

Fulton Jury Awards \$113M After Insurer Denies Policy-Limit Settlement Offer

By Cedra Mayfield

September 20, 2023

What You Need to Know

- Fulton County State Court jury returns \$113 million verdict against estate of defendant involved in construction zone injury crash.
- Nine-figure outcome follows \$80 million jury verdict achieved by Brodhead Law Firm attorneys in August.
- As defense counsel, Swift Currie McGhee & Hiers attorneys unsuccessfully challenged an unenforced policy limit settlement offer to Georgia Court of Appeals.

An insurer's refusal to settle a 2016 construction zone injury collision complaint for policy limits has escalated into a \$113 million jury verdict.

Awarded by Fulton County State Court jurors in three phases, more than 40% of the verdict is linked to attorney fees for bad faith in the transaction and frivolous defenses after the suit's filing.

But with additional attorney's fees still being pursued, plaintiff counsel anticipate another judgment against the estate of a late Nationwide Affinity Insurance Company of America client.

"There's also going to be attorney's fees added under §9-11-68(b) based on an offer of judgment that we made in 2018," said plaintiff attorney Ben C. Brodhead of Brodhead Law. "That should add somewhere between \$40 [million] and \$50 million."

'Admitted Negligence Per Se'

When a vehicle driven overnight by defendant Ashley Claxton along southbound Ga. 400 veered into a construction zone near Mansell Road, it struck plaintiff Dale Adams, "pinning him against a guardrail," per the allegations in the plaintiff's pre-trial brief.

Brodhead teamed with firm colleagues Ashley Fournet, Holli Clark and Michael Arndt to represent the



(Courtesy photos)

(L-R) Ben C. Brodhead, Ashley B. Fournet, Holli Clark and Michael Arndt of Brodhead Law.

construction site supervisor who'd survived the May 2016 collision, but "sustained injuries, special damages, and general damages," per an amended complaint filed after Claxton's death in September 2021.

"As a direct and proximate result of Ms. Claxton's recklessness, negligence, and negligence per se, Plaintiff sustained ... pain and suffering, permanent impairment, permanent disability, permanent disfigurement, and medical expenses," plaintiff counsel pleaded.

Swift Currie McGhee & Hiers attorneys Stephen Schatz, Rebecca E. Strickland and John "Jack" M. McCall represented the defendant's estate, but did not respond to a Daily Report request for comment.

According to its filed answers and pre-trial brief, defense counsel initially denied "that negligence is subject to determination by the jury," since substituted estate defendant Michael Smith "admitted negligence per se in

his Answer to the Amended Complaint” as the administrator of Claxton’s estate.

“Thus, the proximate cause of the accident is not at issue,” read the defense pre-trial brief.

‘Defense Just Completely Refused It’

According to Brodhead, plaintiff counsel offered to settle the matter on more than one occasion, beginning with a time-limited demand policy limit offer that involved “a release of personal injury claims in exchange for \$50,000.”

Brodhead said defense counsel sought the inclusion of “property damage claims” and a “statutory limited release under §33-24-41-1” as additional settlement stipulations.

But rather than provide plaintiff counsel with a check, Nationwide provided a “\$50,000 instrument” for payment that ignited a secondary legal dispute.

Upon attempting to cash the instrument, plaintiff counsel learned it required a bank processing approval that could take up to nine business days, per appellate filings.

Unable to “immediately distribute funds to Mr. Adams,” plaintiff counsel then regarded Nationwide’s instrument as a counter-offer rather than an unconditionally accepted settlement offer, prompting a challenge.

When defense counsel asked the trial court to enforce what it considered to be a binding settlement agreement, both Judge Eric A. Richardson and the Georgia Court of Appeals declined.

“There were many, many offers issued in this case. There were offers as low as policy limits. Then after that, there was an offer of \$1.75 million,” Brodhead told the Daily Report. “The defense just completely refused it.”

With negotiations stalled, Brodhead said the case advanced to trial before Fulton County State Court jurors.

‘You Don’t Deny It’

After two days of voir dire and multiple juror strikes, opposing counsel faced off a trial before Richardson on Sept. 11. Advising as an appellate consultant, Bondurant Mixson & Elmore partner Mike Terry joined the plaintiff team at trial.

Brodhead said plaintiff counsel focused its case on conveying to the jury “both the significance of the [plaintiff’s] injuries [and] the improper conduct [that occurred] at the time of the collision, as well as during litigation,” as a means to justify more than \$40 million sought in initial attorney’s fees.

In addition to the late defendant’s act of “reckless driving through a construction zone” establishing “bad faith in the transaction” under §13-6-11, Brodhead said

defense counsel “presented a frivolous claim or defense” that supported attorney’s fees under §9-11-68(e).

“They claimed that there could be fault on the part of our client. They said that damages should be reduced by our comparative fault, but there was obviously no comparative fault [and] no contributory negligence,” Brodhead said. “The defendant ha[d] both been charged with reckless driving and pled guilty to reckless driving ... She should have simply admitted it. If we alleged that she left her lane of travel and entered a construction zone, you simply admit that. You don’t deny it.”

After three days of trial and about four hours of deliberations, Brodhead said the jury returned a \$113 million plaintiff verdict over the course of three phases on Sept. 15.

After awarding \$60 million in compensatory damages, jurors awarded just over \$40 million in attorney’s fees and litigation expenses linked to §13-6-11 before tacking on an additional \$3.5 million in fees associated with §9-11-68(e).

Jurors also granted \$9.6 million in pre-judgment interest for a Georgia Unliquidated Interest Act demand made by plaintiff counsel in January 2019 under §51-12-14 in the amount of \$25 million at an 8.5% interest rate for 1,661 days.

But Brodhead said litigation isn’t over.

In addition to seeking between \$40 million and \$50 million in additional attorney fees under §9-11-68(b) for a 2018 offer of judgment made by plaintiff counsel, Brodhead said he expected defense counsel to challenge the verdict.

“We’re going to be generating interest at a rate of about \$47,000 a day. All of this could have been avoided by the insurance company accepting reasonable offers of settlement,” Brodhead told the Daily Report. “There’s no question that they’re going to try to appeal.”

‘Juries Are Going to Impose the Full Amount’

The nine-figure outcome by Brodhead Law follows an \$80 million jury verdict secured by the same plaintiff team last month in Cobb County State Court.

Brodhead highlighted jurors’ decisions to award millions in attorney’s fees in both cases.

“As long as insurance companies continue to refuse to accept reasonable offers, juries are going to impose the full amount of the loss on them,” Brodhead said. “They’ve been doing a lot of these stories on ‘nuclear verdicts’ ... If they want to settle cases and not have verdicts like this, then stop demanding additional consideration that’s not offered.”