

DAILY REPORT

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Lawyer credits probes for deals

2 TRUCK-RELATED CRASHES end in settlements after plaintiffs team finds data that change perceptions

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ATLANTA plaintiffs lawyer Ben Brodhead said two settlements he recently finalized bear valuable lessons for attorneys whose practices include trucking cases—including some that might not initially appear to involve commercial vehicles.

In one case, his re-examination of what seemed to be an inattentive motorcyclist hitting a parked vehicle revealed an array of violations by the vehicle's owner.

In the other case, he said, fast work to get to the scene of an accident preserved evidence that helped persuade a trucking company that its driver's tale of a sudden steering problem was likely a fabrication.

The first case started in September 2012, when John Rowley, 47, was driving his motorcycle on a rural stretch of State Route 166 in Carroll County. As he topped a hill and rounded a curve, a "bobtail"—a truck tractor driving without a trailer behind it—was traveling in front of Rowley when it swerved abruptly to the left, revealing Rowley's lane was blocked by a flatbed trailer protruding from a driveway. Brodhead said Rowley had no choice but to lay down the bike and try to slide under the trailer.

"It almost worked," said Brodhead. "But instead of sliding under the trailer, his head caught the axle." Rowley, a married father



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Plaintiffs lawyer Ben Brodhead said a fatality crash that initially seemed to be the fault of the victim was upended when his team revealed multiple violations by another driver.

of five, died at the scene.

According to Brodhead and the Georgia State Patrol accident report, the flatbed trailer that blocked Rowley's way was connected to a pickup truck that had pulled into a driveway leading to the locked gate of a pasture. The driver had parked to unlock the gate to enter, leaving a large section of the trailer, which was carrying a Bobcat machine, blocking the road.

The police report cleared the pickup driver of any criminal liability, finding he had

no choice but to block the road because he couldn't pull onto the shoulder without the trailer tipping. It also said Rowley had been following the semitractor too closely to take evasive action when the tractor swerved to avoid the trailer, and was thus responsible for his own death.

Rowley's widow, Rhonda Rowley, contacted John Sherrod of Douglasville's Sherrod & Bernard, who performed his own investigation and workup of the case, then enlisted Brodhead.

Brodhead said the probe found a lot of evidence to impeach the owner of the trailer.

"If you have a large pickup truck pulling a significant-sized trailer, you could be in the realm of a commercial motor vehicle, just like a tractor-trailer. We realized that we're looking at a Dodge Ram 3500 pickup towing a gooseneck trailer and Bobcat, so it appeared that they were something in excess of the 26,000-pound gross vehicle weight [constituting a] commercial vehicle."

That determination meant that, far from being the "regular ol' guy driving a regular ol' truck" reflected in the police report, the driver and his employer, Villa Rica-based Randy Carden Livestock, were subject to a myriad of requirements that neither met, Brodhead said.

"If it's a commercial vehicle, it requires a commercial driver's license, which [the driver] didn't have, and you've got to comply with federal motor vehicle safety regulations. This company did not comply in every way possible," he said. "No driver's qualification file, no logbook, no vehicle inspection reports, no certificate of training for commercial vehicles."

Commercial vehicle regulations also require a vehicle stopped in a roadway to display hazard lights, warning devices such as reflective triangles or a flagman, Brodhead said.

Brodhead and his reconstruction team obtained an identical truck and trailer, loaded it with a Bobcat, and demonstrated that the rig could have parked alongside the road without flipping or could have pulled into a neighboring driveway while the driver unlocked the gate, and that the trailer itself was three times longer than necessary to haul the Bobcat.

Rowley's widow was very upset that the police cleared Roberts of wrongdoing but wanted to avoid a trial, Brodhead said. He sent a pre-suit demand letter seeking the \$1.5 million policy limits to Carden's insurer, Georgia Farm Bureau Mutual, last year, which was accepted. He also demanded the

\$30,000 limit from the driver's personal policy, which was also accepted; that claim finalized earlier this month.

John Harris of Carrollton's Tysinger & Vance, who represented Carden's insurer, did not respond to requests for comment.

The second case involved an incident in which a tractor-trailer ran off of Interstate 20 near Madison in October, hitting a man working as part of a landscaping crew along the highway and plowing through 70 feet of trees. "This one had a whole lot of stuff going on to make it challenging," Brodhead said. The truck driver, Rickey Hare, told police that he had seen the crew working along the road and started to move to the left "when he heard a loud 'pop' that caused his steering wheel to snatch to the right," Brodhead said.

Landscaper Mario Castillo, 23, who was wearing an orange safety vest, was thrown 45 feet through the air and suffered "severe, permanent, and disabling brain injury," according to the subsequent demand letter.

Shortly after the accident, Castillo's mother hired Brodhead to investigate the case. The Fulton County Probate Court appointed a conservator, James Neuberger, who retained Brodhead to file suit in Fulton County State Court. That suit, filed a month after the accident, named Hare and his wife and co-driver, Gwend Hare; their employer, Autumn Transport Inc.; and its insurer, Great West Casualty Co., as defendants.

"Had we not gotten involved in the case early on, much of the evidence would have disappeared, and we would not have been able to prove the case," Brodhead said.

Within several days of the accident, he and his team scoured the crash site. Tracks left in the ground showed that the tractor-trailer's front and rear tires were aligned. That disproved Hare's claim that the steering had failed, said Brodhead.

Because the tractor went through the woods, he added, "we were able to see the path it took."

"A week or so after the collision, the prop-

erty owner came out and cut down the damaged trees and erased that evidence, so we would have lost all that."

The filing of the suit allowed Brodhead's team to demand access to the wreckage of the totaled truck, which revealed that the undercarriage and steering linkage—while bent up—was intact. "So the only possible problem could have been with the steering gearbox and Pitman arm," which connects the steering box to the steering linkage, he said. "With the permission of opposing counsel, we took possession of the gearbox and Pitman arm, and brought this 200-pound hunk of metal to our office and kept it there, leaking all over the floor."

The steering mechanism also proved to be intact, he said. The driver then changed his story to claim he had a seizure prior to the wreck, although evidence showed that he had been steadily applying the brakes after leaving the road and "appeared to be quite conscious and aware at the scene as he was telling his initial story to the police," according to Brodhead's demand letter. Further investigation revealed Rickey Hare had a child molestation conviction on his record, "which didn't make him a sympathetic character," Brodhead said.

The transport company's lawyers, Mark Barber and Michael Horst of Baker, Donelson, Bearman, Caldwell & Berkowitz, had the case transferred to federal court in Atlanta, and within a month agreed to settle for the trucking company's \$2 million policy limit.

The defense lawyers did not respond to requests for comment. Brodhead said they "did a masterful job of protecting their client, because they could have easily ended up in an excess liability position." ☈