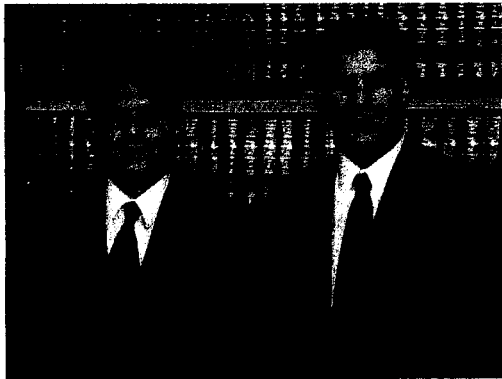


Non-resident lands \$16M settlement in truck accident case

Strong liability, large future economic losses key



STEVEN Z. GARRIS (L) & MICHAEL J. GARRIS (R)
Importance of hiring right experts cannot be overstated.

Verdicts & Settlements Plus

By DENISE G. CALLAHAN

Can a person who was injured in a truck accident successfully settle his case for a significant amount, even though he was a non-resident of the state?

A \$16 million settlement — one of the largest in Michigan for auto-negligence — indicates the answer is yes.

Although confidentiality agreements prohibit the release of names and locations, Ann Arbor attorneys Michael J. Garris and Steven Z. Garris, who represent

the plaintiff, said the successful settlement was due to several factors, not the least of which was the fact that one of the defendants was a trucking company with heavy-duty insurance.

"We had very strong liability and that is so crucial. Plus, we had a client that everybody loved. Even the defense attorney said, 'what a nice person and what a nice family,'" Michael stated. "Those factors right there are crucial. Then, when you can black-board large economic losses into the future, the risk to the defendants becomes significant."

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Real Property

QUIET TITLE — NOTARIZED AFFIDAVIT

Where plaintiff, a tax deed holder, sought to quiet title in the disputed property the trial court properly ruled that MCL 211.79a requires a notarized affidavit from the county treasurer certifying that the back taxes had not been paid within the 90-day redemption period, says the Michigan Court of Appeals. **page 14**

Governmental Immunity

HIGHWAY EXCEPTION — NOTICE

Plaintiff's failure to timely notify defendant-city, under MCL 691.1404, about the circumstances of her injury at a public road crosswalk does not entitle the city to summary disposition because the city was not actually prejudiced by the delay, decides the Michigan Court of Appeals in an unpublished opinion. **page 15**

News from the Capitol

Court orders proposal to be on ballot

New law lets bars stay open after 2 a.m.

Crash test program won't get revision

Full reports on page 7



Settlement in truck accident case gives non-resident plaintiff \$16M

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But, despite all the positives weighing in their favor, the Garris brothers said the case — especially during the preliminary stages — was anything but a slam dunk.

First off, they filed their action in the county where the truck driver lived — a more plaintiff-friendly place — but the defendants tried for a change of venue to a more conservative sanctuary in another county.

Michael argued that, under *Massey v. Mandell*, the case should stay put, right where it was.

"The other side had the burden of proving I didn't file in the proper county. I pointed to the case I found and the facts. My client had a right to file in this county because the truck driver lived in the county," he explained. "That can have a significant effect on the settlement and it did. The other county was a very conservative county."

Next came the issues of liability and damages, the Garrises recalled.

Even though the defendant truck driver refused to admit he was at fault, they noted his deposition testimony made it abundantly clear that there weren't any extenuating circumstances present the day of the crash that could have relieved the truck driver of responsibility for what happened.

The Garrises said there are several things attorneys need to keep in mind when seeking a settlement of this magnitude:

- hire a well-qualified life expectancy expert who can determine the cost and length of your client's future medical and attendant care among other expenses;
- hire an economics expert to help project inflation and other future economic impacts on the care expenses;
- get your own expert on structured settlements involved — never rely on the defendant's structure guys;
- get your client hooked up with a certified public accountant and an

your client get dazzled by high dollars. "As nerve wracking as it can be for the attorney and the client, when you're talking about millions of dollars and turning down offers of millions of dollars you've got stand your ground until you get the compensation you feel is adequate for your client," Michael emphasized. "The original offers were down in the couple million range. They started out very, very low. They wanted to see if we'd flinch."

