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# DAILY REPORT

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## Between Verdict and Judgment, Lawyer Finds a Negotiating Opportunity



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THE TIME BETWEEN A JURY reaching a verdict and a judge signing an order to pay

it can be a negotiating opportunity, according to a lawyer who said he recently increased his client's recovery during that window.

A \$1.2 million verdict turned into a \$1.7 million settlement—including interest and attorney's fees—during the post-verdict, pre-judgment phase of a Henry

County car wreck case, according to the plaintiff's attorney, Ben Brodhead. He said the payment allowed his client to recover damages and pay for a lumbar fusion surgery while preventing any judgment against the defendant from being entered into the record.

Brodhead added that the timing was important because a judgment not only would have created a debt for the defendant but also would have exposed the defendant's insurance company to a potential bad faith claim. The reason: it had rejected a pre-suit demand by the plaintiff for the defendant's insurance policy limit of only \$100,000, some \$1.1 million less than the verdict.

The threat of bad faith claims to insurance companies that reject pre-suit demands by plaintiffs to settle claims for policy limits stems from the 1992 Georgia Supreme Court decision *Southern General Insurance Co. v. Holt*, 262, Ga. 267. Defense lawyers have complained that *Holt* is used to the unfair advantage of plaintiffs, but Brodhead contends the law is misunderstood.

"This is not a trick or a setup. This is not a gotcha," said Brodhead. "We literally begged them to pay the \$100,000 policy limit."

His client, Dona Tamblyn, was hit in December 2010 while driving her Toyota Sienna in Cobb County. Defendant Linda Long made a left turn in her Jaguar, striking the Toyota and pushing it into a Nissan Pathfinder.

The defense contended in a case summary written for the court that although Long was liable, the bigger impact came from the Pathfinder, not the Jaguar. The defense also alleged that Tamblyn "may be exaggerating the nature and extent of her injuries."

Brodhead said his client needed surgery and had no money or insurance to cover it. He said Long's insurance company, State Farm, offered \$18,000 at the time.

Tamblyn had to borrow money for surgery and ultimately amassed \$179,000 in medical bills, he said.

Defense attorney Kristie FitzGerald of Sharon Ware & Associates, representing State Farm, said she could not discuss the case.

Once Long lost in a trial before Henry County State Court Judge Ernest Blount, the insurer could have been subject to a bad faith claim by its own customer to pay the judgment. But up until the judge signed the order to pay and entered it

into the record, Brodhead said, there was "still no harm suffered by the defendant."

"An insurance company has the right to gamble on going to trial as long as it's gambling with its own money," Brodhead said. By paying the post-verdict pre-judgment settlement, State Farm protected the assets of the insured.

State Farm has a reputation for fighting claims, but it may be inflated because it's the largest auto insurer in Georgia, according to Brodhead. "Ultimately, they did the right thing, but they chose to make us go through years of unnecessary litigation," he said.

The case is *Tamblyn v. Long*, No. 14SV293EBD.

