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DAILY REPORT

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Trucking Co. Wins Suit in Chatham With Rare Secondary Insuror

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Matt Moffett (left) and Sean Harrell, both of Gray, Rust, St. Amand & Brieske, represented the defendant in the case.

TRIAL ATTORNEYS Matt Moffett and Sean Herald of Gray Rust St. Amand Moffett & Brieske recently secured a defense win against a plaintiff's team represented by Morgan & Morgan's Seth Diamond, Kendall Shortway and William Degenhart in the State Court of Chatham County in Savannah.

Moffett said the insurer had hired him to try to case, which Herald handled in its pre-trial stages. Notably, he said this was a rare case where a secondary insurer got involved in settlement negotiations the primary insurer reached its settlement cap.

Pre-trial, the insurer refused to offer its $1 million policy limit to settle the case. Moffett said his client did not offer their full policy limit to settle because they did not evaluate a risk above that sum.

However, the excess insurance carrier, who had a $20 million policy engaged in settlement negotiations with the plaintiffs' attorneys, who indicated they would ask for $10 million at trial, and ultimately asked for $9.7 million, made an in-part settlement offer in their layer of coverage.

The attorney representing the excess carrier was Billy Davis of Bovis Kyle, who monitored the trial on behalf of his client. Davis did not respond to a request for comment.

"In situations like this, you don't often see the excess carrier, who obviously appreciated a risk, [negotiate] with the plaintiff's attorney," Moffett said. "Most do not make an offer until the underlying insurance carrier offered all their money."

According to Moffett, the secondary insurer got involved because they thought the case had a potential risk exposure into their layer of coverage and they were "presumably trying to work a resolution to cap their exposure."

Diamond didn't respond to request for comment on the litigation, but according to the pretrial order, the collision in question resulted in just over $226,245.42 in medical expenses and approximately $1,244,000 in lost wages. As a longshoreman in Savannah, plaintiff Curtis Feggins had a lucrative union job he could no longer perform as a result of his injuries.

The plaintiffs filed a motion for a new trial on Monday, contending the defense shouldn't have been allowed to argue negligence per se and that the jury was not properly instructed.

According to the pretrial order, the plaintiff, Savannah longshoreman Curtis Feggins' hand was crushed in a collision with Dewayne Gilmore, an employee using a pickup truck to transport hazardous waste for Moran Environment Recovery.

Moffett said Feggins was checking crab traps he'd left under the bridge and was getting back into his vehicle, which required him to stand inside the bike lane on the side of the road (he was parked partially in the lane and on the shoulder. According to Moffett, it's unclear exactly what happened next, but Gilmore's truck was partially in the bike lane and struck Feggins, mangling his hand.

"Our position was 'We're sorry this happened, but it's not a fault of the company or the driver," Moffett said. "Our position was 1. [He] shouldn't have been out there on that bridge and 2. [He] shouldn't have been in the bike lane—that's negligence on [his] part. Our client was doing everything right, not speeding, etcetera."

Moffett described his trial strategy as "short, simple and to the point," favoring multimedia presentations. He said he began his portion of the trial by explaining the defense's position and why he felt it was reasonable.

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>
> —Defense attorney Matt Moffett

"We didn't want to attack him personally. He and his wife seemed like nice people," Moffett said. "We did maintain that certain Georgia statutes exist for the safety of everyone—both pedestrians and drivers."

Moffett said the defense argued that bike lanes are part of highways, which pedestrians shouldn't be on, and there was space where Feggins could have parked that wasn't on the bridge, where he should not have been parking. Moffett also noted there was a sign on the bridge that said "no fishing" but that the people of Savannah informed him that fishing and crabbing were different. Though Moffett said he disagreed with that assessment, the judge did not charge the jury on that count.

The defense countered the plaintiff's accident reconstruction expert with their own. Moffett said he thought that, because his team's expert used to be a teacher, he may have played better in front of a jury.

Moffett said the defense also had a transportation safety expert and a vocational rehabilitation expert waiting in the wings who he didn't end up calling because he didn't think he needed them because he said he wanted to jury to think he was respecting their time.

According to Moffett, after four days of trial, the jury returned a defense verdict in just under a couple of hours.

"I think [the plaintiffs] tried a good case," Moffett said.

The case was *Feggins v. Gilmore*, No. SPCV18-00484-KA, in the State Court of Chatham County. DR