

# DAILY REPORT

A SMART READ FOR SMART READERS

## ATLAW

See our blog about Georgia's legal community, [ATLawblog.com](http://ATLawblog.com).

## Plaintiffs win \$5.6M in rear-end collision

**SPEED OF TRUCK** that was rear-ended was disputed and proved critical to jury verdict

JANET L. CONLEY | [jconley@alm.com](mailto:jconley@alm.com)

PLAINTIFFS' LAWYER Ben C. Brodhead III knows how to pick an accident case with what at first appeared to be bad facts—and still land a \$5.6 million jury verdict. His success in challenging those facts—a scenario that seemed to establish that a rear-ended truck was traveling at safe highway speeds with its lights working—was pivotal in the unlikely win.

Six years ago, Johnny Johnson was driving a tractor-trailer on I-20 near Madison at about 11:30 p.m. when he rear-ended a truck and its attached log trailer. He died from his injuries before making a statement about



**Plaintiffs' attorney Ben Brodhead:** "It was a hard-fought case."

what happened. The driver of the vehicle carrying the logs and his passenger said they were traveling at 50 to 55 miles per hour with their lights and strobe on when Johnson slammed into them from behind. Testimony from an independent eye witness matched theirs—except he added in a 911 call placed when the accident occurred that Johnson was weaving all over the road and must have been "sleepy."

The log truck driver, Carl Thomas, and his passenger were injured and sued Johnson's employer. The employer settled for about \$250,000. No traffic citations were issued in the case.

Then Johnson's estate and his two grown sons, Mark and Paul Johnson, the latter of whom could not attend the trial because he is in jail on a murder conviction, sued the man their father had rear-ended and his trucking company. They also sued the company that owned the log trailer and the insurer, Occidental Fire & Casualty Co. of North Carolina. The plaintiffs' lawyer: Brodhead.

After a trial before DeKalb State Court Judge Janis C. Gordon that lasted almost two weeks, Brodhead's clients won a verdict. The jury spent some seven hours deliberating on damages issues, then granted Johnson's estate and his sons about \$4.1 million in compensatory damages and more than \$1.5 million in punitive damages Feb. 24; Gordon entered a judgment Monday. Georgia's \$250,000 cap on punitives means the total amount the plaintiffs can collect will be reduced to about \$4.5 million, which includes about \$156,000 in pre-judgment interest.

"It was a hard-fought case," said Brodhead, of Brodhead Law, explaining that over the four-year life of the case, there were allegations of witness tampering, serious factual disputes and two interlocu-

tory appeals. The court file shows about 50 motions were filed, including a number of Daubert motions.

"This case is far from over," said Brian J. Duva of Mozley, Finlayson & Loggins, who represented the defendant log truck driver and his company, T&T Trucking, which owned the truck; and the insurer of the tractor and log trailer, Occidental.

James S. Strawinski of Strawinski & Stout, who represented Terrell Enterprises Inc., the company that owned and loaded the log trailer, said in an e-mail message, "We believe that the verdict was contrary to the evidence. We will be pursuing all post-judgment remedies."

Duva said the evidence in the case accrued in his clients' favor. "Obviously, the jury in this case had a hard time putting aside their sympathy, and it's a tragic case, but the only evidence in this case is that our driver's tractor-trailer was properly lit, and his speed was proper and the other guy rear-ended us," he said.

Brodhead has a different perspective. He said he decided to take the case after looking at photos of the accident scene that he said gave him insight into how fast the driver of the log truck was traveling, and how his truck was positioned on the highway.

Data from an electronic control module on the truck Brodhead's client was driving showed the cruise control was set at 67 miles per hour. Brodhead said the log truck driver and his passenger, according to a police report, said they were going 55 miles per hour. That meant a roughly 12 mile-per-hour speed differential between the two vehicles.

"That's the speed you go in a parking lot," Brodhead said. "But [my client's] truck absolutely exploded. It tore the engine out,

## Plaintiffs win \$5.6M in rear-end collision

Rear-ended, from page 1

ripped the transmission out and spilled the transmission pieces all over the interstate. ... The collision accelerated the tractor so hard that it broke all the cab mounts on the log truck. So we knew from a starting point that his claim of going 55 miles per hour wasn't anywhere close to right. He must have been going a whole lot slower."

Brodhead said he estimated a speed differential of about 60 miles per hour. If only a 12 mile-per-hour speed differential could cause damage like this, he added, "Cars would be exploding during rush-hour traffic in bumper taps."

