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Thursday, February 25, 2010

## Teen wins \$600K from bike crash

*Defense lawyers are pleased that verdict was \$900,000 less than pretrial demand of \$1.5 million.*

By Katheryn Hayes Tucker, Staff Reporter



(Zachary D. Porter/Daily Report)

"I call it the case of the amateur Evel Knievel want-to-be motorcycle rider," said **Matthew Flournoy, right**, who represented an injured teen along with James Sadd.

James N. Sadd of Slappey & Sadd, assisted by **Matthew C. Flournoy of the Flournoy Law Firm of Marietta**, won a \$600,000 verdict last week in Cobb County State Court for a 13-year-old girl who was crushed by a motorcycle stunt driver as she was getting out of her family car in a parking lot.

"I call it the case of the amateur Evel Knievel want-to-be motorcycle rider," said **Flournoy**, who used that same characterization for the jury in a closing argument. "He had no business trying to be Evel Knievel."

The driver was James Ballew, part owner of Freedom Power Sports of Kennesaw. The June 8, 2008, crash happened in the parking lot of the motorcycle and all-terrain vehicle dealer. The family was attending a promotional event in the parking lot that featured an inflated "moon walk" tent for children as well as popcorn and snow cones. Ballew was driving the motorcycle around the lot to entertain in a crowd of 50 people and attempting a "burn out" at the time.

The jury announced the verdict at 7 p.m. Thursday after a four-day trial before Cobb State Court Judge Irma B. Glover. The verdict included \$48,348 for medical expenses associated with the crash, which crushed Breana Chevez between the out-of-control motorcycle and her mother's Toyota Matrix, and another \$550,000 for pain and suffering. The girl suffered a broken pelvis, vertebrae and ankle, as well as second-degree burns from the asphalt where she landed. She had to be airlifted to Children's Healthcare of Atlanta at Egleston, where she underwent surgery and treatment.

The jury also awarded much smaller amounts to the girl's father, Dwayne Turner, and younger sister, Zayne Turner, who were injured on the opposite side of the Matrix as the motorcycle slammed it into them. The father's leg was injured and the sister's nose bloodied. For Dwayne Turner, the father, the verdict included \$266 in medical expenses and \$500 for pain and suffering. For Zayne Turner, who was then 6 years old, the verdict included \$547 for medical expenses and \$1,500 for pain and suffering.

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The defendant's attorney, G. Lee Welborn of Downey & Cleveland in Marietta, who was hired by Freedom Power Sports insurance carrier, Auto-Owners Insurance Co., said he was pleased with the verdict. "It was \$900,000 less than the lowest pretrial demand, which was \$1.5 million, the maximum coverage," Welborn said. "And it was a good verdict for the plaintiff, too."

Welborn said he is still discussing options with his client, but he does not expect to appeal. "I suspect this might close the matter," he said.

Attorneys for both sides said the girl—a good student and a basketball player now at Kell High School—made a strong impression on the jury. "They had a compelling story to tell for the young lady who was injured and just a very nice family," said Welborn, who added that his own client—Ballew, the motor cycle driver—made a positive impression as well. "It was a difficult thing for the jury. My client was so nice and apologetic, too."

Ballew said he lost control of the motorcycle because the throttle stuck. But his impromptu exhibition in a parking lot full of children and parents for a family fun day did not play well with the jury, according to the plaintiff's attorneys. "The event was designed purposely to bring in families of young children, and his reckless conduct was really over the top," **Flournoy** said.

According to the complaint and police report, the family had just pulled into the dealer's crowded parking on Cobb Parkway, where the father was considering buying a scooter for riding to his job as an optician in order to save gas. The mother parked beside a curb near other cars. Just as she stepped out, she saw the motorcycle come flying into her daughter, crushing the girl against the family's Toyota Matrix. The impact pushed the Matrix into the father and little sister as they were exiting from the passenger side.

People from the crowd helped move the girl from the hot asphalt to a grassy area nearby and placed a tent over her while they waited for help. She was taken by Life Flight to Eggleston, and after three days in the hospital, she spent her summer—between eighth and ninth grades—recovering from her broken bones.

The girl has returned to playing basketball for her school team, although her attorneys say her speed has been affected by the injury and she still has back pain. Sadd and **Flournoy** said the money from the jury's verdict will go into a trust to cover her future needs, including medical care.

"Although she recovered extremely well, Breana continues to have to deal with chronic back issues. Everybody is very proud of her. She's brave and courageous. She's as tough as she is beautiful," said Sadd. "She's back playing basketball, and she is still doing well in school. But there is concern that her injuries will have a lifelong impact on her, not just now but when she gets older."

One defense tactic may have actually helped the plaintiff, according to Sadd and **Flournoy**, who said the insurance company hired a private investigator to film the girl playing basketball. "We already said she was playing basketball," said Sadd, who asked the private investigator in cross examination what he would have said if one of the parents had asked why he was filming the girls in the gym, and whether he would have told them the truth. The answer was no.

"It was creepy," **said Flournoy** of the video, which was shown in court.

Attorneys for the plaintiff said the highest offer made by the defense before the trial began was less than \$100,000. After they presented the plaintiff's case, Sadd and Flournoy said, the defense made a high-low offer of \$400,000/\$100,000. "Our clients rejected that offer," Sadd said.

"The insurance company just undervalued the injuries to Breana. They should have done the right thing earlier," said Flournoy. "It took a Cobb County jury to tell them what the value was."

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