A Verdicts & Settlements Report of the case, *John Doe v. Anonymous Trucking Company, et al.*, can be found on our website, www.milawyersweekly.com.

Catastrophic injuries

The accident occurred in the summer of 2003 on a major highway in a well-marked construction zone. As the plaintiff was stopped in a line of cars waiting to get through the one-lane, cement barrier-lined zone, the defendant truck driver collided with the plaintiff's car, sending it into the next vehicle in line.

The plaintiff suffered a C5-6 burst fracture and spinal cord injury that rendered him a quadriplegic.

Hiring experts was essential, the Garrises said.

While the defense wanted to rely on insurance industry life expectancy tables, Michael and his life care planning expert located an actual study, based on the level of injury, how long the person was on a ventilator and other factors that affect life expectancy. Their expert was prepared to testify that the plaintiff's life expectancy was greater than the insurance table predictions. According to Michael, that got the ball rolling on figuring out expenses.

"The life care planner and the economist worked hand in hand. The defense attorney took the depositions of the two key treating doctors and they testified to the permanent residuals of the injured person would be. Then, my life care planner took that testimony and translated it into what

Michael explained. "Then, the economist came in and took those numbers and did the projection over the lifetime, building in for inflation — medical expenses are going to up — and then had to reduce to present value for me to determine what today's dollars are going to compensate the injured person for a lifetime."

Structured settlement

Once the damage dollars started dawning on the defendants, table talks about the structured settlement ensued. The Garrises figured — based on the experts' estimations — a jury likely would have returned a verdict for about \$29 million.

When the defendants pushed to get the mandatory reduction to present value — for recoveries over \$250,000 — and buy an annuity to fund the award, Michael refused, insisting that would amount to a double reduction.

"Theoretically, the defendant is paying the money off in today's dollars. If you added all the numbers up, it came to roughly \$29 million, which would equal \$16 million today," Michael noted.

Crucial at this stage was consulting with their own structured settlement expert, the Garris brothers observed. The other side kept throwing out what the Garrises called "wild scenarios" for structuring this settlement, but once they decided on \$16 million they could work out how much the client wanted up front and what would be built into the future. They have worked out nine separate structures with a guaranteed payout of \$19.9 million and could — if the plaintiff lives to estimated life expectancy — result in a total payout of \$37 million.

The insurance factor

Another factor that prompted the settlement was the trucking company's tiered insurance. The first three carriers had \$5 million policy limits and the top tier was \$15 million. No one ever said anything about this to the Garrises, but as the set-

kicked in their policy limits there was no incentive to settle. Let's say the middle levels never offered their policy limits and the case went to trial and the verdict would have gone over the \$15 million, then they would have had to worry about the higher carrier going after them for bad faith," Michael stated. "The top carrier could have said, 'You know what, you should have offered your limits and we could have gotten out of this case at a lower settlement.'"

Future planning

Because of the size of this settlement, the Garrises have revealed nothing about their client other than to say the plaintiff is in his or her late 20s. In another protective move, they have also employed a certified public accountant and estate planner to get things settled for their client.

"You have to have an investment plan for the client. That's what I did once I knew we were going in the right direction towards settlement," Michael said "I think a lot of people when they get a large settlement, the client's just left on their own. There was no way this client would have known how to invest this money properly."

Loose ends

Finally, the Garrises said they are still tying up some loose ends on the settlement — such as collateral sources and the like.

Was settlement the right thing to do in this case given all the positive forces working in their favor? Absolutely, answered Steven.

"We would have had to have a jury return a verdict of \$29 million to get the equivalent to the \$16 million settlement and we thought, while there was a chance of us doing it, it was a risky thing," he said. "What you always have to do when you have a significantly injured client is ask yourself, 'Am I getting enough money to take care of him and is the risk worth any additional benefit?'"