

DUMP TRUCK/BICYCLE COLLISION; CONTRIBUTORY NEGLIGENCE; DE-GLOVING INJURY TO RIGHT LEG: SETTLEMENT

Kristin A. Wamberg vs. Walter E. Wiggins, Executor of the Estate of Judy A. Wiggins, d/b/a J.A.W. Trucking, Walter E. Wiggins, Individually, and Jannie B. Durrance

Superior Court of Jasper County Civil Action File No. 96-CV-09-215

Settlement: April 17, 1998

Settlement in the sum of \$850,000.00 on behalf of a 26-year old Plaintiff, who was riding a bicycle which was struck by a dump truck in downtown Atlanta, Georgia.

On May 6, 1996, Plaintiff, a 1994 graduate of Emory University, was taking Science courses at Georgia State University, necessary for her to attend the Physician's Assistant program at the Medical College of Georgia in the Fall. Plaintiff had been a serious bicycle rider since the age of 15, riding hundreds of miles a year, and was also an accomplished athlete who taught soccer and participated regularly in swimming and intramural basketball. She was riding her bicycle on her way to Georgia State University when she stopped adjacent to the curb at the traffic light at the intersection of Marietta and Fairlie Streets in downtown Atlanta, Georgia. At that time, significant construction was being carried out in Atlanta in preparation for the 1996 Olympic games, and Defendants were involved in a repaving project, delivering gravel for a downtown parking lot. A large dump truck, owned by J.A.W. Trucking, travelling in the same direction as Plaintiff, came to a stop at the intersection also, and after permitting a pedestrian to pass, the dump truck turned right. The right wheel of the dump truck drove directly over the rear of Plaintiff's bicycle, pulling the bicycle and Plaintiff underneath the truck as it made its turn. As a result of this collision, Plaintiff suffered a "de-gloving" of her right leg from her hip to her foot, which involved the skin and muscle being stripped from her leg with corresponding injury to the tissues and blood vessels. Although it was initially feared she would lose her leg, grafting

from her left leg was successful, and while she suffered some permanent scarring and injury to her right leg, she made a significant recovery and now has full use of her leg. In fact, she participated in the Peachtree Road Race the following year. Her medical and related expenses totalled approximately \$135,000.00.

Plaintiff brought this action against Judy A. Wiggins, the owner of J.A.W. Trucking. Mrs. Wiggins passed away in December of 1996, and her husband, Executor of her Estate, was substituted as a party Defendant. Plaintiff contended that the truck driver had failed to exercise proper care when making her turn. Moreover, even if Plaintiff was located in a "blind spot" for the truck driver, as contended by Defendants, Plaintiff argued that the driver had an obligation to insure pedestrian and bicyclist safety before making her turn. The truck driver alleged that she had arrived at the intersection before the Plaintiff, and that Plaintiff thereafter negligently rode her bicycle up to the intersection beside and so close to the truck, that the driver could not see her in the truck's blind spot. Moreover, Defendants contended that Plaintiff was within just a few inches of the truck's right turn signal and should have heard its engine noise, but took no action to move out of the truck's way when it began to turn. Both drivers were cited by the investigating police officer; the dump truck for making an illegal right turn, and the bicyclist for failing to exercise due care in operating her bicycle.

Defendant retained an accident reconstruction engineer who reconstructed the incident on videotape, demonstrating that the driver could not have seen the Plaintiff if she rode up right next to the truck and stopped her bicycle. Moreover, Defendants' expert opined that the physical evidence revealed that Plaintiff had been operating her bicycle on the sidewalk, and had moved into the truck's blind spot immediately prior to the incident. One eyewitness agreed that the Plaintiff had been on the sidewalk before the incident, but four others said they did not know

who arrived at the intersection first, and did not see the Plaintiff on the sidewalk. Plaintiff also retained the services of a professional engineer and a professional truck driver, who both opined that the mirrors on Defendants' truck were likely not properly adjusted in accordance with standards set by the American Trucking Association, in order to alleviate "blind spots", and that, in any event, even if the Plaintiff had arrived at the intersection after the dump truck, the driver should have been able to see her approaching in the various mirrors available even as they were positioned at the time. Moreover, all experts admitted that the pattern of injury to the bicycle reflected that the right front tire of the dump truck had crossed it diagonally from the rear.

Mediation was unsuccessful. The case was scheduled for trial in Monticello, Georgia, a fairly conservative venue. After continued negotiations, it was settled approximately three weeks prior to its scheduled trial date for \$850,000.00.

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