

Trucking accident results in \$1.1 million settlement

Truck driver knocked off bridge sought punitive damages



Brian Franciskato



Dean Nash

Gitschlag's truck, knocking Gitschlag over the bridge and causing him to fall 35 feet onto Hickman Mills Road.

Gitschlag sustained multiple fractures to the pelvis, left arm, wrist, and ribs. He also suffered internal injuries including a lacerated liver, ruptured spleen and collapsed lung.

Gitschlag claimed that Harshman caused the accident by failing to keep a careful lookout, driving at an excessive speed, striking the rear of Green's Bronco and striking the rear of Gitschlag's trailer. Harshman claimed that Green pulled in front of him, causing him to veer off the road and strike Gitschlag.

While Harshman testified he was not speeding at the time of the accident, plaintiff alleged that Harshman had been on the road for five days and was in a hurry to get home. Harshman testified that he left Texoma, Okla., between 7 p.m. and 8 p.m. on July 30, 1999. The accident occurred about seven hours later, allegedly placing Harshman's average speed at more than 70 mph to reach the accident scene.

Green testified that just before impact Harshman's truck appeared to be traveling "50 mph or faster" in a 45 mph zone. Also, Harshman allegedly admitted to Green after the accident that he thought he was going too fast. Both parties' expert witnesses testified that the speed differential between Green's Bronco and Harshman's tractor-trailer was at least 25 mph at impact, based upon substantial damage to Green's Bronco.

In addition to speeding, plaintiffs argued, Harshman failed to keep a careful lookout due to driver fatigue. At the time of the accident, Harshman had driven seven hours in excess of the 10 hours allowed by DOT regulations.

In defense, Harshman and Calloway Carriers denied negligence. They argued that Gitschlag was partly at fault for the

accident because he rear-ended Majors' pickup truck.

Plaintiffs countered that the accident between Majors and Gitschlag had concluded. Moreover, both expert witnesses testified that Majors' pickup truck was not within the proper lane of travel and had rotated in a counter-clockwise motion prior to being struck by Gitschlag. Gitschlag testified the pickup truck had lost control in front of him and was actually traveling backwards toward him when he struck it.

Furthermore, Gitschlag sought punitive damages against Harshman and against Calloway Carriers for negligent hiring and retaining of Harshman. They made allegations that Harshman admitted to violating DOT safety regulations and falsifying his log books to hide the violation. They further claimed that Calloway knew, or should have known, that Harshman had a history of serious traffic violations including allegations of six speeding tickets, two license suspensions and two log book violations within five years before the accident.

Following mediation about two months before trial, the parties reached the settlement.

Harshman's attorney, Brian Fowler, and Calloway's attorney, John Graham Jr., both of Kansas City, noted that their clients paid \$905,000, plus \$46,000 to resolve a workers' compensation subrogation claim.

Majors settled for \$50,000. His attorney, Jeffrey S. Nichols of Overland Park, declined to comment.

Plaintiff's attorney Brian Franciskato of Kansas City noted that the work comp claim was valued at \$145,000, for a total settlement worth \$1.1 million.

— Anne C. Vitale



Richard Gitschlag was knocked off a bridge when his Consolidated Freight truck was struck by another semi. Gitschlag had been out of his vehicle from another accident.

\$1.1 million Settlement

A truck driver has reached a \$1.1 million global settlement in his Jackson County lawsuit against another truck driver and his employer.

The facts of the case are as followed according to the plaintiff, and the defense had no objection:

The accident began when plaintiff truck driver collided with a non-commercial vehicle. The defendant truck driver then struck another vehicle, creating a domino effect that ultimately knocked plaintiff off a bridge, causing serious injuries. Plaintiff sought punitive damages against the defendant truck driver for Department of Transportation violations and against his employer for negligent hiring and retaining.

Around 2 a.m. on July 31, 1999, Richard Gitschlag was driving a tractor-trailer for Consolidated Freight northbound on U.S. 71 Highway and exiting onto I-435 in Kansas City. A Ford Ranger driven by Pete Majors lost control on the wet pavement in front of him, allegedly causing Gitschlag to strike the pickup.

Gitschlag was able to bring his jack-knifed tractor-trailer to a stop against the guardrail over Hickman Mills Road. He claimed he started to exit his truck to put out safety flashers and help Majors.

As Gitschlag was standing on the running board of his truck, Gary Harshman, who was driving a tractor-trailer owned by Calloway Carriers, struck the rear of a Ford Bronco driven by Christopher Green. Harshman then struck

Gitschlag v. Majors, et al.

Type of Action: Trucking accident

Type of Injuries: Fractured pelvis; fractured left arm and wrist; lacerated liver; ruptured spleen; collapsed lung; fractured ribs

Court/Case Number/Date: Jackson County Circuit Court/04CV220560/Sept. 7, 2007

Judge, Jury or ADR: Mediation

Judge: Charles Atwell

Verdict or Settlement: \$1.1 million settlement

Special Damages: \$158,514 past medical expenses; \$30,000 lost wages

Allocation of Fault: N/A

Last Offer: N/A

Last Demand: N/A

Attorneys for Plaintiff: Brian Franciskato and Dean Nash,

Nash & Franciskato Law Firm, Kansas City

Attorneys for Defendants: Jeffrey Nichols, Wallace, Saunders, Austin, et al., Overland Park, Kan. (for Majors); John Graham, Law Offices of Stephanie Warmund, Kansas City (for Calloway Carriers); Brian Fowler, Evans & Dixon, Kansas City (for Harshman)

Insurance Carriers: Liberty Mutual (for Calloway Carriers/Harshman; separate policy for Majors)

Plaintiff's Experts: Steve McKenzie, Olathe, Kan. (accident reconstructionist); Terry Winkler, Springfield (life care planner); Dennis Wylie, Santa Barbara, Calif. (DOT regulations/driver fatigue)

Defendants' Expert: Dr. Edward Prostic, Prairie Village, Kan. (orthopedics); Bruno Schmidt, Springfield (accident reconstructionist); Kenneth Thompson, Louisburg, Kan. (DOT regulations)