

\$3.8M awarded in I-285 crash

By Greg Land

A Fulton County jury deliberated about five hours before awarding more than \$3.8 million to a young woman who was injured when a driver smashed into the already-wrecked vehicle she had been riding in shortly before, knocking it into the woman as she and a companion waited for help in the pre-dawn hours of Labor Day morning in 2008.

The woman's lawyer, Alwyn R. Fredericks of Cash, Krugler & Fredericks, said he had offered to settle before trial for the \$1 million limit of the defendant's State Farm Insurance policy, or even slightly less, but that the highest defense offer was \$5,000.

"It's unfortunate that State Farm had an opportunity to resolve this for much less, and they chose to roll the dice," said Fredericks.

Defense attorney Louis L. McLendon II of Sharon W. Ware & Associates said in an email that because he and his client, Cartersville-based charter air carrier Phoenix Air Group Inc., are still considering their options, it would be inappropriate to comment as to any potential appeal. Sharon W. Ware & Associates is part of State Farm's corporate law department.

The first wreck occurred shortly after 5 a.m. on Sept. 1 as Shondria T. Harris and Synetra L. Baldwin were riding along Interstate 285 near the Paces Ferry Road exit in Harris' Honda Accord. Fredericks said the pair were coming home from visiting-but not entering-a nightclub. Both women fell asleep, with Harris at the wheel, he said.

Baldwin was awakened by the car crashing into the median wall.

Harris' leg was broken and she was trapped in the car, and Baldwin-Fredericks' client-put on the emergency flashers, got out and was trying to pull Harris from the car when another vehicle carrying three men saw the accident and pulled over to help. The "good Samaritans," said Fredericks, parked several car lengths in front of the wrecked Honda, which was perpendicular to the highway and sticking into the left-hand lane.

Two of the three men, Korry Turner and JaCorey Glaude, got out and helped free Harris and took both women forward, seating them between the wrecked car and their own vehicle, Fredericks said.

"So the girls are in the emergency lane, and one of the good Samaritans is down there holding their hands and saying 'Don't worry, we've called 911,' while the other one is looking out up on the highway," he said.

Oncoming traffic avoided the wreck for several minutes until two vehicles, both driven by Phoenix Air employees, came upon the scene. The first, another Honda driven by Nicholas Gann, swerved to avoid the wreck, but the other one, a Nissan Quest minivan driven by 18-year-old Mitchell R. Todd, slammed into Harris' wrecked car, knocking it into Baldwin, Harris and Glaude.

Harris was subsequently treated for a broken leg and ankle and Glaude suffered bruises and abrasions, Fredericks said, but Baldwin was left unconscious, "frothing and bleeding at the mouth."



Alwyn Fredericks

Transported to Grady Memorial Hospital, Baldwin was diagnosed with three sub-arachnoid brain hemorrhages and a broken pubic bone, Fredericks said.

No one was ticketed for either wreck, and there were no allegations that drugs or alcohol were involved, Fredericks said.

At the time of the accident, he said, Baldwin was a 21-year-old full-time student at Alabama State University, where she was studying fine arts and drama and was a member of the dance team. "She had to take four or five months off, then tried to go back to school but couldn't hack it," he said, because her brain injuries make concentration and retention difficult.

In August 2010, Fredericks filed a single-count negligence suit on Baldwin's behalf in Fulton County State Court, naming Phoenix Air, Todd the driver of the car that struck Harris' car and Harris as defendants. By the time the case came to trial, Harris-who did not retain counsel and entered a consent default decree-had been dismissed.

The defense portion of the pretrial order does not dispute Fredericks' account of the accident, but it says that during the course of helping the women, "someone disengaged the lights on the wrecked vehicle" and "sat them in the roadway" with their backs to oncoming traffic. Any resulting injuries, it says, were due to negligence on the part of Harris, Baldwin, Turner and Glaude.

The plaintiff's portion of the order said Baldwin had sustained \$37,811 in medical bills and at least \$4,740 in lost wages.

