

THURSDAY, SEPTEMBER 25, 2014

DAILY REPORT

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Trucker's Facebook habit settles case for injured driver

PLAINTIFF'S LAWYER shows pattern of distracted driving to win \$1M settlement

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A TRUCKER'S SNARKY Facebook posts, including photos he admitted to snapping from behind the wheel, helped the driver he hit three years ago coax a \$1 million settlement from the trucker's company and insurance carrier.

The wreck occurred just after midnight on May 5, 2011, on Interstate 285 in Fulton County. Both the tractor-trailer and the plaintiff's compact sedan were traveling in the westbound lanes when the tractor-trailer attempted to change lanes and clipped the driver side of the sedan, according to the accident report. The sedan flipped over several times before coming to rest on the shoulder.

The sedan's driver, 41-year-old Kristin Meredith, was taken by ambulance to a hospital. She later had surgery to fuse vertebrae in her lower back, her attorney said.

Meredith filed a suit in April



JOHN DISNEY/DAILY REPORT

Ben Brodhead said the trucker had posted on Facebook dozens of photos he had taken while driving.

2013 in DeKalb County State Court against truck driver Jerry O'Reilly, his employer Try Hours and National Interstate Insurance Co. The suit alleged negligence on the part of the trucker and his company and sought more than \$75,000 to compensate her for injuries and damages, as well as punitive damages. A month later, the case was moved to federal court in the

Northern District of Georgia. All of the defendants are out of state.

In its answer filed in May 2013, the defense claimed that Meredith caused the wreck. Her attorney, Ben Brodhead, said they were able to disprove that using an accident reconstructionist. Brodhead noted that law enforcement cited O'Reilly for improper lane change. He pleaded guilty to the

charge in Sandy Springs Municipal Court and paid a \$247.50 fine.

The pivotal moment in the case occurred during a videotaped deposition of O'Reilly at his attorneys' office last October, said Brodhead. During questioning, O'Reilly at first denied using a camera, phone or computer while driving, but he later admitted to taking photos while driving after Brodhead presented him with dozens of posts captured from O'Reilly's Facebook profile.

While none of the photos or comments was posted at the time of the wreck, Brodhead said he was able to use them to establish a pattern of distracted driving.

"We always do background searches on defendants and will pull background information from social media, Internet and records searches," Brodhead said. "We have private investigators looking things up."

"It appeared this guy just drove down the road taking photos," he said. "It speaks to his negligence and disregard for the safety of others. He switched lanes into my client and, in doing so, said he never saw her."

In one post, O'Reilly included a photo of his truck cab accompanied by a caption that read, "My new bumper. Now pull your ass out in front of me." In another, O'Reilly commented below someone else's photo of a sedan boxed in by big rigs, "I've been there and done that also. I don't get mad. I get even."

O'Reilly also admitted changing his Facebook profile's privacy settings, just prior to Brodhead's questions, so that the photos were no longer publicly accessible. Brodhead said he anticipated O'Reilly would eventually make his Facebook profile private and so instructed a staff member to monitor it throughout the deposition and alert him if anything changed.

"And so that means that today while you were waiting on people during the deposition, you found it to be the time that was best to change your privacy settings, correct?" Brodhead asked O'Reilly, according to a transcript.

O'Reilly then answered, "I went on and changed them, I mean, I don't know what to tell you. I didn't know you had this stuff."

Brodhead said he reached out to the defendants' attorneys at Dennis, Corry, Porter & Smith afterward to settle via a so-called Holt demand, a strategy for which Brodhead has developed a reputation.

"It was at the point where the case clearly had a value over \$1 million," Brodhead said. "We gave the defense the option to pay its policy limits, and the defense attorneys did an excellent job of protecting their clients from any excess judgment."

Lead defense counsel Grant Smith could not be reached Wednesday for comment.

Had the case gone to trial, Brodhead was prepared to show the jury O'Reilly's Facebook posts.

"There was information in the depositions that could have inflamed the passions of the jury," he said. In addition to the Facebook posts, O'Reilly admitted he had been diagnosed and treated for sleep apnea, a condition in which a person stops breathing while asleep and that results in fatigue. O'Reilly also admitted that he waited more than eight hours before submitting to a statutorily required drug and alcohol screening following the wreck.

Brodhead said he had a negotiated settlement with the defendants in February, but it wasn't finalized until recently due to ongoing negotiations with the carrier of his client's uninsured motorist coverage, Progressive.

"They had asked for a dismissal without prejudice so they could pursue [O'Reilly] and his company. But they had anticipated that their payment would be made as a full resolution of the case and that they wouldn't have any exposure to any judgments or claims by the uninsured motorist carrier or anyone else," Brodhead said. "So we had to fight with the uninsured motorist carrier to get it to waive its claim for subrogation."

The court dismissed the case with prejudice on Tuesday. 