

# DAILY REPORT

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## Jury Awards \$4.2M After USAA Rejects \$100K Offer to Settle

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A FULTON COUNTY jury awarded a man \$4.2 million for spinal injuries suffered in a multicar wreck after an insurer refused to settle for \$100,000 nearly a decade ago.

Plaintiffs lawyer Ben Brodhead said the total award handed down Thursday should rise significantly with the addition of more than \$700,000 in prejudgment interest and what he estimates is nearly \$2 million in fees from Georgia's Offer of Settlement statute are added in.

Under that law, a party that declines a settlement offer under that statute and then loses at trial by at least 25% more than the rejected offer may have to pay the winning party's attorney fees from the date of the rejected offer.

Brodhead offered to settle the case for \$100,000 in 2010.

Brodhead said that he expected the verdict to be even higher, but jurors told him they thought the plaintiff, Joao Junior, had some



Ashley Fournet (from left), Ben Brodhead, Holli Clark and John Nichols represented the man who was injured in the 2010 multicar crash in Alpharetta.

preexisting spinal problems that the wreck exacerbated.

"They told us that they believed he did have significant spinal degeneration before the collision, but that it had caused 'something'—that's how they stated it," said Brodhead, who tried the case

with Brodhead Law colleagues Ashley Fournet, Holli Clark and John Nichols.

Brodhead said the case—which involved a 2010 wreck in Alpharetta—was delayed for years while he tried to schedule a deposition with the doctor who operated on

his neck, celebrity neurosurgeon Sanjay Gupta.

“It was a real issue for us because his schedule was not conducive to us getting a date for depositions,” said Brodhead. “We lost about four-and-a-half-years and never got it at all. All we had was an affidavit.”

The defendant driver, Sharon Graham, was represented at trial by Cruser, Mitchell, Novitz, Sanchez, Gaston & Zimet partner R. Russell Grant, who did not respond to a request for comment Friday.

According to Brodhead and court filings, Junior, now 60, was sandwiched between two cars at a stop on Old Milton Parkway in March 2010 when Graham hit the last vehicle in line.

According to the responding officer, Graham was “incoherent” at the scene, and said she had taken depression and anti-anxiety drugs that morning. Blood tests subsequently showed she had “multiple sleep and/or psychotropic drugs” in her system, including Ambien, diphenhydramine [Tylenol PM], Xanax and Paxil.

Police also discovered that she was in another, minor collision shortly before the incident.

Even so, she was only cited for following too closely.

Graham and another driver were taken to the hospital. Junior’s Nissan Sentra was totaled, and he was complaining of pain in his leg, back

and neck, but he had someone pick him and his wife up and take them to a cleaning job they had been en route to.

When he got home, Junior was still in pain and went to the emergency room, where he was diagnosed with cervical strain.

He sought chiropractic treatment and therapy, but was still in pain. An MRI showed he had a herniated disc in his neck that would require surgery, which he had about a year-and-a-half later.

Later that year Brodhead sent Graham’s insurer, USAA, a demand for her \$100,000 policy limit, which the insurer countered with an offer of \$14,500.

Junior declined and filed suit in Fulton County State Court.

In 2012 Brodhead offered to settle for \$1.75 million under Georgia’s Unliquidated Damages Interest Act, which was also declined.

“It was several years before USAA finally offered its policy limits,” he said. “By that time, [Junior] was no longer willing to accept only \$100,000.”

Junior suffered ongoing pain and had to give up doing the tile and stone work he usually did, said Brodhead, and now helps his wife on commercial cleaning jobs.

During a four-day trial that began Monday before Judge John Mather, Junior made no claims for lost wages but presented past medical expenses of more than \$177,000, as

well as claims for future treatment and pain and suffering.

Key experts were Junior’s primary care physician, Soren Thomas and neuroradiologist Michael Smith of Decatur.

Nurse practitioner Missy Heath, who had prescribed the drugs Graham had taken, “testified that she never saw any indications” that Graham abused drugs, Brodhead said.

The defense argued that “Junior’s spine problems were consistent with the significant degenerative disc disease, which one would expect to see in a 50-year-old-heavy laborer,” he said.

At closing, Brodhead said he asked the jury to award \$20 million in compensatory damages.

On Thursday afternoon, the jury took a few hours to find that Graham had been impaired at the time of the wreck but was not deserving of punitive damages and awarded \$3 million in compensatory damages, \$1.2 million in attorney fees and \$5,555 in litigation expenses for total of \$4,251,555.

Brodhead hailed Grant for keeping the award lower than he expected.

“I expected the verdict would be higher based on [Junior’s] injuries,” he said. “I believe it was Mr. Grant’s presentation and demeanor that persuaded the jury to return a verdict well below what I requested.”

Grant “was a true professional throughout the entire process,” he said. ☺