

Missouri Lawyers WEEKLY

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Man settles trucking collision case for \$1.5M

Plaintiff claimed punitive damages for violations of federal trucking regulations



Brian McChesney



Craig Ortwerth

An Ohio man injured in a collision with a commercial truck has reached a \$1.5 million settlement in his federal lawsuit against the truck driver and the trucker's employer.

Carl Williams, 65, was driving his motor home from a family gathering in Mountain Home, Ark., to his home in West Alexandria, Ohio, on July 16, 2004. He ran out of gas at 1 a.m. and stalled on the shoulder of northbound Interstate 57 in Franklin County, Ill.

Thomas Schram, a truck driver for Foodliner, was in route to Foodliner's terminal in Nebraska.

Schram rear-ended Williams' motor home on the shoulder of the highway. Schram was traveling about 60 mph at the time of impact.

Defendants denied liability, disputing whether Williams' taillights and flashers were on. Schram argued he could not see Williams and could not avoid the collision.

Discovery confirmed that Schram had been on duty 17 hours at the time of the crash, in violation of federal regulations, said plaintiff's attorney Craig M. Ortwerth, of St. Louis. A plaintiff's expert reviewed Schram's driving records and found that Schram had violated the federal service hour regulations on 77 of the 140 days immediately preceding the crash.

The plaintiff also had evidence that Foodliner knew of Schram's driving habits, Ortwerth said. As a result, the court granted the plaintiff leave to proceed with claims for punitive damages against Schram and Foodliner.

From the crash scene, Williams was taken to Saint Louis University Hospital with complaints of head pain and left shoulder pain. Diagnostic testing revealed a tear of the left rotator cuff that did not require surgery. An MRI of the brain revealed a 3-millimeter frontal subdural hematoma thought to be caused by the crash and a pre-existing meningioma tumor near the brain stem.

Two months later, Williams underwent a follow-up MRI that confirmed his subdural hematoma had resolved. However, his neurosurgeon decided that the brain tumor needed to be removed because of its large size

and proximity to the brain stem.

Following surgery and therapy, Williams was discharged under his own care and has been living on his own. Yet he has difficulties with memory and problem solving, Ortwerth said.

In response to the lawsuit filed in U.S. District Court for the Southern District of Illinois, defendants did not deny that the crash caused Williams' nonoperative shoulder injury and a mild head injury. Defendants argued that Williams' small hematoma resolved within weeks, and his cognitive problems were caused by his brain tumor, invasive surgery and post-operative treatment including radiation.

Defendants disputed Williams' \$55,000 past treatment expenses and disputed the nature and amount of Williams' future medical treatment. Williams was disabled before the crash and did not claim lost wages.

Plaintiff's attorneys made a \$13 million initial demand during a pre-trial mediation, said defense attorney W. Mark Sickles, of Chicago.

After seven months of motion practice including the denial of defendants' motion to strike plaintiff's punitive damage claims and while preparing for a final pretrial conference before Chief Judge David R. Herndon, Sickles said, the parties settled for \$1.5 million.

— Anne C. Vitale

\$1.5 million settlement

PERSONAL INJURY/VEHICULAR

■ **Court:** U.S. District Court for Southern District of Illinois

■ **Case Number/Date:** 06-557-DRH/July 28, 2008

■ **Judge:** David R. Herndon

■ **Plaintiff's Experts:** Dr. Thomas Goodall, Dayton, Ohio (treating neurosurgeon); Wesley Grimes, Mesa, Ariz. (accident reconstruction); Jan Klosterman, St. Louis (life care plan); Merrill Mitler, Bethesda, Md. (human factors); Dr. Jan Saunders, Dayton (treating orthopedic surgeon); Dr. Philip Theodosopoulos, Cincinnati (treating neurosurgeon); Dennis Wylie, Santa Barbara, Calif. (human factors)

■ **Defendants' Experts:** Robert Hanlon, Chicago (neuropsychologist)

■ **Special Damages:** \$55,000 past medical expenses; range of \$860,000 to \$1,147,000 future medical expenses

■ **Insurance Carrier:** AIG

■ **Caption:** Carl Williams v. Thomas Schram and Foodliner, Inc.

■ **Plaintiff's Attorneys:** Brian S. McChesney and Craig M. Ortwerth, McChesney & Ortwerth, St. Louis; Jon E. Rosenstengel, Bonifield & Rosenstengel, Belleville, Ill.

■ **Defendants' Attorney:** W. Mark Sickles, McKenna Storer, Chicago