

# SOUTH CAROLINA LAWYERS WEEKLY

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## Latent brain injury from wreck nets \$3M

Settlement could be first in state involving diffusion tensor imaging

By FRED HORLBECK, Senior Staff Writer  
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A woman who claimed she suffered a brain injury when a 90,000-pound cement truck collided with her car has settled her negligence lawsuit for \$3 million in the U.S. District Court of South Carolina.

Huanni Yang-Weissman said in her complaint that she suffered a closed-head injury, facial cuts, broken teeth and other injuries in the 2004 collision at a Florence intersection.

But the biggest issue in *Yang-Weissman v. South Carolina Prestress Corp.*, case No. 4:07-CV-3643-RBH, was the invisible damage she claimed: mild traumatic brain injury.

The case, settled earlier this month, may be the first South Carolina brain-injury dispute involving diffusion tensor imaging, or DTI, a powerful type of magnetic resonance imaging that detects the disruption of water flow through the brain, according to the plaintiff's counsel.

The admissibility of DTI evidence was looming as a trial issue when the parties settled, said the plaintiff's lawyers, Stephen M. Smith of the Brain Injury Law Center in Hampton, Va., and Richard Rosen of Rosen, Rosen & Hagood in Charleston.



Florence County emergency rescue workers work at the scene of a 2004 collision in which a cement truck crashed into the side of a sedan driven by the plaintiff in *Yang-Weissman v. South Carolina Prestress Corp.* Photo courtesy of Morning News, Florence, SC



Smith

for the impairments a mild brain injury can impose, Smith said.

"There's a lack of ability and knowledge and understanding by lawyers on how to handle the cases. You've got doctors, such as in this case, who don't recognize the injury," he said.

"I think it's a significant settlement for an injury that's difficult to demonstrate because it's not obvious," Rosen said.

At one point, the plaintiff demanded \$6 million, according to Rosen.

But few plaintiffs recover awards that fully compensate them

The plaintiff sued South Carolina Prestress Corp., a Florence County-based company that owned the cement truck. She claimed she was driving through the intersection of U.S. Highway 176 and S.C. Highway 327 on Nov. 9, 2004, when the truck ran a red light and struck the Buick sedan she was driving.

The company denied the allegations and, citing the doctrines of comparative and contributory negligence, said the plaintiff was at fault for failing to avoid the collision.

E. Dale Lang Jr., a lawyer for the defendant, declined to comment on the case. Co-counsel Duke Highfield did not return a phone call seeking comment prior to deadline.

■ See **INJURY** on next page

# INJURY

■ Continued from previous page

The plaintiff was an A-plus accounting student when the accident occurred, Smith and Rosen said. Fluent in three languages, she was running her parents' restaurant while attending Francis Marion University.

After the accident, she complained of impairments such as memory loss and inability to concentrate, her lawyers said. She had difficulty in school and trouble keeping jobs. She couldn't run the restaurant, so her parents had to close it. She received her accounting degree but failed the CPA exam.

"She had a lot of ability, and she had a very serious injury, even though it wasn't visible. I think that was the reason for the settlement," Rosen said.

The parties settled earlier this month after undergoing two mediations, Rosen and Smith said. U.S. District Judge R. Bryan Harwell presided over the case.

Smith said the plaintiff, like many with mild brain injuries, didn't get the full medical attention she needed in the wake of the collision. It wasn't until 2007 that a specialist identified brain activity indicative of seizures, he said. The DTI tests followed.

"A traumatic brain injury of this type sometimes takes a while to show itself because you're dealing with the evolution of damage to the brain," Rosen said.

The plaintiff's lawyers planned to submit the DTI results as evidence at trial, but a battle over admissibility took shape when they learned that a defense expert would contest the evidence.

"He was going to testify that it's strictly experimental. And we were going to rip him a new one," Smith said.

DTI has been around for about 10 years, Smith said, and the scans pointed to damage in the left temporal lobe of the plaintiff's brain.

"Well, her left temporal lobe is the one that got the heck knocked out of it," he said.

The battle of experts never happened, Rosen said. But if the court had refused to admit the DTI evidence, the plaintiff's lawyers would have offered other evidence, including expert medical testimony; charts and illustrations detailing the alleged brain damage; and testimony from family members and friends as to changes in the plaintiff's behavior.

## SETTLEMENT REPORT

**Brief statement of claim:** Defendant's truck broadsided plaintiff's car at an intersection.

**Principal injuries (in order of severity):** Mild traumatic brain injury; dental injuries; musculoskeletal injuries

**Special damages:** \$108,400 in medical bills; \$39,000 lost wages

**Tried or settled:** Settled at mediation

**County and court where tried or settled:** U.S. District Court – Florence Division

**Case name and number:** *Huanni Yang-Weissman v. South Carolina Prestress Corp.*, case No. 4:07-CV-3643-RBH

**Date concluded:** Aug. 14, 2010

**Name of judge:** Hon. R. Bryan Harwell

**Amount:** \$3 million

**Insurance carrier:** State Farm and American Guarantee & Liability Insurance Co.

**Expert witnesses, areas of expertise and hometown:** Daniel Luciano, M.D., seizures (New York); Michael Lipton, Ph.D., M.D., neuroradiologist (New York); Robert D. Voogt, Ph.D., life-care planner (Virginia Beach, Va.); Charles DeMark, M.S., vocational (Portsmouth, Va.); L. Randolph Waid, Ph.D., neuropsychologist (Mount Pleasant); Morton Finkel, M.D., neurologist (New York); Perry Woodside, Ph.D., economist (Charleston); Seymour Gendelman, M.D., neurologist (New York); and Brian D. Greenwald, M.D., neurologist/rehabilitation medicine (New York).

**Attorney for plaintiff:** Stephen M. Smith of the Brain Injury Law Center (Hampton, Va.); and Richard S. Rosen, Andrew Gowdown and Elizabeth Palmer, all of Rosen, Rosen & Hagood (Charleston)

**Submitted by:** Stephen M. Smith

**Editor's note:** *The information in Lawyers Weekly's verdicts and settlements reports was submitted by the counsel for the prevailing party and represents the attorney's characterization of the case.*