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# DAILY REPORT

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► VERDICTS & SETTLEMENTS



ZACHARY D. PORTER/DAILY REPORT

Lawyers Matt Dwyer, left, and Winston Briggs represented an elderly crossing guard who was awarded \$500,000 after sustaining injuries from being hit by a car.

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A Fulton County jury last week awarded more than \$500,000 to an elderly crossing guard struck by a car in East Point, turning aside arguments that the man was to blame for the accident and that his medical complaints

were due to age rather than the accident.

Joseph Chavis, then 82, was manning a school crossing at the intersection of Headland Drive and Headland Terrace near Paul D. West Middle School in East Point on the afternoon of April 17, 2008. Chavis was wearing a

uniform and reflective vest when a 2001 Mercury driven by John F. Hogan struck him, according to court filings.

“He was an elderly gentleman, working as a crossing guard when school let out, and this Mr. Hogan comes around the corner,

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hits him and knocks him up on the hood,” said attorney W. Winston Briggs. “The car stops, and he flies off backwards and hits his head on the ground.”

Briggs, who served as co-counsel with J. Matthew Dwyer Jr., said the driver insisted that Chavis had stepped in front of his car as he turned into the intersection.

“Mr. Hogan contended Chavis was talking to some ladies on the sidewalk and walked out in front of him,” said Briggs.

Chavis suffered a broken ankle and a back injury, said Briggs. Chavis still uses a cane to walk, he said, but the main point of contention was the plaintiff’s claim that he had also suffered brain damage.

“The big battle was whether he experienced a closed-head brain injury,” said Briggs. When Chavis was taken to Grady Hospital, he said, he apparently remained conscious, and “the defense relied heavily on the issue that, when you have a closed-head injury, you have to lose consciousness.”

In any case, he said, “he clearly got his bell rung.” A witness saw Chavis strike his head forcefully on the pavement, said Briggs, and a police officer summoned

from the school by students saw blood on his head and on the pavement, and Chavis “laying there in the street out of it.”

Dwyer filed suit on Chavis’ behalf in January 2009. Prior to trial, Hogan’s insurer, Allstate Property and Casualty, agreed to pay his \$50,000 liability limit, said Briggs. But Chavis’ uninsured motorist carrier, State Farm, failed to respond to a time-limited demand for the \$50,000 coverage limit, and later offered \$20,000 before increasing the offer to \$50,000 prior to trial, he said.

On Aug. 23 trial began before Fulton County State Court Judge Myra H. Dixon.

The defense team of Harper, Waldon & Craig partners Russell D. Waldon and Kimberly A. McNamara introduced evidence from a 2005 Veterans Administration medical screen of Chavis showing positive results for possible dementia, said Briggs, “but a later one showed negative.”

The defense also introduced expert testimony from a psychologist, who testified that Chavis had probably not suffered a brain injury, and an orthopedist, who testified that the plaintiff’s back injuries were likely degenerative in nature.

Hogan was not charged in the accident, said Briggs; called to the stand, the police officer who responded to the emergency call said he had simply declined to charge the driver.

“Mr. Hogan was an elderly man, too,” said Briggs. “The officer just said he decided not to charge him.”

On Aug. 27, the jury took about three hours to award Chavis \$573,217, including \$375,000 for pain and suffering, \$109,310 for past and future medical expenses, and \$88,907 for lost earnings.

Waldon said he had not discussed whether there would be any appeals or other post-trial motions with his client, but he noted that the plaintiffs had sought far more during trial.

“They asked the jury for \$1.8 million, and then offered to settle for \$1,050,000” when the jury was out, he said. Waldon said Chavis was a very likable plaintiff and congratulated his lawyers.

“He was very well represented,” said the defense lawyer. “I thought they did a superb job.”

The case is *Chavis v Hogan*, No. 09EV006409. ☞