Two other insurers who held uninsured driver policies under which Baldwin made uninsured/underinsured driver claims settled out of the case for the "low, minimal limits" of their policies, Fredericks said.

During a court-ordered mediation before Stephen L. Goldner, Fredericks said he asked for the \$1 million policy limit, and that McLendon opened with an offer of \$2,500; Fredericks dropped his bid to \$950,000, and the defense countered with a \$5,000 offer, "the highest they ever went."

The defense tried to add the "good Samaritans" to the verdict form as potentially liable for apportioned blame, but Fulton County State Court Judge Susan B. Forsling refused to allow it, Fredericks said. "She said there was no evidence of any negligence on their part," Fredericks said.

The final jury form contained Phoenix Air as the sole defendant; the company's employee, Todd, had been dismissed as an individual defendant.

During the trial that began March 5, Fredericks and associate James A. Robson represented Baldwin. Fredericks said he argued that Gann and Todd had been speeding along the dark highway, with Todd closely tailing Gann because he didn't know where he was going, and that when Gann veered to avoid the wreck, Todd was going too fast to do the same.

"No one was issued a ticket, but when I looked at the case, I felt like the cop had felt sorry for this young guy and let him go," Fredericks said. He said he also had a recording of a conversation in which Gann said he and Todd had been text-messaging each other before the wreck, but was unable to get it into evidence.

His case was also hampered because Gann joined the military in the interim, and deployed before he could be deposed.

The defense, he said, argued two points: That Todd couldn't see the wreck in the dark until he was right on top of it, and that Baldwin and the others had a chance to move because one of the good Samaritans testified that he saw Todd's vehicle coming behind Gann's and was able to jump out of the way.

Both sides' experts—Matt F. Butryn, a neuropsychologist from Athens who testified for the plaintiff, and Stephen N. Macciocchi, director of rehabilitation psychology and neuropsychology at Shepherd Center—agreed that Baldwin had suffered long-term memory and cognitive brain damage, Fredericks said.

But the defense expert said Baldwin's injuries could be resolved, while the plaintiff's expert disagreed.

Fredericks said he thought the key witnesses were Todd and the investigating officer.

"Todd was impeached numerous times," he said, "and he ultimately admitted that he'd been speeding, doing 65 in a 55 zone."

"They also brought in the police officer from Cobb County who essentially tried to say, 'Yeah, people are doing 75 or 80 in Cobb County, but it's OK,'" Fredericks said. "He wilted on cross; we got him to admit that, yes, even five miles above the limit is breaking the law."

The officer also changed his testimony concerning whether he thought Todd had been speeding and by how much, Fredericks said. "Todd was only 18 at the time, and we

felt like the officer took pity and didn't charge him," he said. "I felt like he botched the investigation."

At closing, Frederick said, he asked the jury for about \$3.4 million "to compensate her for the permanent injuries she'll live with for the rest of her life, and for her lost wages and medicals." McLendon, he said, suggested the jury award Baldwin "maybe \$50,000, if anything at all."

Fredericks said the jury was made up of seven women and five men, of whom seven were African-Americans and five were white. They included a psychologist and the wife of a former police officer.

At the end of about five hours of deliberations, the panel found that Baldwin and Harris were not responsible for any of the plaintiff's injuries, holding Phoenix Air 100 percent liable for \$3,826,172 in damages.

Fredericks said the damages calculations included \$10 an hour for each of the 16 hours a day that Baldwin will be awake for the rest of her life, about 64 years.

In conversation with jurors afterward, Fredericks said they mentioned three factors contributing to the verdict. "One, they didn't believe the police officer," he said. "Two, they felt like the driver's testimony was unreliable; and three, there really wasn't much of an issue once he admitted he'd been speeding."

Fredericks said that in preparing for the trial, he and Robson did not stage any mock trials, but he did have some outside help from the 17 lawyers in their Roswell Road building.

"We must have run the case by at least half of them," he said. "They really helped us hone it."

The case is Baldwin v. Phoenix Air Group, No. 10EV010728.