

SOUTH CAROLINA Lawyers Weekly

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VERDICTS & SETTLEMENTS

Injuries were only part of plaintiff's recovery challenges

\$1.89 MILLION SETTLEMENT

ACTION: Settlement Date: Nov. 6, 2023

NATURE OF CLAIM: Auto accident resulting in life-altering injuries

INJURIES ALLEGED: Paralysis caused by a spinal cord injury; American Spinal Injury Association Grade D compression of the C6 vertebra; uncontrollable bladder and bowel caused by spinal cord injury; and localized stiffness and rigid locking of upper extremities. Plaintiff has some ability to walk for short periods but must primarily move in a powered wheelchair.

AMOUNT: \$1,891,380

SPECIAL OR OTHER DAMAGES: \$8,906,773 life care plan; \$1,009,260 medical expenses

CASE NAME: James A. Boyd and Santonia D. Boyd v. Abbeville County Memorial Hospital

MEDIATOR: Tom Wills

MOST HELPFUL EXPERT: Rebecca Bailey of Southeastern Lifecare Planning, life care planner

ATTORNEYS: Howard S. Sheftman, Harry L. Goldberg and Dylan R. Glick of Finkel Law Firm, Columbia (for the plaintiff); Gary Lovell of Copeland Stair Valz & Lovell, Charleston (for defendant excess insurance carrier MagMutual)

INSURANCE CARRIERS: Travelers Insurance (primary) and MagMutual (excess) for the defendant; GEICO (uninsured motorist) for the plaintiff

By Ross Chandler

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A life-altering collision in the summer of 2022 involving a government vehicle driven by a county employee has culminated in a seven-figure, three-party settlement paid to the injured driver of another vehicle.



Dylan R. Glick



Harry L. Goldberg



Howard S. Sheftman

The crash happened at 1:13 p.m. June 24, 2022, at Epting Avenue and South Main Street, Greenwood, as plaintiff was driving an SUV, said Dylan R. Glick, one of his attorneys from Finkel Law Firm of Columbia. A sedan owned by Abbeville County Memorial Hospital and driven by a licensed practical nurse “suddenly and without due care” merged into plaintiff’s lane, crashing into the front passenger side of his vehicle. The impact forced the SUV to cross the oncoming lane of traffic and crash into an embankment and another vehicle before coming to rest.

Paramedics rushed plaintiff to Self Regional Healthcare in Greenwood, where doctors diagnosed him with injuries that demanded immediate surgery that could not be performed there. Taken by helicopter to Prisma Health Greenville Memorial Hospital in Greenville, surgeons there removed his third through sixth cervical vertebrae

and then reconstructed the third through fifth vertebrae with screws and rods to provide the support formerly offered by those that had been removed. The surgeons also placed a Foley catheter due to bladder problems.

The crash was the start of 125 days of hospitalization that year. Extensive rehabilitation and therapy at Prisma Health and the Charlie Norwood Department of Veterans Affairs Medical Center at Augusta, Georgia, were required for plaintiff to learn to walk again and regain use of his extremities, particularly his arms, which had been locked in a C position since the collision. He continues to receive home health care and physical and occupational therapy. Plaintiff's home also had to be extensively modified to accommodate his newfound disabilities, and his wife became his primary caregiver.

"[Plaintiff's] providers believe he will never return to his condition prior to the accident. He continues to suffer from frequent urinary tract infections and difficulty with mobility and usage of his extremities," Glick said in a report of the settlement.

INSURANCE AND LIEN ISSUES

Abbeville County Memorial had primary liability coverage limits of \$1 million through Travelers Insurance and excess coverage limits of \$5 million through MagMutual. Travelers tendered the full \$1 million less about \$10,000 paid for plaintiff's property damage. MagMutual's top offer of \$750,000 during presuit mediation was accepted.

Plaintiff's family members also had uninsured motorist coverage through Geico with a collective limit of \$150,000 after stacking several vehicles on their policy. GEICO tendered the full amount for bodily injury and property damage.

A recovery challenge for plaintiff's counsel was the South Carolina Tort Claims Act, which caps a government's financial liability when a government

agency or its employee commits a tort while "acting in the scope of employment," Glick explained. The caps for nonmedical malpractice cases are \$300,000 per person to a maximum of \$600,000 per occurrence.

"The hospital argued the caps afforded by the SCTCA applied because adverse driver was driving a vehicle owned by the hospital and acting within the scope of her employment," Glick said. "We argued we could get around the caps based on confidential information we learned which would suggest the adverse driver may not have been acting within the scope of her employment at the time of collision."

Even with the cap, excess carrier Mag-Mutual paid more than the mandated maximum – \$750,000 compared with the law's limit of \$600,000.

"We suspect the fact that the excess carrier settled for more than the caps is a reflection of the uncertainty regarding whether the at-fault driver was acting within the scope of her employment at the time of collision, and therefore whether the caps would apply to her if this matter were tried to verdict," Glick said.

Yet another challenge for plaintiff's counsel was the presence of "super" liens covering the treatment and disability benefits he received. One was held by the U.S. Department of Veterans Affairs, and two were from ERISA lien holders. Such liens do not have to be reduced if they are held by the federal government or are ERISA liens, "which often leaves tort victims on the hook for tens of thousands of dollars," the attorney said.

"Whereas one of these liens may be troublesome enough," Glick added, "our client had to contend with three. We successfully worked with each lien holder to maximize [plaintiff's] recovery and reduce their obligations."