

TRACTOR TRAILER/PICKUP TRUCK COLLISION; INCLEMENT WEATHER;
RECKLESS DRIVING; FRACTURED HIP: SETTLEMENT

Henry B. Waters vs. Continental National Indemnity Company
Douglas County, Georgia, Superior Court Civil Action File
No. 96-CV-1684, settled September 8, 1997

Settlement on behalf of 59-year old Plaintiff, who was driving a pickup truck which collided with a tractor trailer vehicle on a snowy, two-lane highway.

On the 11th day of January, 1996, at about 8:00 p.m., Plaintiff was driving his pickup truck in a westerly direction on Highway 52 West, in Lumpkin County, Georgia. Snow was falling heavily. Plaintiff, an employee of Burlington Industries for almost 40 years, was on his way home after shutting down its operations. Snow completely covered the winding, hilly, two-lane roadway to a depth of 2-3 inches. At this time, Phillip C. Johns was driving a tractor trailer truck in an easterly direction on Highway 52 West, approaching Plaintiff's pickup truck, when the two vehicles collided, causing Plaintiff's vehicle to leave the roadway and overturn. The Georgia State Patrol was alerted to the incident by a nearby resident who had heard the crash, and arrived at the scene within approximately 20 minutes. There were no eyewitnesses. Mr. Johns advised that he had been driving in a careful manner when he noticed the Plaintiff's vehicle fishtailing as it approached him. After it had passed the cab of his vehicle, he felt a bump as it hit his rear, and he saw it spin off the road. He stated emphatically that the Plaintiff's vehicle had crossed the centerline of the road, and struck the rear of his trailer. Emergency Medical Technicians had also

responded to the scene, and as a result of the numerous vehicles there, any tracks left by the vehicles involved in the collision were obscured so that the investigating state troopers were unable to determine the exact point of impact on the roadway. There were no other physical evidence or witnesses to establish which vehicle crossed the centerline, and the investigating officers therefore reached no determination as to responsibility.

The Plaintiff was adamant that the tractor trailer vehicle had come across the roadway at an excessive speed and had struck him. However, an accident reconstruction engineer, hired as a consulting expert several months after the incident, advised that there was no way to determine from the physical evidence which vehicle was the cause of the collision. The break in the case came with a chance remark in a convenience store to an acquaintance of Plaintiff, who stated to the effect that "I saw that tractor trailer truck that night before the collision, and he was going too fast". This resulted in an investigation which led to two essential witnesses, Mr. and Mrs. Greg Lee.

Mr. and Mrs. Lee had been driving in an easterly direction on Highway 52 West that evening, and testified that in their opinion, 15 to 20 miles per hour was the maximum safe speed for a vehicle that night due to the inclement weather, but a tractor trailer truck had passed them a few miles before the accident site, travelling almost 50 miles per hour. They were astonished at his recklessness, and testified that as there were no other vehicles on the road that evening, they followed his tracks, after he went out of sight. His tracks straddled the centerline,

4-wheel drive or chains, was less than 30 miles per hour, but none of them could opine as to where the collision occurred in the roadway, due to the tracks made by the emergency vehicles which obscured any physical evidence concerning the point of impact, and the fact that they were mostly concerned that evening with extracting the Plaintiff from his vehicle and providing emergency care to him. The tractor trailer vehicle was in its proper lane of travel when the emergency personnel arrived.

Plaintiff was taken to a nearby hospital where it was discovered he had suffered a fractured left hip, fractured left leg and several fractured ribs. He subsequently developed osteomyelitis, a bone infection, which eventually cleared up, but caused him to be left with a limp. His medical and related expenses totalled about \$93,000.00. Moreover, he had been disabled from his employment with Burlington Industries where he had been earning approximately \$35,000.00 per year, and where he could have continued his employment through age 65.

The case had been placed on a trial calendar when the parties entered private mediation, which resulted in a settlement for cash and future annuity payments with a present cash value of over \$500,000.00.

[Plaintiff was represented by ATLA and GTLA members William C. Lanham and Clark H. McGehee of Atlanta, Georgia.]