

Jury awards \$13.1M to man hurt by defective repaving project

■ BY DAVID BAUGHER

A Richland County jury has awarded more than \$13.1 million to a man who was badly injured in a fatal car accident caused by a defective highway repaving project.



Applegate

Five students at Claflin University were traveling along Interstate 77 in October 2016 when the driver encountered a four-and-a-half-inch drop-off while trying to get back onto the highway from the shoulder. That caused the driver to lose control of the car, which became airborne and landed on top of another vehicle in the opposing lanes. Four of the car occupants were killed, and the sole survivor, Gernardo Cato, was left with traumatic brain injuries and a broken clavicle. Cato spent 19 days in the hospital after being airlifted from the scene.



Lail

William Applegate, David Lail, and Reynolds Blankenship of Yarborough Applegate in Charleston and Andrew Savage of Savage Law in Charleston represented Cato in a lawsuit against the South Carolina Department of Transportation and a pair of contractors that were working on a road rehabilitation project along that stretch of the highway.

Cato contended that the edge of the pavement should have been “backfilled” to level it out in order to prevent such a crash from happening. Lail said no signs warned of any pavement problems and that any drop-off of more than two inches is considered hazardous.

“I think people understood the severity and we were able to show that this was an issue that the government and road contractors have been dealing with since the 50s,” Applegate said. “It was a well-established issue.”



Blankenship

In a verdict handed down on June 14, Richland County jurors determined that the general contractor, Archer Western Construction, was 60 percent at fault for the accident, and the SCDOT was liable for the remainder. The other contractor, Sloan Construction Company, which

laid the fresh asphalt, was found not liable since the backfilling had been the job of Archer Western. Under state law, Archer Western will be responsible for the entire judgment because it was found to be more than 50 percent at fault, the attorneys said.

The award included more than \$200,000 for medical expenses, more than \$500,000 for future care and nearly \$1.4 million for loss of earning capacity. The jury awarded \$7 million in non-economic damages and \$4 in punitive damages.

The trial lasted for 10 days, and jurors deliberated for about three and a half hours before returning their verdict, the attorneys said. Applegate said that the damages Cato suffered were considerable and jurors understood that.

“In 2021, the information related to severe traumatic brain injury and the effects it has on people has increased dramatically so I think, in this world, it is an easier place to demonstrate the impacts of brain injury,” Applegate said.

The matter had been consolidated with petitions from other plaintiffs representing the estates of the four deceased students, but Applegate said the other plaintiffs resolved their issues separately early in the dispute.

Dennis Lovell and Christina Perrin of Copeland, Stair, Kingma & Lovell represented Archer Western. Rick Pierce of Howser, Newman & Besley in Columbia represented the SCDOT. John Lay and David Rheney of Gallivan White & Boyd in Columbia and Greenville, respectively, and Clarke DuBose of Haynsworth Sinkler Boyd in Columbia represented Sloan.

None of the defense attorneys provided comment on the jury’s verdict, but Cato’s attorneys said that both liability and damages were contested at trial, and numerous defenses were raised.

VERDICT REPORT – ROADWAY DEFECT

Amount: \$13,100,559.90

Injuries alleged: Traumatic brain injury, broken clavicle

Case name: Gernardo Cato v. Archer Western Construction Company; SCDOT; Reeves Construction Company dba Sloan Construction Company

Court: Richland County Circuit Court

Case No.: 2017-CP-40-4432

Judge: Robert E. Hood

Date of verdict: June 14

Most helpful experts: Peter Parsonson of Atlanta (roadway safety), Kendrick E. Richardson of Charleston (accident reconstruction), Deborah L. Caskey of Charlotte (vocational rehabilitation), and Tricia Yount of Charleston (economist)

Insurance carriers: Berkshire Hathaway (for Archer Western) and Insurance Reserve Fund (for SCDOT)

Attorneys for plaintiff: William Applegate, David Lail, and Reynolds Blankenship of Yarborough Applegate in Charleston and Andrew Savage of Savage Law in Charleston

Attorneys for defendants: Gary Lovell and Christina Perrin of Copeland, Stair, Kingma & Lovell in Charleston for Archer Western; Rick Pierce of Howser, Newman & Besley in Columbia for the SCDOT; and John Lay and David Rheney of Gallivan, White & Boyd in Columbia and Greenville, respectively, and Clarke DuBose of Haynsworth Sinkler Boyd in Columbia for Sloan Construction