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# NORTH CAROLINA LAWYERS WEEKLY

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NORTH CAROLINA LAWYERS WEEKLY > VERDICTS & SETTLEMENTS > CLOSED HEAD INJURIES, FRACTURES, YIELD \$2 MILLION SETTLEMENT

## Closed Head Injuries, Fractures, Yield \$2 Million Settlement

**Type of Action:** Personal injury, auto tort  
**Brief statement of claim:** On Dec. 20, 2004, the driver of a commercial dump truck and trailer lost control of his vehicle as he entered an intersection and attempted to make a left-hand turn. The dump truck struck the plaintiff's pick-up truck in the driver's side door. Although he was wearing a seat belt, the plaintiff's head went through his driver's side window and hit the front bumper of the dump truck. The force of the impact caused the plaintiff's pick-up truck to roll all the way over, eventually coming to rest again on all four wheels. The plaintiff made claims against the insurer of the dump truck and plaintiff's under-insured motorist carrier.

**Principle injuries:** The plaintiff suffered a closed head injury with a right subdural hematoma, a mesocolon laceration, cervical spine injury, multiple fractures including bilateral facial fractures, left pelvic fractures, left sacral ala fracture, and left rib fractures.

**Special damages:** Approximately \$500,000

**Verdict or settlement:** Settled

**County where tried or settled:** Wake County.

**Case name and number:** Settled prior to filing suit

**Date concluded:** Plaintiff settled with the insurance carrier for the dump truck driver in September, 2005. Plaintiff settled with his under-insured motorist carrier in October, 2006.

**Amount:** Total Recovery: \$2,000,000;

**Attorneys for plaintiffs:** Brian F. Davis and John M. McCabe of the law firm of Davis & McCabe, P.A., Raleigh

**Other useful information:** Plaintiff's initial hospital course was very complicated, as he underwent multiple surgeries and procedures to try and stabilize his condition. He was placed on a ventilator and underwent an emergency exploratory laparoscopy to determine the cause of his blood loss. The trauma surgeon identified a laceration to his colon and removed part of his bowel. During his acute stay, he went into respiratory failure and underwent a tracheostomy. Later in his stay, he was found to have pneumonia and also developed MRSA. After a prolonged period, he finally stabilized, and he was transferred to the brain injury unit of the neuro care unit of Wake Medical Center.

In addition to the claim plaintiff made against the dump truck driver's insurance carrier, he also made claims against two under-insured motorist policies that he owned. At the time of the wreck, plaintiff owned two vehicles and had a separate policy of insurance for each vehicle. Fortunately, each policy provided \$1,000,000 in UIM coverage. As a result, plaintiff had a total of \$2,000,000 in UIM coverage from which he could recover.

**Plaintiff's experts:** Mike Sutton, PE, accident reconstruction (Raleigh); Patrick O'Brien, MD, trauma specialist (Raleigh); and C. Thomas Gualtieri, MD, neuro-

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### Most Important Opinions

- Criminal Practice – Abusive Boyfriend Convicted of Murder One**  
*: The 4th Circuit affirms defendant's first-degree murder in the fatal shooting of his ex-girlfriend after a day of fishing and a fish fry on the reservation of the Eastern Band of Cherokee Indians; the trial court properly admitted evidence of defendant's prior violent acts and death threats against the victim, and*

psychiatrist (Chapel Hill)



By  
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defendant "invited error" by refusing to allow a jury instruction on a lesser-included offense.

2. Administrative – Black Lung – Evidence – Disability – Rebuttal

*Mingo Logan Coal Co. v. Owens* An administrative law judge did not improperly limit a coal mining company's ability to rebut a presumption of black lung benefits for a claimant who had spent at least 15 years in an underground mine and had become totally disabled from breathing difficulties, and the 4th Circuit affirms the award of benefits.

3. Administrative – 'Market Rate' Debate in Black Lung Fee Award

*Eastern Associated Coal Corp. v. Director, OWCP* In this black lung benefits case, claimant's lawyers had sufficient market-based evidence to support their hourly rates of \$175 to \$300 and their quarter-hour billing did not lead to billing excessive hours, but the 4th Circuit said the record did not support some fees for legal assistants; the court affirms the award of over \$32,000.

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