

VERDICTS & SETTLEMENTS

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Driver sustains brain injury when dump truck tips over

Former employees

claimed area wasn't

kept in 'safe manner'

\$687,500 settlement

Type of action:
Negligence & tort

Injuries alleged: Mild traumatic brain injury

Name of case: Withheld

Court/case #: Essex Superior Court (no. withheld)

Tried before judge or jury: N/A (settled at mediation)

Special damages: Approximately \$5,000 (medical)

Amount of settlement: \$687,500

Attorneys: Douglas K. Sheff and Adam H. Becker, Sheff Law Offices, Boston (for the plaintiff)

The 35-year-old plaintiff dump truck driver was dumping a load at a landfill when his truck tipped over. The plaintiff was thrown across the cab of the truck and suffered injuries.

The plaintiff initially refused medical treatment at the scene. He eventually went to the hospital and his injuries were diagnosed as back and neck strains and sprains. The plaintiff's initial treatment consisted of pain management of his orthopedic injuries.

A workers' compensation claim was handled by outside counsel and was based entirely upon orthopedic injuries. The plaintiff's medical records revealed occasional visual disturbances, mood swings and confusion. He experienced some olfactory hallucinations as well, which can indicate subtle seizure activity as a result of diffuse axonal shearing.

The plaintiff obtained neuropsychological treatment, and the results were largely normal. He did, however, test below average in non-verbal and verbal memory, as well as motor skills. He also remained depressed.

The plaintiff's counsel discovered



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that several of the plaintiff's symptoms and test results seemed to be related to the left temporal lobe of the brain. Counsel combined the use of the plaintiff's pattern of temporal lobe symptoms, PET Scans and EEGs to establish a case for traumatic brain injury at a specific location of the brain, consistent with the tip over accident. The plaintiff initially alleged both orthopedic and cognitive damages, but his history included a serious prior

motor vehicle accident that resulted in a herniated disc and back surgery, rendering him disabled from employment for approximately three years.

The plaintiff's focus groups indicated that they were willing to provide a more generous award to him if the traumatic brain injury case were presented without the orthopedic injuries and/or exacerbations. The amount of time out of work from the prior accident was a universal

negative for focus group participants. Counsel dropped all orthopedic claims from the case. With regard to liability, the plaintiff dropped his initial theory and stipulated that the ground beneath the dump truck was level.

The plaintiff then alleged that the truck tipped over due to latent ground instability. Plaintiff's counsel bolstered the instability claim with the use of a geotechnical engineer who claimed the defect of ground instability was latent or hidden from the plaintiff and could only have been discovered and cured by the defendants, who were in control of the grounds. The plaintiff then alleged that if the defendants did not perceive a hazard, the plaintiff could not have been expected to avoid it.

Onsite investigation of the accident scene and the conditions at the landfill was not possible, so the plaintiff's case relied upon the testimony of other truck drivers and prior employees of the defendants who demonstrated that the landfill was not maintained in a safe manner, and that the truck tipped over in a location where the plaintiff was directed to dump by the defendants, directly contradicting the testimony of defendants.

The case settled at mediation after a Power Point presentation by the plaintiff's counsel and a lengthy negotiation session.