Duva called Brodhead's damage argument "just speculation." The experts on both sides of the case, he said, testified that there are no studies available that give them the ability to equate speed with a level of damages. While such studies do exist with passenger vehicles, he said, they're not available for tractor-trailers.

Brodhead disagreed, saying his experts didn't testify to that. "What happens is, in automobiles, you can do an actual speed calculation from crush damage based on studies," he said. "There's a big difference between saying you can tell the exact speed or a narrow speed range based on damage as you can with cars, as opposed to using this as a reality check to know that this is not a 10 mile-per-hour impact."

Duva also said the testimony in the case showed that his clients had been on the highway for three to three and a half miles, had established their lane position and had all their rear warning lights working.

Brodhead contended at trial that the angle of the logs' penetration in the cab of his client's truck showed that Duva's clients had instead just pulled onto the highway from an emergency lane where they'd stopped to try and get their cab's dome light working. He also said an examination of the log truck and its trailer showed that the wiring was in disrepair, held together with electrical tape, spliced in places and with a ground wire unattached.

"The only witness testimony in the case is that the lights were on and that the strobe

lights were on and that the lights were visible at the rear," Duva countered. "To the extent any problem with wiring [existed], it was not manifested in failure with the lights."

The one independent eyewitness in the case, a Greyhound bus driver, James Prophet, testified at trial that the lights on the log truck were working. But Prophet's testimony was mired in controversy.

"This is what you would call contentious litigation," Brodhead said. "There was an ongoing battle going back and forth where we were contending that they [the defense] were tampering with witnesses and they were making the same contentions against us."

As evidence of this, the parties' joint proposed pretrial order lists Brodhead as a witness the defense might have called—something to which Brodhead objected. He was not called to testify at trial.

He said that Prophet kept changing his testimony about seeing the lights working on the log truck, which is what led to the tampering allegations. In a video deposition of Prophet that Brodhead sent to the *Daily Report*, Prophet says, "I made a mistake," explaining that he initially thought he saw the log truck driver's lights, then realized he was looking at the plaintiff's truck lights and that the plaintiff "was trying to warn me and I didn't see that warning."

Brodhead, off camera, asked Prophet if this testimony had been coerced, saying, "Have I done anything to trick you?"

"No, sir, you haven't coerced me at all," Prophet answered.

Duva said he probably had seen the Prophet video at some point, but did not recall it. Whether Prophet ever changed his testimony is a substantive issue for appeal, Duva said, and one he would not comment on. As far as this jury is concerned, he said, the answer is no.

"We don't think that Mr. Prophet ever changed what he remembered about how the accident occurred," he added. He declined to discuss why Brodhead was on his witness list, saying that was something to be taken up in post-trial motions or on appeal.

Brodhead said he invested heavily in the case, spending about \$300,000 and calling six experts and four fact witnesses, using four custom-built trial displays, more

than 30 boards and blow-ups and six animations, created by Dustin Productions, that he called "the most realistic I've ever seen." He said expert reconstructionist Sean Alexander and trucking expert Mike Napier were key to winning the case.

Brodhead said he also tried the case before five mock juries, and enlisted personal injury attorney James A. Neuberger of Neuberger Law and Joseph A. Fried, a plaintiffs' side trucking law expert at Fried Rogers Goldberg, to serve as mock defense counsel. "Their generosity helped make the difference between winning and losing," Brodhead said.

He said Duva told him the defense spent about \$700,000 on trial preparations—a number Duva called "absolutely inaccurate." Duva declined to discuss what the defense spent. He also would not discuss whether he'd used mock trials to prepare for the case. He said he called one expert witness, a reconstructionist.

Brodhead said Occidental, the insurer of the tractor and trailer, had a \$1 million policy limit in the case, but refused to settle for that amount. Duva would not confirm any settlement amount or discussions.

Despite the policy limit, Brodhead said he believed Occidental will have to pay the entire verdict because it declined to settle, thereby exposing its insured to liability and itself to a potential bad faith claim.

"We believe that claim would have no merit," Duva said.

He also said his firm is working on post-trial motions for a judgment notwithstanding the verdict and a new trial. If those aren't granted, he plans to appeal. "The reason for that is we think the verdict was completely contrary to the evidence," he said.

Brodhead said he expected an appeal, but added, "I don't believe that there are any valid appeal issues, but with so many motions and so many hearings and so many rulings, is it possible that there was something inconsistent with the law? It is certainly possible, but I don't believe there was anything that would have resulted in an unfair trial for the defendants."

The case is *Johnson v. Thomas*, No. 06A56191. ☞