



(Clockwise, from top left) Matt Cook, Nathan Nicholson and Josh Bearden of the Cook Law Group in Gainesville, Georgia, and D. Scott Cummins of The Cummins Firm in Newnan, Georgia. Courtesy photos

## Settlement Strategy: Obtaining \$10M From 'Underinsured' Trucking Defendant

Litigators with the Cook Law Group in Gainesville and The Cummins Firm in Newnan leveraged Facebook postings and Rule 30(b)(6) depositions to resolve a fatal automotive tort for \$6 million over the trucking defendant's \$4 million insurance policy limit.

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By Cedra Mayfield

Litigation Reporter

## What You Need to Know

- Collaborating plaintiff counsel with the Cook Law Group in Gainesville and The Cummins Firm in Newnan obtained a \$10 million settlement following fatal motorcycle versus tractor-trailer collision in 2022.
- Plaintiff counsel convinced Alabama-based Wiley Sanders Truck Lines Inc. to pay \$6 million over its \$4 million policy limit to family of decedent.
- Trucking defendant represented by Lewis Brisbois Bisgaard & Smith attorneys.

Litigators with the Cook Law Group in Gainesville and The Cummins Firm in Newnan have obtained a \$10 million settlement for the family of a motorcyclist killed in a collision with a Wiley Sanders tractor-trailer in 2022.

Now plaintiff counsel are sharing how they leveraged Facebook postings and Rule 30(b)(6) depositions to resolve the fatal automotive tort for \$6 million over the trucking defendant's \$4 million insurance policy limit.

"We knew early on that the trucking company was underinsured, but we knew that the case was worth in excess of the policy limits," Cook Law Group associate attorney Nathan Nicholson told the Daily Report. "The biggest hurdle was getting the trucking company to pay excess money, which is very rare."

### 'Reappeared From Its Oily Grave'

Under the leadership of partner Matt E. Cook, Nicholson and colleague Josh Bearden



collaborated with The Cummins Firm's D. Scott Cummins to represent the family of Thad Jenkins.

According to plaintiff counsel, Jenkins had been traveling on Ga. 14 in Newnan when Wiley Sanders truck operator Amy Rutledge collided with the 47-year-old motorcyclist as she made a left-hand turn in March 2022.

"The circumstances of the wreck suggested that the Wiley Sanders driver

must have been distracted when she made the improper turn, since Mr. Jenkins was clearly visible when the driver made the turn," Cook said.

Hoping to pinpoint the distraction, Cook said plaintiff counsel sought a download of the Rutledge's phone but didn't receive immediate access.

Despite plaintiff counsel's mailing of preservation letters, Cook said the defendant driver alleged her phone fell "into a bucket of oil paint" several months after the wreck.

When plaintiff counsel threatened to file a motion for spoliation sanctions surrounding the defendant's failure to preserve and download the mobile device, Cook said the defendant's phone reemerged.

"[T]he phone 'miraculously' reappear[ed] from its oily grave and was then downloaded by the defense," Cook said. "However, the download could not rule in or rule out phone use by the driver at the time of the wreck."

That didn't stop plaintiff counsel's quest to determine whether Rutledge had been distracted behind the wheel of the tractor-trailer.

The plaintiff quartet opted to examine the defendants' corporate and employee social media accounts.

According to Cook, plaintiff counsel uncovered "Facebook postings by the driver showing cell phone videos taken by the driver while driving for Wiley Sanders in the months leading up to the wreck."



"By continuing to dig and search for social media posts regarding potential unsafe driving not only by the driver but also by the company, we were able to find social media posts from the company promoting a photograph contest with many winning drivers' photographs appearing to be taken while driving," co-counsel Bearden said.

Plaintiff counsel said they also discovered the trucking company had purchased dash cameras to monitor driver behavior yet "declined to activate and utilize the inward two-facing camera technology."

Cook called the discovery "a critical omission" that plaintiff counsel later explored "via [30\(b\)\(6\)](#) depositions of the dash cam manufacturer and the management of Wiley Sanders Trucking."

During the depositions, Nicholson said plaintiff counsel "box[ed] in the defendants with their own social media postings encouraging drivers to take the best scenery photographs while on the road."

