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Mediation, Arbitration Mix Save $1.45M Crash Settlement

Guardrail slashes boy's face, father claims emotional distress

By THOMAS B. SCHEFFEY

Matthew Yates et al. v. Angela McKinley: An injured father and son collected $1.45 million in damages through mediation and arbitration following a horrific car accident in the Danbury-area town of New Fairfield.

Shortly before noon on Aug. 28, 2007, New Fairfield architect Scott Yates was driving south on Route 37 in his hometown. His 11-year old son, Matthew, was with him.

In the northbound lane, Angela McKinley was driving her station wagon behind a pickup truck, driven by Ricardo Cardinale, Jr., which slowed down to make a left turn. McKinley later testified she didn't see his brake lights or turn signal, and slammed into the rear of the truck with enough force to drive it across the center line and into the side of the oncoming Yates' vehicle. That small Mitsubishi sedan was pinned against the guardrail, with steel from the passenger side door breaking inward toward the young boy. He and his father, Scott, were represented by **Richard L. Newman,** of Bridgeport's **Adelman, Hirsch & Newman.**

"The impact broke the metal, which was facing inward, sort of jaggedly," Newman said. The child "bounced sideways and slammed into the jagged metal and ripped off the left half of his face. Horrific injuries. Multiple skull fractures."

After the collision, Scott, the father, saw his badly injured son, unconscious and still, "and thought he was dead," said Newman.

The complexity of the boy's injuries was too much for nearby Danbury Hospital, and Matthew was transferred by helicopter to the Westchester County Medical Center in New York state, where he underwent the first of multiple operations.

Fortunately, his vision was preserved. However, Newman sad, "he has had extensive scarring and he will have additional surgery to try to continue to try to treat the scarring."

McKinley, the driver who caused the accident, was insured with a $500,000 per accident, $250,000 per person liability policy from Allstate Insurance Co., along with a $1 million umbrella policy.

Newman, to be safe, also filed a claim against pickup driver Cardinale, in case some liability was eventually attributed to him.

Additionally, the plaintiff's attorney filed an offer of compromise that was $100,000 more than the individual policy limits for Matthew and his father, at $1,350,000 and $350,000 respectively. This was an indication of the plaintiffs' confidence in the value of the case, and also exposed Allstate to a potential bad faith claim, if later it could be found that Allstate unreasonably refused to settle and exposed McKinley to excess liability. "We wanted to put them [Allstate] at risk, to foster a willingness to come to the table," said Newman.

Contributed Photo

Bridgeport attorney Richard L. Newman said he and the defense attorney 'reached sort of a clever agreement' to settle the boy's injury claim through mediation and the father's emotional distress claim through mediation.

Allstate was represented by **Michael O. Connelly,** of Bridgeport's **Murphy & Karpie.** He politely declined to comment, on grounds that he lacked his client's permission to do so.

Mediation First

Connolly and Newman mediated the

matter with Bridgeport solo **Peter Clark**, and agreed the severely injured youth deserved the full $1.25 million available to him under the combined policies. The father's claims were less clear-cut. He suffered lower back injuries complicated by a history of prior treatment, and most of his claimed injuries were for bystander emotional distress.

That claim has only been recognized by Connecticut courts since 1996, when the state Supreme Court held in *Clohessy v. Bachelor* that a close relative of a victim can recover for emotional distress, under severely shocking circumstances. "This was the textbook case of bystander emotional distress. He meets all the criteria for it," said Newman.

Bystander distress is not only relatively new, it is also highly subjective, and Allstate was not willing to make an offer to settle the father's claims during mediation.

The entire progress made in the mediation might have been for nothing, Newman said, if the parties could not agree on the combined Yates' claims. "At the mediation, the defendant and the insurance company were unwilling to concede the value of [the father's] case. They recognized there was a case," said Newman, "but we couldn't reach an agreement as to what it was worth."

Two Remedies

Instead, Newman and Connolly agreed to the policy limits for young Matthew Yates, and then set aside a potential pool of $200,000 in coverage for the father, Scott, to be determined in a separate arbitration. Unlike mediation, which requires a final agreement to settle, arbitration can be made legally binding ahead of time.

The boy's vision was persevered. However, his attorney said, 'he has had extensive scarring and will have additional surgery to treat the scarring.'

Halloran & Sage arbitrator **Richard Tynan** was not told the amount of coverage available, as the parties agreed, and returned an award of $300,000 for Scott Yates. Because of the "cap" agreement, Allstate only had to pay its $200,000 policy limits, and avoided the expense of a jury trial, without excess exposure to its policyholder.

"Rather than losing the settlement for Matthew, with the mediator's help we reached this sort of clever agreement that we would arbitrate the father's claim, without jeopardizing Matthew's settlement," Newman explained. This way, the parties were able to go before a single arbitrator and get his opinion as to the value of the claim, and settle it within the policy limits. "So even when we couldn't resolve everything by mediation," Newman concluded, "we didn't lose the progress we'd made." ■