

DAILY REPORT

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Woman Rear-Ended by Pickup Truck Settles Spinal Injury Claims for \$3M

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A WOMAN WHOSE back was injured when she was rear-ended by a pickup truck as she waited at a red light reached a \$3 million combined settlement against the other driver and his employer, and a garage that worked on the truck's brakes prior to the crash.

The case was complicated by a number of factors, including that the plaintiff—now 72—had several falls before and after the wreck, and she was in another wreck two years after being hit. There was also a pending motion for spoliation sanctions because the truck's brakes were repaired after the wreck and the old parts discarded, said plaintiffs attorney Ben Brodhead.

"I honestly think we could have gotten \$10 million at trial, but my client just wasn't looking forward to going through three more years of appeals," said Brodhead, who handled the case with Brodhead Law colleague Ashley Fournet.



Ashley Fournet (left) and Ben Brodhead represented the woman whose car was hit when a truck's brakes failed.

The insurer for the at-fault driver and his employer, Annasteel & Supply Co., will pay \$2.8 million of the settlement. Their attorney, Andrew M. Capobianco of Mozley, Finlayson & Loggins, declined to comment.

The other \$200,000 was paid by the insurer for the garage that worked on the truck, Clayton

Auto Service, which was represented by Neal Scott with Zurich North America Insurance's in-house counsel, the Law Office of Terry-Dawn Thomas.

Scott said he could not comment "other than to say Clayton Auto's contribution was a small percentage of the total settlement amount."

According to Brodhead and court filings, Sandra King's Toyota Avalon was stopped at a traffic signal in DeKalb County in June 2014 when a Ford F-250 pickup driven by Michael Brown rear-ended her.

According to a witness, there was smoke coming from the truck's wheels and the "distinct odor of burning brakes" just before the collision.

A photo of King's car shows the left rear third of the vehicle completely crushed, and Brodhead said the truck ran up onto and over the car's rear bumper.

"This was a huge impact," he said. "The defense claimed that, since the truck went over the structure of the vehicle, that the collision wasn't as bad as it appeared. There might be some truth to that, but the truck completely overran the back bumper."

Rather than go to an emergency room for treatment, King had her husband take her.

Then 67, King's initial complaints were of pain in the hip and knee, but she soon began experiencing lower back pain, Brodhead said. She underwent lumbar fusion surgery more than a year later.

Brown "had a series of falls both before and after the collision" and in 2016 was involved in a "significant, roll-over collision that

required transport to the hospital by ambulance," he said.

She denied that her back was further injured in that wreck, and the following year she had to undergo another surgery because the initial fusion failed.

Brown said after the wreck that his brakes failed and that the brake pedal did not move when he pressed it, Brodhead said. Brown was cited for following too closely.



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—Ben Brodhead,
plaintiffs attorney

Annasteel had allowed Brown to drive the truck to and from work, and Clayton had worked on its brakes at least twice before the wreck.

After the wreck, Annasteel once again had Clayton work on the truck, including replacing the brakes.

"In reality, that truck was probably totaled based on the value of the truck," said Brodhead. "Why

repair a 1991 pickup with hundreds of thousands of miles on it? That's why we argued it looked like intentional spoliation of evidence."

King sued Annasteel, Brown and Clayton in DeKalb County State Court in 2016.

Brodhead said the positions of the Annasteel defendants could have complicated a trial.

"Annasteel paid Brown's ticket, so that counts as a bond forfeiture and guilty plea, legally," he said.

"Annasteel also claimed he was not in the scope and course of his employment at the time, so they were not at fault. They also seemed to have a contradiction, because they were saying that, even if the brakes failed, he should have been able to stop."

The garage, he said, denied any negligence, but without the missing brake parts there was no way to prove how or whether they actually failed.

Brodhead filed a motion for spoliation sanctions in May, and it was still pending when Judge Al Wong, who was handling the case, convened a mediation.

The mediation failed, but "Judge Wong's help laid the groundwork for the settlement," he said.

The case was on Wong's July trial calendar when the consent order ending it was entered June 11. 