t take a penny less than \$2 million,’” he said.

Prior to the expiration of the extended deadline, the \$2 mil-

lion offer was accepted. The check arrived on Sept. 28, Brodhead said.

“Our position was not a bluff,” said Brodhead. “My client wanted to resolve the case, but she was unwilling to resolve it for less than \$2 million at this time. If we resolved the case at or around the time of mediation, my client could use the settlement funds for the purchase of health insurance or to obtain medical services at a discounted rate by paying cash rather than receiving care at the full billing rate based on a promise of future payment.”

Had the case been dragged out by the defense, he said, “my client's medical expenses and litigation expenses would have increased, and, in order to compensate for the increased costs and delays, we anticipated submitting our next demand at no less than \$3 million.”

Brodhead said Johnson “did an excellent job of protecting his clients. Had he not continued his efforts to resolve the case, his clients ultimately would have paid more for defense costs and more in terms of a final settlement or judgment.”

The case is *Compass Group USA*, No. 11VS187904. ■