THE CONNECTICUT
LAW TRIBUNE
AN AMERICAN LAWYER MEDIA PUBLICATION
December, 2002

Gruesome Crash Settled For $4.35 Million

Highway workers go high-tech to deconstruct liability

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In the 5:30 a.m. darkness of Oct. 25, 1996, a dozing driver of a semi-tractor trailer smashed into four construction workers retrieving warning cones along Interstate 95 in Greenwich.

The big rig first hit a flashing arrow "crash truck," slamming it into the four men working from an open trailer drawn behind a slow-moving pickup truck. Noel Grant was the most badly injured of the four, all of whom recently agreed to a $4.35 million settlement in the case. Grant was thrown 145 feet and punctured with crash debris. He lost an arm and had his belly ripped open in the horrific impact, suffering brain and kidney injuries.

At first, tracing tort liability was like mapping a pool cue ball breaking a rack.

Stamford plaintiffs' lawyer Stewart M. Casper represented Grant. He initially only sued the truck driver and Sroka Trucking Inc., a tiny New Jersey garbage-hauling company. Casper deposed the driver of the crash truck that hit the men, and a companion crash truck that was unscathed. Both drivers were Grant's co-workers.

Normally, worker's compensation law prevents a tort suit against com-workers, noted Casper. "But there's one very narrow exception" that applies if the injury arises from negligent operation of a motor vehicle, he noted.

That exception was important in the hunt for a pocket deep enough to compensate the victims' considerable injuries.

As it turned out, Sroka was underinsured, carrying a $500,000 policy, instead of the $750,000 required for interstate commerce, Casper said. But after he deposed the crash truck drivers, and reviewed the police reports, Casper began to see the case in a new light.

India Blue

Stamford plaintiffs' lawyer Stewart M. Casper helped secure a recent $4.35 million settlement for his client and three other highway construction workers injured in a 1996 accident on Interstate 95.

The crash truck is really a 12-ton dump truck cab and frame, mounted with a shock-absorbing "impact attenuator" and lighted with a large flashing arrow. The ones involved in this case were rented from a Hamden company named Warning Lights Inc., by the general contractor on the highway job—Torrington's O&G Industries Inc.

O&G is a major contractor for Connecticut highway work, and had liability coverage of $27 million. In addition, under an indemnification clause in its lease agreement with Warning Lights, O&G could ultimately be held liable. The plaintiffs added these parties to their suit.

With witnesses' depositions in hand, Casper next consulted experts on crash truck positioning, and the protocols for dismantling a construction-zone merge lane. If the long wedge of cones had been collected from the thick end first, heading against traffic, the pickup truck would finish its job at the least exposed point, where the cones approach the shoulder, the experts said. The pickup, however, was traveling with the traffic flow. The crew picked up the wooden merge arrow signs first, and then the cones. The final positioning of the collection truck would be its least protected.

"It didn't seem to make any sense to be doing what the construction crew and the crash truck operator were doing," said Casper, of Casper & de Toledo. His expert, Russell M. Lewis, PhD., cited other states' standards as averaging between 1,000 feet and 1,500 feet for a crash truck positioning upstream from workers. The O&G contract with the state called for crash truck positioning of 50 to 200 feet, assuming other lane-closure warning devices, Casper said.

The four plaintiffs had a computerized video made to recreate the accident from three different angles. Another animation purported to show that the crash truck would have been effective in stopping the tractor-trailer if it were 250 feet behind the workers.

As the trial date approached, Casper mentioned to his client's surgeon that it would have been helpful to have before-and-after photos of Grant. To his surprise, the surgeon had a gruesome 15-second video of Grant on the operating table before surgery.

Casper contended that video might have been admissible at trial, in light of the public's growing familiarity with graphic operations from shows like television's hit "ER" medical drama.

"No way," responded defense lawyer Jeffrey Blueweiss, representing O&G. He was confident that no judge would allow a jury to see it, because its inflammatory "prejudicial" effect would far outweigh anything it could prove.

The crash animations, Blueweiss added, were more like "cartoons." They were based on so many speculative assumptions that they also were unlikely to be admitted into evidence, in Blueweiss' view.

A chief factor favoring settlement, Blueweiss added, was Grant's personality. The plaintiff came off as a decent, hard-working individual who wasn't exaggerating his injuries—qualities that would appeal to a jury, Blueweiss conceded.

The $4.35 million defense settlement offer for the four plaintiffs, which could net Grant alone up to $2 million, was impossible to refuse, Casper said. A jury might allocate a huge fraction of fault to Sroka trucking and minimal fault to the crash truck, he said.

Nevertheless, said Blueweiss, of Bridgeport's Bai, Pollock, Blueweiss & Mulcahey, "I would have liked to have tried it."

Stephen Jacques, of Cheshire's Moore, O'Brien, Jacques & Yelenak, represented plaintiff Milton Gregory; Brian Mongelluso, of Waterbury's Moynahan, Ruskin, Mascolo & Minnella, represented plaintiff Querino Maia, and Cheshire solo Alec Rimer represented plaintiff Paulo Pinto. ■