

DAILY REPORT

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\$5M Settlement Ends Tractor-Trailer Accident Case

GREG LAND | gland@alm.com

A MAN WHO was able to drive his car away after being struck by a tractor-trailer and sent spinning down the expressway has settled his claims with the trucking company for \$5 million.

Plaintiffs attorney Ben Brodhead said that he offered to settle the case for \$500,000 several years ago and steadily increased his demands every time the defense turned him down.

His last demand, for \$5 million, contained an “automatic escalation provision” that would increase the demand by \$1.5 million every two weeks.

“We use those occasionally,” said Brodhead. His negotiation



JOHN DISNEY/ALM

Plaintiffs attorney Ben Brodhead's initial settlement offer was \$500,000 several years ago, and the final one was for \$5 million with “automatic escalation” of another \$1.5 million every two weeks.

policy, he explained, is to “give our best offer at the beginning, and then the offer just goes up.”

The defendant, Southeastern Freight Lines, was represented by Baker, Donelson, Bearman,

Caldwell & Berkowitz partner Mark Barber, who said he was not at liberty to discuss the case.

The incident occurred in April 2010 when Keith Gordon, now 48, was driving his

Nissan 300ZX on Highway 75/85 near East Point. A tractor-trailer in the lane to his left — whose driver would testify that he didn't see Gordon—attempted to change lanes, striking Gordon's car in the left rear, spinning it counterclockwise and hitting it twice again before coming to rest on the side on the highway.

As he was pushed down the expressway, "all he can see in his window is a tractor-trailer grill," said Brodhead. "He knew he was going to die."

The damage to Gordon's car was relatively light: A photo shows a series of dents along the driver's side. The only apparent damage to the semi was a slightly bent and scratched right front bumper.

The trucker, Sheldon Thompson, was cited for failure to maintain lane; the Georgia State Patrol report said Gordon was uninjured and that his car suffered "minor damage" and was driven from the scene.

Brodhead said Gordon was in pain at the scene and subsequently developed neck and

back pain, ultimately requiring the implantation of a spinal stabilizer. He is currently in the process of obtaining a spinal stimulator to relieve ongoing pain and has incurred medical bills of about \$400,000 thus far, Brodhead said.

Brodhead said the case was complicated by the original defense counsel's refusal to contemplate paying more than \$200,000 to \$300,000 to settle.

Another factor involved Gordon's failure to produce identification at the accident scene and giving the officer the name of his brother.

In 2012, Gordon sued Thompson, Southeastern and its insurer, Discover Property & Casualty, in Fulton County State Court.

After the defense ignored his \$500,000 offer to settle, Brodhead made a certified offer of judgment for \$799,998, which also went unanswered.

During a mediation before Henning Mediation and Arbitration Service's Rex Smith, Brodhead said he offered to settle for \$1.8 million, but the defense would not even offer \$500,000.

Brodhead raised his bid to \$2.5 million, then \$2.9 million. After a second failed mediation before Henning's Art Glaser, he made a final offer of \$5M with the automatic escalation provision.

He said the settlement check arrived last week.

The settlement is a "win-win" for both sides, Brodhead said, because Gordon's upcoming spinal stimulator surgery will be expensive.

"Now, my client can use his settlement proceeds to get insurance to cover it, so he can settle for less," Brodhead said. 