Confident in the evidence uncovered during discovery, plaintiff counsel pushed forward toward trial against the corporate defendant they'd already determined to be underinsured. Per Cook, the Troy, Alabama based trucking company had more than 600 trucks and drivers, but "only \$4 million in coverage."



"The trucking company's \$4 million policy limits were not sufficient to provide full compensation for Thad Jenkins' life," plaintiff counsel Cummins said. "We knew the case deserved more compensation, and we spoke with our client who agreed to let us dig into the evidence and litigate until we had proof of deplorable driving for this truck driver, and apparently for others who participated in a photo contest from the cabs of the trucks."

In December 2022, plaintiff counsel filed a wrongful death complaint against Rutledge, Wiley Sanders and Hudson Insurance Company in Decatur County State Court on behalf of Jenkins' wife, Dallas Kee. Citing negligence claims ranging from hiring and retention to supervision, training and entrustment, the plaintiff sought compensatory and punitive damages.

Lewis Brisbois Bisgaard & Smith litigators Brantley Rowlen in Savannah and Andrew Craft in Atlanta represented the defendants.

Although reached for comment, defense counsel opted not to provide the Daily Report with any feedback on the matter.



### **'Certain a Large Verdict Would Ensure'**

With the matter transferred to U.S. District Judge Leslie Abrams Gardner's Middle District of Georgia docket in Albany, plaintiff counsel had been set to try the case before a federal jury this month. With time ticking down to the wrongful death trial, Nicholson said the plaintiff team attempted to obtain a deposition with "one of the top executives at the trucking company."

But rather than conduct the deposition, Cook said plaintiff counsel accepted a last-minute settlement offer by the defendants worth \$6 million more than their \$4 million insurance policy limits.

"We never made a demand for the insurance limits and we never quit digging on the critical discovery issues," Cook said. "We were certain a large verdict would ensue, but collection would be protracted. As we moved closer to the reality that a trial, and verdict, were coming, the company had to come to grips with the fact that [the] plaintiff would never accept just the insurance limits. [T]he company finally came to the understanding that it had to make a business decision—one that was going to be painful but a decision that allowed the company to survive."

After weighing "the represented value of the company versus the delay, risks and the personal toll a trial and appeal would have taken on [her]," Cook said the plaintiff settled "for an amount that likely equaled or exceeded what would be collected post-bankruptcy in the event of a large verdict."

"Our client's wife was interested in making sure the trucking company paid enough of a settlement to make an impression on them to have safer drivers in the future, and we believe that cause was served by this settlement of \$6 million personal monies paid in addition to the \$4 million policy limit," Cummins added.

Bearden agreed.

"I am hopeful that this case will encourage companies to voluntarily take appropriate safety precautions preemptively," Bearden said. "With interior-facing cameras, the true causes of previous 'inattentive' incidents of this or other drivers could be caught and appropriately addressed before someone else gets hurt or killed."

### **'The Fast Answer Is Not Always the Best Answer'**

The resolution signaled a variety of takeaways for the plaintiff team.

For Cook, the eight-figure outcome highlighted the need for lawyers to "evaluate every case on its own merits." He noted that in many cases, "clients will accept the insurance limits and move on." But in instances with "more flagrant" wrongdoing, Cook urged that "the defendant must bear some personal consequences for the plaintiff to heal, for the defendant to improve and for the public to benefit."

"This was one of those cases and those goals were all achieved with the payment of significant personal money to close out the case," Cook said.

According to Cook, the impact to Wiley Sanders' bottom line constituted a "meaningful demonstration of personal responsibility" that left the plaintiff feeling vindicated and lead counsel feeling pleased.



Nicholson, on the other hand, said the resolution triggered feelings of pride.

"I am proud that we were able to bring closure to our client's family and get the justice he deserved," Nicholson said. "As Matt says, 'the fast answer is not always the best answer.' We try to leave no stone unturned for our clients. In this case, the trucking company was underinsured but ultimately made the right decision to pay personal money to protect the company."

Plaintiff counsel also applauded opposing counsel.

While Cook said, "Andrew Craft did an excellent job in defending the case and helping the matter resolve in a reasonable way," Nicholson added that "Craft did a great job throughout the case in defending his clients."

Cook said, "Andrew took this 'bet the business' case, put all the cards on the table, met the challenges head-on in a professional manner and that let the case resolve as it should have prior to trial."