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\$14M in Settlements Ends Ga. Case Involving Man Who Lost Foot When Hit by Concrete Truck

The case involved a 17-year-old high school sophomore whose foot was crushed by a truck and included sanctions orders striking defenses for discovery abuses.

By Greg Land | September 23, 2021



Christopher Newbern (from left), Edward Piasta and Michael Walker. (Courtesy photo)

A young man who lost a foot when he was struck by a cement truck reached settlements totaling \$14 million shortly before the case was going to trial in Cobb County.

The trial would have been an uphill slog for the defendants, said attorney Edward Piasta: The judge had already struck the defense's answers as a sanction discovery abuses, so the only issue for the jury to consider were damages suffered by the now 21-year-old plaintiff, Daniel Zurita.

"We settled the Saturday before jury selection was set to start on Monday," said Piasta, who represented Zurita with Piasta Newbern Walker (<https://www.pnwlaw.com/>) partners Michael Walker and Christopher Newbern and Daniel Castan and Alexander Lecca of Castan & Lecca (<https://caslec-law.com/>).

In an interview, Piasta and Walker said the \$14 million included a partial settlement Zurita reached last year with one of three insurers handling Zurita's claims.

"The \$14 million is the total sum," he said. "There were three levels of insurance. The first level essentially tendered their limits; the next level was with Great Midwestern Insurance; they made a partial settlement for \$6 million in exchange for capping the defendants' exposure at \$31 million at trial."

The case was set for trial last month; according to court records it was voluntarily dismissed Sept. 20.

The defense team included Robert Shannon and Logan Owens of Carlton Fields (<https://www.carltonfields.com/>), Jay Patton of Taylor English Duma and John O'Hara, Catherine Bryan and Joseph Megariotis of Connell Foley (<https://www.connellfoley.com/>) in Newark, New Jersey. There was no reply to a query Thursday.

According to the Piasta and Walker, court filings and a plaintiffs' account, the accident happened two days before Thanksgiving in 2017 when Zurita, then a high school sophomore on break for the holiday, accompanied his father to a construction site in Woodstock where a housing development was being built.

Zurita's father was working at the site building concrete foundations, and the young man tagged along to learn from his dad, Piasta said.

Zurita was among a group of pedestrians walking along what is now a residential road when a concrete truck came up behind them at a narrow "pinch point" in the roadway.

The truck driver, John Cobb, was negotiating a curb on the right and dashcam video showed he steered to the left, crushing Zurita's foot. The foot could not be saved and his leg was amputated below the knee.

In 2018 Zurita and his father sued Cobb and his employer, Ernst Concrete, in Cobb County State Court.

The case was "hotly contested," with the defense saying Zurita stepped into the truck's path and also blaming his father and other contractors for failing to supervise a minor on a job site.

In 2019 Judge Allison Salter granted a plaintiffs' motion for sanctions after the defense failed to turn over training materials requested in discovery, and used a privileged report from Zurita's psychologist whose practice mistakenly included it in a discovery response to craft questions when deposing the young man.

As a sanction, Salter barred any defense of contributory negligence; she issued a certificate for interlocutory review, but the Court of Appeals declined to hear the defense's appeal.

In 2020 the plaintiffs again sought sanctions, this time over defense claims that safety documents that were not privileged had been withheld under baseless claims of attorney-client privilege.

Salter again granted the motion, striking the defense's answer to Zurita's claims of respondeat superior but also dismissing the plaintiffs' claims for punitive damages and negligent hiring and retention.

The Court of Appeals again declined an interlocutory appeal.

For the appeals, the plaintiffs brought aboard Darren Summerville and Max Thelen of the Summerville Firm (<http://www.summervillefirm.com/>); the defense enlisted Laurie Webb Daniel and Jonathan Spital of Holland & Knight (<https://www.hklaw.com/en>).

"After the initial imposition of sanctions, Ernst Concrete's leadership worked very hard to make it right to the Zuritas," Piasta said, retaining Patton and O'Hara to replace its original counsel from Freeman Mathis & Gary (<https://www.fmglaw.com/>).

"Jay and Jeff worked professionally to bring this hard-fought case to an amicable conclusion and were not responsible for the issues underlying the sanctions orders," he noted.

"They're complete class acts who entered the case late to solve problems they did not create," he said.

Piasta and Walker said they were proud of the way Zuritas handled the challenge of such a traumatic injury, noting that he used some of the 2020 settlement money to start his own concrete foundation company.

They also hailed Salter's handling of the complex case.

"There were numerous motions and hearings, and it was obvious with each motion and hearing that she had meticulously studied the briefings, law and transcripts and understood the facts and law inside and out," Piasta said in a written account. "Both our team and our clients are extremely grateful for Judge Salter's and her staff's time and attention on the case."

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