

DAILY REPORT

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Troup jury awards \$2.5M in transport crash suit

PLAINTIFFS ARGUED woman was not properly strapped to stretcher during LaGrange wreck

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THE 94-YEAR-OLD father of a disabled woman killed when she was thrown from a stretcher during an auto wreck was awarded \$2.5 million by a Troup County jury after evidence showed that restraining straps that should have been installed on the stretcher were missing.

Lead plaintiffs' attorney Brandon Peak said the verdict was subject to a confidential high-low agreement reached before trial, meaning no appeals are expected. During closing arguments, he said he asked the jury for \$2 million.

"This is something that's happening more and more," said Peak, a partner with Columbus-based Butler, Wooten & Fryhofer. Peak said there are frequently problems with subcontractors who handle nonemergency transportation (NET) cases for the state.

"I've handled a lot of these NET cases... here needs to be some regulation of these folks," Peak said.

Dennis, Corry, Porter & Smith partner Grant Smith, who represented the companies responsible for the NET providers and their driver, confirmed the confidential agreement and praised his opposing counsel.

"Brandon is a top-notch trial lawyer and he tried an outstanding case," said Smith in a short email. "The defendants had some chal-

lenges with our witnesses and some evidentiary rulings."

Rakhi McNeill of Waldon Adelman Castilla Hiestand & Prout represented the estate of the driver that caused the wreck, Panfilo Chaves-Ramirez, who was deemed liable for 20 percent of the award, or \$500,000 of the total.

"This was a well-tryed case," said McNeill. "We knew going in that fighting liability would be an uphill battle; our goal was to show the jury that the co-defendants' negligence greatly exceeded that of Mr. Chaves-Ramirez."

McNeill's client was not a party to the high-low, she said; she said no appeal will be sought.

At issue was the death of 63-year-old Mary Ellen Humphrey, who suffered from several health problems including paralysis in her legs. Single with no children, she had been a resident of a LaGrange nursing home since 2006, said Peak. She had kidney problems that required thrice-weekly trips to the West Georgia Dialysis Center, and on Sept. 11, 2010 she had been picked up by a minivan owned by Brilansie Enterprises in Lawrenceville.

The driver of the 2005 Chevrolet Uplander, Philippe Gadson, was taking Humphrey back to the nursing home when a 2000 Dodge Durango driven by Chaves-Ramirez approached on a cross street and struck the minivan's front left corner.



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Brandon Peak represented the father of a stretchered woman who died in the crash.

Humphrey was restrained by three straps across her torso, but the force of the impact threw her forward from beneath them and into the driver's seat "with such force that it bent," then "continued forward, with her head slamming into the front console and her body wedged between the two front seats," according to the plaintiff's portion of the pre-trial order.

Humphrey suffered myriad injuries, including a skull fracture, 18 broken ribs, and a broken femur. She survived a few minutes, Peak said, before dying at the scene.

Gadson, Chaves-Ramirez and a passenger in his SUV all survived without life-threatening injuries, Peak said, but a few months later, Chaves-Ramirez died in an unrelated incident.

In July 2012, Peak and fellow Butler Wooten attorneys James Butler Jr. and John Morrison III, LaGrange attorney Sandra Heath Taylor and Jason Woolf of Kenneth Nugent's Columbus office filed suit in Troup County State Court on behalf of Humphrey's father, James Humphrey, and her sister-in-law, Barbara Humphrey, the administrator of Mary Ellen Humphrey's estate.

The wrongful death action named Gadson, the driver of the van; Brilansie Enterprises; its insurer, National Interstate Insurance Company; and the executor of Chaves-Ramirez's estate, Steven Ray, as defendants, along with Southeastrans Inc.

Southeastrans is an Atlanta-based company that works under contract with the state Department of Community Health, Peak explained, to engage subcontractors to provide NET to Medicaid and Medicare patients.

According to Peak and the plaintiffs' portion of the pretrial order, the manual for the Stryker stretcher the dead woman was ejected from "plainly states that it is not to be used without all of the restraint straps, including the two shoulder restraints."

"Because she was not properly secured with the shoulder restraints—the restraints that would have provided her protection during this frontal collision—Ms. Humphrey came flying out of the stretcher and slammed into the rear/inboard side of the driver's seat," the order said.

According to the defense portion of the order, Brilansie bought the used van and the Stryker stretcher from the company Southeastrans had employed previously, Peach Transit.

"The stretcher had three horizontal straps when Brilansie bought it," the order said.

"The stretcher did not come with an owner's manual and Brilansie did not obtain a copy of the manual.

Georgia DCH "specifically approved the agreement requiring at least three safety straps on a stretcher," it said. "There is no statute, regulation, ordinance or rule requiring more than three safety straps on a stretcher used in non-emergency transport. There is no evidence that Stryker designed the shoulder straps to restrain a passenger in an automobile collision."



Even though this happened three years ago, Southeastrans has still not done anything to make sure these stretchers have five restraints.

—Brandon Peak, partner,
Butler, Wooten, & Fryhofer,
Columbus

The plaintiffs' own expert agreed that, even if she had been wearing the shoulder straps, Mary Humphrey would have suffered "significant injuries, including broken bones," the defense portion of the order said, and may have died anyway.

The portion allocated to Ray, Chaves-Ramirez' executor, conceded that he caused the wreck.

"The main issue in this case is whether Ms. Humphrey's catastrophic injuries were caused from the accident or from the co-defendants' failure to properly secure Ms. Humphrey," it said.

There was no mediation, and the case went to trial Dec. 10 before Troup County State Court Judge Jeannette Little. Peak and Taylor handled the trial for the plaintiffs, while Smith and Dennis Corry associate Brent Estes represented Brilansie, Southeastrans and Gadson. McNeill represented Chaves-Ramirez's estate, Peak said.

James Humphrey is in poor health and was unable to attend the trial, he said.

During the three-and-a-half-day trial, Peak said key witnesses included Georgia Bureau of Investigation Associate Medical Examiner Stacey Desamours and forensic

pathologist Joe Burton.

"They both said that if she'd had the shoulder restraints, she would have sustained some non-fatal injuries during the wreck, but she wouldn't have died," Peak said.

"Ms. Humphrey had no earnings history, so this case was about the value of her life," Peak said.

Much of the defense testimony concerned the state of the deceased's health, Peak said, and notice that those problems necessitated her being transported frequently by NET carriers.

"We argued that that certainly didn't mean she deserved less care or that her life was worth less," Peak said. "We had friends, administrators from the nursing home come in, and painted a real picture of who she was, instead of somebody who's just a medical diagnosis on a piece of paper."

The trial wrapped up on the afternoon of the 12th, and the next day the jurors—described by Peak as very well educated and attentive—took about an hour and a half to award James Humphrey \$2.5 million for the life of his daughter, allocating 20 percent of the liability to Chaves-Ramirez's estate and 40 percent each to Brilansie and Southeastrans. The panel awarded nothing against Gadson, and declined to award punitive damages. An additional \$12,600 was added for funeral expenses and emergency transportation costs.

The jury awarded nothing to Barbara Humphrey, the dead woman's administrator, for the "pain, suffering, shock, fright and terror" endured by Mary Ellen Humphrey prior to her death.

Peak said the lawyers spoke briefly with jurors afterward.

"I think they were proud to see they'd done the right thing," he said. "Even though this happened three years ago, Southeastrans has still not done anything to make sure these stretchers have five restraints."

The case is *Humphrey v. Brilansie Enterprises Inc.*, No. 12-CS-203. ☞