

'Close Call' Nets Injured Driver \$50K

Man was able to move car to avoid fatal crash

Thomas Henry v. Allstate Insurance: A former state Department of Transportation employee, who came within six feet of a potentially fatal crash, was awarded \$50,000 in "close call" damages following a bench trial in New Haven.

Thomas Henry was in his car on the entrance ramp of exit 63 returning to his office around lunch time on Jan. 22, 2003. As he awaited the passage of traffic, Whitney Johnson, an uninsured motorist, lost control of her car going 50 to 60 mph and was headed directly towards Henry's Dodge Stratus.

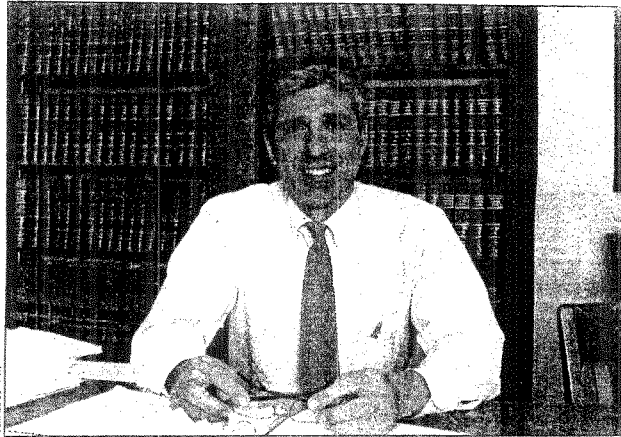
In the few seconds Henry had between "perception of danger," wrote Judge Angela C. Robinson in her decision, and impact, Henry was able to move his car forward about six feet before Johnson smashed into the vehicle's side, spinning it 180 degrees onto Route 15. The rear portion of the car was mangled, the trunk popped open and the bumper was knocked off. The car was destroyed.

Because Henry was able to move the car forward those half-dozen feet, he walked away from the crash, though he sustained a cervical spine injury, pain in his left side and a head wound. He has accumulated just over \$2,000 in medical bills since the crash.

His doctor rated his cervical spine injury as a 10-percent permanent partial disability.

Because Johnson was an uninsured motorist, Henry had to file suit against his own auto insurance company, Allstate Insurance, to recover damages. The uninsured motorist coverage on his plan was for \$50,000, said Henry's lawyer, Anthony S. Bonadies, of Hamden's Sette & Bonadies.

Unable to hash out a settlement outside of court, Bonadies and Allstate counsel Margaret Pothin agreed to a bench trial before Judge Robinson. By going that route, Bonadies said he did not have to spend money calling in expert witnesses for a jury trial. Only Henry testified at the bench trial.



Hamden attorney Anthony S. Bonadies said 'close call' damages are a recognized form of compensation in Connecticut, but they are not always requested by lawyers.

Because liability was also uncontested, the only real issue for Judge Robinson to determine was the damages. Robinson, in a decision dated March 24, awarded Henry \$3,110 for economic damages, including medical bills and lost wages. She awarded \$50,000 for his permanent partial disability and pain and suffering, which includes his "close call."

"He saw his life flash before him," said Bonadies. "It's the kind of thing he thinks about all the time. If he hadn't moved up six feet, death would've been at his door. He's lucky to be alive."

Bonadies explained that close call damages are a recognized form of compensation in Connecticut, but they are not always requested by lawyers. He said juries often grant compensation for close calls without using those words in explaining their decisions. He said with this case, Robinson discussed the form of damages in her written decision.

"This court finds that the particular pain, anguish and nervousness that the

plaintiff suffered as a result of the collision entitles him to more compensation because it was a 'near miss' or 'close call,'" wrote Robinson. "Regarding the non-economic award, the court factors in the severity of the collision, with its unusual 'near miss' or 'close call' aspect, as well as the after-effects of the plaintiff's injuries on his ability to carry on and participate in his life as he had previously."

Bonadies said Henry is now retired.

Pothin, Allstate's lawyer, could not be reached for comment by press time Thursday. Bonadies said Allstate would not appeal the decision as it had already paid the damages.

— Christian Nolan

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Judge Dismisses State's 'No Child' Suit

By ASSOCIATED PRESS

A federal judge in New Haven last week dismissed the last of four claims in Connecticut's challenge to the federal No Child Left Behind law.

Connecticut in 2005 became the first state to sue over the law's testing requirements, saying it is unconstitutional because expenses outweigh federal reimbursements.

The 2002 law requires annual standardized tests for students in grades three through eight. States must correct problems in school districts that fail short. Connecticut wants to continue its program of testing students every other year, in grades four, six and eight.

In a ruling released last Monday, Judge Mark Kravitz dismissed the state's claim that alleges the U.S. Department of Education unfairly denied Connecticut's proposed changes to testing rules for special education and limited English proficiency students (LEP).

The state contended it would have to use state money to meet the federal Act's requirements, a violation of the law's unfunded mandates provision. Kravitz said the state failed to make the argument that Education Department's denial violated that provision.

"Though Connecticut provided estimates of what it would cost to modify and implement assessment policies and accommodations for LEP students and to develop alternative assessments for students with disabilities...nowhere did it state that federal funding was insufficient to cover those costs," Kravitz wrote. "Instead, the State sought to justify its requests on the basis of reasons other than cost."

The judge dismissed the first three claims in September 2006, ruling the state can't challenge the constitutionality of the law until it exhausted the U.S. Department of Education's administrative appeals.

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