

DAILY REPORT

\$83M Verdict After \$100K Demand Rejected in Henry County

By Cedra Mayfield

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What You Need to Know

- Henry County State Court jury returns \$83 million automotive tort verdict four years after Progressive Corp. rejected \$100,000 policy limits demand.
- Litigators with Brodhead Law, Smith Welch Webb & White and Bondurant Mixson & Elmore collaborated to achieve eight-figure outcome.
- Defense counsel with Downey & Cleveland and Chambless Higdon Richardson Katz & Griggs defended insurer and insured, respectively.
- <https://www.law.com/dailyreportonline/2021/10/11/string-of-post-shutdown-defense-wins-greets-downey-cleveland-as-jury-trials-resume/>

Henry County State Court jurors have returned a \$83 million verdict to the family of a woman who died several months after being injured in a 2018 collision with a driver accused of running a stop sign.

Collaborating plaintiff counsel with Brodhead Law, Smith Welch Webb & White and Bondurant Mixson & Elmore credit the eight-figure outcome to their ability to help “the jury understand how to value [the] life” of the 70-year-old decedent—and Progressive Corp.’s unwillingness to



Courtesy photos

L-R: (top row) Ben Brodhead, Ashley Fournet, Holli Clark and Michael Arndt of Brodhead Law, (bottom row) Orlando Ojeda of Brodhead Law, John Webb of Smith Welch Webb & White and Michael B. Terry of Bondurant Mixson & Elmore.

settle the matter for an initial \$100,000 policy limits demand.

“The only reason the verdict and judgment exist, is because Progressive refused multiple reasonable offers of compromise,” said plaintiff attorney Ben Brodhead. “Every offer made by [the] plaintiffs was lower than the judgment obtained.”

'Progressive Forced This Case to Trial'

According to plaintiff counsel, Deborah Bates had been driving through the intersection of McDonough Parkway and Brooks Road when defendant Judy Simmons "drove through a stop sign at approximately 50 miles per hour," before striking Bates' vehicle in July 2018.

"Ms. Bates suffered serious injuries and was hospitalized in the ICU at Atlanta Medical Center and a long term care facility for almost five months before she succumbed to her injuries," Brodhead told the Daily Report. "Defendant Simmons was charged with failure to stop at a stop sign and homicide by vehicle in the second degree. She pled guilty to those charges."

Seeking to hold Simmons accountable for Bates' injuries and subsequent death, members of Bates' family retained John Webb of Smith Welch Webb & White in Stockbridge to file an automotive tort complaint in Henry County State Court in November 2019. In the initial complaint, Webb contended Simmons' "negligence and negligence per se proximately caused serious injuries to Deborah Bates, which caused her tremendous pain and suffering and ultimately resulted in her death."

Webb later joined forces with Brodhead and Brodhead Law litigators Michael Arndt, Holli Clark, Ashley Fournet and Orlando Ojeda to bring an amended complaint in September. During the more than four years between complaints, Brodhead said Progressive rejected repeated offers of settlement proffered by the plaintiffs.

"[The] plaintiffs twice offered to compromise in exchange for Progressive's policy limits of \$100,000," Brodhead said. "However, Progressive refused to accept either offer identically as required by Georgia law."

But, Brodhead said that didn't stop the plaintiffs from making additional offers of settlement,

including a resolution for \$3 million under § OCGA 9-11-68 in March 2020. After each subsequent offer got rejected by the insurer, plaintiff counsel determined only one remedy remained viable.

"Progressive forced this case to trial in bad faith," Brodhead said.

Downey & Cleveland litigators R. Christopher Harrison and Laura Golden teamed together to represent Progressive, while Macon attorney L. Taylor Bittick of Chambless Higdon Richardson Katz & Griggs represented Simmons for the Georgia Insolvency Pool, according to plaintiff counsel. Daily Report requests for comment remained unanswered by each attorney Friday morning.

In a consolidated pre-trial order, defense counsel briefed that "the defendant admit[ted] duty and breach of duty."

"The Defendant contests all remaining issues and allegations, including but not limited to proximate causation, medical damages, attorney fees, and punitive damages," read the defense brief.

'How to Value Life'

With both parties remaining at odds, the case proceeded to a jury trial before Henry County State Court Judge Chaundra Lewis on Nov. 11. During jury selection, Brodhead said Simmons "admitted fault and proximate cause for the first time."

"Prior to that, proximate cause had not been admitted, and only a generic breach of duty had been admitted," Brodhead said.

The admission enabled plaintiff counsel to shift their trial focus toward "helping the jury understand how to value life." In hopes of convincing the jury of the value of the retired 70-year-old's life, the plaintiff team opted to deploy expert testimony from a pair of Bates' treating physicians.

Plaintiff counsel also highlighted how Bates had recently become a great grandmother, before

noting that her estate had incurred about \$3 million in medical and funeral expenses.

With Bondurant Mixson & Elmore partner Michael B. Terry in tow as an addition to the plaintiff team at trial, Brodhead said the collaborating litigators requested the jury return a verdict of \$1 billion for the value of Bates' life, \$100 million for pain and suffering and more than \$3 million in medical and funeral expenses. In support of their request, plaintiff counsel highlighted for the jury that Simmons' criminal charges had not included driving under the influence, despite evidence that it may have occurred.

According to Brodhead, after obtaining the defendant's pharmacy records during discovery, plaintiff counsel learned Simmons had been taking "numerous prescription medications on a regular basis, including Oxycodone, Soma, blood pressure medications, Zoloft, Xanax, and Ambien."

"Defendant Simmons initially claimed she only took Xanax the morning of the collision, but later testified it was 'possible' she took the other medications," Brodhead said. "The jury ultimately determined that defendant Simmons was misusing her prescription medications to the extent that she was substantially impaired."

Across the aisle, defense attorneys Harrison and Golden handled trial proceedings on behalf of Progressive and Simmons. Having withdrawn their client's defenses to causation of injuries and death, Brodhead said opposing counsel centered their arguments on "punitive facts, attorneys' fees, and the amount of damages."

"Defendant's counsel, Chris Harrison, did a great job with what he had, but he was forced to try a case with terrible facts for his side. I don't

believe anyone could have obtained a better result for the defendant, and I know most attorneys would have done a lot worse," Brodhead said. "Although there were vigorous arguments from both sides on multiple issues, Judge Lewis remained patient and controlled her court well."

'Total Will Be Over \$100 Million'

After five days of trial and a total of six hours of deliberations, the Henry County State Court jury returned a plaintiff verdict in two phases on Nov. 19.

During the first phase, jurors awarded Bates' family members \$25 million for the plaintiffs' wrongful death claim and \$21 million for estate claims that included pain and suffering and medical expenses.

During the second phase, the jury awarded \$1 million in punitive damages against the defendant, but the payout didn't end there. Jurors also awarded \$30 million in attorney's fees under *O.C.G.A. § 13-6-11* and \$5.6 million in prejudgment interest tied to a \$20 million Georgia Unliquidated Interest Act demand under *O.C.G.A. § 51-12-14* that had accrued at 6.25% interest since April 23, 2020.

Brodhead said plaintiff counsel expected the verdict to be "slightly higher," but remained confident that "when attorneys' fees under *OCGA 9-11-68* are added, the total will be over \$100 million, as expected.» The litigator also noted that the outcome held a takeaway for other lawyers to consider.

"Even in counties where awards have historically been lower, you can reach these jurors and obtain values consistent with other more favorable counties if you present the case properly," Brodhead said.